



# Statement on the making of regulations in connection with the award of 412-414 MHz paired with 422-424 MHz

Statement

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## Section 1

# Summary

- 1.1 Ofcom has held three consultations, in January 2005, October 2005 and April 2006, in connection with the award of wireless telegraphy licences for use of the spectrum bands 412-414 MHz paired with 422-424 MHz. It has also published an Information Memorandum in respect of this award in April 2006.
- 1.2 Ofcom has carefully considered the responses to these consultations, including those to the last consultation on the draft statutory instruments to be made in connection with the award. It considers that the responses do not require changes to any of the four statutory instruments relevant to this award.
- 1.3 Ofcom has made some changes to the drafting in the interests of clarity and these are discussed in this Statement.
- 1.4 Ofcom has now made the four statutory instruments and submitted them for registration and publication. They will come into force on 7 August 2006.
- 1.5 Ofcom is provisionally indicating in this Statement that the award process will commence in the week beginning 11 September 2006. Ofcom expects that the application date will be Thursday, 14 September 2006, although this will be confirmed by Ofcom via publication on its website after the statutory instruments have come into force.
- 1.6 The relevant section of the Ofcom website for information on Ofcom's spectrum award programme and the award of the Spectrum Bands is [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/).
- 1.7 Ofcom will hold a seminar on the auction rules before the start of the award process, on Tuesday, 5 September 2006.

## Section 2

# Introduction

- 2.1 This Statement sets out Ofcom's decisions in relation to the statutory instruments it needs to make in connection with the award of wireless telegraphy licences for the use of the spectrum bands 412-414 MHz paired with 422-424 MHz (the "Spectrum Bands").
- 2.2 Ofcom published on 6 April 2005 a notice<sup>1</sup> of its proposal to make regulations and invited comments on these by 17 May 2006, Ofcom, in reaching its decisions, has carefully considered the submissions it received.
- 2.3 The draft statutory instruments Ofcom published for consultation in April 2006 (the "April Consultation") followed previous consultations and decisions relevant to this award:
- The Spectrum Framework Review: Implementation Plan (SFR:IP) consultation<sup>2</sup> published on 13 January 2005, which included outline proposals for the award of the Spectrum Bands.
  - A consultation on detailed proposals for the award, published on 13 October 2005 (the "October Consultation"), and two seminars, followed by a statement on the subsequent decisions, published on 6 April 2006 (the "April Statement")<sup>3</sup>.
- 2.4 The Information Memorandum for this award (the "Information Memorandum") was also published on 6 April 2006<sup>4</sup>.
- 2.5 The award of the Spectrum Bands is part of a programme of spectrum awards that was described in the SFR:IP consultation. In July 2005, Ofcom provided an update on the programme in the Spectrum Framework Review: Implementation Plan Interim Statement. Further information on the spectrum awards programme can be found on Ofcom's website in its dedicated section:  
[www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/).

## Overview of responses to the April Consultation

- 2.6 Ofcom received three responses to the April Consultation; a summary of these is provided at Annex 1. The response from Arqiva is available on Ofcom's website<sup>5</sup>; other responses were submitted with requests for confidentiality.
- 2.7 Only one confidential response and a response from Arqiva comprised comments on the details of the draft regulations. These comments all related to the draft Wireless Telegraphy (Licence Award) (No.2) Regulations 2006 (the "Licence Award Regulations"). In summary, these were as follows:

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<sup>1</sup> See <http://www.ofcom.org.uk/consult/condocs/412424award/consultation.pdf>

<sup>2</sup> See <http://www.ofcom.org.uk/consult/condocs/sfrrip/> for the consultation and the interim statement

<sup>3</sup> See [http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_412/](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_412/) for both the October Consultation and April Statement; this section of the website includes other documents relevant to the award.

<sup>4</sup> See [http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award\\_412/](http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_412/)

<sup>5</sup> See <http://www.ofcom.org.uk/consult/condocs/412424award/responses/>

- a suggestion to include additional wording to identify Ofcom's auction advisors;
- a comment on the Licence Selection Menu;
- a query on the disclosure of information.

Other comments received were:

- a concern that the proposed award was technology neutral and did not restrict 3G use;
- a request for the clarification of the role of a band manager particularly in respect of enforcement powers and responsibilities for interference.

## **Making and publication of the final regulations in connection with the award**

2.8 Ofcom made the four statutory instruments relevant to this award on 7 July 2006. These will be available on the website of the Office of Public Sector Information (OPSI)<sup>6</sup>, under the titles listed at paragraph 3.2. Copies in draft form are also annexed to this Statement for indicative purposes in the form submitted for registration and publication after their making by Ofcom. OPSI is the only authorised source for published statutory instruments.

## **Document structure**

- 2.9 The following section of this Statement provides an analysis of the main points raised by stakeholders in their responses to the April Consultation. It also sets out the additional drafting changes that were made to the Licence Award Regulations. These changes do not reflect substantive changes in policy, but are aimed at ensuring greater clarity in the final version of these Regulations.
- 2.10 Section 4 describes the next steps for the award.
- 2.11 Annex 1 provides a summary table of consultation responses.
- 2.12 Annex 2 includes draft copies of the four statutory instruments in the form submitted for registration and publication after their making by Ofcom.
- 2.13 Annex 3 includes copies of the Regulatory Impact Assessments for the four statutory instruments in the form placed in the libraries of both Houses of Parliament.

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<sup>6</sup> See <http://www.opsi.gov.uk>

### Section 3

## Ofcom's decisions following the April Consultation

- 3.1 In the April Consultation Ofcom gave notice of, and consulted on, its proposals to make regulations in connection with the award of wireless telegraphy licences for use of the Spectrum Bands.
- 3.2 The proposals included four draft statutory instruments, which can be briefly summarised as follows:
- The Wireless Telegraphy (Licence Award) (No.2) Regulations 2006 set out the process to be followed for the award of licences for use of the Spectrum Bands and the rules that will apply to that process.
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2006 provide the scope for subsequent transfers of licences in the Spectrum Bands, as described in the April Statement.
  - The Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2006 set out the provisions necessary to allow the publication of details of the licences for use of the Spectrum Bands in the wireless telegraphy register.
  - The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006 sets out how the number of licences in the Spectrum Bands will be limited for the time being as a result of the award process.
- 3.3 The Licence Award Regulations give effect to Ofcom's policy in relation to the determination of the winning option and the winning bidders as set out in the April Statement and the Information Memorandum. As stated in at paragraph 4.47 in the April Statement and the Executive Summary of the Information Memorandum, if there are unsold licences as a result of the award process defined by the Licence Award Regulations, these will be retained by Ofcom and may be assigned subsequently in a new award process at Ofcom's discretion. Ofcom intends to consult at the appropriate time should there be unsold licences as a result of the award process under the Licence Award Regulations.
- 3.4 Three responses were received to the consultation, of which two contained comments on the proposed statutory instruments. All of these comments related to the Wireless Telegraphy (Licence Award) (No.2) Regulations 2006. The other comments received related to general policy matters.
- 3.5 No comments were received in relation on the provisions in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2006, the Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2006 or the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006.
- 3.6 Ofcom has carefully considered the responses to the consultation. This section sets out Ofcom's responses to the main points in stakeholders' comments. A summary of the issues raised together with Ofcom's responses is shown in Annex 1.

## **The Wireless Telegraphy (Licence Award) (No.2) Regulations 2006**

- 3.7 In connection with regulation 28(f) a respondent suggested a minor amendment to the text by adding the 'the identity of whom Ofcom has publicly disclosed' to the end. Ofcom believes that the Information Memorandum (paragraph 4.62) is explicit with regard to the identities of the advisors who have provided services to Ofcom and that regulation 28(f) does not therefore require further amendment.
- 3.8 Arqiva felt that there was an inconsistency between the number of licences with may be bid for (regulation 17(3)(c)) and the Licence Selection Menu (Schedule 4). However, Schedule 4 refers to regulation 12(1)(a), which covers the situation where there is only one bidder and consequently no auction is held. Where there is more than one bidder and an auction is held in accordance with the procedure in Part 5 of the Regulations, bidders must use the Bidding Menu Document at Schedule 5 in accordance with regulations 16 and 17.
- 3.9 Arqiva pointed out that any party considering bidding might wish to discuss confidential matters with a range of parties before deciding if it wished to proceed to bid. This might well include potential suppliers and customers, as well as potential bidding partners. It asked for clarification of whether a bidding party has to notify Ofcom of all its business discussions, even where these discussions may not lead anywhere or, for example, only result in an indication of equipment availability. Regulation 8(3)(f)(iv) allows for the disclosure of confidential information for the purpose of enabling the recipient to decide whether to participate in a bidder group. Additionally, the Information Memorandum (paragraph 4.22) states that it is not Ofcom's intention either to preclude parties from participating in the auction, or to require them to be in the same bidder group, where they have simply sought to negotiate access to an existing network. For the sake of clarity, Ofcom would add that this would apply also to other normal commercial negotiations with suppliers and customers. If in any doubt applicants should disclose all information to Ofcom on the application form.
- 3.10 In the light of the above, Ofcom does not consider that changes are required to the draft Wireless Telegraphy (Licence Award) (No.2) Regulations 2006 in relation to the comments received on the Regulations.

## **Other comments received**

- 3.11 Arqiva suggested that Ofcom should clarify the role of a band manager particularly in respect to enforcement powers and responsibilities for interference. Ofcom described in the October Consultation (paragraphs A8.37-38) how a band manager might operate including interference and enforcement matters.
- 3.12 A respondent expressed concern that the proposed award was to be technology neutral and would not restrict 3G use. Ofcom does not believe that there should be restrictions on the possible use of 3G services in the band. It addressed this issue in paragraphs 4.38-4.41 of the October Consultation and in paragraphs 5.38-5.59 and Annex 1 of the April Statement. No further evidence or analysis has been provided which Ofcom has not already taken into account.

## **Changes introduced by Ofcom to improve the clarity of drafting**

- 3.13 Ofcom has made a number of drafting changes to the Licence award Regulations. These were made for the purpose of clarity and do not introduce variations from the policy framework described in the April Statement.



3.14 By way of summary, the major changes include:

- Clarification of the number of licences that may be granted under regulation 4 and the frequencies that may be authorised for use under each of the licences.
- The procedures Ofcom will follow under regulation 11 where there are no bidders.
- The requirement under regulation 17 for bids to be specified in figures as well as in words, with a consequential amendment to the bidding menu document in Schedule 5.
- The inclusion of the applicant's bank details in the application information in Schedule 1.

## Section 4

# Next steps

- 4.1 Ofcom made the four statutory instruments in connection with the award process on 7 July 2006 and they will come into force on 7 August 2006. Drafts of these statutory instruments are annexed to this Statement in the form submitted for registration and publication after their making by Ofcom for indicative purposes. The statutory instruments will be officially published on OPSI's website in due course at [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 4.2 Ofcom provisionally expects the application date to be Thursday, 14 September 2006. As provided in regulation 5(4) of the Licence Award Regulations. Ofcom will publish the exact date and times on its website at : [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/), once the Licence Award Regulations have come into force.
- 4.3 All relevant information and documents relating to the award of the Spectrum Bands will be published at [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/). For example, Ofcom will make electronic documents available for download, once they are available, in the form prescribed by the Schedules to the Licence Award Regulations.
- 4.4 As set out in section 4 to the Information Memorandum, the award process is expected to last approximately 30 to 40 business days from the application date.
- 4.5 Ofcom will hold a seminar on the auction rules before the start of the award process, on Tuesday, 5 September 2006.

## Annex 1

# Summary of responses to the April Consultation

A1.1 Ofcom received three responses to the April Consultation.

A1.2 This Annex sets out a summary of stakeholders' submissions and Ofcom's responses to these. Most points are addressed in detail in section 3 of this Statement.

Issue raised	Comments	Ofcom's response
Advisors providing services to Ofcom in relation to the auction	In connection with regulation 28 a respondent suggested that 28(f) be amended to add at the end 'the identity of whom Ofcom has publicly disclosed'.	Ofcom is of the view that the Information Memorandum (paragraph 4.62) is explicit with regard to the identities of the advisors who have provided services to Ofcom and that regulation 28(f) does not therefore require any further amendment.
Technology neutrality	A respondent expressed concern that the proposed award was to be technology neutral and did not restrict 3G use.	Ofcom does not believe that that there should be restrictions on the possible use of 3G services in the band. This issue was addressed in the October Consultation (paragraphs 4.38-4.41) and in the April Statement (paragraphs 5.38-5.39 and Annex 1) and no further evidence or analysis has been provided which Ofcom has not already taken into account
Notification of discussions	Arqiva asked for clarification of whether a bidding party has to notify Ofcom of all business discussions even when they lead to nowhere or, for example, only result in an indication of equipment availability.	Regulation 8(3)(f)(iv) allows for the disclosure of confidential information for the purpose of enabling the recipient to decide whether to participate in a bidder group. Also, the Information Memorandum (paragraph 4.22) states that it is not Ofcom's intention either to preclude parties from participating

		in the auction or to require them to be in the same bidder group where they have simply sought to negotiate access to an existing network. Ofcom would extend this to include any other normal commercial negotiations with suppliers and customers.
Number of licences which may be bid for	Arqiva felt that there was an inconsistency in the text of the auction regulations and the bidder menu on the number of licences which may be bid for (i.e. Schedule 4 is inconsistent with regulation 17(3)c).	Schedule 4 refers to regulation 12(1)(a), which covers the situation where there is an auction with only one bidder, and not to regulation 17 which covers an auction where there is more than one bidder.
Band manager	Arqiva suggested that Ofcom should clarify the role of a band manager particularly in respect to enforcement powers and responsibilities for interference.	Ofcom described in Annex 8 of the October Consultation how a band manager might operate, including interference and enforcement matters (see paragraphs A8.37-38).

## Annex 2

# Draft statutory instruments

- A2.1 This Annex includes a copy of the statutory instruments as made by Ofcom on 7 July 2006 and in the form submitted for registration and publication. These are marked as draft because OPSI is the only authorised source for published statutory instruments.
- A2.2 The statutory instruments are:
- The Wireless Telegraphy (Licence Award) (No.2) Regulations 2006;
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2006;
  - The Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2006; and
  - The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006.

**2006 No. 1806**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) (No. 2) Regulations  
2006**

*Made* - - - -

*7th July 2006*

*Coming into force* - -

*7th August 2006*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by section 3(1), (3), (4) and (5B) of the Wireless Telegraphy Act 1998<sup>(a)</sup> (“the 1998 Act”) and section 403(7) of the Communications Act 2003<sup>(b)</sup> (“the 2003 Act”) as applied by section 6(1) of the 1998 Act;

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the 2003 Act as applied by section 6(1) of the 1998 Act, published notice of their proposal in accordance with section 403(4)(b) of the 2003 Act as applied by section 6(1) of the 1998 Act and have considered the representations made to them before the time specified in that notice in accordance with section 403(4)(c) of the 2003 Act as applied by section 6(1) of the 1998 Act.

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 and shall come into force on 7th August 2006.

(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

**Interpretation**

**2.** In these Regulations —

- (a) “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- (b) “authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;

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<sup>(a)</sup> 1998 c.6. Section 3 of the 1998 Act was amended by the Communications Act 2003 (c.21), section 167, section 406, Schedule 17, paragraph 149 and Schedule 19(1).  
<sup>(b)</sup> 2003 c.21.

- (c) “bid” has the meaning given in regulation 17(1);
- (d) “bid deposit” has the meaning given in regulation 19(3);
- (e) “bidder” means an applicant who has qualified to bid in the award process and who has not withdrawn from the award process before the last day for withdrawal;
- (f) “bidder group” means, in relation to an applicant or bidder:—
  - (i) that applicant or bidder;
  - (ii) each associate of that applicant or bidder; and
  - (iii) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 3;
- (g) “bidding menu document” has the meaning given in regulation 16(a);
- (h) “confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect the decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;
- (i) “frequency lot” means any of frequency lot A, frequency lot B, frequency lot C or frequency lot D as respectively defined in paragraphs (j) to (m);
- (j) “frequency lot A” means the frequencies between 412.0 megahertz and 412.5 megahertz and between 422.0 megahertz and 422.5 megahertz;
- (k) “frequency lot B” means the frequencies between 412.5 megahertz and 413.0 megahertz and between 422.5 megahertz to 423.0 megahertz;
- (l) “frequency lot C” means the frequencies between 413.0 megahertz and 413.5 megahertz and between 423.0 megahertz and 423.5 megahertz;
- (m) “frequency lot D” means the frequencies between 413.5 megahertz and 414.0 megahertz and between 423.5 megahertz and 424.0 megahertz;
- (n) “last day for withdrawal” has the meaning given in regulation 9(2)(b);
- (o) “licence” means one of the wireless telegraphy licences to be granted pursuant to these Regulations;
- (p) “material interest” means, whether held directly or indirectly:—
  - (i) any interest (construed in accordance with sections 208 and 209 of the Companies Act 1985(a)) in —
    - (aa) shares carrying more than twenty five percent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
    - (bb) shares, where the consent of the holder of those shares is required for the conduct of any business of the applicant or bidder; or
  - (ii) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;
- (q) “minimum bid” shall be construed in accordance with regulation 17(2);
- (r) “OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process and published on their internet website;
- (s) “pounds” means pounds sterling;
- (t) “sealed bid” has the meaning given in regulation 18(2);
- (u) “sealed bid delivery period” has the meaning given in regulation 15(1)(a);
- (v) “valid combination of bids” has the meaning given in regulation 24(3);

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(a) 1985 c.6. Section 209 was inserted by S.I. 1993/1819. Section 209(1)(h) was amended by S.I. 1996/2827, and S.I. 2001/1228. Section 209(2), (2A) (2B) and (2C) were substituted by S.I. 2001/3649 and then amended by S.I. 2002/765. Section 209(9A) and (9B) were inserted by S.I. 1996/1560. Section 209(9B) was amended by S.I. 2001/3755. Section 209(10) was amended by the Law of Property (Miscellaneous Provisions) Act 1994 (c.36) section 21(2) and Schedule 2.

- (w) “valid bids” has the meaning given in regulation 23(1);
- (x) “winning combination of bids” shall be construed in accordance with regulation 24;
- (y) “winning bid” has the meaning given in regulation 24(1); and
- (z) “winning bidder” means a bidder who submitted a winning bid.

## PART 2

### APPLICATION STAGE

#### **Applications for the grant of licences**

**3.** Applications for the grant of licences shall only be made in accordance with the procedure set out in these Regulations.

#### **Licences which may be granted**

**4.—**(1) The wireless telegraphy licences which may be granted pursuant to these Regulations are licences to —

- (a) establish or use stations for wireless telegraphy; and
- (b) install or use apparatus for wireless telegraphy;

in the United Kingdom.

(2) A maximum of four licences from a total of fifteen available licences may be granted pursuant to these Regulations.

(3) The frequencies on which the stations for wireless telegraphy and apparatus for wireless telegraphy are authorised to operate by each of the fifteen available licences shall comprise the fifteen combinations of frequency lots specified in paragraph (4).

(4) The fifteen combinations of frequency lots are —

- (a) frequency lot A;
- (b) frequency lot B;
- (c) frequency lot C;
- (d) frequency lot D;
- (e) frequency lots A and B;
- (f) frequency lots A and C;
- (g) frequency lots A and D;
- (h) frequency lots B and C;
- (i) frequency lots B and D;
- (j) frequency lots C and D;
- (k) frequency lots A, B and C;
- (l) frequency lots A, B and D;
- (m) frequency lots A, C and D;
- (n) frequency lots B, C and D;
- (o) frequency lots A, B, C and D.

#### **Application**

**5.—**(1) Only a body corporate may apply to OFCOM for a licence.

(2) A body corporate may only make one application.



(3) To apply for a licence, a body corporate must, on the day specified by OFCOM for receipt of applications —

- (a) deliver a sealed envelope to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM, containing —
  - (i) a document containing the application information required by Schedule 1, completed in respect of the applicant and signed on its behalf by two authorised persons;
  - (ii) a document, in the form set out in Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
  - (iii) for each person who is not an associate of the applicant which the applicant wishes to join its bidder group, a document in the form set out in Schedule 3, completed by the applicant (and signed on its behalf by two authorised persons) and completed by and signed by or on behalf of the person in respect of whom that document is completed; and
- (b) have paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of twenty five thousand pounds.

(4) OFCOM shall provide notification of the day and times mentioned in paragraph (3) by publication of that information on their internet website.

## PART 3

### QUALIFICATION STAGE

#### Assessment of bidder groups

6.—(1) OFCOM shall give notice to each applicant of —

- (a) the name of each other applicant and the names of their associates; and
- (b) the latest time by which each applicant must notify OFCOM under paragraphs (3) and (4).

(2) On receipt of that notice, each applicant shall examine the names of the other applicants and their associates and determine if any member of its bidder group is also an associate of another applicant or an applicant.

(3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or an applicant, it must notify the other applicant and OFCOM by the time specified in the notice given by OFCOM under paragraph (1) of that fact, and OFCOM shall specify a further time by which each applicant concerned must —

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or an applicant; and
- (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 5(3)(a)(i) and (ii).

(4) Where an applicant determines that no member of its bidder group is an associate of another applicant or an applicant it must notify OFCOM of that fact by the time specified in the notice given by OFCOM under paragraph (1).

(5) If it appears to OFCOM from any application, that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice of that fact to each of the applicants concerned and specify a day by which each applicant concerned must —

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
- (b) where changes have occurred to its bidder group, provide OFCOM with revised versions of the documents provided under regulation 5(3)(a)(i), (ii) and (iii).

(6) After the last day specified by OFCOM under paragraphs (3) and (5), OFCOM shall record the members of each applicant's bidder group.

### **Subsequent changes to bidder groups**

7.—(1) After the recording by OFCOM of the members of each applicant's bidder group, an applicant may change its bidder group but, in relation to the award process, the applicant shall be subject to regulations 8(2) and 27 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, that applicant must notify OFCOM of the change and submit revised versions of the documents provided under regulation 5(3)(a)(i) and (ii).

(3) To add a person who is not an associate of the applicant to its bidder group, an applicant must deliver to OFCOM a document in the form set out in Schedule 3 completed by the applicant (and signed on its behalf by two authorised persons) and completed by and signed by or on behalf of the person in respect of whom that document is completed.

### **Determination of applicants who are qualified to bid**

8.—(1) OFCOM shall determine whether each applicant who has submitted an application in accordance with regulation 5 is qualified to bid in the award process.

(2) 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.

(3) In making their determination under paragraph (1), OFCOM shall take into account whether —

- (a) the grant of a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a licence having regard to the probity of —
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) any director of any member of the applicant's bidder group;
- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person except where the disclosure was —
  - (i) to a member of the applicant's bidder group;
  - (ii) to OFCOM;
  - (iii) for the purpose of raising finance for the applicants' application and was to a provider of finance; or
  - (iv) for the purpose of enabling the recipient to decide whether to participate as a member of the applicant's bidder group;
- (g) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;

- (h) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
  - (i) any person who is a member or a director or employee of a member of the applicant's bidder group and also a director or employee of a member of another bidder group is —
    - (i) taking part in the preparation of both bidder groups for participation in the award process; or
    - (ii) receiving confidential information relating to both bidder groups.
- (4) Applicants must, by a time notified by OFCOM, provide to OFCOM any information or documentation which OFCOM require to make their determination.
- (5) If an applicant does not provide such information or documentation within the notified time, OFCOM shall also take that fact into account in making their determination.
- (6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

### **Publication of determination**

- 9.**—(1) OFCOM shall notify each applicant of their determination under regulation 8(1).
- (2) OFCOM shall also notify each applicant qualified to bid of —
- (a) the identity of the other applicants who are so qualified; and
  - (b) the last day for withdrawal from the award process ("last day for withdrawal").
- (3) OFCOM shall publish the identity of the applicants which are qualified to bid in the award process and the last day for withdrawal on their internet website.

### **Withdrawal of an application**

- 10.**—(1) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall —
- (a) notify all other applicants of the withdrawal; and
  - (b) refund, on completion of the award process, the applicant's initial deposit except where the initial deposit has been forfeited under regulation 27.
- (2) Once an applicant withdraws its application, that applicant shall not be re-admitted to the award process.

### **Determination of number of bidders**

- 11.**—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.
- (2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants who were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not already been forfeited under regulation 27) but not any interest which has accrued on the deposits.
- (3) Where there is only one bidder, OFCOM shall grant a licence in accordance with the procedure set out in Part 4 of these Regulations.
- (4) Where the number of bidders is more than one, OFCOM shall grant licences in accordance with the procedure set out in Part 5 of these Regulations.
- (5) OFCOM shall publish the identity of the bidders on their internet website along with a statement of whether OFCOM will proceed to grant licences in accordance with Part 4 or Part 5 of these Regulations.

## PART 4

### PROCEDURE WHERE THERE IS ONLY ONE BIDDER

#### **Licence selection menu**

**12.**—(1) Where there is only one bidder, OFCOM shall give notice to that bidder of the day by which that bidder must —

- (a) deliver to OFCOM a licence selection menu in the form set out in Schedule 4, completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
- (b) pay into OFCOM's bank account with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).

(2) The bidder must select one of the licences (and not more than one) listed on the licence selection menu.

(3) The licence fee shall be —

- (a) where the bidder has selected a licence which authorises use of frequencies comprising one frequency lot, fifty thousand pounds;
- (b) where the bidder has selected a licence which authorises use of frequencies comprising any two frequency lots, one hundred thousand pounds;
- (c) where the bidder has selected a licence which authorises use of frequencies comprising any three frequency lots, one hundred and fifty thousand pounds; and
- (d) where the bidder has selected a licence which authorises use of frequencies comprising all four frequency lots, two hundred thousand pounds.

(4) The sum which that bidder shall pay to OFCOM shall be —

- (a) where the initial deposit has not been forfeited in accordance with regulation 27, a sum equal to the licence fee less the initial deposit; and
- (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

(5) If the bidder fails to notify OFCOM of its licence selection or fails to pay OFCOM the required sum in accordance with this regulation it shall —

- (a) not be entitled to the grant of a licence; and
- (b) not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 27) be forfeited.

#### **Grant of licence**

**13.** Where OFCOM have received from the bidder a licence selection menu completed in accordance with regulation 12 and the sum determined in accordance with regulation 12(4) by the time specified, OFCOM shall grant the bidder the licence selected on the licence selection menu.

#### **Completion of the award process**

**14.** After the grant of a licence, OFCOM shall complete the award process by —

- (a) publishing on their internet website the identity of the person to whom a licence has been granted, the frequency lots in respect of which the licence was granted and the total licence fee paid; and
- (b) refunding to applicants who were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not already been forfeited under regulation 27) but not any interest which has accrued on the deposits.

## **PART 5**

### **PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER**

#### **Notice to bidders**

**15.**—(1) Where there is more than one bidder, OFCOM shall give notice to each of the bidders of —

- (a) the day on which and the times on that day within which sealed bids must be delivered to OFCOM (the “sealed bid delivery period”);
- (b) the identity of all bidders; and
- (c) a password which the bidder must specify on its bidding menu document to confirm that it has originated from that bidder.

(2) OFCOM shall publish on their internet website the identity of the bidders to whom OFCOM have given notice and the sealed bid delivery period.

#### **Bid documentation**

**16.** The bid documentation shall consist of —

- (a) a bidding menu document in the form set out in Schedule 5, completed by the bidder in accordance with regulation 17, signed on its behalf by two authorised persons and bearing that bidder’s password (a “bidding menu document”); and
- (b) a document in the form set out in Schedule 6, completed in respect of the bidder and signed on its behalf by two authorised persons.

#### **Completion of the bidding menu document**

**17.**—(1) Where a bidder wishes to specify a sum on the bidding menu document which it commits to pay for a licence (a “bid”) it must specify an amount in whole pounds in words and figures which must be greater than or equal to the minimum bid.

(2) The minimum bid shall be:—

- (a) fifty thousand pounds for a licence which authorises use of frequencies comprising one frequency lot;
- (b) one hundred thousand pounds for a licence which authorises use of frequencies comprising any two frequency lots;
- (c) one hundred and fifty thousand pounds for a licence which authorises use of frequencies comprising any three frequency lots; and
- (d) two hundred thousand pounds for a licence which authorises use of frequencies comprising all four frequency lots.

(3) On the bidding menu document a bidder must —

- (a) specify a bid against a licence;
- (b) only specify one bid against any one licence; and
- (c) specify a bid against at least one licence but need not specify a bid against each licence.

#### **Submission of sealed bids to OFCOM**

**18.**—(1) The completed bid documentation must be placed in a non-transparent envelope and sealed.

(2) The sealed non-transparent envelope containing the bid documentation constitutes a sealed bid.

(3) Sealed bids must be delivered to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA and be placed in the box marked for delivery of sealed bids during the sealed bid delivery period.

(4) Only a bidder may submit a sealed bid to OFCOM.

(5) A bidder may only submit one sealed bid.

### **Bid deposit**

**19.**—(1) In addition to the initial deposit paid at the time of application, a bidder must, on the day specified for delivery of sealed bids under regulation 15, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit.

(2) The further sum to be paid under paragraph (1) shall —

(a) where the initial deposit has not been forfeited in accordance with regulation 27, be a sum representing the difference between —

(i) the bidder's initial deposit; and

(ii) the highest sum which that bidder has specified on the bidding menu document against any of the licences; or

(b) where the initial deposit has been forfeited in accordance with regulation 27, be a sum equal to the highest sum which that bidder has specified on the bidding menu document against any of the licences.

(3) The total amount on deposit after payment of the further sum constitutes the bid deposit.

### **Opening of sealed bids**

**20.** OFCOM shall only open sealed bids which were submitted to OFCOM in accordance with regulation 18(1) and (3) and shall reject sealed bids which were not so submitted.

### **Incomplete or defective completion of bid documents**

**21.**—(1) Where, due to the manner of completion, bid documentation is incomplete or defective but OFCOM can identify the bidder and ascertain the bidder's intention in relation to bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified time that OFCOM have correctly identified the bidder and ascertained its intention in relation to bids.

(2) Where the bidder confirms in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not confirm in a notice given to OFCOM by the time required which is signed by at least two authorised persons of that bidder that OFCOM have correctly identified the bidder and ascertained the bidder's intention, the sealed bid in its entirety shall be rejected by OFCOM.

### **Rejection of opened sealed bids from the award process**

**22.**—(1) OFCOM shall also reject and exclude from the award process the entirety of an opened sealed bid where —

(a) in any case where regulation 21(1) does not apply, the bidder has not completed the bid documentation in accordance with the requirements of these Regulations;

(b) the sealed bid was submitted by a person other than a bidder;

(c) the bidder has submitted more than one sealed bid; or

(d) the entirety of the bid deposit has not been paid into OFCOM's bank account in accordance with regulation 19.

(2) OFCOM shall notify any bidder whose sealed bid has been rejected and shall give reasons for the rejection.

(3) OFCOM shall also notify any bidder to whom a notice was given under regulation 15(1) but in respect of whom a sealed bid was not opened.

### **Valid bids**

**23.**—(1) Only bids specified on a bidding menu document in accordance with regulation 17 and contained in a sealed bid which has not been rejected by OFCOM (“valid bids”) shall be taken into consideration for the purpose of determining the winning combination of bids under regulation 24.

(2) Any bidder to whom a notice was given under regulation 15(1) who does not submit a valid bid shall be excluded from the award process and shall not receive a refund of its initial deposit, or its bid deposit where a bid deposit has been paid, which shall (where not already forfeited under regulation 27) be forfeited.

### **Determination of the winning bids and the winning combination of bids**

**24.**—(1) The winning bids shall be those valid bids that comprise the winning combination of bids.

(2) Unless paragraph (4) applies, the winning combination of bids shall be the valid combination of bids having the highest total value of amounts bid.

(3) A valid combination of bids is any combination of valid bids for licences where within that combination of bids —

- (a) there is at most one valid bid from any one bidder; and
- (b) each frequency lot is included at most once.

(4) Where there is more than one valid combination of bids for which the total value is equal highest, the winning combination of bids shall be determined in accordance with the order of precedence set out in paragraph (5).

(5) The order of precedence shall be determined by —

- (a) the number of frequency lots included within each such valid combination of bids such that valid combinations of bids including a greater number of frequency lots prevail over valid combinations of bids including fewer frequency lots; and
- (b) where any two or more such valid combinations of bids include the equal highest number of frequency lots, OFCOM shall employ a method of random selection from amongst those valid combinations of bids to determine the winning combination of bids.

### **Grant of licences and payment of refunds to winning bidders**

**25.**—(1) After determining the winning bids and the identity of the winning bidders in accordance with regulation 24, OFCOM shall —

- (a) grant each winning bidder the licence in respect of which that bidder submitted a winning bid; and
- (b) refund to each winning bidder a sum calculated in accordance with paragraph (2).

(2) The sum which OFCOM shall refund to a winning bidder shall be the difference between the winning bidder’s bid deposit and the winning bidder’s winning bid.

(3) The licence fee in respect of a winning bidder’s licence shall be a sum equal to the winning bid made by that winning bidder.

### **Completion of the award process**

**26.** After the grant of licences and the payment of refunds to winning bidders, OFCOM shall complete the award process by —

- (a) publishing on their internet website the identity of all bidders, the details of all valid bids, the identity of the persons to whom licences were granted, the details of the frequency lots in respect of which those licences were granted and the details of the licence fees paid; and
- (b) refunding to applicants who were not qualified or who withdrew in accordance with regulation 10, and unsuccessful bidders the initial deposits or bid deposits, (where such deposits have not already been forfeited under regulations 23(2) or 27) but not any interest which has accrued on the deposits.

## PART 6

### ACTIVITY RULES

#### **Forfeit of deposit and exclusion from award process**

**27.** If, in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 28 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process —

- (a) the initial deposit, or the bid deposit where a bid deposit has been paid, shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

#### **Events**

**28.** The events referred to in regulation 27, in relation to an applicant who is qualified to bid or bidder, are —

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group is colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group is acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, is disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person except where the disclosure is —
  - (i) to a member of that applicant's or bidder's bidder group;
  - (ii) to OFCOM;
  - (iii) for the purpose of raising finance for a bid and is to a provider of finance; or
  - (iv) for the purpose of enabling the recipient to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group is obtaining or attempting to obtain confidential information relating to another applicant or bidder;
- (f) any member of that applicant's or bidder's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group is —



- (i) taking part in the preparation of both bidder groups for participation in the award process; or
- (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group;
- (i) a change is occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of —
  - (i) a person ceasing to be a member of that bidder group;
  - (ii) a person joining that bidder group under the procedure in regulation 7(3);
  - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

## PART 7

### MISCELLANEOUS

#### **General power of exclusion**

**29.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

**30.** If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel which are specified by OFCOM for that purpose on their internet website and must deliver that notice to OFCOM —

- (a) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA;
- (b) by fax to a number dedicated to the award process which is published by OFCOM on their internet website; or
- (c) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website.

#### **Changes to timing or location**

**31.—**(1) Paragraph (2) applies where OFCOM determine that it is impracticable for any reason

- (a) for any document which is to be delivered to OFCOM's premises under these Regulations to be delivered at the place or within the times specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed within the times specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify applicants and bidders that —

- (i) delivery must be made on a different day or within different times on that day or at a different place;
- (ii) the action must be completed on a different day or within different times.

**Refunds**

32. OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations or the licences.

7th July 2006

*Stephen Carter*  
Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

## SCHEDULE 1

Regulation 5(3)(a)(i)

### APPLICATION INFORMATION

#### 1. Details of the applicant

Provide the following details for the applicant —

Applicant's full name  
Registered number of company  
Registered office of company  
Applicant's contact address (if different to  
registered office)  
Telephone number  
Fax number  
Electronic mail address  
Bank Sort Code and Account Number

#### 2. Authorised persons

Provide details of the name and position in the applicant of three persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

#### 3. Directors or members

Provide the name and job title of each of the directors or members of the managing body of the applicant.

#### 4. Bidder group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 3 to the Regulations in accordance with regulation 5(3)(a)(iii) of the Regulations.

#### 5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 8 of the Regulations concerning whether or not to qualify the applicant to bid in the award process —

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether any member of the applicant's bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;
- (d) state whether any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;
- (e) state whether any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed confidential information,

whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure —

- (i) was to a member of the applicant's bidder group; or
- (ii) was to OFCOM;
- (f) state whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (g) state whether any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process and provide a description of the services concerned; and
- (h) state whether (and provide a description of any circumstances in which) any person who is a director or employee of a member of the applicant's bidder group and also a director or employee of a member of another bidder group is —
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups.

## **6. Other information**

Provide a brief description of the substance of —

- (a) agreements (if any) relating to the management of the applicant; and
- (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its bidder group or its directors or officers.

## SCHEDULE 2

Regulation 5(3)(a)(ii)

### APPLICATION DOCUMENT

[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that —

- (a) the persons authorised in section 2 of the applicant’s application have read and understood the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (“the Regulations”), the terms of the licence to be granted under the Regulations, the Wireless Telegraphy Act 1949 and the Wireless Telegraphy Act 1998;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 27 and 28 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

## SCHEDULE 3

Regulation 5(3)(a)(iii)

### DOCUMENT FOR MEMBER OF APPLICANT'S BIDDER GROUP WHO IS NOT AN ASSOCIATE

[Insert name of applicant or bidder] (the "applicant/bidder") wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder's bidder group as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 8(2) 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. Regulations 27 and 28 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

#### **1. Applicant/bidder**

In relation to regulations 8(2), 27 and 28 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications ("OFCOM") that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in bidder group who is not an associate] is not a member of any other applicant's or bidder's bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in bidder group who is not an associate] —

- (a) has ever been or becomes a member of any other applicant's or bidder's bidder group;
- (b) has ever been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) has ever obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

#### **2. [Insert name of person to be included in bidder group who is not an associate]**

[Insert name of person to be included in bidder group who is not an associate] represents and warrants to OFCOM that it —

- (a) consents to be a member of the applicant/bidder's bidder group;
- (b) is not a member of any other applicant's or bidder's bidder group; and
- (c) is aware of the provisions in regulations 27 and 28 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder —

- (a) if it has ever been or becomes a member of any other applicant's or bidder's bidder group;
- (b) if it has ever been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) if it has ever obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

## SCHEDULE 4

Regulation 12(1)(a)

### LICENCE SELECTION MENU

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

E-mail address:

Licence in respect of:	Selected licence (indicate selected licence with a tick (✓) against only one of the licences listed):
1. Frequency lot A:	
2. Frequency lot B:	
3. Frequency lot C:	
4. Frequency lot D:	
5. Frequency lots A and B:	
6. Frequency lots A and C:	
7. Frequency lots A and D:	
8. Frequency lots B and C:	
9. Frequency lots B and D:	
10. Frequency lots C and D:	
11. Frequency lots A, B and C:	
12. Frequency lots A, B and D:	
13. Frequency lots A, C and D:	
14. Frequency lots B, C and D:	
15. Frequency lots A, B, C and D	

## SCHEDULE 5

Regulation 16(a)

### BIDDING MENU DOCUMENT

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

E-mail address:

Password allocated by the Office of Communications ("OFCOM"):

Licence in respect of:	Bid amount (in words)	Bid amount (in figures)
1. Frequency lot A:		
2. Frequency lot B:		
3. Frequency lot C:		
4. Frequency lot D:		
5. Frequency lots A and B:		
6. Frequency lots A and C:		
7. Frequency lots A and D:		
8. Frequency lots B and C:		
9. Frequency lots B and D:		
10. Frequency lots C and D:		
11. Frequency lots A, B and C:		
12. Frequency lots A, B and D:		
13. Frequency lots A, C and D:		
14. Frequency lots B, C and D:		
15. Frequency lots A, B, C and D:		



## SCHEDULE 6

Regulation 16(b)

### BIDDER DOCUMENT

[Insert name of bidder] represents and warrants to the Office of Communications (“OFCOM”) that

- (a) all of the statements made in any document submitted to OFCOM under regulation 5(3)(a), 6(5)(b) or 7 of the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (“the Regulations”) are and remain true;
- (b) it has complied with the Regulations and all requirements of OFCOM under the Regulations; and
- (c) it has notified OFCOM in accordance with regulation 7 of the Regulations of any changes to its bidder group subsequent to its application.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency bands 412.0 megahertz to 414.0 megahertz and 422.0 megahertz to 424.0 megahertz.

A maximum of four licences from a total of fifteen available licences will be granted in accordance with the procedure set out in these Regulations.

To apply a body corporate must deliver the documents required by regulation 5(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. Information is required about applicants’ bidder groups, a term defined in regulation 2(f). An initial deposit of twenty five thousand pounds must also be paid to OFCOM (regulation 5(3)(b)).

Regulation 6 provides for a procedure under which overlaps between applicants’ bidder groups can be drawn to the attention of the applicants and time is allowed for applicants to notify OFCOM of any changes to bidder groups which have the effect that such overlaps are removed. An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 8(2)).

OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 8(3). Under regulation 9, OFCOM will publish the identity of all applicants qualified to bid on their internet website and will also notify applicants of the last day when they may withdraw from the award process without forfeiture of the initial deposit.

OFCOM will follow the procedure in Part 4 of these Regulations where there is only one bidder, or the procedure in Part 5 of these Regulations where there is more than one bidder.

Under Part 4, where there is only one bidder, OFCOM will invite the bidder to select which of the fifteen available licences it wishes to purchase. The licence fee will be fifty thousand pounds for each frequency lot comprising the licence. If the bidder does not make a selection or does not pay the licence fee by the required time, the bidder will not be granted a licence and will forfeit sums on deposit held by OFCOM (regulation 12(5)).

Under Part 5, where the number of bidders is more than one, OFCOM will give each bidder a notice, setting out the delivery period within which completed bid documentation must be provided to OFCOM (regulation 15). The bid documentation must be completed in accordance with regulations 16 and 17 and sealed bids submitted in accordance with regulation 18. Bidders must also pay to OFCOM a further deposit (regulation 19).

OFCOM will determine the winning bids and the identity of the winning bidders under Part 5 by following the procedure set out in regulation 24. OFCOM will then grant each winning bidder the licence in respect of which that bidder submitted a winning bid and refund as appropriate any sums due under regulation 25(2).

If in relation to an applicant who is qualified to bid or a bidder, OFCOM are satisfied that certain events are occurring or have occurred and the occurrence would materially affect the outcome of the award process the applicant or bidder concerned will forfeit sums on deposit and may be excluded from the award process (regulation 27).

A full regulatory impact assessment of the effect these Regulations will have on the cost to business has been prepared and is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA, telephone 020 7981 3000 or on the OFCOM website at <http://www.ofcom.org.uk>. Copies of the report have also been placed in the libraries of both Houses of Parliament.

**2006 No. 1807**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Spectrum Trading) (Amendment)  
(No. 2) Regulations 2006**

*Made* - - - -

*7th July 2006*

*Coming into force* - -

*7th August 2006*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 168(1) and (3) and section 403(7) of the Communications Act 2003(a) (“the Act”).

Before making the Regulations OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the Act, published notice of their proposal in accordance with section 403(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 403(4)(c) of the Act.

**Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2006 and shall come into force on 7th August 2006.

**Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2004**

2. Part 4 of the Schedule to the Wireless Telegraphy (Spectrum Trading) Regulations 2004(b) is amended by inserting at the end —

“Spectrum Access

412.0 MHz to 414.0 MHz

422.0 MHz to 424.0 MHz”.

*Stephen Carter*

Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

7th July 2006

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(a) 2003 c. 21

(b) S.I. 2004/3154 as amended by S.I. 2006/339

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (S.I. 2004/3154) (the “Principal Regulations”).

Regulation 2 of the Regulations amends the Principal Regulations and authorises the transfer of rights and obligations arising by virtue of a wireless telegraphy licence in the Spectrum Access class within the frequency bands.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.

**2006 No. 1808**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) (No. 2)  
Regulations 2006**

*Made* - - - -

*7th July 2006*

*Coming into force* - -

*7th August 2006*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 170(1) and (2) and section 403(7) of the Communications Act 2003(a) (“the Act”).

Before making the Regulations OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the Act, published notice of their proposal in accordance with section 403(4)(b) of the Act, and have considered the representations made to them before the time specified in the notice in accordance with section 403(4)(c) of the Act.

**Citation and commencement**

**1.** These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006 and shall come into force on 7th August 2006.

**Amendment of the Wireless Telegraphy (Register) Regulations 2004**

**2.** Part 4 of the Schedule to the Wireless Telegraphy (Register) Regulations 2004(b) is amended by inserting at the end —

“Spectrum Access

412.0 MHz to 414.0 MHz

422.0 MHz to 424.0 MHz”

*Stephen Carter*

Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

7th July 2006

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(a) 2003 c. 21

(b) S.I. 2004/3155 as amended by S.I. 2006/340

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Wireless Telegraphy (Register) Regulations 2004 (S.I. 2004/3155) (the “Principal Regulations”).

The Principal Regulations require OFCOM to establish and maintain a public register of relevant information relating to wireless telegraphy licences of certain classes which apply to a station or apparatus operating within certain frequency bands specified in the Schedule to the Principal Regulations. Regulation 2 of these Regulations amends the Principal Regulations by inserting the Spectrum Access class of licence and relevant frequency bands for that class.

A full regulatory impact assessment of the effect that these Regulations will have on the costs to business is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament

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STATUTORY INSTRUMENTS

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2006 No. 1809

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Limitation of Number of Spectrum  
Access Licences) Order 2006**

*Made* - - - -

*7th July 2006*

*Coming into force* - -

*7th August 2006*

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 164(1) to (3) of the Communications Act 2003(a) (“the Act”).

Before making the Order OFCOM have given notice of their proposal to do so in accordance with section 403(4)(a) of the Act, published notice of their proposal in accordance with section 403(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 403(4)(c) of the Act.

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006 and shall come into force on 7th August 2006

(2) This Order shall not extend to the Channel Islands or to the Isle of Man.

**Limitation of licences**

**2.**—(1) OFCOM will grant one, two, three or four wireless telegraphy licences for the use of the frequency band 412.0 megahertz to 414.0 megahertz and the frequency band 422.0 megahertz to 424.0 megahertz.

(2) The criteria for determining the number of licences to be granted for the use of these frequency bands and the persons to whom the licences will be granted shall be determined by OFCOM using the procedure set out in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006(b).

7th July 2006

*Stephen Carter*  
Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

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(a) 2003 c. 21  
(b) S.I. 2006/1806

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order is made under section 164 of the Communications Act 2003 (“the Act”). Section 164 of the Act implements Article 7(1)(c) of the Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ No L 108, 24.4.02, p21). Under section 164(1) OFCOM may, if they consider it appropriate for the purpose of securing the efficient use of the electromagnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing these limitations.

This Order specifies frequency bands for the use of which OFCOM will grant only a limited number of wireless telegraphy licences. The licences will be within the licence class known as Spectrum Access.

In determining the limit on the number of licences at these frequencies and the persons to whom licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (S.I. 2006/1806).

A full regulatory impact assessment of the effect that this Order will have on the costs to business is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the Office of Communications Internet web site at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.



## Annex 3

# Regulatory Impact Assessments

- A3.1 The analysis presented here, when read in conjunction with the rest of this document, set out in this Annex represents Regulatory Impact Assessments (“RIA”) for each of the four statutory instruments which are proposed to be made in connection with the award of wireless telegraphy licenses for use of the Band.
- A3.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

## Regulatory Impact Assessment – the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006

### Proposal, purpose and intended effect

- A3.3 Following its October Consultation, Ofcom has decided to award by means of an auction, technology neutral licences for use of the Band.
- A3.4 The regulations to which this RIA relates give effect to a sealed bid combinatorial auction with package bidding. In October 2005, Ofcom consulted on the award of the available spectrum through a single UK licence by means of a sealed bid auction. However, following responses to that consultation, Ofcom has now decided to award the spectrum in four 2×500 kHz lots allowing bidders to bid for any single lot or for any combination of lots up to and including all four. This format will best meet Ofcom’s objectives in relation to this award, taking into account the views of respondents to the Consultation. It also ensures the optimal use of the electro-magnetic spectrum having regard to the availability of, and demand for, the spectrum and to the desirability of promoting:
- the efficient management and use of the spectrum;
  - the economic and other benefits that may arise from use of the spectrum;
  - the development of innovative services; and
  - competition in the provision of electronic communications services.

### Introduction

- A3.5 In the Spectrum Framework Review Implementation Plan (SFR:IP), Ofcom set out six options for the award of spectrum in the Band. Ofcom’s proposed option in the SFR:IP was to award the spectrum by auction of a single UK licence as this was considered to be most consistent with the need to secure optimal use of the spectrum. These draft regulations represent the culmination of a thorough process of consultation on the 412-414 MHz band paired with 422-424MHz, held in October 2005. Ofcom proposed in October that one UK licence would be awarded for this spectrum band by auction and the licence would be technology neutral. Ofcom proposed that the form of the auction would be a second price sealed bid auction.

- A3.6 The Impact Assessment in the Consultation considered two options for packaging and awarding the spectrum. The first option was to use transmitter licensing and licensing the spectrum on a first come first served basis, with either geographically differentiated administrative incentive pricing (AIP) to curtail excess demand, or, if possible, a sealed bid auction element to resolve competing demands in hot-spot areas. Hence, in this option, auctions would operate independently at each hot spot where there was excess demand, but otherwise first come first served would be used. The second option was to award a national licence, which would, amongst other uses, allow a band manager to use the spectrum to trade off the needs of both large and small users and current and potential future users.
- A3.7 The Impact Assessment considered that a transmitter licence on first come first served basis carried a risk of the spectrum being assigned to users who were not best placed to make optimal use of the spectrum because the aggregation risks involved might preclude a single national user. Further, it may be more difficult to trade the spectrum and there would be a need for coordination between various users. A national licence on the other hand would allow the market to determine whether a number of small users would generate more value than a single national user. This would also allow a band manager to emerge.
- A3.8 The responses to the October Consultation illustrated that there was demand both for a single national licence for the 2x2 MHz of spectrum available and for a number of packages of national channels in smaller blocks. In the light of these responses, Ofcom decided to award the spectrum in four lots each of 2 x 500 kHz, and to do so through a process which allows the aggregation of the lots into blocks of up to 2x2 MHz.
- A3.9 The RIA therefore focuses on Ofcom's choice of auction format for the four blocks of spectrum. In doing so, it considers various forms for the assignment of the four blocks. These forms and the various rules for the auction are discussed in the table below.

### **Costs to business**

- A3.10 Ofcom's overall conclusion is that the costs imposed on business are significantly outweighed by the benefits and where possible the award of the spectrum has been designed to minimise the costs imposed on business.
- A3.11 Ofcom's decision to use an auction to award the spectrum will not impose costs in general, only on those businesses that have a demand for the spectrum. Ofcom regards the potential costs imposed on auction participants as proportionate given the potentially large efficiency savings which will flow from an appropriately designed auction in ensuring that the spectrum is allocated to those who value the spectrum most highly.
- A3.12 The sealed bid auction format with package bidding is a simple and low cost auction format to participate in. Since there are only four lots that can be purchased either individually or in combination with others, it minimises the cost imposed on auction participants (and the cost of running the auction) subject to fulfilling Ofcom's objectives for the auction.

### **Assessment of costs and benefits of auction format and design issues**

- A3.13 The costs and benefits of specific elements of the auction design and format are discussed below covering, covering:

- characteristics of the lots, sealed bid versus open auctions
- transparency, bidder association and pricing rules

### Auction format: type of lots and sealed versus open auction

A3.14 There are three key issues in deciding the format of the auction of a number of spectrum packages: whether to have a sequential or simultaneous auction, and, in particular, a combinatorial auction; whether to have specific or generic lots; and, whether to have a sealed bid process or an open process for the auction of these lots. The table below explores the benefits and costs of both these issues.

	Benefits	Costs	Risks
Generic lots	Simpler than having specific lots in a package bidding auction. All lots can be assigned on a contiguous basis, as there is no difference between lots.	A follow-up process is required to assign actual blocks between winning bidders	If bidders have strong preferences between lots and this inhibits their bidding, there is a risk that the outcome of the auction is inefficient
Specific lots	Allows bidders to express preferences for individual frequency blocks where there is variation in coordination requirements with MoD and proximity to other bands of spectrum. Blocks/lots can be assigned as part of the auction. Can lead to a more efficient outcome.	More complicated than having an auction with generic lots since it requires evaluating individual preferences between lots. Particularly so for non-contiguous lots.	Small risk of exclusionary bidding in bids for multiple lots.
Sequential auction	May allow bidders to learn from observing other bids and is relatively simple to run. However, this benefit may be limited because demand for lots may be complementary.	<p>If lots are substitutes, there can be substitution risks because ability to substitute will be limited. If lots are complements, there can be significant aggregation risks because failure to acquire all lots may leave some lots stranded.</p> <p>Bidders may need to understand the coordination costs of their bids at every stage.</p> <p>Can also be costly to implement, and more complex and time consuming.</p>	<p>Risk of deterring entry to some bidders due to the complexity and the time required.</p> <p>Risk of stranded licences means that some technologies may not be deployable.</p>
Simultaneous auction	Allows bidders to manage substitution and aggregation risks that arise when lots are substitutes or complements for	Weak bidders may be discouraged from participating in the auction because it is easier for strong bidders to overbid. Bidders	

	different users.	cannot learn from each other's bids. Inefficiency may result if there is some common value uncertainty.	
Package bidding	This allows bidders who require complementary lots to acquire them. It also reduces aggregation risks.	Threshold risk for smaller bidders; inability of bidders seeking single lots to displace aggregators seeking all four lots, even though it may be efficient to do so. However this risk is modest in relation to the significant gains from reduction of aggregate risks.	
Open process	If there is common value, allows bidders to learn from the behaviour of competitors. However common value unlikely.	Weak bidders may be discouraged from participating.  Can also be complex and costly to run.	Risk of collusion between bidders and low participation.
Sealed-bid process	Encourages participation where there are bidder asymmetries. Less susceptible to collusion. Simple, quick and easy to run.	May lack some transparency for bidders of contiguous lots who may wish to know relative valuations of competitors. Bidders cannot learn from other bids.	Requires strategic approach to bidding, particularly where winners pay what they bid – i.e., shading bids, which may lead to an inefficient outcome.

A3.15 The Impact Assessment indicates that, on balance, a sealed bid format with package bidding is the best option for the award of the four lots. This minimises aggregation risks and the risk of being left with stranded licences. The sealed bid option appears attractive in the light of the potential asymmetries between bidders, as illustrated by the responses to the Consultation. This encourages participation and increases the possibility of the auction generating a competitive outcome.

### Transparency, bidder association, and pricing rules

A3.16 The choice of the pricing rule also affects the options chosen for transparency and bidder association rules. Ofcom is proposing transparency, i.e. the revelation of the number and identity of the bidders in advance of the auction and to publish details of all bids submitted once the auction is complete. It is also introducing rules prohibiting associations between bidders and requiring bidders to certify non-association with other bidders. The pricing rule is such that winners will pay what they bid.

A3.17 Ofcom has considered two options for each of the three rules, and then assessed which combinations of the options were feasible. The options for each rule are as follows:

- transparency – the details of the participants are either revealed or not revealed
- bidder association – this is either explicitly prohibited or not

- pricing rules – either the winner pays what they bid (PWYB), or pay according to the opportunity cost of the bid (also called a Vickery-Clarkes Grove mechanism).

A3.18 The advantages and disadvantages of each of the three choices are discussed in the table below along with some other auction rules.

Option	Advantages	Disadvantages
Transparency	Enables rules prohibiting bidder association to be properly implemented.  Eases uncertainty for bidders under PWYB pricing rule.	Increases the potential for strategic manipulation of auction and makes it easier for tacit collusion to occur. Easier for strong bidders to discourage weak bidders from participating in the auction.
No transparency	Strong bidders prevented from revealing their participation and therefore harder for them to discourage weak bidders from participating.	Difficult to implement rules prohibiting bidder association and collusion; particularly an issue in package bidding.
Bidder association prohibited	Makes strategic manipulation of auction difficult.	Imposes compliance costs on bidders and verification costs on Ofcom. Setting the threshold is somewhat arbitrary and is difficult to implement if no transparency.
Bidder association not prohibited	Allows legitimate multiple bid vehicles, e.g. a bidder wants to trial two different services as separately registered companies for financial reasons.	Strategic manipulation might occur especially when uniform pricing determines what the winners pay.
Pay what you bid (PWYB)	Under this rule, strategic manipulation with asymmetric bidders is much more costly. So manipulation less likely and pricing rule can promote participation.  Fewer possibilities for collusion. Simple for bidders to understand and Ofcom to run.	May be less efficient than opportunity cost pricing as bidders would shade down their bids.
Opportunity cost pricing	More efficient outcome likely than PWYB pricing rule because bidders have incentive to bid their true valuation.	Inefficient where there are bidder asymmetries. Can allow significant gains from collusion. Relatively more complex to understand and run. In practice, the incentives on bidders to bid their valuations may not work.

A3.19 Respondents to the October consultation made some points that are relevant to the choice of the pricing rule:

- There was demand for smaller lots as well as one single aggregate lot.

- b) There was a concern that a single licence might result in the winner obtaining a dominant position.

A3.20 The points above illustrate a concern about bidder asymmetries and the possibility of some strong bidders. Given this concern, on balance, a PWYB pricing rule is preferable since it can ensure incentives for participation and reduces the likelihood of only one winner emerging through collusion. The proposed format does not preclude one winner from emerging, but provided sufficient rules are in place on transparency, collusion and bidder association, such a result would be an efficient outcome. Consequently, such rules are preferable for a sealed bid auction format with package bidding.

### **Costs to Ofcom**

A3.21 The costs of Ofcom's decision to auction the lots relate mainly to the costs of carrying out the auction. The administrative costs of the auction should be small in relation to the benefit generated to the economy and Ofcom's analysis indicates that the auction is very unlikely to have a negative financial impact on the public sector.

A3.22 The other cost to Ofcom is that of conducting a subsequent award process if one of the lots remain unsold either because there was no demand for the lot, or the only demand was in combination with lots assigned to other bidders under the auction rules. Ofcom believes that the risk of unsold lots may not be high as this is also dependent on bidders' valuation relative to the reserve price and further, there is the possibility of trading any acquired lots in a secondary trading market. A further cost Ofcom could incur specific to its proposals was if licensees could not agree to co-ordinate the use of adjacent lots between themselves and other users in adjacent bands. However, Ofcom has reason to believe that this is unlikely to be a problem.

### **Business sectors affected**

A3.23 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.

A3.24 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- small business suppliers;
- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- emergency services;
- sectors connected with public gathering places such as:
  - airports;
  - railway stations;
  - conference and exhibition centres;

- sports and music stadiums
- museums

A3.25 Some of the respondents to the October consultation who could be potential bidders in the auction are likely to be smaller bidders wanting single lots. In designing an auction with package bidding and a sealed bid with a PWYB rule, Ofcom is ensuring that smaller and 'weaker bidders' are not discouraged from participating in the auction.

## **Conclusion**

- A3.26 This Impact Assessment has analysed the costs and benefits of undertaking an auction for four lots of 2 x 500 kHz within the Band.
- A3.27 It concludes that, given the requirements of potential bidders for the Band, a sealed bid auction with package bidding allowing for all combinations of lots, with a PWYB pricing rule, complemented with rules prohibiting collusion and bidder association is the most likely option to promote the efficient allocation of the spectrum and maximise the value to the economy. Considering all these factors, Ofcom is of the view that on balance, the benefits of undertaking such an auction will far outweigh any costs to Ofcom or to business or to the public sector.

## **Regulatory Impact Assessment – the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2006**

### **Proposal, purpose and intended effect**

- A3.28 The purpose of these regulations is to permit the transfer of all rights and obligations relating to wireless telegraphy licences in the Band, also known as spectrum trading. Ofcom intends that all types of transfers, i.e. outright, concurrent, partial and total transfers will be permitted.

### **Costs and benefits to business**

- A3.29 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment in the Spectrum Trading and Wireless Telegraphy Register Regulations published in December 2004. It concluded that the likely benefits of spectrum trading generally outweighed the costs because trading would generally result in efficient allocation. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only be incurred by those who traded, but those trading are also likely to benefit most from the trade. The analysis of the general benefits of introducing spectrum trading should also apply to the Band. Since all types of trading would be allowed, the costs to business, if any, are likely to be minimal.
- A3.30 In the SFR:IP, Ofcom raised the possibility of the Band being awarded to an organisation acting as a band manager. In its consultation in October 2005 on detailed proposals for the award of the Band it described how a band manager might operate by the transfer of spectrum rights and obligations under the spectrum trading regime. The band manager role might be particularly relevant to this Band where there may be a variety of potential uses and many small users. This would benefit both the organisation conducting business as a band manager and its customers, who would be provided with access to the spectrum.

## **Costs to Ofcom**

- A3.31 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up and including the Band within the framework will entail little additional cost. Permitting all types of transfers increases the possibility that the number of licensees might increase. However, Ofcom does not consider that this will necessarily increase costs, particularly as the number of licensees may ultimately be limited by demand.

## **Business sectors affected**

- A3.32 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.
- A3.33 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:
- small business suppliers;
  - telecommunications equipment manufacturing;
  - hotels;
  - hospitals;
  - emergency services;
  - sectors connected with public gathering places such as:
    - airports;
    - railway stations;
    - conference and exhibition centres;
    - sports and music stadiums
    - museums

## **Conclusion**

- A3.34 Ofcom has assessed the impact of allowing spectrum trading in the Band and has found that the costs are likely to outweigh the benefits. It considers that there is more benefit to licensees to allow all types of transfers than any costs that might be incurred as a result.

## **Regulatory Impact Assessment – the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006**

### **Proposal, purpose and intended effect**

- A3.35 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences – the Wireless Telegraphy Register.



A3.36 The intended effect of the Regulations is to enable information about the licences in the Band to be published in the Wireless Telegraphy Register. This should facilitate spectrum trading by providing information to the benefit of buyers, on the holders of different frequencies and the constraints on the use of specific frequencies or bands.

A3.37 The amendment results from Ofcom's planned auction of licences to use the Band.

### **Costs and benefits**

A3.38 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the register. This proposed amendment to those Regulations only has the effect of including the Band within the Regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original Regulations.

A3.39 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for these regulations. Those conclusions were that the benefits of having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the proposed Regulations will be even lower than the previous assessment because the register has been established and is already being maintained. The additional costs to Ofcom would be minimal and would be limited to updating the register for the Band. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.

A3.40 Now that the register has been set up, the additional costs of including the Band within the register should be very small. As a result, the benefits are likely to exceed the costs.

### **Business sectors affected**

A3.41 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.

A3.42 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- small business suppliers;
- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- emergency services;
- sectors connected with public gathering places such as:
  - airports;

- railway stations;
- conference and exhibition centres;
- sports and music stadiums
- museums

## **Conclusion**

A3.43 Ofcom's assessment is that the benefits of including the Band within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.

## **Regulatory Impact Assessment – the Wireless Telegraphy (Limitation of the Number of Spectrum Access Licences) Order 2006**

### **Proposal, purpose and intended effect**

- A3.44 Following its October Consultation and Statement (6 April 2006) on the award of licences in the Band, Ofcom has decided to award a number of technology neutral licences.
- A3.45 The Limitation Order is intended to allow Ofcom to limit the number of users of the Band through the award of a limited number of licences, rather than not limiting the number of users through making the use of the spectrum licence exempt.
- A3.46 The way by which Ofcom will award a limited number of licences for the Band is set out in the Wireless Telegraphy (Licence Awards) (No. 2) Regulations 2006.

### **Costs and benefits**

- A3.47 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Band are lower than the costs of making use of the spectrum licence exempt.
- A3.48 The decision to licence the Band, as opposed to making their use licence exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. Ofcom's technical assessment is that the likely uses of the band are such that the power levels required would lead to interference to other users unless users were subject to co-ordination requirements. However, if the use of the Band were licence exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users co-ordinated with each other. The costs due to interference between users would generally outweigh the benefit of licence exemption.

### **Costs to Ofcom**

- A3.49 The costs to Ofcom of limiting the number of licences in the Band relate mainly to the costs of awarding the spectrum. Ofcom has made regulations to auction licences for the use of the Band, therefore the costs to Ofcom would be those of carrying out an auction.

A3.50 In comparison, licence exemption would mean that Ofcom would not incur auction costs. However, as discussed in the previous section, the costs to business is likely to be relatively higher under licence exemption because of the need to incur coordination costs to limit interference with other users and this would be unlikely to lead to the most efficient use of spectrum.

A3.51 Ofcom also notes that the administrative costs of holding the auction are likely to be small in relation to the benefit generated for the economy.

### **Business sectors affected**

A3.52 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.

A3.53 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- small business suppliers;
- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- emergency services;
- sectors connected with public gathering places such as:
  - airports;
  - railway stations;
  - conference and exhibition centres;
  - sports and music stadiums
  - museums

### **Conclusion**

A3.54 Ofcom has assessed the impact of limiting or not limiting the number of licenses in the Band and has concluded that the best option is to limit the number of licences. This is mainly because the number of users who might wish to use the spectrum under licence exemption can potentially be large, thereby leading to more costs incurred by each user for coordination and interference mitigation, that may be disproportionate to the benefits to all users.