



Notice of Ofcom's proposal to  
make regulations in connection  
with the award of 412 – 414 MHz  
paired with 422 – 424 MHz

**Consultation**

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## Section 1

# Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make four statutory instruments in connection with the award of wireless telegraphy licences for use of the spectrum bands 412 to 414 MHz paired with 422 to 424 MHz ("the Band"). Copies of each of the four statutory instruments are set out in Annexes 5 – 8 of this document. Separately Ofcom has published the reasoning for its decision to award licences for use of the Band (see Statement entitled Award of available spectrum: 412 to 414 MHz paired with 422 to 424 MHz published on 6 April). An information memorandum setting out relevant information which potential applicants for the licences should take into account has also been published.

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

- 1.2 These regulations set out the process and rules for award of licences to operate within the Band. Ofcom intends to hold an auction, although the regulations also provide for circumstances where there is insufficient demand and therefore no auction is held. There are fifteen possible combinations of the four lots of spectrum within the Band and the award process will determine the identity and number of licensees to operate within the Band up to a maximum of four. The regulations include provisions describing the procedures and rules for applying and bidding for the licences, how the winning bidders will be chosen and rules prescribing how applicants and bidders must conduct themselves during the award process. Section 3 of this document sets out a detailed summary of the general effect of the provisions.

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

- 1.3 Ofcom has decided that the licences to operate within the Band should be tradable. Accordingly Ofcom is proposing to make amendments to the existing regulations which govern spectrum trading to allow this to take place. Section 4 of this document sets out a summary of the general effect of the provisions.

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

- 1.4 Where licences are tradable Ofcom's policy is to include relevant details of those licences on a public register to facilitate the efficient working of the spectrum market. Accordingly, Ofcom is proposing to make amendments to the existing regulations governing the register to allow details of the licences to operate within the Band to be included. Section 5 of this document sets out a summary of the general effect of the provisions.

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

- 1.5 Ofcom is required to make a licence limitation order where it considers it appropriate to limit the number of licences for a particular set of frequencies as in the case of the Band. Section 6 of this document sets out a summary of the general effect of the provisions.

- 1.6 Ofcom is giving notice and consulting on each of its proposals to make these four statutory instruments. Comments or representations with respect to the four proposed statutory instruments are invited by 17 May 2006.

## Section 2

# Notice

## Background to the proposals

- 2.1 Ofcom plans to award wireless telegraphy licences for equipment operating within the spectrum bands 412 to 414 MHz paired with 422 to 424 MHz (the "Licences" and the "Band"). The number of licences to be awarded and the precise frequencies which each licence will cover will be determined by the award process.
- 2.2 On 6 April, Ofcom published its decision to hold an award process in a statement entitled Award of available spectrum: 412 to 414 MHz paired with 422 to 424 MHz (the "Statement"). The Statement followed extensive consultation with stakeholders on the approach allowing use of the Band, in particular:
  - Consultation carried out by Ofcom in January 2005 (Spectrum Framework Review: Implementation Plan)
  - Consultation carried out by Ofcom in October 2005 (Award of available spectrum: 412 to 414 MHz paired with 422 to 424 MHz) (the "October Consultation")

## Notice of proposals

- 2.3 This notice covers four related proposals to make regulations to allow award of licences to operate within the Band.

## Proposed auction regulations

- 2.4 Ofcom has the statutory power to make regulations to award licences by means of an auction and it has decided to do this. Accordingly Ofcom proposes to make The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 in order to allow an auction to be held for the purpose of awarding licences for equipment operating within the Band. A draft of the proposed regulations is set out at Annex 5.
- 2.5 The general effect of these regulations is set out at Section 3 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed trading regulations

- 2.6 Ofcom has decided that the licences to be awarded for the Band should be tradable and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2006. A draft of the proposed regulations is set out at Annex 6.
- 2.7 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed register regulations

- 2.8 Ofcom has decided that certain information relating to the licences should be published and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006. A draft of the proposed regulations is set out at Annex 7.
- 2.9 The general effect of these regulations is set out at Section 5 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed limitation order

- 2.10 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to the Band for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Band. Accordingly under section 164 of the Communications Act it must make an order. Ofcom proposes to make The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006. A draft of the proposed order is set out at Annex 8.
- 2.11 The general effect of this order is set out at Section 6 of this document. A Regulatory Impact Assessment (RIA) for the order is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Comments or representations

- 2.12 Comments or representations with respect to the four proposed regulations are invited by 17 May 2006. This consultation period is in excess of the minimum statutory requirement to reflect the changes made to Ofcom's proposals for the Bands as a result of the October Consultation and responses. Comments should be sent to:

Robert Emson  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

[robert.emson@ofcom.org.uk](mailto:robert.emson@ofcom.org.uk)

020 7783 4375

- 2.13 Following this consultation, Ofcom intends to make the final regulations as soon as practicable.
- 2.14 Hard copies of this notice and the proposed regulations can be obtained from:

Robert Emson  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

[robert.emson@ofcom.org.uk](mailto:robert.emson@ofcom.org.uk)

020 7783 4375

- 2.15 Electronic copies are also available and this notice has been placed on Ofcom's website <http://www.ofcom.org.uk>.



## Section 3

# General effect of the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006

## The legislative framework

- 3.1 Under section 3(1), (3), (4) and (5B) of the Wireless Telegraphy Act 1998 Ofcom may make regulations to allow wireless telegraphy licences to be awarded by means of an auction. A draft of the proposed regulations is set out at Annex 5 of this document.

## Extent of application

- 3.2 The proposed regulations will apply in the United Kingdom but will not extend to the Channel Islands or to the Isle of Man.

## The proposed regulations

- 3.3 The proposed regulations set out the procedure and rules that will apply for the auction award process of licences to operate within the Band. The award process includes an application stage, a qualification stage and two procedures to follow for award of the licences, depending on the number of bidders. The proposed regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process. The award process will also determine the precise identity and the number of licences to be awarded.

## Application stage

- 3.4 The application stage is described in detail at Part 2 of the proposed regulations. Any body corporate wishing to participate in the award process must submit an application form containing the application information required by the proposed regulations.
- 3.5 The Band has been divided into the following four frequency lots:
- Frequency lot A (frequencies between 412.0 MHz and 412.5 MHz and between 422.0 MHz and 422.5 MHz);
  - Frequency lot B (frequencies between 412.5 MHz and 413.0 MHz and between 422.5 MHz and 423.0 MHz);
  - Frequency lot C (frequencies between 413.0 MHz and 413.5 MHz and between 423.0 MHz and 423.5 MHz); and
  - Frequency lot D (frequencies between 413.5 MHz and 414.0 MHz and between 423.5 MHz to 424.0 MHz).
- 3.6 There are fifteen possible combinations of these frequency lots and hence fifteen different licences which may be awarded. The precise number and identity of licences to be awarded will be determined by the award process, although a maximum of four licences may be awarded.

- 3.7 The application information includes details of all members of the applicant's bidder group which is defined in the proposed regulations as including the applicant, each associate of the applicant and any person in receipt of confidential information of the applicant in respect of the award process. Applicants are also required to provide Ofcom with details of any circumstances relevant to Ofcom's determination of the applicant's qualification to bid (including details of all exchanges of confidential information by the applicant to a party other than Ofcom or a member of its bidder group). The date, time and place for submission of applications will be published on the Ofcom website.
- 3.8 The application form must also be accompanied by an application document in the form provided for in the regulations. The application document requires an applicant to certify, amongst other things that:
- it has the legal authority to participate in the auction and to be granted a licence;
  - the information provided in its application is true, accurate and complete; and
  - it is aware of the provisions relating to disclosure of confidential information.
- 3.9 In addition, applicants must also submit documents in the form provided for in the proposed regulations for each person who is not an associate of the applicant but who the applicant wishes to make a member of its bidder group (for example advisers with whom the applicant wishes to exchange confidential information).
- 3.10 The term "associate" is defined in the proposed regulations as meaning any person who has a material interest in an applicant or bidder. "Material interest" is defined in the proposed regulations as any interest, whether held directly or indirectly in shares carrying more than twenty five per cent of the votes entitled to be cast at a general meeting of the applicant or bidder or any interest in shares where the consent of the holder of those shares is required for the conduct of any business of the applicant or bidder. Any person who has the ability to appoint or remove the majority of the applicant or bidder's board of directors is also deemed to have a material interest in that applicant or bidder.
- 3.11 "Confidential information" is defined in the proposed regulations as including any information in respect of an applicant or bidder which is not in the public domain, but which if it were made public or disclosed to another applicant, potential applicant, bidder or members of another bidder group, would be likely to affect decisions that such other person may make in relation to the award process.
- 3.12 Finally, the application form must be accompanied by an initial deposit of £25,000. Such initial deposits will not earn interest and will only be refunded in the circumstances set out in the proposed regulations.

### **Qualification stage**

- 3.13 The qualification stage is described in detail at Part 3 of the proposed regulations. Following receipt of the applications, Ofcom will notify all applicants of the names of each other applicant and the names of the associates of each other applicant and of a date by which applicants must inform Ofcom and any other applicant concerned if they have any common membership overlaps (i.e. where any member of the applicant's bidder group is also an associate of another applicant).
- 3.14 Where Ofcom identifies any overlap between the bidder groups, it will also notify affected applicants. Where either Ofcom or any applicant has identified a common

membership overlap, Ofcom will specify a date by which each applicant must notify Ofcom of any change in circumstances which means that there is no longer any such overlap. Ofcom will then record the details of each applicant's bidder group.

- 3.15 Regulation 7 of the proposed regulations provides that an applicant may make changes to the composition of their bidder groups after the application stage, provided such changes are notified to Ofcom and accompanied by revised versions of the documents required in the application stage and provided that they do not result in a breach of the activity rules provided for at Part 6 of the proposed regulations.
- 3.16 Following the period for resolution of overlaps, Ofcom will determine which applicants are qualified to bid in the auction. An applicant may not qualify to bid where a member of its bidder group is also a member of another bidder group. However, in making its qualification determination, Ofcom will take into account a number of other factors, including whether the grant of a licence to the applicant would be prejudicial to the interests of national security, whether the applicant is a fit and proper person to hold a licence, whether the applicant or any member of its bidder group is any way attempting to distort the award process or collude with another party, or whether the applicant or any member of its bidder group has disclosed confidential information to someone outside its bidder group (subject to certain exceptions).
- 3.17 Ofcom may request that additional information be provided by a specified time in relation to an application. Failure to provide such information within the specified time will also be taken into account by Ofcom when determining which applicants qualify to bid in the auction.
- 3.18 Ofcom will notify each applicant of whether it has qualified to bid in the auction (giving reasons where an applicant has not qualified) and notifying them of the last date on which they may withdraw from the award process. Ofcom will also publish the identity of all applicants who are qualified to bid in the auction on its website.
- 3.19 Applicants wishing to withdraw from the award process before this last day for withdrawal may do so by notice in writing to Ofcom, signed by at least two authorised persons (being persons identified on the application form as authorised to bind the applicant and in respect of whom specimen signatures were provided). Ofcom will notify all other applicants of any such withdrawal. Applicants who withdraw in this way will receive a refund of their initial deposit (unless the deposit has been forfeited in accordance with the activity rules set out at Part 6 of the proposed regulations) at the end of the award process, but they may not be re-admitted to the award process. Applicants will not receive any interest which has accrued on their initial deposit.
- 3.20 Qualified applicants who do not withdraw before the last day for withdrawal are known as bidders and Ofcom will publish the names of all bidders on its website, along with a determination of the procedure to be followed for the award of licences. Bidders are committed to purchase a licence if they are the only bidder remaining and Ofcom proceeds under Part 4 of the proposed regulations or to purchase a licence if they submit a winning bid under the auction to be held under the Part 5 procedure.

### **Auction stage – only one bidder**

- 3.21 Part 4 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is only one bidder. Ofcom will send that bidder a notice containing a licence selection menu listing each of the fifteen licences

(for each of the combinations of frequency lots). The notice will also state the day by which the bidder must return its completed licence selection menu and pay to Ofcom the appropriate sum as a licence fee.

- 3.22 The bidder must complete the licence selection menu by selecting one (and no more than one) of the fifteen licences. The licence selection menu must be signed by two authorised persons of the bidder and returned to Ofcom by the time specified in the notice. If the bidder fails to return the licence selection menu by the time specified, fails to pay the licence fee or does not select at least one of the licences, the bidder will not receive a refund of its initial deposit if this has not already been forfeited and will not be entitled to the grant of a licence.
- 3.23 The licence fee will be:
- (a) £50,000 for a licence for one frequency lot;
  - (b) £100,000 for a licence for any two frequency lots;
  - (c) £150,000 for a licence for any three frequency lots;
  - (d) £200,000 for a licence for all four frequency lots.
- 3.24 The sum which the bidder must pay to Ofcom will be the appropriate licence fee less the initial deposit, unless the initial deposit has already been forfeited in which case the full licence fee shall be payable. Ofcom will grant the bidder the licence selected on the licence selection menu once it has received payment of the appropriate licence fee.
- 3.25 Following the grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee, the frequency lots in respect of which the licence was granted and the total licence fee paid. Ofcom will also refund initial deposits (without any interest having accrued) to applicants who were not qualified or withdrew before the last day for withdrawal, unless such initial deposits have already been forfeited in accordance with the proposed regulations.

### **Auction stage – more than one bidder**

- 3.26 Part 5 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is more than one bidder. Ofcom will give a notice to each of the bidders setting out details of when the auction will take place. This notice will also reveal the identity of all other bidders and will include a password for each bidder, which will be required when completing the bidding menu document. Ofcom will also publish the identity of all bidders and the date for submission of bids on its website.
- 3.27 To bid in the auction, bidders in receipt of the notice must submit a bidding menu document in the form provided for in the proposed regulations, signed by two authorised persons and accompanied by the appropriate password, together with a bidder document in the form provided for in the proposed regulations, signed by two authorised persons. The bidder document requires the bidder to confirm that all statements made in its application and any documents submitted to Ofcom as part of the award process are and remain true, that it has complied with the requirements of the proposed regulations and that it has notified Ofcom in accordance with the proposed regulations in respect of any changes to its bidder group subsequent to its application.

- 3.28 Regulation 17 of the proposed regulations explains how the bidding menu document must be completed. Bidders must bid for at least one of the licences on the bidding menu, but need not bid for all of them. Bids for a licence must be expressed in whole pounds sterling and in words only and must be equal to or greater than the minimum bid. The minimum bid is:
- (a) £50,000 for a licence for one frequency lot;
  - (b) £100,000 for a licence for any two frequency lots;
  - (c) £150,000 for a licence for any three frequency lots;
  - (d) £200,000 for a licence for all four frequency lots.
- 3.29 The completed bid documentation must then be submitted to Ofcom in a sealed, non-transparent envelope within the times and on the day specified by Ofcom and placed in the box marked for delivery of the sealed bids. Bidders must also ensure that on that day a further deposit is paid to Ofcom by a same day electronic transfer.
- 3.30 Where the bidder has forfeited its initial deposit, this further deposit will be an amount equal to the highest sum which the bidder has specified on the bidding menu document against any of the licences. Where the bidder has not forfeited its initial deposit, this further deposit will be the difference between the initial deposit and the highest sum which that bidder has specified on the bidding menu document against any of the licences. As with the initial deposit, this further deposit will not earn interest and will only be refunded in the circumstances set out in the proposed regulations. The total sum on deposit after payment of this further deposit is known as the bid deposit.
- 3.31 Ofcom will open only those sealed bids which were delivered to Ofcom in accordance with the procedure set out in the proposed regulations. Sealed bids not submitted in accordance with the procedure will be rejected and excluded from the award process. Ofcom will notify any bidder whose bid has been rejected and give the reasons for that rejection. Ofcom will also notify any bidder in respect of whom no sealed bid was opened.
- 3.32 Where any sealed bids are incomplete or defective, but Ofcom can unambiguously identify the identity and intention of the bidder in relation to the bidding menu document, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms Ofcom's understanding, the sealed bid will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm Ofcom's understanding, the sealed bid will be rejected.
- 3.33 Ofcom shall then determine the winning bids and the winning combination of bids from all those bids contained in sealed bids that have not been rejected ("valid bids").
- 3.34 The winning bids will be the valid bids that comprise the winning combination of bids. The winning combination of bids will be the valid combination with the highest total value of valid bids making up that combination.
- 3.35 A valid combination is each possible combination of valid bids for licences where, within that combination:
- there is at most one valid bid from any one bidder; and
  - each frequency lot is included at most once.

- 3.36 If there is a tie (i.e. two valid combinations with the equal highest total value of valid bids), Ofcom will use the following order of precedence to determine the winning combination. First, valid combinations in respect of greater numbers of frequency lots will prevail over valid combinations in respect of fewer numbers of frequency lots. If there is still a tie, Ofcom will use a method of random selection amongst the tied valid combinations to determine the winning combination.
- 3.37 After determining the winning combination of bids and the identity of the winning bidders, Ofcom will grant each winning bidder the licence in respect of which that bidder submitted a winning bid. Ofcom will also refund to each winning bidder the difference between the winning bidder's bid deposit and their winning bid. Where the difference is zero, no refund will be made.
- 3.38 After granting the licences and paying any refunds to the winning bidders, Ofcom will complete the award process by publishing details of all valid bids, the identity of the bidders, the identities of the licensees and the frequency lots in respect of which each licence was granted and details of the licence fees paid. Ofcom will also refund any remaining initial deposits or bid deposits (without any interest having accrued) to all unsuccessful applicants and to any applicants who withdrew before the last day for withdrawal, unless such initial deposits or bid deposits have been forfeited in accordance with the proposed regulations.

### Activity rules

- 3.39 Part 6 of the proposed regulations sets out the activity rules that apply to applicants who have qualified to bid and bidders. Regulation 27 provides that where Ofcom are satisfied that any of the events set out in regulation 28 have occurred and that the occurrence would materially affect the outcome of the award process, the bidder or applicant concerned will forfeit their initial deposit (or bid deposit where one has been paid). In such circumstances the bidder may also be excluded from the award process by Ofcom giving that bidder or applicant written notice.
- 3.40 Regulation 28 of the proposed regulations sets out the details of the events referred to in regulation 27. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group to distort the award process in any way, disclosure of confidential information to someone who is not a member of the bidder group (subject to certain exceptions), or changes occurring in the membership of the bidder group, except as provided for in regulation 28(i) of the proposed regulations.
- 3.41 With regard to changes occurring in the membership of the bidder group, changes occurring as a result of a person ceasing to be associated are allowed. Equally, bidders and applicants are able to add members under the procedure set out at regulation 7. However, the addition of associates is only permitted as a result of merger and acquisition activity where such activity is for a purpose not related to the award process. Also, a change which leads to a member of a bidder's bidder group also becoming a member of another bidder's bidder group will be a breach of the activity rules and may lead to the exclusion of either or both bidders concerned and the forfeiture of deposits.

### Miscellaneous

- 3.42 Part 7 of the proposed regulations sets out certain other miscellaneous provisions, including a general power of exclusion where Ofcom determines in its opinion that

the grant of a licence to a bidder would be prejudicial to the interests of national security or where the bidder is not a fit and proper person to hold a licence.

- 3.43 Regulation 30 provides details of Ofcom's contact details for the purposes of receiving any notification from a bidder or applicant in accordance with the award process. It also states that notifications to Ofcom in accordance with the proposed regulations may be made by fax, personal delivery or email.
- 3.44 Regulation 31 enables Ofcom to alter the date, time or place for delivery of any documents or for completion of any action in relation to the award process, where it would otherwise be impractical for such delivery or action to take place at the locations or within the times required.
- 3.45 Regulation 32 provides Ofcom with a general discretion to refund any sums paid to it in accordance with any provision of the proposed regulations as Ofcom sees fit.



## Section 4

# General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006

### The legislative framework

- 4.1 These regulations are to be made under sections 168(1) and (3) and 403(7) of the Communications Act 2003. Section 168 implements Article 9(3) and (4) of the Directive of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (2002/21/EC). Under section 168(1) of the Act Ofcom may by regulations authorise the transfer to another person by the holder of a wireless telegraphy licence, or the holder of a grant of recognised spectrum access, of rights and obligations arising by virtue of such a licence or grant.
- 4.2 Under section 168(4) and (5) transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.
- 4.3 A draft of the regulations which Ofcom proposes to make is set out at Annex 6..
- 4.4 These Regulations amend the existing regulations on spectrum trading: the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (SI 2004/3154 as amended by SI 2006/339) (the "2004 Regulations").

### The existing 2004 Regulations on spectrum trading

- 4.5 Both the 2004 Regulations and the amending Regulations (SI 2006/339) are available at [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 4.6 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at [www.ofcom.org.uk](http://www.ofcom.org.uk).

### Total and partial transfers under the 2004 Regulations

- 4.7 Regulation 4(1) of the 2004 Regulations authorises the transfer of all rights and obligations arising by virtue of the wireless telegraphy licences of the classes listed in Column 1 of each Part of the Schedule which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part.
- 4.8 Regulation 6(a)(i) to (iv) of the 2004 Regulations authorises the transfer of rights and obligations relating to parts of the licensed range of frequencies for licences granted for the Public Mobile Operator sector, the Fixed Wireless Access sector, Point to Point Fixed Links licences and Scanning Telemetry licences.
- 4.9 Under the 2004 Regulations two types of transfer are authorised by regulation 4(1) and regulation 6 (regardless of whether the transfer is "total" or "partial").



- 4.10 Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer (“outright transfer”).
- 4.11 Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer (“concurrent transfer”).
- 4.12 Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that traded the spectrum) no longer has any rights to use the traded spectrum.
- 4.13 Concurrent transfers, on the other hand, enable licensees to share rights to use spectrum as they see fit over a period of time without the need to undertake further transfers between themselves to effect that sharing.
- 4.14 Section 168(2)(a) and (c) of the Act determine the sorts of transfers which Ofcom may authorise in the regulations. To be sure to permit the maximum possible types of transfer Ofcom decided to mirror in the 2004 Regulations the wording used in that section.
- 4.15 The concept of concurrent licence holding was new to the system of UK wireless telegraphy licensing. Under such a holding each of the concurrent licensees will jointly hold the same rights and obligations under a licence.

### **Circumstances where transfers are not authorised under the 2004 Regulations**

- 4.16 Regulations 4(1) and 6 of the 2004 Regulations which authorise transfers are both subject to regulation 7. Regulation 7 sets out particular circumstances in which transfers are not authorised.
- 4.17 These are:
- Where the licence holder (or all of the concurrent holders) and the transferee have not consented to the transfer.
  - Where licence fees are outstanding or where the licence holder has opted to pay Ofcom its licence fee by instalments. In the latter situation, the licensee could pay up its outstanding instalments under a licence and then approach Ofcom with a proposed transfer.
  - Where Ofcom has served notice under section 1E(1) of the Wireless Telegraphy Act 1949 of a proposal to revoke or vary the licence. That notice is served around two months prior to the final revocation decision. In the case of a notice concerning a licence variation this will not in fact be an obstacle to trade because if the licensee consents to the variation being made and, if that happened, the licence amendment would be implemented quickly.
- 4.18 Finally, a transfer is not authorised where Ofcom has not consented to it being made.

### **Notification of a trade under the 2004 Regulations**

- 4.19 Once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 8(1) of the 2004 Regulations). Once all the information is provided, Ofcom will check the documentation in order to ensure that the mandatory information requirements have been met and that the

proposed transfer is consistent with the information held by Ofcom. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 8(2) of the 2004 Regulations).

### **Giving consent to a trade under the 2004 Regulations**

4.20 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 10 of the 2004 Regulations) take into account the following factors:

- whether the holder (or concurrent holders) of the licence is/are in breach of the terms of the licence.
- whether the transferee (and the transferor in the case of a partial transfer) is able to meet the terms of the licence.
- whether the transferee is able to meet any criteria in relation to the persons to whom a wireless telegraphy licence may be granted.
- whether it is requisite or expedient for Ofcom to refuse consent because Ofcom has to meet national security concerns, comply with European Community or international obligations or a direction by the Secretary of State.

4.21 In some circumstances Ofcom may be able to consent to a transfer but give a direction to the parties to the trade that the transfer will only be put into effect when certain of the above matters are resolved. This is permitted by regulation 11 of the 2004 Regulations.

### **Enacting the transfer under the 2004 Regulations**

4.22 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.

4.23 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee (Regulation 8(5) of the 2004 Regulations).

4.24 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed and the public register, as described in the Trading Regulations, to ensure that the new licence holdings are reflected.

### **The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2006 (the “proposed amending regulations”)**

4.25 The number and identity of licences to be granted for use of the Band will be determined by the auction process (Ofcom will grant between one and four licences for a combination of frequencies drawn from fifteen possible licences). Each licence granted will contain identical rights and obligations for the use of the specified frequencies nationally. Each licensee independently holds its rights and obligations.

4.26 The proposed amending regulations would amend the 2004 Regulations to permit all types of transfers (described in the 2004 Regulations) of wireless telegraphy licences of the class Spectrum Access for the frequencies, 412.0 MHz to 414.0 MHz and 422.0 MHz to 424.0 MHz (the “Band”). Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another.

Thus the original licensee (that transferred the rights and obligations) no longer has any rights to use the spectrum in respect of which the licence was granted.

4.27 The circumstances where transfers are not authorised and the existing rules in the 2004 Regulations on the process for notification, consent and enactment of transfers described above, shall apply to transfers of these licences.

4.28 Outright, partial and concurrent transfers which are permitted by the 2004 Regulations for other licences would be permitted for this licence class (Spectrum Access). These include:

- Outright total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) are transferred in entirety from one party to another;
- concurrent total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
- outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
- concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s).

## Section 5

# General effect of the proposed Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2006

### The legislative framework and the existing regulations

- 5.1 Under section 170(1) of the Communications Act 2003 Ofcom may, by regulations, make provision for the establishment and maintenance of a wireless telegraphy register. Under section 170(2) of that Act Ofcom may only include relevant information in the register if it is information of a description prescribed by regulations.
- 5.2 The proposed Regulations amend the Wireless Telegraphy (Register) Regulations 2004 (SI 2004/4155) (the “2004 Regulations”) which provided that Ofcom shall establish and maintain a register of relevant information and prescribed the relevant information.
- 5.3 The 2004 Regulations are available on the website [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 5.4 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at [www.ofcom.org.uk](http://www.ofcom.org.uk).

### The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Register) (Amendment) (No. 2) Regulations 2006

- 5.5 A draft of the proposed regulations is set out at Annex 7. The proposed regulations add a category of licences (those to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006) for which information will be published on the register. The information will be the same information as is already registered under the existing 2004 Regulations.
- 5.6 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It will not provide precise details about individual transmitters due to security concerns. Information is currently limited only to the classes that became tradable in 2004.

## Section 6

# General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) Order 2006

### The legislative framework

- 6.1 Under section 164(1) of the Communications Act 2003 Ofcom may, if they consider it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 164 implements Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive).
- 6.2 Under section 164(2) an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 6.3 Where Ofcom make an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to who licences will be granted.

### The proposed regulations

- 6.4 A draft of the proposed order is set out at Annex 8.
- 6.5 In relation to the award of licences in the licence class Spectrum Access for the frequencies, 412.0 MHz to 414.0 MHz and 422.0 MHz to 424.0 MHz, Ofcom will grant a limited number of licences, depending on the outcome of the award process to be held under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2006 (see sections 2 and 3 of this Notice for more information on the proposed award process).
- 6.6 The proposed order consequently provides that Ofcom will only grant a limited number of licences for the Band, the precise number being determined by the application of the procedures set out in the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2006. The proposed order will be made and enter into force at the same time as the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2006.

## Section 7

# Regulatory Impact Assessments

- 7.1 The analysis presented here, when read in conjunction with the rest of this document, represents a Regulatory Impact Assessment ("RIA") as defined by section 7 of the Communications Act 2003 (the "Act") 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. You should send any comments on this RIA to Ofcom by the closing date for this consultation. Ofcom will consider all comments before deciding whether to implement the proposals.
- 7.2 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. This is reflected in section 7 of the Act, which means that Ofcom will generally carry out RIAs where proposals would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. In accordance with section 7 of this Act, 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

- 7.3 Following its October Consultation, Ofcom has decided to award by means of an auction, technology neutral licences for use of the Band.
- 7.4 The draft 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 2x500 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

- 7.5 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.

- 7.6 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 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.
- 7.7 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.
- 7.8 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.
- 7.9 This 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**

- 7.10 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.
- 7.11 The decision to license the spectrum as opposed to making the use of it licence exempt imposes a cost on those businesses that would like to use the spectrum. However, if the use of the spectrum 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. Ofcom's technical research has shown that this would impose large costs due to interference between users. These costs would greatly outweigh the benefit of licence exemption.
- 7.12 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.

- 7.13 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**

- 7.14 The costs and benefits of specific elements of the auction design and format are discussed below 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**

- 7.15 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 these issues.

	<b>Benefits</b>	<b>Costs</b>	<b>Risks</b>
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.	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. Bidders may need to understand the coordination costs of their bids at every stage. Can also be costly to implement, and more complex and time consuming.	Risk of deterring entry to some bidders due to the complexity and the time required. Risk of stranded licences means that some technologies may not be deployable.
Simultaneous auction	Allows bidders to manage substitution and aggregation risks that arise when lots are substitutes or complements for different users.	Weak bidders may be discouraged from participating in the auction because it is easier for strong bidders to overbid. Bidders 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.

- 7.16 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**

- 7.17 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.
- 7.18 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).
- 7.19 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.

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

- (a) 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.

7.21 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**

- 7.22 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.
- 7.23 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**

- 7.24 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.
- 7.25 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:
    - o airports;
    - o railway stations;
    - o conference and exhibition centres;
    - o sports and music stadiums
    - o museums
- 7.26 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**

- 7.27 This Impact Assessment has analysed the costs and benefits of undertaking an auction for four lots of 2 × 500 kHz within the Band.
- 7.28 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**

- 7.29 The purpose of these draft 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**

- 7.30 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.

### **Costs to Ofcom**

- 7.31 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.
- 7.32 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 – in particular, the number of licensees may ultimately be limited by demand. In the SFR:IP, Ofcom raised the possibility of the Band being awarded to an organisation acting as a band manager and that such a role might be particularly relevant to this Band where there may be a variety of potential uses and many small users. If a licensee were to be awarded all the lots in the Band through the auction and wished to operate as a band manager, it is possible that the assignment of spectrum to individual users may change over time, but the licence may not change

ownership. In such a case, the costs of allowing all types of transfers is likely to be limited.

### **Business sectors affected**

- 7.33 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.
- 7.34 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:
    - o airports;
    - o railway stations;
    - o conference and exhibition centres;
    - o sports and music stadiums
    - o museums

### **Conclusion**

- 7.35 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**

- 7.36 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.
- 7.37 The intended effect of these draft 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.
- 7.38 The amendment results from Ofcom's planned auction of licences to use the Band.

## **Costs and benefits**

- 7.39 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.
- 7.40 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.
- 7.41 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**

- 7.42 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.
- 7.43 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**

- 7.44 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**

- 7.45 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.
- 7.46 The draft Limitation Order to which this RIA relates 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.
- 7.47 This will enable Ofcom to proceed with the award of this spectrum by means of an auction. The way by which Ofcom will award a limited number of licenses for the Band is set out in the Wireless Telegraphy (Licence Awards) (No. 2) Regulations 2006.

### **Costs and benefits**

- 7.48 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.
- 7.49 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. 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. Ofcom's technical research has shown that this would impose large costs due to interference between users. These costs would generally outweigh the benefit of licence exemption.

### **Costs to Ofcom**

- 7.50 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.
- 7.51 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.
- 7.52 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**

- 7.53 The main business sectors affected by this proposal are fixed and mobile communications services provision and broadcasting services provision.
- 7.54 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:
    - o airports;
    - o railway stations;
    - o conference and exhibition centres;
    - o sports and music stadiums
    - o museums

### **Conclusion**

- 7.55 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.

## Annex 1

# Responding to this consultation

## How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 17 May 2006**.

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to first [robert.emson@ofcom.org.uk](mailto:robert.emson@ofcom.org.uk).

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

### Robert Emson

3rd Floor

Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7783 4303

Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Robert Emson on 020 7783 4375.

## Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

## Next steps

Following the end of the consultation period, Ofcom intends make the regulations as soon as possible.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

## Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director for Scotland, who is Ofcom's Consultation Champion:

Vicki Nash  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 0141 229 7401  
Fax: 0141 229 7433  
E-mail: [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact): Robert Emson

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

*Do stakeholders agree with the proposed statutory instruments set out in this notice for the award of this spectrum?*

## **Annex 5**

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



**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - [\*\*\*] 2006

*Coming into force* - - [\*\*\*] 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 [XXXX] 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;
- (c) “bid” has the meaning given in regulation [17(1)];

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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.

- (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 lots A, B, C or 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” shall be construed in accordance with regulation [4];
- (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” has the meaning given in regulation [24(3)];
- (w) “valid bids” has the meaning given in regulation [23(1)];

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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.

- (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 individual wireless telegraphy licences which may be granted pursuant to these Regulations are licences to —

- (a) establish or use stations for wireless telegraphy in the United Kingdom; or
- (b) install or use apparatus for wireless telegraphy in the United Kingdom; operating within the frequencies identified in paragraph (2).

(2) The frequencies 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), 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 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 received 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 is only one bidder, OFCOM shall grant a licence in accordance with the procedure set out in Part 4 of these Regulations.

(3) 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.

(4) 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 for one frequency lot, fifty thousand pounds;
  - (b) where the bidder has selected a licence for any two frequency lots, one hundred thousand pounds;
  - (c) where the bidder has selected a licence for any three frequency lots, one hundred and fifty thousand pounds; and
  - (d) where the bidder has selected a licence for 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 its 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 and in words only which must be greater than or equal to the minimum bid.

(2) The minimum bid shall be:—

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

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

- (a) only 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 having the highest total value of amounts bid.

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

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

### **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 details of all valid bids, the identity of all bidders, 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 impractical 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 time 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 time 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 a different time on that day or at a different place;
- (ii) the action must be completed on a different day or within a different time.

## **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.

[Date]

*Name*  
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

#### 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 regulation [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.

**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 exactly 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 only)
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)*

## **Annex 6**

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

**2006 No.**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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 XXX.

**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”

\*\*\*

XXX

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

**EXPLANATORY NOTE**

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

## **Annex 7**

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



**2006 No. XXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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 XXX.

**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”

\*\*\*

XXX

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

**EXPLANATORY NOTE**

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

## **Annex 8**

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

2006 No. \*\*\*

## ELECTRONIC COMMUNICATIONS

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

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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 \*\*\*.

(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 frequencies 412.0 megahertz to 414.0 megahertz and the frequencies 422.0 megahertz to 424.0 megahertz.

(2) The criteria for determining the number of licences to be granted for the use of these frequencies 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).

\*\*\*

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

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**EXPLANATORY NOTE**

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