

Statement on the making of  
regulations in connection with the  
award of 1781.7-1785 MHz paired  
with 1876.7-1880 MHz

**Statement**

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## Section 1

# Summary

- 1.1 Ofcom has held three consultations, in January, July and November 2005, in connection with the award of wireless telegraphy licences for use of the spectrum bands 1781.7-1785 MHz paired with 1876.7-1880 MHz. It has also published an Information Memorandum in respect of this award in November 2005.
- 1.2 Ofcom has carefully considered the responses to its latest consultation on the draft statutory instruments to be made in connection with the award. Having made a number of drafting changes to reflect Ofcom's consideration of these comments, Ofcom has now made the four statutory instruments relevant to this award and can proceed with the award process.
- 1.3 The main substantive changes introduced as a result of responses to the November Consultation concern the Wireless Telegraphy (Licence Award) Regulations 2006. They relate to two issues:
  - the requirement for applicants to provide an address within ten kilometres of Ofcom's offices in London. This requirement has been removed;
  - the provisions on exchange of confidential information. Ofcom has made certain clarifications and changes to these provisions to address concerns raised in relation to disclosure of information in the context of commercial discussions between parties aimed at securing access to an existing network (roaming or mobile virtual network operator).
- 1.4 Some additional changes to the drafting have been made in the interests of clarity and these are discussed in this Statement.
- 1.5 Ofcom has now made the four statutory instruments and submitted them for registration and publication. They will come into force on 10 March 2006.
- 1.6 Ofcom is provisionally indicating in this Statement that the award process will commence in the week beginning 20 March 2006. Ofcom expects that the application date will be Tuesday 21 March 2006, although this will be confirmed by Ofcom via publication on its website after the statutory instruments have come into force.
- 1.7 The relevant section of the Ofcom website for information on Ofcom's spectrum award programme and the award of the Spectrum Bands is [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/).
- 1.8 Ofcom will hold a seminar on the auction rules before the start of the award process, on Wednesday 1 March 2006.

## Section 2

# Introduction

- 2.1 This Statement sets out Ofcom's decisions in relation to the statutory instruments it needs to make in connection with the award of wireless telegraphy licences for the use of the spectrum bands 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz (the "Spectrum Bands").
- 2.2 Having given notice of its proposal to make regulations, published notice of its proposals on 24 November 2005 and invited comments on these by 5 January 2006, Ofcom has carefully considered the submissions it received to reach its decisions.
- 2.3 The draft statutory instruments Ofcom published for consultation<sup>1</sup> in November 2005 (the "November Consultation") followed previous consultations and decisions relevant to this award:
- The Spectrum Framework Review: Implementation Plan (SFR:IP) consultation<sup>2</sup>, published on 13 January 2005, which included outline proposals for the award of the Spectrum Bands;
  - A consultation on detailed proposals for the award, published on 28 July 2005 (the "July Consultation"), and two seminars, followed by a statement on the subsequent decisions, published on 24 November 2005 (the "November Statement")<sup>3</sup>.
- 2.4 The Information Memorandum for this award (the "Information Memorandum") was also published on 24 November 2005<sup>4</sup>.
- 2.5 The award of the Spectrum Bands is part of a programme of spectrum awards that was described in the SFR:IP consultation. In July 2005, Ofcom provided an update on the programme in the Spectrum Framework Review: Implementation Plan Interim Statement<sup>2</sup>. Further information on the spectrum awards programme can be found on Ofcom's website in its dedicated section:  
[www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/).

## Overview of responses to the November Consultation

- 2.6 Ofcom received 9 responses to the November Consultation; a summary of these is provided at Annex 1. Three respondents requested confidentiality; the other six responses, from BT, Coffee Telecom, FMS Solutions, ip.access, Mobile200 and Teleware, are available on Ofcom's website<sup>5</sup>.
- 2.7 A majority of respondents expressed support for the proposed regulations and there were only limited comments on the detailed drafting. Two of the confidential responses expressed disagreement with certain general aspects of the award. However, Ofcom considers that these aspects had been determined following a number of previous consultations, including the SFR:IP consultation and the July

<sup>1</sup> See <http://www.ofcom.org.uk/consult/condocs/reg1781/>.

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

<sup>3</sup> See <http://www.ofcom.org.uk/consult/condocs/1781/> for both the July Consultation and November Statement; this section of the website includes other documents relevant to the award.

<sup>4</sup> See [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/) under 'Awards in progress'.

<sup>5</sup> See <http://www.ofcom.org.uk/consult/condocs/reg1781/responses/>.

Consultation on the Spectrum Bands. One respondent argued that Ofcom had not adequately considered the implications of the technology neutral approach, which it believed potentially allowed 3G use in the Spectrum Bands. Another identified a potential for existing Mobile Network Operators to restrict competition in services to be developed in the Spectrum Bands; it argued that they would be able and willing to place high bids, relative to other bidders, on options for smaller numbers of licences and therefore limit the number of licences eventually awarded. However, Ofcom considers that these points have already been addressed in the July Consultation (see in particular paragraphs 6.55 to 6.69) and the November Statement (see in particular paragraph 5.10).

2.8 Comments on the details of the draft regulations all related to the Wireless Telegraphy (Licence Award) Regulations 2006 (the “Licence Award Regulations”). In summary, these concerned:

- the need to include appropriate provisions for a bidder whose deposits had already been forfeited prior to the auction date;
- the requirement to provide an address within ten kilometres of Ofcom’s offices (Riverside House, London SE1 9HA);
- the requirements on the disclosure of confidential information and how these might prevent parties from holding discussions on the provision of capacity on an existing network (roaming or MVNO) by effectively requiring both such parties to be part of the same bidder group and hence preventing both from applying for licences;
- the appropriateness of the commitment required by Schedule 3 to the draft Licence Award Regulations.

2.9 One respondent also expressed some concern in relation to a specific provision in the draft licence, which was published as an Annex to the Information Memorandum, considering a “best endeavours” duty to cooperate on engineering coordination to be too burdensome.

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

2.10 Ofcom has made the four statutory instruments relevant to this award on 14 February 2006. These will be available on the website of the Office of Public Sector Information (OPSI)<sup>6</sup>, under the titles listed at paragraph 3.2. Copies in draft form are also annexed to this Statement for indicative purposes in the form submitted for registration and publication after their making by Ofcom. OPSI is the only authorised source for published statutory instruments.

## **Document structure**

2.11 The following section of this Statement provides an analysis of the main points raised by stakeholders in their responses to the November Consultation and a summary of the decisions Ofcom has made after considering these submissions. It also sets out additional drafting changes that were made to the Licence Award Regulations. These changes do not reflect substantive changes in policy, but are aimed at ensuring greater clarity in the final version of these Regulations.

2.12 Section 4 describes the next steps for the award.

2.13 Annex 1 provides a summary table of consultation responses.

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

- 2.14 Annex 2 includes draft copies of the four statutory instruments in the form submitted for registration and publication after their making by Ofcom.
- 2.15 Annex 3 includes copies of the Regulatory Impact Assessments for the four statutory instruments in the form placed in the libraries of both Houses of Parliament.

## Section 3

# Ofcom's decisions following the November Consultation

- 3.1 In the November Consultation, Ofcom gave notice of, and consulted on, its proposals to make regulations in connection with the award of wireless telegraphy licences for use of the Spectrum Bands.
- 3.2 The proposals included four draft statutory instruments, which can be briefly summarised as follows.
- The Wireless Telegraphy (Licence Award) Regulations 2006 set out the process to be followed for the award of licences for use of the Spectrum Bands and the rules that will apply to that process.
  - The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006 provide the scope for subsequent transfers of licences in the Spectrum Bands, as described in the November Statement.
  - The Wireless Telegraphy (Register) (Amendment) Regulations 2006 set out the provisions necessary to allow the publication of details of the licences for use of the Spectrum Bands in the wireless telegraphy register.
  - The Wireless Telegraphy (Limitation of Number of Concurrent Spectrum Access Licences) Order 2006 sets out how the number of licences in the Spectrum Bands will be limited for the time being as a result of the award process.
- 3.3 The Licence Award Regulations give effect to Ofcom's policy in relation to the determination of the winning option and the winning bidders as set out in the November Statement and the Information Memorandum. As stated at paragraphs 5.21 in the November Statement and the Executive Summary of the Information Memorandum, if there are unsold licences as a result of the award process defined by the Licence Award Regulations, these will be retained by Ofcom and may be assigned subsequently in a new award process at Ofcom's discretion. Such a situation could arise for example if the winning licence option was for say ten licences but the number of bids under that option was less than ten. Ofcom intends to consult at the appropriate time should there be unsold licences as a result of the award process under the Licence Award Regulations.
- 3.4 Most respondents to the consultation on the draft statutory instruments indicated general agreement with the proposed statutory instruments, or only submitted comments on limited aspects of the proposals.
- 3.5 No comments were received in relation to the provisions in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006, Wireless Telegraphy (Register) (Amendment) Regulations 2006 and Wireless Telegraphy (Limitation of Number of Concurrent Spectrum Access Licences) Order 2006.
- 3.6 This section sets out Ofcom's responses to the main points in stakeholders' submissions on the Licence Award Regulations and on the draft licence. These fall into 4 categories, as described further below.



3.7 Other comments from respondents are addressed in Annex 1.

### **Requirement to provide an address within 10 km of Ofcom's offices in London**

- 3.8 Paragraph 1 of Schedule 2 to the draft Licence Award Regulations required applicants to provide an address within ten kilometres of Ofcom's premises in London at Riverside House, 2a Southwark Bridge road, SE1 9HA.
- 3.9 This provision attracted comments from four respondents. FMS Solutions, ip.access and Teleware considered it to be unnecessary in the context of this auction. Mobile200 requested a clarification, arguing that it should be possible for applicants to give an address of an appointed representative or advisor, provided that the representative was not also an associate of another applicant and that the applicant declare its relationship with the representative.
- 3.10 After careful consideration of these responses in the context of the award of licences for the Spectrum Bands, Ofcom has decided to remove this requirement. Applicants will still be able to provide contact details which may be different to their registered office, but there is no longer a requirement for this address to be within 10km of Ofcom's premises in London. Ofcom has taken into account its wide powers of discretion under regulation 35 of the Licence Award Regulations to alter the date, times or place for delivery of any documents in connection with the award process and the fact that the auction is a single round process. In this context, Ofcom considers that the provision is not necessary.

### **Cooperation in engineering coordination**

- 3.11 Annex 1 of the Information Memorandum published on 24 November 2005 included a draft of the form of licence to be awarded for the Spectrum Bands.
- 3.12 As described at paragraphs 4.25 to 4.33 of the November Statement, licensees in the Spectrum Bands will be required to take certain steps to secure engineering coordination for concurrent use. Schedule 1 (paragraph 5. a) and 5. d)) of the licence requires licensees to use best endeavours to:
- agree the engineering principles to be set out in a Code of Practice with all the other licensees in the Spectrum Bands; and
  - adhere to any Code of Practice subsequently adopted in accordance with the requirements of the licence.
- 3.13 One respondent argued that a requirement to use "best endeavours" in respect of engineering coordination was too onerous on licensees. It submitted that this implied a requirement to use all means short of those leading to bankruptcy and proposed that the requirement should be replaced by one of reasonable endeavours.
- 3.14 Ofcom agrees that "best endeavours" imposes a greater obligation than "reasonable endeavours". However, Ofcom does not agree that "best endeavours" is as onerous as suggested by the respondent. Whilst "reasonable endeavours" allows commercial considerations to be taken into account, "best endeavours" requires that at least some commercial considerations should be ignored (if that becomes necessary). Ofcom does not consider that the test is so onerous as to require all means to be taken short of certain bankruptcy. Ofcom is also of the view that such an obligation is proportionate to the objective of efficient use of the Spectrum Bands, since all licensees will hold concurrent rights and obligations.

- 3.15 It should be noted that if licensees fail to agree a Code or if its implementation fails to meet its objectives, Ofcom will impose its own Code of Practice, including engineering coordination principles. Licensees would then be required to comply with the requirements of the Code imposed by Ofcom which may not be conditional to a qualified level of endeavours.

### **Provisions relating to forfeit of deposit and bidder exclusion**

- 3.16 BT highlighted two points of concern, first in relation to the discretion afforded to Ofcom in deciding whether an applicant or bidder should be excluded from the award process and secondly in relation to bidders whose deposit has already been forfeited in accordance with the Licence Award Regulations.
- 3.17 In the draft Licence Award Regulations, regulation 31 gives Ofcom the power to forfeit the deposit of an applicant or bidder and to exclude that applicant or bidder from the award process, if Ofcom is satisfied that any of the events listed in regulation 32 have occurred and that the occurrence would materially affect the outcome of the award process.
- 3.18 BT argued that:
- Ofcom should remove the scope for discretion under regulation 31 and
    - either make exclusion a certain consequence of the occurrence of events under regulation 32; or
    - distinguish between those events under regulation 32 which would necessarily lead to exclusion and those which may; and
  - the incentives to comply with the Licence Award Regulations would be too weak for a party whose deposit has already been forfeited if Ofcom did not require applicants or bidders to provide new deposits where their deposits have been forfeited.
- 3.19 In response to the first point, Ofcom considers that its discretion under regulation 31 is appropriate and proportionate given the events set out in regulation 32. Whilst some of the events (for example evidence of collusion or attempts to distort the outcome of the award process) are very likely to result in the forfeit of any deposit and exclusion from the award process, there may be circumstances in relation to other events where such an outcome is not proportionate and consequently it is appropriate for Ofcom to retain discretion in this regard.
- 3.20 In response to the second point, Ofcom would like to provide the following clarifications, taking account of the changes described in the following sub-section on provisions relating to the exchange of confidential information. Ofcom accepts that there may be a period of time during which a qualified applicant or a bidder may no longer have a deposit with Ofcom.
- 3.20.1 Under the procedure set out in Part 4 (where there are seven or fewer bidders), this could occur if Ofcom has already forfeited a qualified applicant or bidder's initial deposit of £25,000 under regulation 31 before giving that bidder a provisional award notice under regulation 11. In such circumstances the bidder would be required to pay the full licence fee (£50,000) in order to receive a licence. Ofcom considers that the incentives under Part 4 are proportionate to deter the behaviour identified in regulation 32. Even where a bidder has forfeited its deposit, the threat of exclusion remains. Such a bidder would therefore have forfeited its initial cash deposit of £25,000 and would

also not receive a licence if it failed to pay the full licence fee in accordance with regulation 12 (or if it were subsequently excluded).

3.20.2 Under the procedure set out in Part 5 (where there are more than seven bidders), this could occur in the following case.

- Before the auction:
  - forfeit of a qualified applicant or bidder's initial deposit (i.e. after an applicant has qualified under regulation 7).

In this case, there would be a period during which a bidder could potentially be eligible to bid and no longer have a deposit with Ofcom. However, Ofcom considers that this period of time is likely to be short in any event. In the Information Memorandum, Ofcom stated its expectation that there would be a period of only approximately nine business days between notification to those applicants qualified to bid in the award process and the holding of the auction (which requires submission of a further cash deposit). Moreover, Ofcom considers that the lack of a deposit is unlikely to have a significant impact on the applicant or bidder's behaviour (or on the efficiency of the award) given the requirement on all bidders to top up their deposits so that the total held by Ofcom amounts to a deposit of half of their highest bid against any licence option. Bidders who have already lost their initial deposit are therefore effectively required to replenish their initial deposit if they are to stay in the award process.

- After the auction date:
  - forfeit of a bidders' bid deposit.

Ofcom believes that the penalty in these circumstances, i.e. forfeit of half of the highest amount that the bidder has committed against any of the licence options, is proportionate to deter the behaviours identified in regulation 32.

3.20.3 Furthermore, qualified applicants or bidders who have already forfeited their initial or bid deposits have an additional, strong incentive not to engage in any of the events under regulation 32 as to do so would risk exclusion from the award process altogether.

3.21 In light of the above, Ofcom considers that it is not necessary to amend the provisions relating to deposits in case of forfeit or those in regulations 31 and 32.

### **Provisions relating to the exchange of confidential information**

3.22 One respondent considered that potential bidders who do not have common associates (as defined in regulation 2(a)) may want to discuss access to an existing network of one of these potential bidders and to negotiate wholesale reseller or roaming arrangements.

3.23 The respondent identified the following concerns with respect to such discussions.

3.23.1 Knowledge of the very fact that agreement had been reached between two such potential bidders, or some description of the terms of these agreements, may affect decisions of other potential bidders (in particular whether to participate in the award process or what their valuations would be).

- 3.23.2 It was not clear whether the discussions themselves would result in the exchange of confidential information under the meaning given in regulation 2(h). The respondent considered that, if this were the case, then only one of the parties could qualify as a bidder and the other parties to the discussions would have to become a member of that bidder's bidder group via the submission of the document contained in Schedule 4.
- 3.23.3 The respondent was of the view that a party wishing to provide access to an existing network to third parties should not be precluded from:
- o either entering into agreements with several different parties who would not be disqualified to bid for that reason; or
  - o entering into one or more agreements without itself being prevented from applying or bidding for that reason.
- 3.24 Ofcom has considered these issues carefully. In particular, it has never been and it is not Ofcom's intention to either preclude parties from participating in the award process, or to require parties to be part of the same bidder group where, subject to the content and character of the discussions in question, the parties have simply sought to negotiate access to an existing network (wholesale reseller or roaming arrangements).
- 3.25 Ofcom sets out below some further observations on the issues and also some amendments to the Licence Award Regulations it has made to address the concerns.
- 3.25.1 The definition of confidential information is contained at regulation 2(h). Under that definition, information would have to, if disclosed, be likely to affect the decisions that other parties may make in relation to the award process. The particular circumstances of each case, including the timing of disclosure, the nature of the information, the relationship of the information to the award process and the person to whom the information may be disclosed will be relevant to whether information falls under the definition or not.
- 3.25.2 The Regulations deal with disclosure of confidential information in two instances: firstly, as a matter which Ofcom must take into account when considering whether to qualify an applicant to bid in the award process and, secondly, after qualification certain activity rules about confidential information apply to disclosure of the information. In each instance, it is the disclosure rather than the existence of (or creation) of information which is caught by the rules. Under the activity rules, it is only disclosure which would materially affect the outcome of the award process which is caught.
- 3.25.3 Ofcom therefore considers that information exchanged in discussions such as those concerning negotiation of access to an existing network must be considered on a case by case basis. Depending on the content and character of those discussions, the negotiation may involve an exchange of confidential information (as defined in the Licence Award Regulations) as between those parties. Further, depending on the content and character of those discussions, the exchange may or may not be likely to distort the outcome of the award process. Accordingly, applicants and bidders should take considerable care before engaging in such behaviour and take their own advice on the issues.

- 3.25.4 Applicants are now required to provide additional relevant information in their applications (see Schedule 2) and this includes any disclosure of confidential information (within the meaning of the Licence Award Regulations) to someone who is not a member of that applicant's bidder group. Any applicant who is concerned that a disclosure may have taken place is therefore required to inform Ofcom of this fact. If in doubt about the nature of a disclosure, we suggest that applicants should inform Ofcom as part of their application.
- 3.25.5 Regulation 4(3)(a)(iii) and Schedule 4 have been amended so that the document contained at Schedule 4 is only required in respect of those persons which an applicant or bidder wishes to be included in its bidder group. Applicants therefore have a choice whether to include someone in their bidder group, or to provide Ofcom with full details of any disclosure of information to a third party, where it considers that such information might be captured by the definition of confidential information at regulation 2(h).
- 3.25.6 Ofcom will consider any information provided on a case by case basis under regulation 7 in determining whether an applicant is qualified to bid together with all other relevant considerations. In respect of commercial discussions which have led to the disclosure of confidential information (as defined in the Regulations) in exercising its discretion Ofcom will be particularly concerned with whether the disclosure of information has been part of collusive behaviour or an attempt to collude and whether it is likely to distort the outcome of the award process.
- 3.25.7 After Ofcom's determination under regulation 7 of which applicants have qualified to bid, the relevant provisions are those in regulation 31 and 32. Parties should take considerable care in relation to such discussions during this period and take their own advice. Depending on the content and character of the commercial discussions relating to network access, it is possible that they could involve the exchange of confidential information as defined in the Regulations. It is therefore possible that this will lead to forfeiture of deposits and possibly also exclusion from the process if Ofcom is satisfied that the disclosure of confidential information would materially affect the outcome of the award process.

### **Other changes introduced by Ofcom to improve the clarity of drafting**

- 3.26 In addition to the changes made as a result of responses to the November Consultation, Ofcom has also made a number of drafting changes to the Licence Award Regulations.
- 3.27 These changes were made for the purpose of improving the clarity and precision of drafting and do not introduce variations from the policy framework described in the November Statement.
- 3.28 By way of summary, the major drafting changes include:
- clarification of the definition of material interest under regulation 2 to take account of the possibility for decisions on the conduct of business of a body corporate to be dependant on the consent of holders of particular classes of shares;

- changes to the list of criteria for determination of an applicant's qualification to bid under regulation 7 to ensure greater consistency with the list of events under regulation 32;
- clarificatory changes to the drafting of regulations 24 and 25;
- changes under regulation 34 to permit the provision of written notification by email, with some corresponding changes to regulations 9 and 21 to require certain notifications to be signed by an authorised person; and
- general changes to the content of the Schedules, including additions to the information required on application and changes to the form of document required by Schedules 3 and 5. Schedule 4 (document required to add a member to the bidder group who is not an associate) has also been amended in the interests of greater clarity.

## Section 4

# Next steps

- 4.1 Ofcom made the four statutory instruments in connection with the award process on 14 February 2006 and they will come into force on 10 March 2006. Drafts of these statutory instruments are annexed to this Statement in the form submitted for registration and publication after their making by Ofcom for indicative purposes. The statutory instruments will be officially published on OPSI's website in due course at [www.opsi.gov.uk](http://www.opsi.gov.uk).
- 4.2 Ofcom has provisionally indicated in this Statement that it expects the application date to be Tuesday 21 March 2006. As provided in regulation 4(4) of the Licence Award Regulations, Ofcom will publish the exact date and times on its website at: [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/), once the Licence Award Regulations have come into force.
- 4.3 All relevant information and documents relating to the award of the Spectrum Bands will be published at [www.ofcom.org.uk/radiocomms/spectrumawards/](http://www.ofcom.org.uk/radiocomms/spectrumawards/). For example, Ofcom will make electronic documents available for download, once they are available, in the form prescribed by the Schedules to the Licence Award Regulations.
- 4.4 As set out in section 4 to the Information Memorandum, the award process is expected to last approximately 30 to 40 business days from the application date.
- 4.5 Ofcom will hold a seminar on the auction rules before the start of the award process, on Wednesday 1 March 2006.

## Annex 1

# Summary of responses to the November Consultation

A1.1 Ofcom received 9 responses to the November Consultation. Most provided comments on specific parts or provisions of the draft Licence Award Regulations and expressed some support for the proposals. Two respondents made general comments concerning the approach, expressing disagreement on the basis of points previously addressed by Ofcom in the July Consultation and the November Statement.

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

Issue Raised	Comments	Ofcom's response
Licence Award Regulations - requirement to provide an address within 10 km of Ofcom's offices	FMS Solutions, ip.access and Teleware argued that it was unnecessary. Mobile200 requested some clarification and believed that it could be the address of a representative of the applicant, who should not be an associate of any other applicant and subject to a declaration of the link between the applicant and its representative.	Ofcom agrees that the requirement, intended for exceptional cases of disruption to the course of business, may be removed. This is discussed in more detail at paragraphs 3.8 to 3.10.
Draft Licence, Schedule 1 para. 5. - level of requirement for engineering coordination	One respondent argued that the requirement on Licensees to use their best endeavours for engineering coordination (preparing the Code of Practice and implementing it) was too burdensome. It proposed a requirement to use reasonable endeavours.	Ofcom believes that the best endeavours requirement is proportionate. This is explained at paragraphs 3.11 to 3.15.
Licence Award Regulations - Ofcom's discretion to exclude under regulation 31	BT submitted that Ofcom's discretion to exclude under regulation 31 should be removed in favour of certain exclusion.	Ofcom considers that it is appropriate for the regulator to retain discretion in this respect, as this will allow a judgement to be made about whether exclusion is warranted, having considered the circumstances.
Licence Award Regulations - bidders whose deposit has been forfeited but who were not excluded	BT considered that, in absence of systematic exclusion in case of forfeit of an applicant's or bidder's deposit, Ofcom should require that applicant or bidder to submit a new deposit replacing any forfeited sum, to maintain an incentive for that person to comply with the Regulations.	Ofcom is of the view that the draft Regulations include adequate incentives for applicants and bidders to comply with the provisions set out in them. The reasons are set out at paragraphs 3.20 to 3.21.



Issue Raised	Comments	Ofcom's response
Licence Award Regulations - confidential information and commercial agreements for roaming or reselling (MVNO)	One respondent expressed concern at the possibility that, on the basis of the definition of confidential information, provisions in the Regulations could force a party discussing such agreements to be part of a bidder's bidder group (when it might want to be a bidder itself) or only hold the discussions with only one party (when it might want to do so with several parties).	Ofcom does not wish to preclude bidders from holding such discussions or from subsequently both participating in the award process, subject to the content and character of the discussions in question. Ofcom has made a number of clarifications and some changes to the Regulations as set out at paragraphs 3.22 to 3.25.
Licence Award Regulations - appropriateness of commitments required by Schedule 3	One respondent considered that it was not possible for an applicant to commit to part (c) of Schedule 3, because the licence provided in the Information Memorandum is only in draft.	Annex 1 to the Information Memorandum provides a draft licence, including all the terms and conditions that will apply to licences awarded under the award process for the Spectrum Bands. A licence may only be a draft licence until it is actually granted. Ofcom does not expect to make any changes to the licence from the draft included at Annex 1. If, for reasons unforeseen at the time of publication of this Statement, Ofcom subsequently found it necessary to amend the terms of the licences, it would publish these changes and the revised version of the terms and conditions of the licences on its website; such a change may also require prior public consultation.
Award design – ability of Mobile Network Operators to determine the outcome of the auction	One respondent argued that the auction design allowed existing Mobile Network Operators to determine the outcome of the auction and restrict competition by bidding comparatively high amounts for the options with fewer Licences. It favoured excluding MNOs or applying a factor 0.5 to their bids for low numbers of licences.	Ofcom has already considered these points as a result of the July Consultation and responded in the November Statement, in particular at paragraph 5.10.

Issue Raised	Comments	Ofcom's response
General policy for the award - consideration of 3G use and issues still requiring resolution	One respondent submitted that Ofcom needs to be very cautious about allowing 3G use in the spectrum bands and that issues for the award remained unresolved.	No particular technology is precluded under a Licence for the Spectrum Bands so long as it meets the terms and conditions of the Licence. However Ofcom believes that this does not discriminate and that it is not otherwise unfair against existing holders of 3G licences for the reasons given at paragraphs 6.55 to 6.69 in the July Consultation and 4.36 to 4.38 in the November Statement. The respondent has provided no further evidence or analysis not already taken into account in those previous discussions.

## Annex 2

# Draft statutory instruments

A2.1 This Annex includes a copy of the statutory instruments as made by Ofcom on 14 February 2006 and in the form submitted for registration and publication. Because OPSI is the only authorised source for published statutory instruments, they are marked as draft.

A2.2 The statutory instruments are:

- The Wireless Telegraphy (Licence Award) Regulations 2006;
- The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006;
- The Wireless Telegraphy (Register) (Amendment) Regulations 2006; and
- The Wireless Telegraphy (Limitation of Number of Concurrent Spectrum Access Licences) Order 2006.

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STATUTORY INSTRUMENTS

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**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence Award) Regulations 2006**

*Made* - - - - - XX XX 2006

*Coming into force* - - - - - XX XX 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) Regulations 2006 and shall come into force on 10th March 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);
- (d) “bid deposit” has the meaning given in regulation 19(3);

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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 145 and Schedule 19(1).  
<sup>(b)</sup> 2003 c.21.

- (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 delivers to OFCOM a completed document in the form set out in Schedule 4;
- (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) “last day for withdrawal” has the meaning given in regulation 8(2)(b);
- (j) “licence” means a wireless telegraphy licence to establish or use stations for wireless telegraphy or install or use apparatus for wireless telegraphy in the United Kingdom at the frequency bands 1781.7 megahertz to 1785.0 megahertz and 1876.7 megahertz to 1880.0 megahertz to be granted pursuant to these Regulations;
- (k) “licence option” means one of a total of seven, eight, nine, ten, eleven, or twelve licences;
- (l) “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;
- (m) “OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process and published on their internet website;
- (n) “pounds” means pounds sterling;
- (o) “sealed bid” has the meaning given in regulation 18(2);
- (p) “sealed bid delivery period” has the meaning given in regulation 15(1)(a);
- (q) “valid bids” has the meaning given in regulation 23(1);
- (r) “winning bid” shall be construed in accordance with regulation 25;
- (s) “winning bidder” has the meaning given in regulation 26(1); and
- (t) “winning licence option” shall be construed in accordance with regulation 24.

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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.

## 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.

#### **Application**

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

(2) A body corporate may only apply for one licence.

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

- (a) deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA in a sealed envelope —
  - (i) a document containing the application information required by Schedule 2, completed in respect of the applicant and signed on its behalf;
  - (ii) a document, in the form set out in Schedule 3, completed in respect of the applicant and signed on its behalf;
  - (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 4, completed by the applicant (and signed on its behalf) and completed by and signed by or on behalf of the person in respect of whom that document is completed; and
- (b) pay 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**

5.—(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 4(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 date 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 4(3)(a)(i) and, (ii).

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

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

**6.**—(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 7(2) and 31 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 4(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 4 completed by the applicant (and signed on its behalf) 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**

**7.**—(1) OFCOM shall determine whether each applicant who has submitted an application in accordance with regulation 4 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 confidential information, whether directly or indirectly, to any person except where the disclosure —
  - (i) was to a member of the applicant's bidder group;

- (ii) was to OFCOM;
  - (iii) was for the purpose of raising finance for the applicant's application and was to a provider of finance; or
  - (iv) was for the purpose of enabling the recipient to decide whether to participate as a member of the applicant's bidder group;
  - (g) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
  - (h) any member of that 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 director or employee of a member of that 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**

- 8.—**(1) OFCOM shall notify each applicant of their determination under regulation 7(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 who are qualified to bid in the award process and the last day for withdrawal on their internet website.

#### **Withdrawal of an application**

- 9.—**(1) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by an authorised person 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 31.
- (2) Once an applicant withdraws its application, that applicant shall not be re-admitted to the award process.

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

- 10.—**(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.
- (2) Where the number of bidders is seven or fewer, OFCOM shall grant licences in accordance with the procedure set out in Part 4 of these Regulations.
- (3) Where the number of bidders is more than seven, 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 ARE SEVEN OR FEWER BIDDERS

#### **Provisional award notice and sums payable**

**11.**—(1) Where the number of bidders is seven or fewer, OFCOM shall give a provisional award notice to each bidder containing —

- (a) a draft of the licence which the bidder is provisionally awarded;
- (b) a statement of the licence fee;
- (c) the sum which the bidder shall pay to OFCOM; and
- (d) the latest time by which the bidder must pay that sum.

(2) The licence fee in respect of each licence shall be fifty thousand pounds;

(3) The sum which each bidder shall pay to OFCOM shall —

- (a) where its initial deposit has not been forfeited in accordance with regulation 31, be a sum equal to the licence fee less the initial deposit; and
- (b) where its initial deposit has been so forfeited, be a sum equal to the licence fee.

(4) OFCOM shall publish on their internet website the identity of the bidders to whom licences have been provisionally awarded.

#### **Payment**

**12.**—(1) Each bidder shall pay to OFCOM the sum specified in its provisional award notice by the time specified in that notice.

(2) That sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder.

(3) If a bidder fails to make payment 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 31) be forfeited.

#### **Grant of licences**

**13.** Where OFCOM have received from a bidder the sum specified in its provisional award notice by the time specified in that notice, OFCOM shall grant that bidder a licence.

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

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

- (a) publishing on their internet website the identity of the persons to whom licences were granted and the licence fees paid; and
- (b) refunding to applicants who were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not already been forfeited under regulation 31) but not any interest which has accrued on the deposits.

## PART 5

### PROCEDURE WHERE THERE ARE MORE THAN SEVEN BIDDERS

#### Notice to bidders

**15.**—(1) Where the number of bidders is more than seven, 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 document in the form set out in Schedule 1, 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 5, 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 fifty thousand pounds.

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

- (a) only specify a bid for a licence which is one of a total number which is a licence option;
- (b) only specify one bid against any licence option; and
- (c) specify a bid against at least one licence option but need not specify a bid against each licence option.

#### 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 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, during the sealed bid delivery period, 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 31, be a sum representing the difference between —
    - (i) the bidder's initial deposit; and
    - (ii) half of the highest sum which that bidder has specified on the bidding menu document against any of the licence options; or
  - (b) where the initial deposit has been forfeited in accordance with regulation 31, be a sum equal to half of the highest sum which that bidder has specified on the bidding menu document against any of the licence options.
- (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 incorrect 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 an authorised person 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 an authorised person 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 during the sealed bid delivery period 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 licence option and the winning bids.

(2) Any bidder to which a notice was given under regulation 15(1) which 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 31) be forfeited.

#### **Determination of the winning licence option**

**24.**—(1) OFCOM shall calculate the total value of the valid bids made in respect of each licence option as follows —

- (a) where the number of valid bids in respect of a licence option is equal to or less than the number of licences under that licence option, OFCOM shall calculate the total value of all the valid bids for that licence option;
- (b) where the number of valid bids in respect of any licence option is greater than the number of licences under that licence option, OFCOM shall —
  - (i) identify the *n* highest valid bids, where *n* is the number of licences under that licence option; and
  - (ii) calculate the total value of the *n* highest valid bids.

(2) The winning licence option shall be the one having the highest total value, determined under paragraph (1).

(3) If there is more than one licence option having the highest total value determined under paragraph (1), the winning licence option shall be that with the greater or, as the case may be, the greatest number of licences amongst those licence options having the equal highest total value.

#### **Determination of winning bids**

**25.**—(1) The winning bids shall be those valid bids included in the calculation made under regulation 24(1) for the winning licence option.

(2) Where there is more than one bid of equal value included in the calculation made under regulation 24(1) for the winning licence option, and that value is the lowest amount included in that calculation, OFCOM shall employ a method of random selection amongst those bids of equal value to determine which of them shall be treated as a winning bid.

#### **Provisional award notice and sums payable**

**26.**—(1) OFCOM shall give a provisional award notice to each bidder who submitted a winning bid (a “winning bidder”) containing —

- (a) a draft of the licence which the winning bidder is provisionally awarded;
- (b) a statement of the licence fee;
- (c) the sum which the winning bidder shall pay to OFCOM; and
- (d) the latest time by which the winning bidder must pay that sum.

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

(3) The sum which each winning bidder shall pay to OFCOM shall —

- (a) where its bid deposit has not been forfeited in accordance with regulation 31, be a sum equal to the licence fee less the bid deposit; and
- (b) where its bid deposit has been so forfeited, be a sum equal to the licence fee.

(4) OFCOM shall also notify each bidder who did not submit a winning bid that it has not been provisionally awarded a licence.

(5) OFCOM shall publish on their internet website the identity of the winning bidders to whom licences have been provisionally awarded.

### **Payment**

**27.**—(1) Each winning bidder shall pay to OFCOM the sum specified in its provisional award notice by the time specified in that notice.

(2) That sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder.

(3) If a winning bidder fails to make payment 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 bid deposit, which shall (where it has not already been forfeited under regulation 31) be forfeited.

### **Grant of licences**

**28.** Where OFCOM have received from a winning bidder the sum specified in its provisional award notice by the time specified in that notice, OFCOM shall grant that winning bidder a licence.

### **Licences not awarded**

**29.**—(1) Where OFCOM do not grant a licence to a winning bidder because that winning bidder has failed to make payment in accordance with regulation 27(1), OFCOM shall select the appropriate bidder (among those bidders who made a valid bid for the winning licence option) to which a provisional award notice should next be given in accordance with the order of precedence set out in paragraph (3) and follow the procedures set out in regulations 26 to 28 to give a provisional award notice, receive payment of the licence fee and grant a licence.

(2) Should that bidder fail to make payment, OFCOM shall follow the procedures set out in regulations 26 to 28 to give a provisional award notice, receive payment of the licence fee and grant a licence to the next bidder in the order of precedence until the licence is awarded or the list of bidders (among those bidders who made a valid bid for the winning licence option) is exhausted.

(3) The order of precedence among bidders who made a valid bid for the winning licence option shall be determined by the sums bid by those bidders for the winning licence option such that higher sums shall prevail over lower sums, and, where any two or more bidders bid sums of equal value OFCOM shall employ a method of random selection to determine the precedence among those bidders.

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

**30.** After the grant of licences, OFCOM shall complete the award process by —

- (a) publishing on their internet website the details of all bids, the identity of all bidders and the identity of the persons to whom licences were granted and the licence fees paid; and
- (b) refunding to applicants who were not qualified or who withdrew in accordance with regulation 9, and unsuccessful bidders, the initial deposits or bid deposits, (where such deposits have not already been forfeited under regulations 23(2), 27(3)(b) or 31) but not any interest which has accrued on the deposits.

## **PART 6**

### **ACTIVITY RULES**

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

**31.** 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 32 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**

**32.** The events referred to in regulation 31, in relation to an applicant 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 —
  - (i) is to a member of that applicant's or bidder's bidder group;
  - (ii) is to OFCOM; or
  - (iii) is for the purpose of raising finance for a bid and is to a provider of finance.
- (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 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 6(2);
  - (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**

**33.** 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

34. 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 OFCOM's 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.

### Delivery of documents

35. If OFCOM determine that it is impractical for any reason 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, OFCOM shall take all reasonable steps to notify the persons who must deliver the document concerned and require delivery to be made —

- (a) on a different day or within a different time; or
- (b) at a different place.

### Refunds

36. 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.

XX XX 2006

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

## SCHEDULE 1

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 Option	Bid amount (in words only)
7 licences:	
8 licences:	
9 licences:	
10 licences:	
11 licences:	

12 licences:

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The bidder undertakes to OFCOM to pay the sum specified for a licence against each licence option, if that sum is determined to be a winning bid within the winning licence option by OFCOM in accordance with the Wireless Telegraphy (Licence Award) Regulations 2006.

## SCHEDULE 2

Regulation 4(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

(a) Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) Regulations 2006 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

(b) 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 4 to the Regulations in accordance with regulation 4(3)(a)(iii) of the Regulations.

#### 5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 7 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 is not 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 that 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 officer

## SCHEDULE 3

Regulation 4(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) 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 31 and 32 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and

obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

## SCHEDULE 4

Regulation 4(3)(a)(iii)

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

[Insert name of applicant or bidder] (the "applicant/bidder") wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder's bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2006 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 7(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. Regulation 31 and 32 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 those provisions 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 in 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 31 and 32 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 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 in 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 5**

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 4(3)(a), 5(5)(b) or 6 of the Wireless Telegraphy (Licence Award) 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 6(2) of the Regulations of any changes to its bidder group subsequent to its application.

## EXPLANATORY NOTE

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

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at the frequency bands 1781.7 megahertz to 1785.0 megahertz and 1876.7 megahertz to 1880.0 megahertz.

To apply a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) on a day specified on their internet website. Information is required about applicants’ bidder groups (which is a term defined in regulation 2(f)). An initial deposit of twenty five thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

Regulation 5 provides for a procedure under which overlaps between applicants’ bidder groups can be drawn to the attention of the applicants and time is to be allowed for applicants to notify OFCOM of any changes to bidder groups which have the effect that such overlaps are removed. An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 7(2)).

OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 7(3). Under regulation 8, OFCOM will notify applicants of the last day when they may withdraw their application without forfeiture of the initial deposit.

OFCOM will follow the procedure in Part 4 of these Regulations (where the number of bidders are seven or fewer) or the procedure in Part 5 (where the number of bidders is more than seven) (regulation 10).

Under Part 4, where the number of bidders is seven or fewer, OFCOM will provisionally award a licence with a fee of fifty thousand pounds to each bidder and require a sum to be paid which takes into account the amount on deposit (regulation 11). If a bidder does not pay the sum required by the required time, that bidder will not be granted a licence and will forfeit sums on deposit held by OFCOM (regulation 12). If the sum is paid on time, a licence is to be granted (regulation 13).

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

Under Part 5, OFCOM shall determine the winning bids by following the procedure set out in regulations 24 and 25. Winning bidders will be given provisional award notices setting out the licence fee payable by that bidder, a sum to be paid which takes into account the amount on deposit and the time by which the sum must be paid (regulation 26). If a winning bidder does not pay the sum by the required time that bidder will not be granted a licence and will forfeit any deposit held by OFCOM (regulation 27). If the sum is paid on time a licence is to be granted (regulation 28). Licences not granted due to a failure by a winning bidder to make payment under regulation 27 may be offered to other bidders in accordance with the procedure set out in regulation 29.

If in relation to an applicant which is qualified to bid or a bidder OFCOM are satisfied that certain events are occurring or have occurred and the occurrence would materially affect the outcome of the award process the applicant or bidder concerned will forfeit sums on deposit and may be excluded from the award process (regulation 31).

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

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STATUTORY INSTRUMENTS

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**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Spectrum Trading) (Amendment)  
Regulations 2006**

*Made* - - - - *XX XX 2006*

*Coming into force* - - *XX XX 2006*

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

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

**Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006 and shall come into force on 10th March 2006.

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

2. The Wireless Telegraphy (Spectrum Trading) Regulations 2004(b) are amended as follows —

(a) at the end of regulation 4 (transfer of all rights and obligations arising by virtue of a wireless telegraphy licence) add the following paragraph —

“(3) Paragraph (1) shall apply to wireless telegraphy licences within the licence classes specified in Column 1 of each of Parts 1 to 6 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.”;

(b) for regulation 5 substitute the following regulation —

“5. Subject to regulation 7, a transfer by the holder of a wireless telegraphy licence within the licence class specified in Column 1 of Part 7 of the Schedule which applies to stations or apparatus operating within either of the frequency bands specified in Column 2 of the same Part, of all of the rights and obligations arising by virtue of that wireless telegraphy licence, is authorised if the rights and obligations of the person making the transfer become rights and obligations of a single transferee to the exclusion of the person making the transfer.”;

- (c) in regulation 7 (circumstances in which a transfer is not authorised) —
  - (i) in paragraph (b) for “Wireless Telegraphy (Licence Charges) Regulations 2002” substitute “Wireless Telegraphy (Licence Charges) Regulations 2005”(a);
  - (ii) in paragraph (c) for “under regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2002” substitute “under regulation 4(7)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2005”;
- (d) in regulation 8 (transfer procedure), in paragraph (1) —
  - (i) for “authorised by regulations 4(1) or 6” substitute “authorised by regulation 4(1), 5 or 6”;
  - (ii) in sub-paragraph (d) for “authorised by regulation 4(1) or regulation 6” substitute “authorised by regulation 4(1), 5 or 6”; and
- (e) in the Schedule, after Part 6 add the following Part —

**“PART 7**

<i>Column 1</i>	<i>Column 2</i>
<b>Licence Class</b>	<b>Frequency Band</b>
Concurrent Spectrum Access	1781.7 MHz to 1785.0 MHz 1876.7 MHz to 1880.0 MHz”.

XX XX 2006

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

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(a) S.I. 2005/1378

**EXPLANATORY NOTE**

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

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

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

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

## STATUTORY INSTRUMENTS

2006 No. XXXX

## ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Register) (Amendment) Regulations  
2006

Made - - - - XX XX 2006

Coming into force - - XX XX 2006

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

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

**Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) Regulations 2006 and shall come into force on 10th March 2006.

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

2.—(1) The Wireless Telegraphy (Register) Regulations 2004(b) are amended as follows.

(2) In the Schedule, after Part 6 add the following Part—

**“PART 7**

<i>Column 1</i>	<i>Column 2</i>
<b>Licence class</b>	<b>Frequency bands</b>
Concurrent Spectrum Access	1781.7 MHz to 1785.0 MHz 1876.7 MHz to 1880.0 MHz”.

XX XX 2006

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

(a) 2003 c. 21  
(b) S.I. 2004/3155



**EXPLANATORY NOTE**

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

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

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

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

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STATUTORY INSTRUMENTS

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**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - *XX XX 2006*

*Coming into force* - - *XX XX 2006*

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

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

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Concurrent Spectrum Access Licences) Order 2006 and shall come into force on 10th March 2006.

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

**Limitation of licences**

**2.**—(1) OFCOM will grant a fixed number of wireless telegraphy licences for the use of the frequency band 1781.7 megahertz to 1785.0 megahertz and the frequency band 1876.7 megahertz to 1880.0 megahertz.

(2) In determining the number of licences for the use of these frequency bands to be granted and the persons to whom the licences will be granted OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2006(b).

XX XX 2006

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

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(a) 2003 c. 21.  
(b) XXXX/XX

## EXPLANATORY NOTE

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

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

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

In determining the limit on the number of licences at these frequencies and the persons to whom licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2006 (S.I. 2006/XXXX).

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

## Annex 3

# Regulatory Impact Assessments

A3.1 The analysis set out in this Annex represents Regulatory Impact Assessments (“RIA”) for each of the four statutory instruments made in connection with the award of wireless telegraphy licences for use of the Spectrum Bands.

A3.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

## Regulatory Impact Assessment – the Wireless Telegraphy (Licence Award) Regulations 2006

### Proposal, purpose and intended effect

A3.3 Following the July Consultation and the November Statement, Ofcom has decided to award low power, technology neutral, concurrent licences (i.e. licensees have equal access to the entire spectrum on a shared basis, no one licensee having priority over any other), by means of an auction.

A3.4 The regulations to which this RIA relates, give effect to a sealed bid auction with menu bidding which will allow the market to determine the number of concurrent licences awarded, within a minimum and maximum set by Ofcom. Ofcom assessed various alternative auction formats in the context of the conditions particular to this auction. This format was the one which best met Ofcom’s objectives in relation to this award of ensuring the optimal use of the electro-magnetic spectrum having regard to the availability of, and demand for, the spectrum and to the desirability of promoting:

- the efficient management and use of the spectrum;
- the economic and other benefits that may arise from use of the spectrum;
- the development of innovative services; and
- competition in the provision of electronic communications services.

### Introduction

A3.5 These regulations represent the culmination of a process of consultation which began with the publication of a consultation on the future use of these Spectrum Bands by the Radiocommunications Agency in 2003. Ofcom put forward proposals for the auction of the Spectrum Bands in the Spectrum Framework Review: Implementation Plan (the “SFR:IP”), which was published in January 2005. Following the analysis of responses to the SFR:IP, Ofcom made detailed proposals for the award in the July Consultation. It was followed by the November Statement and the consultation on the Notice.

A3.6 The Impact Assessment in the SFR:IP considered the option of leaving the spectrum unassigned. It concluded that the benefits of awarding the spectrum were likely to be significant compared to leaving it fallow for some future use such as 3G. In addition,

the proposal to award the spectrum by means of an auction was justified on the grounds that demand was likely to exceed the supply of spectrum in this band.

A3.7 The Impact Assessment in the July Consultation focused on the policy options put forward for the form of licences offered (technology neutral and low power) and on the auction design.

A3.8 This RIA, therefore, focuses on Ofcom's choice of auction format resulting from the Consultation processes detailed above. The costs and benefits to business are considered first, followed by consideration of the impact on the public sector. In this case, the impact on the public sector is limited to the impact on Ofcom. Following this, the costs and benefits to the economy as a whole of specific auction format and design issues are assessed.

### **Costs to business**

A3.9 Ofcom's overall conclusion is that the costs imposed on business are significantly outweighed by the benefits and where possible the award of the spectrum has been designed to minimise the costs imposed on business.

A3.10 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 coordinated 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, low administrative costs. Ofcom's technical analysis has shown that engineering coordination will only be effective where the number of licensees is small, and respondents to the consultations on this issue have not produced any evidence to refute this.

A3.11 Ofcom's decision to use an auction to award the spectrum will not impose costs on business in general, only on those businesses which may have some 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 a well designed auction in ensuring that the spectrum is allocated to those who value the spectrum most highly, and given that there is evidence of excess demand for this spectrum. Ofcom's research indicates that the value generated from the use of this spectrum could be between £150 million and £550 million<sup>7</sup>, therefore the potential for efficiency saving from optimally allocating the spectrum is large.

A3.12 The sealed bid auction format with menu bidding is a simple and low cost auction format to implement. It minimises the cost imposed on auction participants (and the cost of running the auction) subject to fulfilling Ofcom's objectives for the auction.

A3.13 The menu bidding component of the auction design, which lets the market decide the optimal number of licences, also reduces the risk that too many or too few licences are awarded, compared to Ofcom attempting to estimate the optimal number of licences. This reduces the risk that unnecessary coordination costs could be imposed on users of the Spectrum Bands.

<sup>7</sup> On a net present value basis, calculated over 10 years.

## **Costs to Ofcom**

A3.14 The costs of Ofcom's decision to auction the Spectrum Bands 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 for the economy.

A3.15 The only other cost Ofcom could incur specific to its proposals for awarding these Spectrum Bands would arise if the licensees were unable to agree an appropriate code of practice to manage engineering costs amongst themselves. However, based on industry responses to the consultation and subsequent engagement with stakeholders, Ofcom has reason to believe that the possibility of this happening is small.

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

A3.16 The costs and benefits of specific elements of the auction format and design are discussed below, covering:

- sealed vs. open auctions;
- transparency, bidder association and pricing rules.

### **Auction format: sealed versus open auction**

A3.17 There are two key issues in deciding the format of the auction: whether to use a sealed bid or a simultaneous multi-round auction (SMRA) also called an open auction. The second issue is whether to have a simple format in which Ofcom determines the total number of licences, and participants bid for individual licences within that total, or to have a menu bidding approach in which the participants can determine (within a minimum and a maximum) the total number of licences awarded. The table below explores the four combinations of these two issues.

<b>Option</b>	<b>Benefits</b>	<b>Costs</b>	<b>Risks</b>
Menu bidding - sealed bid	Market assesses engineering coordination costs and determines optimum number of licensees. May facilitate entry by mitigating impact of bidder asymmetries because weak bidders have an increased chance of winning. Fast and low cost to run. Bidders are in a better position than Ofcom to determine the total number of licences (within a minimum and a maximum).	Bidders cannot learn from each others' bids and inefficiency may result if some bidders are not sufficiently well informed of the potential value of the spectrum. Bidders may have to invest time in understanding the impact of engineering coordination costs on their bids.	The risk that the auction is inefficient because bidders do not get information from observing others' bid is mitigated by the fact that the common value between bidders may be modest because the potential uses of the spectrum are quite diverse.
Menu bidding - SMRA	Bidders learn from observing other bids. This benefit is likely to be limited because there are several different potential applications for the spectrum. The market determines the number of licences.	Weak bidders more likely to be discouraged from the auction because it is easier for strong bidders to overbid competitors. Costly to implement, more complex and time consuming for bidders. Bidders may have to invest time in understanding the impact of engineering coordination costs on their bids.	
Simple sealed bid for predefined number of licences	May facilitate entry by mitigating impact of bidder asymmetries because weak bidders have an increased chance of winning. Fast and low cost to run.	Bidders cannot learn from each others' bids and inefficiency may result if some bidders are not sufficiently well informed of the potential value of the spectrum.	Ofcom will not have enough information to accurately determine the most appropriate number of licensees.
Simple SMRA for predefined number of licences	Bidders learn from observing other bids. This benefit is likely to be limited because there are several different potential applications for the spectrum. Relatively simple and not expensive to run.	Weak bidders more likely to be discouraged from the auction because it is easier for strong bidders to overbid competitors.	Ofcom will not have enough information to accurately determine the most appropriate number of licensees.

A3.18 The Impact Assessment indicates that, on balance, a menu bidding sealed bid format is the best option. The sealed bid option appears attractive in the light of potentially large asymmetries between bidders. The SMRA format does have some advantages because there is uncertainty about the value of the spectrum. However, the uncertainty is more to do with different potential applications of the spectrum, so the actual extent to which bidders would be able to learn from each others' bids would be limited, because other bidders might be planning to provide very different services. On

balance, therefore, a sealed bid approach appears more appropriate than an SMRA approach.

A3.19 Menu bidding has clear advantages over the simple option of bidding separately for a predefined number of licences because it allows the market to evaluate engineering coordination costs and determine the appropriate number of licences.

### **Transparency, bidder association, and pricing rules**

A3.20 In this particular auction, the choice of pricing rule (which determines how much the winning bidders have to pay) also affects the options chosen for transparency and bidder association<sup>8</sup> rules. Ofcom is proposing transparency, i.e. that the identity of bidders is revealed before the auction, that bidder association is prohibited and that bidders will have to declare they have complied with this rule, and that the pricing rule is such that the winners pay what they bid.

A3.21 Ofcom has considered two options for each of the three rules, 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 it is allowed;
- pricing rules - either the winners pay what they bid, uniform pricing rule (all the winners pay the value of the lowest winning bid<sup>9</sup>) or a Vickrey-Clarke-Groves rule.

A3.22 The advantages and disadvantages of each of the three choices are presented in the table below.

<sup>8</sup> Collusion is usually linked in with bidder association, because strategic manipulation of the auction can occur under each and in the context of this auction bidder association should be taken to include collusion. The only difference is that while collusion is anti-competitive per se, there may be valid reasons for bidder association.

<sup>9</sup> Vickrey pricing is a related rule in which the winners pay the value of the highest losing bid. This has very similar properties to uniform pricing and so is not considered here. Other variations on these pricing rules are possible, but the two considered encapsulate the main options facing Ofcom.



<b>Option</b>	<b>Advantages</b>	<b>Disadvantages</b>
Transparency	Enables rules prohibiting bidder association to be properly implemented Eases uncertainty for bidders under pay what you bid price rule.	Increases the potential for strategic manipulation of the 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 are prevented from revealing their participation in the auction, therefore it is harder for them to discourage weak bidders from participating.	Difficult to implement rules prohibiting bidder association and collusion if this of concern.
Bidder association prohibited	Makes strategic manipulation of the auction difficult.	Imposes compliance costs on participants and verification costs on Ofcom. Setting the threshold is somewhat arbitrary and it is difficult to implement if there is no transparency. Bidders may have legitimate reasons for multiple bid vehicles which are disallowed.
Bidder association allowed	Allows legitimate multiple bid vehicles, e.g. a bidder wants to trial two different services as separately registered companies for financial reasons.	Vulnerable to strategic manipulation especially when uniform pricing determines what the winners pay.
'Pay what you bid' pricing	Strategic manipulation - which is likely to be more effective when there are bidder asymmetries - is much more costly under this pricing rule. Thus manipulation is less likely and the outcome of the auction should be more efficient.	Inefficient outcomes may arise compared to uniform pricing, because the fear of the winner's curse may lead bidders to be cautious and to underbid.
Uniform pricing	If bidders are reasonably similar, uniform pricing mitigates the winner's curse problem and typically leads to more efficient outcomes, though the winner's curse issue is less significant in cases like this where bidders intend to put the spectrum to different uses and therefore may not share common values for the spectrum.	Uniform price auctions are highly vulnerable to strategic manipulation, particularly where there are asymmetries between bidders. A strong bidder could submit a high bid to influence the choice of a particular outcome and would face a very small chance of having to pay what they bid.
Vickrey-Clarke-Groves pricing	The optimal strategy for bidders is to bid their valuation, which promotes an economically efficient outcome.	The auction rules are difficult to implement in practice, and difficult for bidders to understand. In practice the incentives on bidders to bid their valuations may not work.

A3.23 Clearly the best combination of the above rules depends on the market conditions in the auction. The salient factors are:

- the level of bidder asymmetry - evidence from the external studies carried out for Ofcom and from the responses to previous consultations suggests that the level of bidder asymmetry could be high;
- the risk of strategic manipulation - it is difficult to tell whether there are strong incentives for any bidders to manipulate the auction using multiple bid vehicles;
- the maturity of the technology - GSM technology is mature and the costs of operating low power systems are well understood. To the extent that bidders are planning to use GSM, this reduces the variability in valuing the spectrum, and alleviates the impact of the winner's curse;
- the possibility of legitimate multiple bid vehicles - although this could not be ruled out, the secondary market offers opportunities for players to gain additional licences should they so wish.

A3.24 In the light of these conditions, the following conclusions can be made. Pay what you bid pricing is likely to be preferable to uniform pricing and a Vickrey-Clarke-Groves pricing rule. Pay what you bid is superior to uniform pricing, because concerns of manipulation of the auction are stronger than concerns over an inefficient outcome of the auction due to the winner's curse issue. Pay what you bid is superior to Vickrey-Clarke-Groves because the theoretical advantages of Vickrey-Clarke-Groves are unlikely to be realised in practice.

A3.25 Prohibiting bidder association is consistent with seeking to minimise the scope for strategic manipulation of the auction and the alternative ways for achieving the same result as using multiple bid vehicles.

A3.26 If bidder association rules are prohibited then transparency is clearly preferable to non-transparency. Moreover, because a pay what you bid pricing rule is the better option, there is no need for non-transparency to address the potential for strategic manipulation of the auction.

### **Business sectors affected**

A3.27 The main business sector affected by this proposal is fixed and mobile communications service provision.

A3.28 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- tertiary education;
- sectors connected with public gathering places such as:
  - airports;
  - railway stations;
  - conference and exhibition centres;
  - sports and music stadiums;

- o museums.

A3.29 Many of the respondents to the July Consultation who could be potential bidders in the auction are small businesses. The steps that Ofcom has taken in designing the auction to ensure that so-called “weak bidders” are not discouraged from participating in the auction should ensure that small businesses are not unfairly disadvantaged in the auction.

## **Conclusion**

A3.30 This Impact Assessment has analysed the costs of benefits of the conducting a sealed bid auction with menu bidding for the Spectrum Bands 1781.7 – 1785 MHz paired with 1876.7 – 1881 MHz.

A3.31 It has found that the auction format and the auction rules proposed by Ofcom to complement the choice of auction format are those most likely to meet the objectives of the auction, in particular to secure the optimal use of the Spectrum Bands. It is difficult to place a monetary value on the benefits associated with one auction design over another, but Ofcom believes that its chosen auction format will maximise the likelihood that the rights to use the Spectrum Bands are acquired by those best able to generate maximum value from them, and that this will far outweigh the costs to business and to the public sector carrying out an auction.

## **Regulatory Impact Assessment – the Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006**

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

A3.32 The purpose of these regulations is to permit the transfer of all rights and obligations relating to wireless telegraphy licences in the Spectrum Bands, also known as spectrum trading. Ofcom intends that outright total transfers are permitted, but not concurrent or partial transfers.

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

A3.33 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 greatly outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded (and for whom the benefit of the spectrum trade should exceed the costs anyway). This analysis of the general benefits of introducing spectrum trading should also apply to these Spectrum Bands.

A3.34 Ofcom considered whether to limit spectrum trading in the Spectrum Bands to outright total transfers or whether also to allow concurrent total transfers and partial transfers. Allowing concurrent total transfers would increase the flexibility with which the spectrum could be traded, however it would have the effect of increasing the number of licensees in the Spectrum Bands. An increase in the number of licensees would increase coordination costs for all existing licensees. This would mean that only one party would benefit from a concurrent total transfer, whereas all other licensees' costs would increase. Consequently a spectrum trade of this type could be inefficient overall even though the benefits would exceed the costs for the initiator of the trade.

A3.35 Partial transfers, whether outright or concurrent also suffer from the same problem. They effectively increase the number of licensees and therefore would impose additional costs on licensees who would not benefit from the transfer.

A3.36 It may also be possible for parties without licences to reach commercial agreements with licensees in order to meet business objectives requiring access to the Spectrum Bands. This is a matter for licensees and potential commercial partners to judge.

### **Costs to Ofcom**

A3.37 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 these Spectrum Bands within the framework should require little additional cost.

A3.38 Ofcom could incur greater costs if it were to allow concurrent total and partial transfers, than if it allowed only outright total transfers, because the possibility of Ofcom needing to intervene to resolve disputes between licensees would be likely to increase as the number of licensees increases.

### **Business sectors affected**

A3.39 The main business sector affected by this proposal is fixed and mobile communications service provision.

A3.40 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- tertiary education;
- sectors connected with public gathering places such as:
  - airports;
  - railway stations;
  - conference and exhibition centres;
  - sports and music stadiums;
  - museums.

### **Conclusion**

A3.41 Ofcom has assessed the impact of allowing spectrum trading in the Spectrum Bands and has found that the costs are likely to outweigh the benefits. It has also considered whether to allow to outright total transfers, concurrent total transfers and partial transfers (outright or concurrent). Ofcom's assessment is that the best option is only to allow outright total transfers, because the other two mechanisms would impose costs on parties that did not benefit from such transfers. It may also be possible to achieve some additional flexibility by commercial agreements that do not involve spectrum trading (this is a matter for the relevant commercial parties to judge).

## **Regulatory Impact Assessment – the Wireless Telegraphy (Register) (Amendment) Regulations 2006**

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

A3.42 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences - the Wireless Telegraphy Register.

A3.43 The intended effect of the Regulations is to enable information about the licences in the spectrum bands 1781.7 - 1785 MHz and 1876.7 - 1880 MHz (the "Spectrum Bands") to be published in this Wireless Telegraphy Register. This should facilitate spectrum trading by:

- providing information which will enable potential buyers to find out who holds what frequencies and the constraints on the use of the specific frequencies or bands.

A3.44 The amendment results from Ofcom's planned auction of licences to use the Spectrum Bands.

### **Costs and benefits**

A3.45 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 Spectrum Bands within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.

A3.46 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 being maintained anyway. The additional costs to Ofcom would be minimal and limited to updating the register for the Spectrum Bands. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.

A3.47 Moreover, now that the register has been set up, the additional costs of including the Spectrum Bands within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

### **Business sectors affected**

A3.48 The main business sector affected by this proposal is fixed and mobile communications service provision.

A3.49 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- telecommunications equipment manufacturing;

- hotels;
- hospitals;
- tertiary education;
- 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**

A3.50 Ofcom's assessment is that the benefits of including the Spectrum Bands 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 Number of Concurrent Spectrum Access Licences) Order 2006**

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

A3.51 The Limitation Order is intended to allow Ofcom to limit the number of users of the Spectrum Bands through the award of a limited number of licences, rather than not limiting the number of users through making the use of the spectrum licence exempt.

A3.52 The way by which Ofcom will award a limited number of licences for the Spectrum Bands is set out in the Wireless Telegraphy (Licence Awards) Regulations 2006.

### **Costs and benefits**

A3.53 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Spectrum Bands are lower than the costs of making use of the spectrum licence exempt.

A3.54 The decision to licence the Spectrum Bands, 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 Spectrum Bands were licence exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users coordinated 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, low administrative costs. Ofcom's technical analysis shows that engineering coordination will only be effective where the number of licensees is relatively small, and respondents to the consultations on this issue have not produced any evidence to refute this.

## **Costs to Ofcom**

A3.55 The costs to Ofcom of limiting the number of licences in the Spectrum Bands relate mainly to costs of awarding the spectrum. Ofcom has made regulations to auction licences for the use of the Spectrum Bands, therefore the costs to Ofcom would be those of carrying out the auction.

A3.56 In comparison, licence exemption would mean that Ofcom would not incur auction costs. However, as discussed in the previous section, the costs to business are likely to be relatively higher under licence exemption because of interference and coordination costs and this would be unlikely to lead to the most efficient use of the spectrum.

A3.57 Ofcom also notes that the administrative costs of the auction are likely to be small in relation to the benefit generated for the economy.

## **Business sectors affected**

A3.58 The main business sector affected by this proposal is fixed and mobile communications service provision.

A3.59 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal, and these sectors include:

- telecommunications equipment manufacturing;
- hotels;
- hospitals;
- tertiary education;
- sectors connected with public gathering places such as:
  - airports;
  - railway stations;
  - conference and exhibition centres;
  - sports and music stadiums;
  - museums.

## **Conclusion**

A3.60 Ofcom has assessed the impact of limiting or not limiting the number of licences in the Spectrum Bands and has concluded that the better option is to limit the number of licences. This is primarily because the number of users that would be likely to use the spectrum under licence exemption is large and would lead to all users incurring substantial costs in terms of interference and coordination with other users.