



Notice of Ofcom's proposal to  
make regulations in connection  
with the award of 1781.7 – 1785  
MHz paired with 1876.7 – 1880  
MHz

**Consultation**

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## Section 1

# Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make four statutory instruments in connection with the award of wireless telegraphy licences for use of the spectrum bands 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz ("Spectrum Bands"). Copies of each of the four statutory instruments are set out in Annexes 5 – 8 of this document. Separately Ofcom has published the reasoning for its decision to award licences for use of the Spectrum Bands (see Statement entitled Award of available spectrum: 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz published on 24 November ). An information memorandum setting out relevant information which potential applicants for the licences may wish to take into account has also been published.

### **Proposed Wireless Telegraphy (Licence Award) Regulations 2006**

- 1.2 These regulations set out the process and rules under which the licences for use of the Spectrum Bands will be awarded. Ofcom intends to hold an auction, although the regulations also provide for circumstances where there is insufficient demand and therefore no auction is held. They include provisions describing the procedures and rules for applying and bidding for the licences, how the winning bidders will be chosen and rules prescribing how applicants and bidders must conduct themselves during the award process. Section 3 of this document sets out a detailed summary of the general effect of the provisions.

### **Proposed Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006**

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

### **Proposed Wireless Telegraphy (Register) (Amendment) Regulations 2006**

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

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

- 1.5 Ofcom is required to make a licence limitation order where it considers it appropriate to limit the number of licences for a particular set of frequencies as in the case of the

Spectrum Bands. Section 6 of this document sets out a summary of the general effect of the provisions.

- 1.6 Ofcom is giving notice and consulting on each of its proposals to make these four sets of statutory instruments. Comments or representations with respect to the four proposed statutory instruments are invited by 5 January 2006.

## Section 2

# Notice

## Background to the proposals

2.1 Ofcom plans to award wireless telegraphy licences for the use of the spectrum bands 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz (the “Licences” and the “Spectrum Bands”). It has published its decision to do this in its statement entitled Award of available spectrum: 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz published on 24 November (“Statement”). This Statement follows extensive consultation with stakeholders on the approach allowing use of the Spectrum Bands, in particular:

- Consultation carried out by the Radiocommunications Agency in 2003
- Consultation carried out by Ofcom in January 2005 (Spectrum Framework Review: Implementation Plan)
- Consultation carried out by Ofcom in July 2005 (Award of available spectrum: 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz)

## Notice of proposals

2.2 This notice covers four related proposals to make regulations to allow award of the Spectrum Bands.

## Proposed auction regulations

2.3 Ofcom has decided to award the Licences by means of an auction and it has the statutory power to make regulations to do this. Accordingly Ofcom proposes to make The Wireless Telegraphy (Licence Award) Regulations 2006 in order to allow an auction to be held for the purpose of awarding the Licences. A draft of the proposed regulations are set out at Annex 5.

2.4 The general effect of these regulations is set out at Section 3 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed trading regulations

2.5 Ofcom has decided that the Licences should be tradable and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006. A draft of the proposed regulations are set out at Annex 6.

2.6 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed register regulations

- 2.7 Ofcom has decided that certain information relating to the Licences should be published and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Register) (Amendment) Regulations 2006. A draft of the proposed regulations are set out at Annex 7.
- 2.8 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Proposed limitation order

- 2.9 Ofcom has decided to award a limited number of licences in relation to the Spectrum Bands as this is appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum, in particular the Spectrum Bands. Accordingly under section 164 of the Communications Act it must make an order. Ofcom proposes to make The Wireless Telegraphy (Limitation of Number of Concurrent Spectrum Access Licences) Order 2006. A draft of the proposed order is set out at Annex 8.
- 2.10 The general effect of this order is set out at Section 5 of this document. A Regulatory Impact Assessment (RIA) for the order is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

## Comments or representations

- 2.11 Comments or representations with respect to the four proposed regulations are invited by 5 January 2006. This consultation period reflects statutory requirements. Comments should be sent to:

Brice Le Cannu

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

[Brice.lecannu@ofcom.org.uk](mailto:Brice.lecannu@ofcom.org.uk)

020 7783 4503

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

Brice Le Cannu  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Notice of Ofcom's proposal to make regulations in connection with the award of 1781.7 – 1785 MHz paired with 1876.7 – 1880 MHz

[Brice.lecannu@ofcom.org.uk](mailto:Brice.lecannu@ofcom.org.uk)

020 7783 4503

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



## Section 3

# General effect of the proposed Wireless Telegraphy (Licence Award) Regulations 2006

## The legislative framework

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

## Extent of application

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

## The proposed regulations

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

## Application stage

- 3.4 The application stage is described in detail at Part 2 of the proposed regulations. Any body corporate wishing to participate in the award process must submit an application form in the form provided for in the proposed regulations. The application form will include details of all members of the applicant's bidder group which is defined in the proposed regulations as including the applicant, each associate of the applicant and any person in receipt of confidential information of the applicant in respect of the award process. The date, time and place for submission of applications will be published on the Ofcom website.
- 3.5 The application form must also be accompanied by a preliminary compliance certificate in the form provided for in the regulations. The preliminary compliance certificate requires an applicant to certify, amongst other things that:
- it is legally capable of bidding for and satisfying its obligations under the terms of the licence;
  - it will comply with the provisions of the proposed regulations;
  - the information provided in its application is true, accurate and complete; and
  - it and the members of its bidder group are not the subject of criminal proceedings that could be expected adversely to affect their business or the applicant's ability to participate in the award process.
- 3.6 In addition, applicants must also submit certificates in the form provided for in the

proposed regulations for each person who is not an associate of the applicant and who has been in receipt of confidential information in respect of the applicant and who consequently is to be included as a member of the applicant's bidder group.

- 3.7 The term "associate" is defined in the proposed regulations as meaning any person who has a material interest in an applicant or bidder. "Material interest" is defined in the proposed regulations as any interest, whether held directly or indirectly in more than 25 per cent. of the relevant share capital of an applicant or bidder or the ability to appoint or remove the majority of the applicant or bidder's board of directors.
- 3.8 "Confidential information" is defined in the proposed regulations as including any information in respect of an applicant or bidder which is not in the public domain, but which if it were made public or disclosed to another applicant, potential applicant, bidder or potential bidder, would be likely to affect decisions that such other person may make in relation to the award process.
- 3.9 Finally, the application form must be accompanied by an initial deposit of £25,000. Such initial deposits will not earn interest and will only be refunded in the circumstances set out in the proposed regulations.

### **Qualification stage**

- 3.10 The qualification stage is described in detail at Part 3 of the proposed regulations. Following receipt of the applications, Ofcom will notify all applicants of the names of each other applicant and the names of the associates of each other applicant and of a date by which applicants must inform Ofcom and any other applicant concerned if they have any common membership overlaps (i.e. where any member of the applicant's bidder group is also an associate of another applicant).
- 3.11 Where Ofcom identifies any overlap between the bidder groups, it will also notify affected applicants. Where either Ofcom or any applicant has identified a common membership overlap, Ofcom will specify a date by which each applicant must notify Ofcom of any change in circumstances which means that there is no longer any such overlap. Ofcom will then record the details of each applicant's bidder group.
- 3.12 Regulation 6 of the proposed regulations provides that an applicant may make changes to the composition of their bidder groups after the application stage, provided such changes are notified to Ofcom and accompanied by a revised application form and supporting certificates and provided that they do not result in a breach of the activity rules provided for at Part 6 of the proposed regulations.
- 3.13 Following the period for resolution of overlaps, Ofcom will determine which applicants are qualified to bid in the auction. Under regulation 7(1), no applicant may qualify to bid where a member of its bidder group is also a member of another bidder group. However, Ofcom will also take into account other factors, including whether the grant of a licence to the applicant would be prejudicial to the interests of national security, whether the applicant is a fit and proper person to hold a licence, whether the applicant or any member of its bidder group is in any way attempting to distort the award process, or whether the applicant or any member of its bidder group has disclosed confidential information to someone outside its bidder group.
- 3.14 Regulation 7(4) enables Ofcom to request that additional information be provided by

a specified time in relation to an application. Failure to provide such information within the specified time will also be taken into account by Ofcom when determining which applicants qualify to bid in the auction.

- 3.15 Ofcom will notify each applicant of whether it has qualified to bid in the auction (giving reasons where an applicant has not qualified) and notifying them of the last date on which they may withdraw from the award process. Ofcom will also publish the identity of all applicants who are qualified to bid in the auction on its website.
- 3.16 Applicants wishing to withdraw from the award process before this last day for withdrawal may do so by notice in writing to Ofcom. Ofcom will notify all other applicants of any such withdrawal. Applicants who withdraw in this way will receive a refund of their initial deposit (unless it has been forfeited in accordance with the activity rules set out at Part 6 of the proposed regulations) at the end of the award process, but they shall not be re-admitted to the award process.
- 3.17 Applicants who do not withdraw before the last day for withdrawal are known as bidders and Ofcom will publish the names of all bidders on its website, along with a determination of the procedure to be followed for the award of licences.

### **Auction stage – seven or fewer bidders**

- 3.18 Part 4 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there are seven or fewer bidders. Ofcom will not hold an auction, but will provisionally award each of the bidders a licence at the reserve price of £50,000. This provisional award will be by way of notice to the bidders, which will include the draft licence, notice of the licence fee of £50,000, the sum payable and the date for payment. Ofcom will publish the names of all bidders who have been provisionally awarded a licence in this way.
- 3.19 Where the initial deposit has not been forfeited, the sum payable will be £25,000. Where the initial deposit has been forfeited, the sum payable will be £50,000.
- 3.20 Where a bidder fails to make payment in accordance with regulation 12, the bidder will no longer be entitled to the grant of a licence and will forfeit any remaining initial deposit.
- 3.21 After granting the licences to all those bidders who have made payment in accordance with regulation 12, Ofcom will complete the award process by publishing details of all those bidders to whom licences were granted. Ofcom will also refund initial deposits (without any interest having accrued) to unsuccessful applicants, unless such initial deposits have been forfeited in accordance with the proposed regulations.

### **Auction stage – more than seven bidders**

- 3.22 Part 5 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there are more than seven bidders. Ofcom will give a notice to each of the bidders setting out details of when the auction will take place. This notice will also reveal the identity of all other bidders and will include a password for each bidder, which will be required when completing the bidding menu document. Ofcom will also publish the identity of all bidders and the date for submission of bids on its website.
- 3.23 To bid in the auction, bidders in receipt of the notice must submit a bidding menu

document in the form provided for in the proposed regulations, signed by two authorised persons and accompanied by the appropriate password. The bidding menu document must also be accompanied by a submission compliance certificate in the form provided for at Schedule 5 of the proposed regulations. The submission compliance certificate requires bidders to confirm that the statements made in the preliminary compliance certificate remain true, that to the best of its knowledge and belief no member of its bidder group is also a member of another bidder group and that to the best of its knowledge and belief, having made all reasonable enquiries, the rules relating to common directors or employees have not been breached.

- 3.24 Regulation 17 of the proposed regulations explains how the bidding menu document must be completed. Bidders must bid for at least one of the licence options on the bidding menu, but need not bid for all of them. Bids for a licence within a specific licence option must be equal to or greater than the reserve price of £50,000 and must be expressed in words and in whole pounds sterling.
- 3.25 The completed bidding menu document and submission compliance form must then be submitted to Ofcom in a sealed, non-transparent envelope within the time specified and placed in the box marked for delivery of the sealed bids. Bidders must also ensure that a further deposit is paid to Ofcom at the same time. Where the bidder has forfeited its initial deposit, this further deposit will be an amount equal to fifty per cent. of the highest bid specified by that bidder on the bidding menu document. Where the bidder has not forfeited its initial deposit, this further deposit will be the difference between the initial deposit and an amount equal to fifty per cent. of the highest bid specified by that bidder on the bidding menu document. As with the initial deposit, this further deposit will not earn interest and will only be refunded in the circumstances set out in the proposed regulations.
- 3.26 Subsequent to the auction date, Ofcom will open only those sealed bids which were delivered to Ofcom in accordance with the procedure set out at regulation 18 of the proposed regulations. Under regulation 21 of the proposed regulations, where any sealed bids are incomplete or incorrect, but Ofcom can unambiguously identify the identity and intention of the bidder in relation to the bidding menu document, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms Ofcom's understanding, the sealed bid will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm Ofcom's understanding, the sealed bid will be rejected.
- 3.27 Regulation 22 of the proposed regulations provides that any sealed bids which have not been completed in accordance with the requirements of the proposed regulations will be rejected and the bidders excluded from the award process.
- 3.28 Ofcom shall then determine from those sealed bids which have not been rejected ("valid bids"), the number of licences to be granted and the identity of the winning bidders. The number of licences to be granted is determined in accordance with regulation 24 of the proposed regulations. This provides that the total value of valid bids received for each licence option (counting only the highest sums under the highest valid bids up to the number of licences in that licence option) will be aggregated.
- 3.29 Ofcom will then provisionally award the number of licences from the licence option which has the highest aggregated total. Where two or more licence options have the

highest aggregated total, regulation 24(4) provides that the winning licence option will be the licence option with the most licences.

- 3.30 Regulation 25 of the proposed regulations sets out the procedure for determining the winning bids within the winning licence option. The winning bids are the highest bids submitted for the winning licence option, up to the number of licences available in that licence option. Where two or more bids are equal and are for the lowest winning amount, regulation 25(2) provides that Ofcom will employ a method of random selection to determine which of those bids is a winning bid.
- 3.31 Under regulation 26 of the proposed regulations, Ofcom will then issue provisional award notices to all bidders who submitted a winning bid. This notice will include a draft of the licence to be awarded, the licence fee to be paid, the sum payable and the date for payment. Ofcom will publish the names of all bidders who have been provisionally awarded a licence in this way.
- 3.32 Where the bid deposit has not been forfeited, the sum payable will be the difference between the bid deposit and the winning bid. Where the bid deposit has been forfeited, the sum payable will be the winning bid.
- 3.33 Where a bidder fails to make payment in accordance with regulation 27 of the proposed regulations, the bidder will no longer be entitled to the grant of a licence and will forfeit any remaining bid deposit. Regulation 29 of the proposed regulations provides that in these circumstances the licence will be offered to another bidder in accordance with the order of precedence set out at regulation 29(3) of the proposed regulations. The order of precedence is determined by the value of valid bids submitted for the winning licence option that were not winning bids such that higher bids prevail over lower bids. Where two or more bidders submitted bids of equal amount, the order of precedence between them will be determined by a method of random selection.
- 3.34 After granting the licences to all those bidders who have made payment in accordance with regulation 27, Ofcom will complete the award process by publishing details of all bids, the identity of the bidders and the identity of those bidders to whom licences were granted. Ofcom will also refund any remaining initial deposits or bid deposits (without any interest having accrued) to all unsuccessful applicants and to any applicants who withdrew before the last day for withdrawal, unless such initial deposits or bid deposits have been forfeited in accordance with the proposed regulations.

### **Activity rules**

- 3.35 Part 6 of the proposed regulations sets out the activity rules that are to apply during the award process. Regulation 31 provides that any breach of the activity rules which would materially affect the outcome of the award process may result in a bidder or applicant forfeiting its initial deposit, or bid deposit where one has been paid. In such circumstances the bidder may also be excluded from the award process by Ofcom giving that bidder or applicant written notice.
- 3.36 Regulation 32 of the proposed regulations sets out the details of the events leading to forfeit of an initial or bid deposit and exclusion from the award process. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group to distort the award process in any way, disclosure of confidential information to someone who is not a member of the bidder group, or changes occurring in the membership of the bidder

group, except as provided for in regulation 32 of the proposed regulations.

- 3.37 With regard to confidential information, the disclosure to Ofcom, or to a provider of finance where the disclosure is for the purpose of raising finance for the bid, is permitted. Any person who is a director or employee of any member of two or more bidder groups must ensure that they receive confidential information in respect of only one bid and that they take part in the preparation of only one bid.
- 3.38 With regard to changes occurring in the membership of the bidder group, changes occurring as a result of a person ceasing to be associated is allowed. Equally, bidders and applicants are able to add members under the procedure set out at regulation 6(2). However, the addition of associates is only permitted as a result of merger and acquisition activity where such activity is for a purpose not related to the award process. Also, a change which leads to a member of a bidder's bidder group also becoming a member of another bidder's bidder group will be a breach of the activity rules and may lead to the exclusion of either or both bidders concerned and the forfeiture of deposits.

### **Miscellaneous**

- 3.39 Part 7 of the proposed regulations sets out other miscellaneous provisions. Regulation 33 provides for a general power of exclusion where Ofcom determines in its opinion that the grant of a licence to a bidder would be prejudicial to the interests of national security or where the bidder is not a fit and proper person to hold a licence.
- 3.40 Regulation 34 provides details of Ofcom's contact details for the purposes of receiving any notification from a bidder or applicant in accordance with the award process.
- 3.41 Regulation 35 enables Ofcom to alter the date, time or place for delivery of any documents in relation to the award process where it would otherwise be impractical for such delivery to take place.
- 3.42 Regulation 36 provides Ofcom with a general discretion to refund any sums paid to it in accordance with any provision of the proposed regulations as Ofcom sees fit.

## Section 4

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

## The legislative framework

- 4.1 These regulations are to be made under section 168(1) and (3) of the Communications Act 2003. Section 168 implements Article 9(3) and (4) of the Directive of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (2002/21/EC). Under section 168(1) of the Act Ofcom may by regulations authorise the transfer to another person by the holder of a wireless telegraphy licence, or the holder of a grant of recognised spectrum access, of rights and obligations arising by virtue of such a licence or grant.
- 4.2 Under section 168(4) and (5) transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.
- 4.3 A draft of the regulations which Ofcom proposes to make under section 168(1) and (3) is set out at Annex 6. This draft takes account of comments received following the consultation carried out by Ofcom in July 2005 (Award of available spectrum 1781.7 to 1785 MHz paired with 1876.7 to 1880 MHz).
- 4.4 These Regulations amend the existing regulations on spectrum trading: the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (SI 2004/3154) (the “2004 Regulations”).

## The existing 2004 Regulations on spectrum trading

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

## Total and partial transfers under the 2004 Regulations

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



and regulation 6 (regardless of whether the transfer is “total” or “partial”).

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

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

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



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

- 4.19 Once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 8(1) of the 2004 Regulations). Once all the information is provided, Ofcom will check the documentation in order to ensure that the mandatory information requirements have been met and that the proposed transfer is consistent with the information held by Ofcom. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 8(2) of the 2004 Regulations).

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

- 4.20 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 10 of the 2004 Regulations) take into account the following factors:
- whether the holder (or concurrent holders) of the licence is/are in breach of the terms of the licence.
  - whether the transferee (and the transferor in the case of a partial transfer) is able to meet the terms of the licence.
  - whether the transferee is able to meet any criteria in relation to the persons to whom a wireless telegraphy licence may be granted.
  - whether it is requisite or expedient for Ofcom to refuse consent because Ofcom has to meet national security concerns, comply with European Community or international obligations or a direction by the Secretary of State.
- 4.21 In some circumstances Ofcom may be able to consent to a transfer but give a direction to the parties to the trade that the transfer will only be put into effect when certain of the above matters are resolved. This is permitted by regulation 11 of the 2004 Regulations.

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

- 4.22 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.
- 4.23 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee (Regulation 8(5) of the 2004 Regulations).
- 4.24 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed. We will also update the public register, as described in the Trading Regulations, to ensure that the new licence holdings are reflected<sup>5</sup>.

## **The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006 (the “proposed amending regulations”)**

- 4.25 The licences for award in the Spectrum Bands will not be concurrently held by all licensees as a result of the auction. They are distinct licences, but with identical rights and obligations for the concurrent use of identical frequencies nationally. Each

licensee independently holds its rights and obligations.

- 4.26 The proposed amending regulations would amend the 2004 Regulations to permit only total outright transfers of wireless telegraphy licences of the class Concurrent Spectrum Access for the frequencies, 1781.7 MHz to 1785.0 MHz and 1876.7 MHz to 1889.0 MHz (the “Spectrum Bands”). Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that transferred the rights and obligations) no longer has any rights to use the spectrum in respect of which the licence was granted.
- 4.27 The circumstances where transfers are not authorised and the existing rules in the 2004 Regulations on the process for notification, consent and enactment of transfers described above, shall apply to transfers of these licences.
- 4.28 Partial and concurrent transfers which are permitted by the 2004 Regulations for other licences would not be permitted for this licence class (Concurrent Spectrum Access). That is because Ofcom are minded not to allow transfers which would increase the number of licensees in the Spectrum Bands. These include:
- concurrent total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
  - outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and
  - concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s).
- 4.29 The concern, in relation to the Spectrum Bands, with the above three types of transfers is that they would allow one licensee unilaterally to increase the number of licensees and so the number of parties with whom all the other licensees would have to coordinate and hence their engineering coordination costs. This position will however be kept under review.
- 4.30 In addition, the proposed amending regulations would update the 2004 Regulations by changing references from the Wireless Telegraphy (Licence Charges) Regulations 2002 to the Wireless Telegraphy (Licence Charges) Regulations 2005.

## Section 5

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

### The legislative framework and the existing regulations

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

### The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Register) (Amendment) Regulations 2006

- 5.5 A draft of the proposed regulations is set out at Annex 7. The proposed regulations add a category of licences (those to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) Regulations 2006) for which information will be published on the register. The information will be the same information as is already registered under the existing 2004 Regulations.
- 5.6 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It will not provide precise details about individual transmitters due to security concerns. Information is currently limited only to the classes that became tradable in 2004.

## Section 6

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

## The legislative framework

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

## The proposed regulations

- 6.4 A draft of the proposed order is set out at Annex 8.
- 6.5 In relation to the award of licences in the licence class Concurrent Wireless Access for the frequencies, 1781.7 MHz to 1785.0 MHz and 1876.7 MHz to 1889.0 MHz, there will be a limited number of licences. These are the licences to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) Regulations 2006.
- 6.6 As can be seen from section 3 of this Notice, in relation to the proposed Wireless Telegraphy (Licence Award) Regulations 2006, the limit on the number of licences to be granted will be determined through the award process established by those regulations.
- 6.7 Also, the limits on the persons to whom grants of licences at these frequencies will be made are also contained in the proposed Wireless Telegraphy (Licence Award) Regulations 2006. Those Regulations propose limits on the persons who are qualified to bid for licences and provide that in certain cases applicants and bidders for licences can be excluded from the award process.
- 6.8 Therefore, Regulation 2 in the proposed order provides that Ofcom will only grant a limited number of licences for these spectrum bands.
- 6.9 Regulation 2 in the proposed order also provides that this limit will be determined by

Notice of Ofcom's proposal to make regulations in connection with the award of 1781.7 – 1785 MHz paired with 1876.7 – 1880 MHz

Ofcom through the application of the procedures set out in the Wireless Telegraphy Licence (Licence Award) Regulations 2006. The regulations and the order will be made and enter into force at the same time.

## Section 7

# Regulatory Impact Assessments

- 7.1 The analysis presented here, when read in conjunction with the rest of this document, represents a Regulatory Impact Assessment (RIA), as defined by section 7 of the Communications Act 2003 (the 'Act'). You should send any comments on this RIA to Ofcom by the closing date for this consultation. Ofcom will consider all comments before deciding whether to implement the proposals.
- 7.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally Ofcom will carry out RIAs where proposals would be likely to have a significant effect on businesses or the general public, or where there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the RIA in this document Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

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

### Proposal, purpose and intended effect

- 7.3 Following its Consultation (July 2005) and Statement (November 2005) on the award of the available spectrum: 1781.7 – 1785 MHz paired with 1876.7 – 1881 MHz, 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.
- 7.4 The draft regulations to which this Impact Assessment 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

- 7.5 These draft regulations represent the culmination of a thorough process of consultation which began with the publication of a consultation on the future use of these Spectrum Bands by the legacy regulator the Radiocommunications Agency in

April 2003. Ofcom put forward proposals for the auction of the Spectrum Bands in the Spectrum Framework Review: Implementation Plan (SFR:IP), which was published in January 2005. Then finally Ofcom published a Consultation and Statement on the award of the Spectrum Bands in July and November 2005 respectively.

- 7.6 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 e.g. 3G use, according to Ofcom research. 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.
- 7.7 The Impact Assessment in the July 2005 Consultation focused on the policy options put forward for the form of licences offered, (technology neutral and low power) and on the auction design.
- 7.8 This Impact Assessment, 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**

- 7.9 Ofcom's overall conclusion is that the costs imposed on business are outweighed by the benefits and where possible the award of the spectrum has been designed to minimise the costs imposed on business.
- 7.10 The decision to licence 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, the number of potential users could be very high; licence exemption in other Spectrum Bands has led to hundreds of users. Ofcom's technical research has shown that this would impose costs on users due to the costs of interference and coordination with other users. These costs are likely to be high, and would greatly outweigh the benefits of licence exemption - low administrative cost. 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.
- 7.11 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>1</sup>, therefore the potential for efficiency saving from optimally allocating the spectrum is large.
- 7.12 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.

<sup>1</sup> On a net present value basis calculated over 10 years

- 7.13 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.

### **Costs to Ofcom**

- 7.14 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 and Ofcom's analysis indicates that the auction is very unlikely to have a negative financial impact on the public sector.
- 7.15 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**

- 7.16 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**

- 7.17 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 participants bid on individual licences or to have a menu bidding approach in which the participants can make a series of bids on the basis of the number of players to be in the market - i.e. total number of licences awarded. The table below explores the four combinations of these two issues.



Option	Benefits	Costs	Risks
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 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 accurately to 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 accurately to determine the most appropriate number of licensees.

7.18 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 other's bid 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.

7.19 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**

- 7.20 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>2</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.
- 7.21 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>3</sup>) or a Vickrey-Clarke-Groves rule.
- 7.22 The advantages and disadvantages of each of the three choices are presented in the table below.

<sup>2</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>3</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.

Option	Advantages	Disadvantages
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.

7.23 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.

7.24 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.

7.25 Prohibiting bidder association is consistent with the concerns over strategic manipulation of the auction and the alternative ways for achieving the same result as using multiple bid vehicles.

7.26 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**

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

7.28 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:
  - o airports;
  - o railway stations;
  - o conference and exhibition centres;

- o sports and music stadiums;
- o museums.

7.29 Many of the respondents to the 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**

7.30 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.

7.31 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; 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 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 draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006**

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

7.32 This Impact Assessment for the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006 relates to Ofcom’s proposed auction of the Spectrum Bands 1781.7 – 1785 MHz paired with 1876.7 – 1881 MHz. 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**

7.33 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 specific Spectrum Bands.

7.34 Ofcom considered whether to limit spectrum trading 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 these 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.

7.35 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.

7.36 Even without concurrent and partial transfers, Ofcom believes that parties without licences may be able to gain access to the spectrum if they can strike a suitable commercial agreement with a licensee (while the licensee retains all rights and obligations).

### **Costs to Ofcom**

7.37 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.

7.38 Ofcom could incur slightly more 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**

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

7.40 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**

7.41 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 and because it may be possible to gain the additional flexibility of these other types of transfer by commercial agreements that do not involve spectrum trading.

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

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

- 7.42 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.
- 7.43 The intended effect of this proposal is to enable information about the licences in the Spectrum Bands (1781.7 - 1785 MHz and 1876.7 - 1880 MHz) to be published in this Wireless Telegraphy Register. In so doing this should facilitate spectrum trading by:
- except where security considerations prevent publication of information, 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;

### **Costs and benefits**

- 7.44 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 specified 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.
- 7.45 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 a 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 a independent register.
- 7.46 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**

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

7.48 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.

## **Conclusions**

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

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

7.50 Following its Consultation (July 2005) and Statement (November 2005) on the award of available the spectrum: 1781.7 – 1785 MHz paired with 1876.7 – 1881 MHz, 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.

7.51 The draft Limitation Order to which this Impact Assessment relates 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.

7.52 This will enable Ofcom to proceed with the award of this spectrum by auction. The way which Ofcom intends to do this is set out in the Wireless Telegraphy (Licence Awards) Regulations 2006.

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

7.53 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.

- 7.54 The decision to licence the spectrum, as opposed to making use of it 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 were licence exempt, the number of unlicensed users could be very high - licence exemption in other Spectrum Bands has led to hundreds of users. Ofcom's technical research has shown that this would impose costs on users due to either interference or coordination with other users to avoid interference. These costs are likely to be high, and could greatly outweigh the benefits of licence exemption - the reduced administrative cost. 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**

- 7.55 The costs to Ofcom of limiting the number of licences in the Spectrum Bands relate mainly to costs of awarding the spectrum. Ofcom is proposing to auction the Spectrum Bands, therefore the costs to Ofcom would be those of carrying out the auction.
- 7.56 In comparison, licence exemption would mean that Ofcom did 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 might not lead to the most efficient use of the spectrum.
- 7.57 Ofcom also notes that the administrative costs of the auction are likely to be small in relation to the benefit generated for the economy and that an auction would be very unlikely to have a negative financial impact on the public sector.

### **Business sectors affected**

- 7.58 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.59 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;

- o museums.

## Conclusion

- 7.60 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.

## Annex 1

# Responding to this consultation

## How to respond

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

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

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

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

### Brice Le Cannu

3rd Floor

Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 77834303

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

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

## Further information

If you have any want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Brice Le Cannu on 020 7783 4503.

## Confidentiality

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

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

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

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

## Next steps

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

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

## Ofcom's consultation processes

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

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

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

Vicki Nash  
Ofcom (Scotland)  
Sutherland House  
149 St. Vincent Street  
Glasgow  
G2 5NW  
Tel: 0141 229 7401  
Fax: 0141 229 7433  
E-mail: [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## **Annex 2**

# **Ofcom's consultation principles**

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

### **Before the consultation**

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

### **During the consultation**

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

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

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

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

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

### **After the consultation**

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

## Annex 3

# Consultation response cover sheet

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

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact): Brice Le Cannu

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

☐

Name/contact details/job title

☐

Whole response

☐

Organisation

☐

Part of the response

☐

If there is no separate annex, which parts?

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

### DECLARATION

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

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

☐

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

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



## **Annex 5**

# **Draft Wireless Telegraphy (Licence Award) Regulations 2006**

**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - [ ] 2006

*Coming into force* - - [ ] 2006

These Regulations are made in exercise of the powers conferred on the Office of Communications (“OFCOM”) by section 3(1), (3), (4) and (5B) of the Wireless Telegraphy Act 1998<sup>(a)</sup> (“the 1998 Act”);

OFCOM have, under section 403(4)(a) of the Communications Act 2003<sup>(b)</sup> (“the 2003 Act”), as applied by section 6(1) of 1998 Act, given notice of their proposal to make these Regulations and, under section 403(4)(b) of the 2003 Act, as applied by section 6(1) of the 1998 Act, published notice of their proposal and have considered the representations made to them before the time specified in the notice;

Accordingly, OFCOM makes the following Regulations—

**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 [ ] 2006.

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

**Interpretation**

**2.** In these Regulations —

- (a) “authorised person” means the persons specified by an applicant in its application as authorised to bind the applicant in relation to the award process;
- (b) “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- (c) “bid” has the meaning given in regulation 17(1);
- (d) “bid deposit” has the meaning given in regulation 19;
- (e) “bidders” has the meaning given in regulation 10(1);

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<sup>(a)</sup> 1998 c. 6.  
<sup>(b)</sup> 2003 c. 21.

- (f) “bidder group” means, in relation to an applicant or bidder:–
  - (i) that applicant or bidder;
  - (ii) each associate; and
  - (iii) any person in respect of whom, the applicant or bidder delivers to OFCOM a completed form in the format set out in schedule 4 at the time of application under regulation 4(3)(a)(iii) or subsequently regulation 6(2);
- (g) “bidding menu document” means a document in the format set out in schedule 1;
- (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 a another applicant (or potential applicant) or bidder or their 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(1)(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 options” has the meaning given in 17(2);
- (l) “material interest” means, whether held directly or indirectly:–
  - (i) any interest in more than twenty five percent of the relevant share capital of a bidder or applicant where “interest” in this sub-paragraph (k)(i) shall be construed in accordance with sections 208 and 209 of the Companies Act 1985(a); or
  - (ii) the right to appoint or remove a majority of the bidder’s or applicant’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) “relevant share capital” means the bidder’s or applicant’s issued share capital of one or more classes carrying rights to vote as a separate class in all circumstances at general meetings of the company;
- (o) “sealed bid” has the meaning given in regulation 18(1);
- (p) “sealed bid delivery period” has the meaning given in regulation 15(1)(a);
- (q) “valid bids” has the meaning given in regulation 23;
- (r) “winning bids” has the meaning given in regulation 23;
- (s) “winning bidder” has the meaning given in regulation 26; and
- (t) “winning licence option” has the meaning given in regulation 23.

### **Application for grant of licences**

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

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(a) 1985 c. 6

## PART 2

### APPLICATION STAGE

#### **Application for a licence**

- 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, during the period of time on the day which is designated by OFCOM, by publication on their internet website, for receipt of applications —
- (a) deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA in a sealed envelope:
    - (i) an application form, in the format set out in Schedule 2, completed by the applicant and which sets out the names of each member in its bidder group ;
    - (ii) a preliminary compliance certificate, in the format set out in Schedule 3, completed by the applicant;
    - (iii) a certificate, in the format set out in Schedule 4, completed by each person who is not an associate in relation to the applicant and who is to be included in the applicant's bidder group, and by the applicant; and
  - (b) pay to 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.

## 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 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 applicant or an associate of another applicant.
- (3) Where an applicant determines that a member of its bidder group is also an applicant or associate of another 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 date by which each applicant concerned must —
- (a) notify OFCOM in writing of any change in circumstances which means that no member of its bidder group is an applicant or associate of another applicant; and
  - (b) where changes have occurred to its bidder group provide OFCOM with a revised application form and revised preliminary compliance certificate.
- (4) Where an applicant determines that no member of its bidder group is an applicant or an associate of another applicant it must notify OFCOM in writing 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 in writing of any change in circumstances which means 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 a revised application form and revised preliminary compliance certificate.

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

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

**6.—**(1) Following 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, such changes shall be subject to regulations 7(1) and 31 together with 32(9) and (10) where they apply.

(2) To add a person who is not an associate of the applicant to its bidder group, an applicant must deliver to OFCOM a certificate in the format set out in Schedule 4 completed by that person and by the applicant concerned.

(3) Where the change involves the addition or removal of an associate that applicant must notify OFCOM of the change and submit a revised application form and a revised preliminary compliance certificate.

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

**7.—**(1) 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.

(2) Where paragraph (1) does not apply, OFCOM shall determine whether each applicant, which has submitted an application in accordance with regulation 4, is qualified to bid in the award process.

(3) In making that determination 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 the applicant, each member of the applicant's bidder group and any director of any member of the applicant's bidder group;
- (c) any member of its bidder group, has colluded, or attempted to collude, or is colluding with another person to distort the outcome of the award process;
- (d) any member of its bidder group has or is acting in a way which is likely to distort the outcome of the award process; and
- (e) any member of its bidder group, or any person to whom confidential information has been disclosed for the purpose of raising finance for the application, has disclosed confidential information, whether directly or indirectly, to any person except where the disclosure —
  - (i) was to a member of its bidder group;
  - (ii) was to OFCOM;
  - (iii) was for the purpose of raising finance for the application and is 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.

(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 determines that an applicant is not qualified to bid in the award process, their initial deposit shall not be forfeited for that reason.

### **Publication of determination**

**8.**—(1) OFCOM shall notify each applicant of their determination and, where an applicant is so qualified, OFCOM shall also notify that applicant of —

- (a) the identity of the other applicants who are so qualified; and
- (b) the last day for withdrawal from the award process (the “last day for withdrawal”).

(2) OFCOM shall also publish the identity of the applicants which are qualified to bid in the award process on their internet website along with the last day for withdrawal.

### **Withdrawal of an application**

**9.**—(1) If, on or before the last day for withdrawal, OFCOM receive notice in writing of an applicant’s intention to withdraw its application, the application 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 applicants who are qualified to bid**

**10.**—(1) After the last day for withdrawal, OFCOM shall determine the number of applicants which are qualified to bid for a licence and have not withdrawn from the award process (“bidders”).

(2) Where the number of bidders is seven or fewer, OFCOM shall grant licences in accordance with the procedure for the award of licences set out in Part 4 of these Regulations and not the procedure set out in Part 5 of these Regulations.

(3) Where the number of bidders is more than seven, OFCOM shall grant licences in accordance with the procedure for the award of licences set out in Part 5 of these Regulations and not Part 4 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 award licences in accordance with Part 4 or Part 5.

## **PART 4**

### **PROCEDURE WHERE THERE ARE SEVEN OR FEWER BIDDERS**

#### **Provisional award notice**

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

- (a) a draft of the licence which the bidder is provisionally awarded;
- (b) the licence fee, which shall be fifty thousand pounds in respect of each licence;
- (c) the sum of money to be paid to OFCOM which represents:—
  - (i) its licence fee less the initial deposit where the initial deposit has not been forfeited in accordance with regulation 31; or
  - (ii) its licence fee where the initial deposit has been so forfeited; and
- (d) a time on a day before which the bidder must pay that sum of money.

(2) OFCOM shall publish on their internet website the identity of the bidders to which the licence have been provisionally awarded.

### **Payment of the licence fee**

**12.**—(1) Before the time on the day specified in the provisional award notice, each bidder shall pay to OFCOM the sum specified in that notice.

(2) That sum shall be paid to 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 not already forfeited under regulation 31) be forfeited.

### **Grant of licences**

**13.** Where OFCOM have received from a bidder the sum specified in the provisional award notice by the time required, OFCOM shall grant the 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 details of the persons to whom licences were granted and the licence fees paid; and
- (b) refunding to applicants which were not qualified or who withdrew in accordance with regulation 9, the initial deposits, where such deposits have not been forfeited, 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 —

- (a) the period of time on the day during 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 which OFCOM has given notice and the day on which sealed bids must be delivered to OFCOM.

#### **Bid documentation**

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

- (a) a bidding menu document completed by the bidder in accordance with regulation 17, signed by two authorised persons and bearing the appropriate password; and
- (b) a submission compliance certificate completed in respect of the bidder and signed by two authorised persons in the form set out in schedule 5.

#### **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 sterling and in words only which must be greater than or equal to fifty thousand pounds.

(2) A bidder may only specify a bid for a licence which is among a total number of seven, eight, nine, ten, eleven or twelve licences (which total numbers of licences are referred to as “licence options”).

(3) A bidder must specify a bid against at least one licence option on the bidding menu document but need not specify a bid against each licence option.

(4) A bidder may only specify one bid against any licence option.

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

**18.**—(1) To bid in the award process, the completed bid documentation must be placed in a sealed, non-transparent envelope (which bid documentation when so placed in the envelope is referred to as a “sealed bid”).

(2) 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.

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

(4) 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 to OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum for deposit so that the total amount of deposit is equal to half the highest sum which that bidder has specified on the bidding menu document, against any of the licence options (which total amount on deposit is referred to as the “bid 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 of money, 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 half of the highest sum which that bidder has specified on the bidding menu document, against any of the licence options.

### **Opening of sealed bids**

**20.**—(1) OFCOM shall open sealed bids which were submitted to OFCOM in accordance with the requirements of regulation 18(1) and (2).

(2) OFCOM shall not open and shall reject sealed bids which were not submitted in accordance with the requirements of regulation 18(1) and (2).

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

**21.**—(1) Where, due to the manner of completion, bid documentation is incomplete or incorrect but OFCOM can unambiguously deduce the identity of the bidder and the bidder’s intention in relation to bids, OFCOM shall ask the bidder to confirm in writing by a specified time that OFCOM’s understanding of the identity and intention is correct.

(2) Where the bidder confirms in writing by the time specified that OFCOM’s understanding is correct, the sealed bid in its entirety shall be accepted by OFCOM on the basis of that understanding.



(3) Where the bidder does not confirm in writing by the time specified that OFCOM's understanding is correct, the sealed bid in its entirety shall be rejected by OFCOM.

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

**22.**—(1) OFCOM shall 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 received by OFCOM, by the time required.

(2) OFCOM shall notify a bidder who submitted a rejected sealed bid of the rejection and reasons for it and shall notify any bidder to which a notice was given under regulation 15 but in respect of which a sealed bid was not opened.

### **Valid bids**

**23.**—(1) OFCOM shall determine —

- (a) the licence option by reference to which OFCOM shall determine the winning bids (the “winning licence option”); and
- (b) the bids which shall determine the persons to whom OFCOM shall offer a provisional award notice (the “winning bids”);

only by reference to bids specified on each bidding menu document contained in a sealed bid which has not been rejected by OFCOM (“valid bids”).

(2) If a bidder to which the notice in regulation 15(1) has been given fails to submit a valid bid, that bidder 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 determine in relation to the licence option of —

- (a) seven licences, if more than seven valid bids were made for that licence option, which are the seven sums bid under the seven highest valid bids;
- (b) eight licences, if more than eight valid bids were made for that licence option, which are the eight sums bid under the eight highest valid bids;
- (c) nine licences, if more than nine valid bids were made for that licence option, which are the nine sums bid under the nine highest valid bids;
- (d) ten licences, if more than ten valid bids were made for that licence option, which are the ten sums bid under the ten highest valid bids; and
- (e) eleven licences, if more than eleven valid bids were made for that licence option, which are the eleven sums bid under the eleven highest valid bids;
- (f) twelve licences, if more than twelve valid bids were made for that licence option, which are the twelve sums bid under the twelve highest valid bids

(2) OFCOM shall then —

- (a) in relation to the licence option of seven licences, add these seven highest sums together to produce a total, or, where seven or fewer than seven valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;

- (b) in relation to the licence option of eight licences, add these eight highest sums together to produce a total, or, where eight or fewer than eight valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;
- (c) in relation to the licence option of nine licences, add these nine highest sums together to produce a total, or, where nine or fewer than nine valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;
- (d) in relation to the licence option of ten licences, add these ten highest sums together to produce a total, or, where ten or fewer than ten valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;
- (e) in relation to the licence option of eleven licences, add these eleven highest sums together to produce a total, or, where eleven or fewer than eleven valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;
- (f) in relation to the licence option of twelve licences, add these twelve highest sums together to produce a total, or, where twelve or fewer than twelve valid bids were made for that licence option, OFCOM shall add these bids together to produce a total;

and determine which of each of these six totals resulting from the appropriate calculation in sub-paragraphs (a) to (f) is the highest.

(3) Subject to paragraph (4), the licence option with the highest total shall be the winning licence option.

(4) If the highest total of the six totals resulting from the appropriate calculation in sub-paragraphs (a) to (f) of paragraph (2) is the same for more than one licence option, then, in respect of those licence options, the licence option with the most licences shall be the winning licence option.

### **Determination of winning bids**

**25.**—(1) Subject to paragraph (2), the winning bids shall be determined as follows —

- (a) if the winning licence option is seven licences, the winning bids shall be the seven highest valid bids that were submitted for the licence option of seven licences, or, where fewer than seven valid bids were submitted those bids;
- (b) if the winning licence option is eight licences, the winning bids shall be the eight highest valid bids that were submitted for the licence option of eight licences, or, where fewer than eight valid bids were submitted those bids;
- (c) if the winning licence option is nine licences, the winning bids shall be the nine highest valid bids that were submitted for the licence option of nine licences, or, where fewer than nine valid bids were submitted those bids;
- (d) if the winning licence option is ten licences, the winning bids shall be the ten highest valid bids that were submitted for the licence option of ten licences, or, where fewer than ten valid bids were submitted those bids;
- (e) if the winning licence option is eleven licences, the winning bids shall be the eleven highest valid bids that were submitted for the licence option of eleven licences, or, where fewer than eleven valid bids were submitted those bids; and
- (f) if the winning licence option is twelve licences, the winning bids shall be the twelve highest valid bids that were submitted for the licence option of twelve licences, or, where fewer than twelve valid bids were submitted those bids.

(2) If, in relation to any of sub-paragraphs (a) to (f), there would be more winning bids than the number of licences available under that licence option as a result of two or more bidders submitting a valid bid of equal amount (which would be the lowest winning bid) against that licence option, OFCOM shall employ a method of random selection amongst those bidders which submitted the valid bids of equal amount to determine which is a winning bid.

### **Provisional award notice**

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

- (a) a draft of the licence which the bidder is provisionally awarded;
- (b) the licence fee in respect of the bidder’s licence, which shall be a sum equal to the winning bid made by that winning bidder;
- (c) the sum of money which that bidder shall pay to OFCOM which represents —
  - (i) the licence fee less the bid deposit where the bid deposit has not been forfeited in accordance with regulation 31; or
  - (ii) the licence fee where the bid deposit has been so forfeited; and
- (d) a time on a day before which the bidder must pay that sum of money.

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

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

### **Payment of the licence fee**

**27.**—(1) Before the time on the day specified in the provisional award notice, each winning bidder shall pay to OFCOM the sum specified in the provisional award notice.

(2) That sum shall be paid to OFCOM’s bank 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 not already forfeited under regulation 31) be forfeited.

### **Grant of licences**

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

### **Grant of 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 whom a provisional award notice should next be given in accordance with the order of precedence in paragraph (3) and follow the procedures set out in regulations 26 to 28 to issue a provisional award notice, receive payment of the sum and grant a licence..

(2) Should that bidder fail to make payment as required by the provisional award notice, then OFCOM shall send a provisional award notice 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 amount, OFCOM shall employ a method of random selection to determine the precedence among those bidders.

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

- 30.**—(1) After the grant of licences, OFCOM shall complete the award process by —
- (a) publishing the details of all bids, the identity of all bidders and the persons to which licences were granted and the licence fees paid; and
  - (b) refunding to applicants which 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 been forfeited, 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 or 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 written notice.

### **Events leading to exclusion**

**32.**—(1) The events referred to in regulation 31 are —

(2) the submission to OFCOM of any information in connection with the award process which is false or misleading;

(3) any member of its bidder group is colluding (or attempting to collude) with another person to distort the outcome of the award process;

(4) any member of its bidder group is acting in a way which is likely to distort the outcome of the award process;

(5) any member of its bidder group, or a person providing finance for the bidder's bid, 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 —

- (a) is to a member of its bidder group;
- (b) is to OFCOM; or
- (c) is for the purpose of raising finance for the bid and is to provider of finance.

(6) any member of its bidder group is attempting to obtain or obtaining confidential information relating to another applicant or bidder;

(7) any member of its bidder group is attempting to receive or is receiving services in relation to the award process from any person who has or is providing services to OFCOM in relation to the award process;

(8) any person who is a director or employee of a member of its bidder group and also a director or employee of a member of another bidder group —

- (a) taking part in the preparation of both bidder groups for participation in the award process; or
- (b) receiving confidential information relating to both bidder groups;

(9) a member of its bidder group is or becomes a member of another applicant's or bidder's bidder group; or

(10) a change is occurring in the membership of its bidder group from that notified to OFCOM in its application except as a result of —

- (a) a person ceasing to be a member of that bidder group;
- (b) a person joining the bidder group under the procedure in regulation 6(2);
- (c) 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 that applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

**34.**—(1) Subject to any requirement to the contrary contained in these regulations, if, in accordance with any provision of these regulations, a bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it shall do so by written notification marked for the attention of [ ] and —

- (a) sent to OFCOM at Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA;
- (b) sent to OFCOM by fax to a number 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 in accordance with these Regulations to be delivered at the place or on the day or time specified in these Regulations, it shall take all reasonable steps to notify the persons who must deliver the document concerned and require delivery to be made —

- (a) at a different time or day; 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.

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

## SCHEDULE 1

Regulations 3(e) and 18

### BIDDING MENU DOCUMENT

Bidder's full name: (the "bidder")

Bidder address:

Telephone number:

Fax number:

E-mail address:

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

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

The submission of this bidding menu document to OFCOM constitutes an irrevocable undertaking to OFCOM by the bidder to pay the sum specified for a licence against each licence option, if that is determined to be the winning licence option by OFCOM in accordance with the Wireless Telegraphy (Licence Award) Regulations 2006 ("Regulations").

We the undersigned declare that we are entitled to commit the bidder irrevocably, according to the bids expressed above, to accept the grant of a licence and pay the licence fee as determined by OFCOM in accordance with the Regulations.

Signed

Name

For and on behalf of the bidder

Date

Signed

Name

For and on behalf of the bidder

Date

## SCHEDULE 2

Regulation 5(3)(a)

### APPLICATION FORM

#### 1. Details of the applicant

Provide the following contact details for the applicant and details of an address within ten kilometres of the Office of Communications (“OFCOM”) premises at Riverside House, 2a Southwark Bridge Road, London, SE1 9HA, United Kingdom to which OFCOM may deliver any notice or other document relating to the auction (the “auction address”).

Applicant contact details

Applicant’s full name

Registered number of company

Registered office of company

Telephone number

Fax number

E-mail address

Auction address

#### 2. Authorised persons

Provide details of the name and position in the company of three persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide 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. Other information relating to the management of the applicant

Provide brief details of agreements (if any) relating to the management of the applicant.

#### 5. Bidder group

a) Provide the names of the applicant’s associates (as defined in 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 who are not associates of the applicant.

We the undersigned declare that the applicant is irrevocably committed to accept the grant of a licence and pay the licence fee as determined by OFCOM (if a provisional award notice is sent to the applicant) in accordance with the Regulations.

---

Signed

Name

For and on behalf of the bidder

Date

---

Signed

Name

For and on behalf of the bidder

Date

---





## SCHEDULE 3

Regulation 4(3)(b)(a)(ii)

### PRELIMINARY COMPLIANCE CERTIFICATE

[*Insert name of applicant*] (the “applicant”) certifies, represents, warrants and undertakes to the Office of Communications (“OFCOM”) that —

- (a) the persons authorised in section 2 of the applicant’s application form have read and understood the Wireless Telegraphy (Licence Award) Regulations 2006 (the “Regulations”), the terms of the licences to be granted under the Regulations, the Wireless Telegraphy Act 1949, and the Wireless Telegraphy Act 1998;
- (b) the applicant is capable of participating in the award process and having a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the applicant understands and will be capable of satisfying its obligations under the terms and conditions of a licence granted pursuant to the award process;
- (d) the factual information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant and each member of its bidder group (as defined in the Regulations) true, accurate and complete in all material respects ;
- (e) the applicant is aware of the provisions in Regulations [     ] about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and has informed OFCOM of any such disclosure;
- (f) the applicant has included with its application a certificate in the form set out in Schedule 4 of the Regulations in respect of every person to whom it has disclosed confidential information, except in the circumstances specified in regulation 7(e)(iii);
- (g) neither the applicant nor any member of its 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;
- (h) neither the applicant nor any member of its bidder group has acted in a way which is likely to distort the outcome of the award process;
- (i) neither the applicant nor any member of its bidder group is the subject, and none of their directors, officers or representatives is the subject, of criminal investigations or proceedings in the United Kingdom or abroad which might reasonably be expected to affect adversely their business or materially affect the applicant’s ability to participate in the award process or to satisfy the terms of any licence granted pursuant to the award process, and that there is no reason to believe that such investigations or proceedings might occur during the award process;

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Signed

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Name

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For and on behalf of the applicant

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Date

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Signed

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Name

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For and on behalf of the applicant

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Date

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## SCHEDULE 4

Regulation 4(3)(a)(iii) and 6(2)

### CERTIFICATE TO ADD A PERSON WHO IS NOT AN ASSOCIATE TO THE APPLICANT'S OR BIDDER'S BIDDER GROUP

[*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 these Regulations.

The applicant/bidder certifies that, so far as it is aware, [*insert name and address of person to be included in bidder group who is not an associate*] —

- (a) is not, and has never been a member of any other applicant’s or bidder’s bidder group; and
- (b) is not, and since the date the Regulations came into force has never been, a subsidiary of any other applicant or bidder.

---

Signed

Name

For and on behalf of the applicant/bidder

Date

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[*Insert name and address of person to be included in bidder group who is not an associate*] certifies that, he:

- (a) consents to be a member of the applicant/bidder’s bidder group;
- (b) is not, and has never been a member of any other applicant’s or bidder’s bidder group;
- (c) is aware of the provisions in Regulations [ ] about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder; and
- (d) is not and since the date the Regulations came into force has never been, a subsidiary of any other applicant or bidder in the award process.

---

Signed

Name

For and on behalf of [*Insert name and address of person to be included in bidder group who is not an associate*]

Date

---

Signed

Name

For and on behalf of [*Insert name and address of person to be included in bidder group who is not an associate*]

Date

---

## SCHEDULE 5

Regulation 16

### SUBMISSION COMPLIANCE CERTIFICATE

[*Insert name of bidder*] certifies, represents, warrants and undertakes that:

- (i) all of the statements made in its preliminary compliance certificate (submitted to OFCOM under regulation 4(3)(a) of the Wireless Telegraphy (Licence Award) Regulations 2006 (the “Regulations”) are and remain true;
- (ii) to the best of the knowledge and belief of [*Insert name of bidder*] no member of its bidder group (as defined in the Regulations) is a member of another bidder group; and
- (iii) to the best of the knowledge and belief of [*Insert name of bidder*], having made all reasonable enquiries, no person who is a director or employee of a member of its bidder group who is also a director or employee of a member of another bidder group has taken part, or will take part, in the preparation by both bidder groups for participation in the award process.

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Signed

Name

For and on behalf of [*Insert name of bidder*]

Date

---

Signed

Name

For and on behalf of [*Insert name of bidder*]

Date

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## EXPLANATORY NOTE

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

These Regulations [    ]

## **Annex 6**

# **Draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2006**

**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - [ ] 2006

*Coming into force* - - [ ] 2006

These Regulations are made in exercise of powers conferred on the Office of Communications (“OFCOM”) by section 168(1) and (3) and section 403(7) of the Communications Act 2003(a) (“the 2003 Act”):

OFCOM have given notice of their proposal to make these Regulations in accordance with section 403(4)(a) of the the 2003 Act and published notice of their proposal in accordance with section 403(4)(b) of the 2003 Act and have considered the representations made to them before the time specified in the notice:

Accordingly OFCOM makes the following Regulations —

**Citation and commencement**

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

**Amendment**

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

(a) The following paragraph shall be added at the end of regulation 4 —

“(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) In regulation 5, the words —

“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 any 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 the transferee to the exclusion of the person making the transfer.”

shall be substituted for all of the words from “Paragraph (1) of regulation 4” to the end of that sentence;

- (c) In regulation 7(b) the words “Wireless Telegraphy (Licence Charges) Regulation 2005(a)” shall be substituted for the words “Wireless Telegraphy (Licence Charges) Regulation 2002(b)”;
- (d) In regulation 7(c) the words “under regulation 4(7)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2005” shall be substituted for the words “under regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2002”;
- (e) In the second line of regulation 8(1), the words “authorised by regulations 4(1), 5 or 6” shall be substituted for the words “authorised by regulations 4(1) or 6”;
- (f) In regulation 8(1)(d), the words “authorised by regulation 4(1), 5 or regulation 6” shall be substituted for the words “authorised by regulation 4(1) or regulation 6”; and
- (g) In the Schedule, after Part 6, the following shall be inserted —

## “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

[xxx] 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

(b) S.I. 2002/1700, amended by S.I. 2003/2983 and S.I. 2003/2984



**EXPLANATORY NOTE**

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

These Regulations [ ]

## **Annex 7**

# **Draft Wireless Telegraphy (Register) (Amendment) Regulations 2006**

**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) Regulations  
2006**

*Made* - - - - [ ] 2006

*Coming into force* - - [ ] 2006

These Regulations are made in exercise of powers conferred on the Office of Communications (“OFCOM”) by section 170(1) and (2) and section 403(7) of the Communications Act 2003(a) (“the 2003 Act”):

OFCOM have given notice of their proposal to make these Regulations in accordance with section 403(4)(a) of the 2003 Act and published notice of their proposal in accordance with section 403(4)(b) of the 2003 Act and have considered the representations made to them before the time specified in the notice:

Accordingly OFCOM makes the following Regulations —

**Citation and commencement**

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

**Amendment**

2.—(1) The Wireless Telegraphy (Register) Regulations 2004(b) are amended in accordance with paragraph (2).

(2) In the Schedule, after Part 6, the following shall be inserted —

**“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”

[xxx] 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) 2004/3155.



**EXPLANATORY NOTE**

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

These Regulations [ ]

## **Annex 8**

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

**2006 No. XXXX**

**ELECTRONIC COMMUNICATIONS**

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

*Made* - - - - [ ] 2006

*Coming into force* - - [ ] 2006

This Order is made in exercise of the powers conferred upon the Office of Communications (“OFCOM”) by section 164(1) to (3) of the Communications Act 2003(a) (“the Act”);

OFCOM have under section 403(4)(a) of the Act as applied by section 164(9) of the 2003 Act, given notice of their proposal to make this Order and, under section 403(4)(b) of the 2003 Act, as applied by section 164(9) of the Act, published notice of their proposal and have considered the representations made to them before the time specified in the notice;

Accordingly OFCOM makes the following Order—

**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 [ ] 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 only a limited number of wireless telegraphy licences at the frequencies 1781.7 megahertz to 1785.0 megahertz and at the frequencies 1876.7 megahertz to 1880.0 megahertz.

(2) 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(b).

[xxx] 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)

**EXPLANATORY NOTE**

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

This Order [   ]