

Award of the 2.3 GHz and 3.4 GHz spectrum bands: Competition issues and auction regulations:
Response of CityFibre Holdings Ltd

Why we are responding to this consultation

CityFibre extends fibre networks in town and cities according to 'Well Planned City' principles. A key component of the fibre optic infrastructure of a well-planned city are the fibre links to existing mobile base stations and, in the near future, to the network of small cells that will be necessary to support 5G rollout.

CityFibre offers open access infrastructure that supports multiple service providers and CityFibre itself seeks to build the underlying passive infrastructure that supports those service providers. Our interest in this consultation is not, therefore, as a potential bidder for, or direct beneficiary of, decisions made in this auction process. Our concern is to ensure that there is a competitive market for wireless services both in the current generation of services (LTE) and in the future as operators migrate to 5G. In particular we strongly believe that a competitive market structure, crucially being at least as competitive as today and preferably with scope for further competitive entry and expansion, will lead to the earliest possible deployment and use of advanced technologies such as 5G, with the substantial consumer and economic benefits that this will entail.

Question 1: Do you agree we have identified the right competition concerns?

We agree that Ofcom has identified significant competition issues that the auction design and associated regulations need to address.

However, having reviewed this document and related materials on future spectrum releases, including the 3.6-3.8 and 3.8 to 4.2 GHz bands, we are concerned that the path to a fully competitive 5G market, and hence the early and widescale rollout and adoption of 5G technology, is not yet fully secured.

The foremost, immediately pressing objective is to maintain an MNO market that is as competitive as exists today. We are concerned that Ofcom's proposals are unduly optimistic about the prospect of there being a viable market for the four current participants, unless stricter safeguards on the accumulation of immediately and prospectively useable spectrum for mobile services are put in place.

In the longer term, and thinking specifically about the transition to 5G, we consider that it is important for there to be a realistic prospect of further competitive market entry in the future. The threat of competitive entry influences not just the bidding behaviour of existing market players in auctions, but also the wider competitive intensity of the current market. Moreover, the transition to 5G has the potential to substantially expand the network capacity both in terms of measures of bandwidth availability and reach. (In other words, a well-designed spectrum release process could lead to substantial expansion of the market).

We see a risk not just that the planned auctions reduce the scope for competition between the existing market participants, but that they create such high de facto barriers to further entry that the only potential evolutionary path for the mobile market involves a linear growth of existing market models subject to periodic accumulations of freed spectrum by the current market players, which in

turn will blunt the incentives to speedy rollout of 5G and lead to spectrum being used incrementally to shore up existing business models, as was the case with the 2012/13 4G spectrum auction.

Ofcom's own analysis strongly suggests that it sees the only realistic bidders for spectrum in the planned auctions are the existing MNOs. The potentially transformational step-change in network capacity and capability offered by 5G is unlikely on that scenario to be achieved at the same rate as if there were actual or potential further entry.

We therefore ask Ofcom to consider, taking into account the various allocations of spectrum that could be realistically made available for harmonised 5G use, setting aside some spectrum the suitable for use for 5G services either for a new entrant or perhaps more credibly, with open access obligations attached to it.

Given the timescales for 5G adoption and roll-out, setting aside or placing conditions on the use of what Ofcom identifies as 'immediately useable' spectrum in the 2.3 GHz band would be hard to justify, but we consider that it worth examining the entirety of the 3.4GHz to 4.2 GHz spectrum (which we understand to be available on different timescales and possibly subject to different auction rules) holistically, with a view to creating the capacity for a credible new entrant operating either a vertically integrated or preferably an open access business model, whilst recognising that spectrum within these bands will be made available on different timescales for practical reasons.

Question 2: Do you agree with our assessment and provisional conclusions in respect to Competition Concern 1:

We should state at the outset that we believe that the decision to permit the BT/EE merger without conditions was misconceived. Therefore, our starting point is that the asymmetric holdings that already exist, and in particular the high share of immediately useable spectrum held by BT/EE is **already** a concern. We recognise, as Ofcom does, that there is no straightforward linear relationship between the size of spectrum holdings and competitive intensity. However, this argument should not be pushed to extremes: to some extent, we recognise that network design and planning can offset the effects of relatively small spectrum holdings but all other things being equal, a company holding twice the volume of spectrum as another will always have an unassailable competitive advantage.

It follows from this that we strongly support the conclusion that an unrestricted auction that allowed BT/EE to further strengthen its control over immediately useable spectrum should be avoided. Moreover, Ofcom is doubtless aware that there is extensive theoretical evidence that suggests a duopoly, whether or not a weak competitive fringe to that duopoly exists, delivers hardly better economic welfare outcomes than a monopoly. For this reason, the appropriate focus should be on maintaining the scope for there to be genuine, fully-fledged competition from both O2 and 3.

We find Ofcom's reasoning as to why this concern applies to 2.3GHz but not to the parallel auction of 3.4GHz unclear and unconvincing. There are clearly operational constraints on the immediate use of 3.4GHz but its prospective use for 5G services is, by Ofcom's own account, now close to being a certainty and MNOs and others will already be making advance plans for 5G trials as a preliminary step ahead of full-scale rollout. (Indeed, the Government appears to be envisaging public money being

used to support hybrid fibre/5G trial rollouts as early as 2018). It follows that the strategic foreclosure of the route to 3.4GHz should be a concern now, as it will start to impact upon businesses' willingness to plan for 5G and to commence the necessary preliminary investments.

Of course, in the longer term other bands may also become available but as an eminent economist once wrote: 'in the long term, we are all dead'. In our view, the longer term possibilities identified by Ofcom are not yet sufficiently clearly defined as realistic prospects for companies to migrate their 5G operations to to offset the strategic impact of 5G roll-out being foreclosed by these linked auctions. Ofcom's analysis requires unsuccessful bidders in these auctions to nonetheless start to make forward-looking business decisions on the basis of an insouciant assessment of their prospects of securing further spectrum in successive auctions. We contend that this is an unrealistic take on likely market and investor reaction to the most credible near-term route to 5G being foreclosed. In any event, as we have discussed in our response to question 1, we think there is a strong case for reserving a significant tranche of spectrum in bands that will become available on a later timescale for an open access 5G platform.

Competition concern 2

We broadly agree with the framework of analysis set out by Ofcom to consider the 'credibility' of an MNO. However, our view is that Ofcom should not rely solely on its attempt to objectively assess the strengths of a mobile business, but also consider how its decisions will impact on the strategic decisions of the different MNOs. CFH is not privy to the strategic assessments or decision-making of either H3G or O2, but we are concerned that Ofcom's policy – particularly the absence of an overall cap on holdings across both the bands that are the subject of this consultation - may encourage one or other of these current market participants to exit the market. If there is no realistic route to 5G (see above), an exit strategy will start to look increasingly attractive to both participants, with a possible alternative strategy of focusing their activities more narrowly on niche market opportunities. Either way, the loss of competitive intensity is in our view a real and material risk.

There are broader risks than those captured by a narrow analysis focusing solely on current MNO competition. As we have already noted, 5G rollout has powerful spillover effects as an infrastructure that can support a much broader range of business cases than those represented in the current MNO business model, and there are also strong synergies between 5G rollout and the rollout of 'full fibre' network infrastructure of the kind envisaged in and supported by Ofcom's own strategy. A loss of competitive intensity, leading to a delayed and/or geographically limited 5G rollout, would therefore have serious knock-on effects.

Question 3: Do you agree we have identified the right options to address our competition concerns?

We believe that the options are broadly those available to Ofcom, subject to the comments we make below under Question 5.

Question 4: Do you agree with our assessment of the options we have identified for promoting competition in the auction?

We do not agree with Ofcom in its provisional conclusion that Option A is the most appropriate option to consider. We believe the best option available to Ofcom is Option E, with Option C as a second best alternative.

Unless there is a clear and compelling reason why BT/EE and Vodafone cannot secure spectrum useable for 5G, even if that is achieved by means of releasing under-utilised spectrum in existing holdings, it is inaccurate to claim, as Ofcom does in analysing option E, that it would be likely to lead to slower adoption of 5G. In fact, our concern is precisely the opposite: unless action is taken to ensure that H3G and O2 have a realistic prospect of entering the 5G market, 5G deployment is likely to be retarded as in an insufficiently competitive market, both BT/EE and Vodafone will face much weaker competitive incentives to deploy this infrastructure on an early timescale.

We find Ofcom's analysis of the 'route to 5G' curiously inconsistent. On the one hand, it claims that if BT/EE and Vodafone are hindered in their ability to enter this auction, then their 5G rollout will be harmed. On the other, it argues that the risk of foreclosure of the market as a result of neither O2 or H3G being able to secure spectrum in the auction is limited because other spectrum may be available at some point in the future. The reality is that the only parties that would have the option of still launching 5G even if they receive no 3.4GHz spectrum are BT/EE and Vodafone, given the extent of their existing holdings, much of which is unused or under-used at present.

Question 5: Do you have any further comments on our proposals on competition measures?

The focus of our comments on this consultation is on safeguarding the level of competition that exists in the mobile market today, and ensuring that all the current market providers have a realistic prospect of transitioning their business to 5G.

The focus of the competition solely on safeguarding existing competition (and hence, it could be argued, rectifying some of the damage done by a mistaken decision to permit the BT/EE merger without conditions, such as spectrum divestment) ignores the importance in any market of their being scope for further, disruptive market entry.

It is particularly important, given that 5G offers the prospect of being genuinely transformative, that thought is given to ways to ensure that there is scope for further market entry and that the best possible outcome to which Ofcom aspires is not a market that is essentially the same as that which exists today.

We have read with interest the separate consultations on possible future use of the 3.6-3.8GHz and 3.8 to 4.2 GHz bands. Taken together, what we do not see strongly reflected in these separate consultations is a strategic vision for release of spectrum that will lead to increased competitive intensity in the mobile market, and in particular in the provision of 5G-enabled services. (We of course recognise that the consultation on 3.6-3.8GHz concerned the approach to be taken to existing use in the part of the band potentially available for mobile/5G use). The spectrum sharing proposals in the 3.8-4.2 GHz consultation from last year appears to hold out the prospect of some spectrum potentially being made available for open access use, which could then lead to new competitive entry and (potentially) the possibility of a different business model to that of the MNOs being developed. However, we understand the focus of that consultation to be less on mobile services than on an expanded range of fixed links services. But we believe that some form of

sharing system could also potentially be applied to a tranche of spectrum in 3.6-3.8 GHz if that were to be reserved for 'open access' use.

In our view, even the existence of such an option has value – and is worth signalling now – as it will condition the market behaviour and auction bidding strategies of the existing market participants.

The first priority of this auction round is to ensure the continued viability of the existing MNOs – hence our support for Option E or (as a second preference) Option C. We would like, however, to see Ofcom make a clear statement of intent that it intends to safeguard the route for further market entry by explicitly stating, in its conclusions on this consultation, that it will seek to create a dedicated space for new entrant activity in the successor 3.6-3.8 GHz auction, consulting if appropriate on a suitable sharing methodology to allow service co-existence .

Question 6: Do you agree with our revised proposal on the withdrawal of bids in the auction?

To repeat, CFH does not see itself as a potential bidder for spectrum in this auction. However, these proposals seem sensible to us.