



Internet Telephony Services Providers' Association

ITSPA response to Ofcom Consultation on 2.3 and 3.4GHz Spectrum

Introduction

The Internet Telephony Services Providers' Association ("**ITSPA**") represents over 90 UK businesses involved with the supply of next generation communication services over data networks to industry and residential customers within the UK. Our traditional core members are VoIP providers. ITSPA pays close attention to both market and regulatory framework developments on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within both national and international markets.

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>.

Ofcom will note that British Telecommunications plc ("**BT**") is a member. This response does not represent the views of BT. Equally other members may make their own submissions as they see fit.

The current problem with the UK's spectrum market

ITSPA is pleased that Ofcom acknowledges the current asymmetry that exists in the spectrum market, with a significant imbalance between the amount of spectrum being held by each of the four major mobile network operators ("**MNOs**") in the UK. Ofcom has made it clear that if BT/EE were to have around 50% (it currently holds c45%) of the usable spectrum there is the potential for rival MNOs to be squeezed, thus stifling competition and innovation. ITSPA therefore agrees with Ofcom's position that BT/EE should not bid for 2.3GHz spectrum.

Given this position, ITSPA is confused around Ofcom's proposals surrounding 3.4Ghz spectrum. We are unclear as to how the correct conclusion that an asymmetry in the order of 50% has the potential for harm today, but is considered not to be harmful two years hence.

Of specific concern for our members is the long-term health of the UK's mobile virtual network operator ("**MVNO**") market. The competitive state of the MVNO sector was highlighted in both the provisional findings of the Competition and Markets Authority in clearing the BT/EE Limited transaction, and of the European Commission's decision in blocking the Three/O2 transaction. ITSPA raised the need to address regulated wholesale access remedies in the mobile market during both of these cases. We recognise that BT/EE has played an important role as the underlying MNO for a number of MVNOs in the current market. Our concerns revolve around the potential unintended consequences of the consultation. Specifically, we fear that MNOs suffering from a capacity constraint as a result of an asymmetry in spectrum, would naturally favour their own retail customers at the expense of their wholesale customers; in other words, MVNOs would be squeezed out of the market and/or the beneficiary of an asymmetric holding would be a natural monopoly host MNO.



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Ofcom will be familiar with our members' concerns about access to mobile technology generally, as a means for innovation and competition, from our work together on net neutrality and on mobile number ranges. We believe that unless Ofcom's proposed approach is changed to address these issues, should any one MNO be the beneficiary of asymmetric spectrum holdings, this innovation and competition would be stifled.

There would be less concern if there was agreement to identify new remedies to amend the current wholesale mobile access market. If this was to happen, it would create a fully functioning MNVO sector that would encourage innovation and competition resulting in improved outcomes for UK consumers. It would benefit the entire ecosystem with numerous CPs similar to ITSPA members likely to take up MNO services if the market worked correctly. Indeed, the UK's mobile market could become as competitive and innovative as it is currently for fixed telephony.

Ofcom outlines a number of alternative options in its consultation; from the aggressive cap seemingly supported by many Communications Providers and the public denoted "Option E", to a less interventionist approach in Option C. Whilst these may, in isolation, appear to address our members' immediate concerns, other tools are available which do not attract some of the negative potential outcomes Ofcom outline, such as a requirement to offer access, on fair and reasonable terms, to the Radio Access Network for holdings in excess of 30%, for example. That would be a remedy consistent with that proposed by ITSPA to the relevant authorities in the aforementioned merger control cases.

We consider that Ofcom's approach has not necessarily addressed these concerns and urge Ofcom to attach due weight to them in its final decision making process. ITSPA believe a combination of correct spectrum allocation and wholesale mobile access remedies will help deliver a vibrant long-term mobile market to the benefit of consumers, MNOs and MVNOs.