

## Your response

Your response should include details of:

- a description of the relevant technology;
- a view of the potential impact of the technology on the sectors we regulate, preferably
- identifying the impact against the criteria listed in section 3.16 of the [call for inputs](#);
- the current state of development of the technology, including any demonstrations of
- feasibility;
- any unresolved issues which need to be addressed for the technology to achieve full
- potential;
- references to key publications and the leading groups working on the technology; and
- whether you would be open to discussing the technology in more detail with Ofcom.

### Your response

Confidential? – N

Dear Sir/Madam,

I thank you for the opportunity presented by the Call for Inputs.

I write on a general point in connection with the availability of licenses for standards essential patents (SEPs), and other related issues.

Whichever new standardised technologies emerge it is important that Ofcom takes active steps to ensure that:

- (a) licenses to SEPs are available to any company that wants a license;
- (b) licenses are available on fair, reasonable and non-discriminatory (FRAND) terms;
- (c) a single royalty price list for the SEPs are made publicly available to all (in accordance with the decision of the Supreme Court in *Unwired Planet vs Huawei*);
- (d) there should be low barriers to entry for new market participants, so that the market can be robust and have healthy competition;
- (e) SEP holders observe the FRAND obligation such that the terms and conditions on offer should be those generally available as a fair market price for any market participant, to reflect the true value of the SEPs to which the licence relates, and without adjustment depending on the individual characteristics of a particular market participant;
- (f) the same SEP licensing rates are made available to all licensees who are similarly situated in the sense that they seek the same kind of licence;
- (g) it is made clear by Ofcom that it would not be FRAND for a small new entrant to the market to have to pay a higher royalty rate than an established large entity, and that the FRAND offer must be non-discriminatory and determined primarily by reference to the value of the patents being licensed with the result that all licensees who need the same kind of licence should be charged the same kind of rate;

(h) injunctions are only available for SEPs in limited circumstances, and when damages are not an adequate remedy;

This is critical to ensure that there are as few barriers to adoption as possible, and to create innovation and competition in the UK market.

The Department of Digital, Culture, Media and Sport recently wrote to me acknowledging that “while the IPR [for 5G] is available on ‘fair and reasonable’ terms, licensing the technology from established players results in significant costs for new entrants”. That is not a healthy situation for SME’s and other participants in the UK market, and this will drive up costs for network operators and consumers.

I would be happy to discuss any of these issues further with Ofcom.

Yours sincerely

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