



Vodafone Response to Ofcom Consultation: Aligning licence terms in the 3.4-3.8 GHz band



Response

Vodafone welcomes the opportunity to comment on proposed variations to UK Broadband's (UKBB's) licences to utilise spectrum in the 3.4GHz and 3.6GHz bands. The need for Ofcom to consider such a variation acts as a stark illustration that the current regime of spectrum Annual Licence Fees (ALFs) does nothing to incentivising trades, indeed serves to act as a barrier to efficient trading of spectrum. It is telling that UKBB is seemingly willing to make an immediate payment of more than £0.5Bn in order to escape the clutches of the regime.

Subject to the caveats outlined below, we are supportive of the proposals in the consultation: we only wish that this exercise had been undertaken prior to the 2021 auction - in the case of 3.6GHz, this would have been possible by providing UKBB with an option to buy out their ALFs at a price set according to the outcome of the Principal stage of that auction, that they could have exercised if it assisted in the Negotiation stage. Had this approach been adopted, then trading during the auction would have been on a more like-for-like basis hence improving the chances of success. Whilst harmonisation of licence terms now will improve the ability to trade spectrum in the band, it is against a backdrop of the need to execute trades that have already been agreed and secured regulatory approval.

Ofcom's approach to calculating the fee to permit alignment of the licence terms appears reasonable. Our view is that the target should be for UKBB to pay fees equivalent to what would have been paid were the spectrum to have been purchased at auction, and the approach broadly achieves this.

It could be argued that since all of the 3.xGHz spectrum was available to UKBB at the time of the 2018 auction, the pricing for the whole amount should reflect the clearing price for spectrum at the time. However, on balance we accept that paying an equivalent sum for the spectrum based on what other licensees paid for identical spectrum, is of greater importance than paying an equivalent sum to that paid by other licensees who acquired similar spectrum at the same time (particularly as there were some short-term restrictions on UKBB's usage of the 3.6GHz band). We therefore support the approach of basing the 3.4GHz price on the 2018 auction outcome, and 3.6GHz on the 2021 auction outcome.

We note that in line with the approach taken in calculating ALFs, Ofcom has indexed the auction outcomes by CPI in the intervening period. Whilst supporting this consistency, it is questionable whether the value of spectrum is inflating in-line with CPI, particularly in the current tumultuous macro-environment.

- In the context of ALFs, Ofcom cannot evade the issue that such fee increases must make their way to consumer pricing, and hence spectrum policy in this area is both intensifying the cost-of-living crisis and further driving inflationary pressures. Double-digit inflation was not envisaged when ALF policy was devised, and Ofcom should seriously consider whether it would be appropriate to apply a guard rail to ALF indexation (e.g. private sector pensions typically cap indexation at 5%; such an approach could be applied to ALFs).



- In the context of the price of UKBB's licence variations, we believe that for consistency's sake Ofcom is correct to index the auction pricing, but needs to be cognisant of the effects on the price tag of the time taken to process the request. We understand that UKBB first approached Ofcom about the variation in May 2021- had the calculation been carried out at the time with the prevailing rate of inflation, then the fee faced by UKBB to effect the change would be some £30M less. We do not suggest that Ofcom should reduce the fee – UKBB has had the benefit of having the money in its bank in the meantime and this is clearly a complex policy question to which Ofcom had to apply due diligence – but we believe that so long as UKBB accepts and funds the licence change expeditiously after the final statement is issued, Ofcom should not further index the calculation based on inflation between March 2022 and the date of variation. We note that an alternative approach might have avoided this issue – Ofcom could have used the auction fee as a debt outstanding on UKBB and applied interest at the cost of capital assumed in the ALF consultation (there would still have been an increasing bill until the date of licence variation, but not at the extreme level of current CPI rates).

Whilst supporting the methodology to calculating the lump sum payment, we consider that by taking a pure “per MHz” approach, Ofcom has failed to account for the value of spectrum contiguity. Licensees in the band have paid considerable sums to achieve spectrum contiguity or even proximity, whether in the guise of fees in the Assignment stage of auctions, spectrum trading fees, or implementation costs to rejig spectrum holdings. It cannot be correct that UKBB be able to hold a substantial contiguous spectrum block in the 3.6GHz band while facing no such costs. As evidence, Ofcom will be aware that Three was prepared to pay £13.3M to be able to create a contiguous 40MHz holding¹ in the 2018 auction, ~~3~~.

Vodafone UK

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¹ With partner company UKBB.