

Orange response to 'Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems'

Orange welcomes the opportunity to respond to Ofcom's consultation on the 'Authorisation of the terrestrial mobile networks complementary to 2 GHz mobile satellite systems'. Generally, we are supportive of Ofcom's proposals, however, we have some concerns regarding the consistency of licensing across and between different telecommunication sectors.

Whilst Orange supports Ofcom's view that it is appropriate that the CGC licence should be in the form of a spectrum access licence and not awarded by auction, there appears to be two significant inconsistencies within the consultation:

1. the applicable trading and liberalisation regime, and
2. the applicable AIP

The applicable trading and liberalisation regime

Ofcom clearly maintains that the CGC spectrum should be awarded only to MSS operators who have gained spectrum through the European process. It is entirely unclear, why Ofcom would then suggest, in its consultation, that this spectrum could be then be traded to another party.

If the CGC spectrum is not being used or no longer required by the MSS operator, it should be handed back to Ofcom for reallocation following a consultative process.

The applicable AIP

The 2G spectrum, which Ofcom is using as a base for the appropriate price for CGC spectrum, has not yet been liberalised, neither have the terms under which it will be liberalised been agreed, nor is there any certainty over the appropriate AIP looking forward.

In order to ensure a level playing field and non discrimination between operators, particularly conventional terrestrial mobile operators, Orange would support the application of AIP based on exactly the same terms as the current 2G operators ie AIP subject to regular review and no ability to trade or liberalise at this point.

Question 1: Do you agree that the CGC licence should be in the form of a spectrum access licence with standard terms and conditions?

Question 2: Do you agree that such licences should be awarded on a UK-wide basis?

Orange supports Ofcom's view that it would be appropriate for the MSS operators successfully awarded spectrum during the EC process to be granted access to spectrum in the UK. In fact, it is unlikely that an economically efficient price would be achieved at auction as the only entrants would be the MSS operators bidding against each other. To this end, it is entirely appropriate for Ofcom to set an appropriate Administered Incentive Price (AIP) for the spectrum to be used for the Complementary Ground Components (CGC) of the satellite systems. However, as discussed later in the response, policy should be applied consistently across the sector.

Orange would also support an additional licence term confirming that the CGC spectrum is an integral part of the the Mobile Satellite Service (MSS) and that it must therefore be managed by the same system. If spectrum is no longer required by the satellite operator, it must be handed back to Ofcom for reallocation following a consultative process.

Additionally, Orange would support the CGC licence reflecting the terms of the MSS licences, as far as possible. With similar obligations and licence terms, in the event that an MSS operator defaults on any EC licence terms, it would automatically follow that the local operator also defaults on its UK CGC licence. Without such comparability between the licensees, a situation could arise where an MSS operators defaults on its licence but is able to continue rolling out a CGC network which could possibly be used for terrestrial 3G communications.

Orange supports Ofcom's proposals to award the licences on a UK wide basis.

Question 3: Do you agree that the CGC licence should authorise the complete set of frequencies assigned under the EC process?

It is Ofcom's understanding that if an MSS operator is successful in being assigned 15MHz of spectrum within the EC process and then applies for a UK CGC licence, it will be authorised across the full 15MHz of spectrum and will therefore pay applicable fees, irrespective of planned or actual usage¹.

Orange supports Ofcom's view that the CGC licence should authorise the complete set of frequencies.

Question 4: Do you agree that the initial grant of the CGC licence should made be to the MSS operator only?

Ofcom intends to accept applications for the CGC licences from successful MSS operators only. Orange fully endorses Ofcom's position. It is entirely appropriate that

¹ Para 7.6

only the successful MSS operator is assigned CGC spectrum. It is the MSS operator who is investing in the satellite network (even if they have subcontracted part of the network rollout to a third party) and who has gained the MSS licence from the EC. Without the same party being licensed in both instances, it is not clear who would be responsible in the event of a default of either licence, as discussed earlier.

Question 5: Subject to certain safeguards, would it be appropriate to license the CGC in advance of the satellite service coming into operation and if so, what criteria should be applied to determine whether the satellite component of the MSS network is operational and what period of time do you consider would be appropriate?

Ofcom is currently of the view that it should be willing to consider authorisation of CGC networks in advance of the planned date for bringing the satellite service into operation, as long as evidence of binding contracts is available to support the implementation schedule provided as part of the EC selection process, within the candidate's business plan².

As Ofcom itself highlights at the start of its consultation, many satellite systems that have been licensed have not been launched. Bearing this in mind, Orange is cautiously supportive of Ofcom's current position. However, whilst the CGC network may be deployed during the period prior to MSS launch, it must not be switched on. In addition, there should be a time limit set for use of the spectrum, after which date it should be handed back to Ofcom.

Question 6: Do you agree that the CGC licence should not include a coverage obligation?

Orange supports Ofcom's view that the CGC licence should not include a coverage obligation.

Question 7: Do you agree that the CGC licence should be provided on a service and technology neutral basis?

Orange supports Ofcom's view that CGC licences should be provided on a service and technology neutral basis. However, we are surprised that there has not been further discussion of the appropriate CGC spectrum usage rights (SURs). As the immediate neighbour to the CGC and MSS network, this issue is of particular importance to Orange and its consumers, particularly if the 3G CGC network is deployed on the same, or a neighbouring, base station to Orange's 3G network.

To this end, we reserve our position on the deployment of a technology and service neutral network until there has been a full consultation on the applicable spectrum usage rights.

² Para 7.12

Question 8: Do you agree that it CGC licences should be tradable and, if so, that they should be both totally or partially tradable and both outright or concurrently tradable, that Ofcom's consent should be required for transfers and that the grounds on which Ofcom may withhold consent should be limited as proposed?

Orange is surprised at Ofcom's proposals to make the CGC spectrum tradable. Whilst it is true that it is Ofcom's normal policy that spectrum that it awards should be tradable, this proposal seems entirely contrary to policy earlier in the consultation document.

In its consultation document, Ofcom clearly states that Article 95 Decision being developed by the European Parliament and the Council will mandate Member States to authorise the successful MSS operators to use the assigned spectrum for operation of CGC. Ofcom intends therefore to accept applications for the CGC licences from the successful MSS operators only³.

Surely, to allow trading of CGC spectrum on an open market runs entirely contrary to this proposal. This spectrum is intrinsically linked to the award and management of the MSS spectrum, which is the reason why it is to be awarded on the basis of a spectrum access licence. Whilst it can be technology and service neutral, subject to further consultation on the SURs, for the delivery and deployment of a satellite network, it is not appropriate for this spectrum to be traded. If the spectrum is not being used, it must be handed back to Ofcom for reallocation.

Question 9: Do you agree that AIP should be applied to CGC licences at a level that reflects the associated opportunity cost?

Question 10: Do you agree that the licence fees should be set at around £554,000 per 2 x 1MHz?

Given that the licences are likely to be awarded in the form of a spectrum access licence, it is entirely appropriate that AIP is used. It is also appropriate that it is set at a level that reflects the associated opportunity cost. However, Ofcom seems confused in its reasoning around the opportunity cost of the spectrum, the appropriate AIP and spectrum trading.

As stated in the Ofcom consultation document, Orange currently pays £554,400 for a 2x1 MHz national channel. This is for the provision of mobile services using GSM technology. Whilst it could be said that the most likely highest value alternative use for the CGC spectrum would be mobile applications because the CGC frequencies are adjacent to the current frequencies used by mobile operators for their 2G and 3G applications⁴, Ofcom is not applying consistent policy to all operators.

The 2G spectrum, which Ofcom is using as a base for the CGC spectrum has not yet been liberalised, neither have the terms under which it will be liberalised been agreed, nor is there any certainty over the AIP as we go forward.

In order to ensure a level playing field and non discrimination between operators, Orange would support the application of AIP based on exactly the same terms as the

³ Para 7.7

⁴ Para 8.28



current 2G operators ie AIP subject to regular review and no ability to trade or liberalise at this point.

Question 11: If you believe that setting fees at this level would result in CGC systems not being deployed, please provide your reasons and full supporting evidence including a detailed business case.

See comments above.

*All queries in relation to this response should be to:
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