



Notice of Ofcom's proposal to
make regulations in connection
with the award of 2500-2690 MHz
and 2010-2025 MHz

Consultation

Publication date: 4 April 2008

Closing Date for Responses: 6 May 2008

Contents

Section		Page
1	Summary	1
2	Notice	3
3	General effect of the proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008	6
4	General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008	27
5	General effect of the proposed Wireless Telegraphy (Register) (Amendment)(No.2) Regulations 2008	31
6	General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2008	32
7	Regulatory Impact Assessments	33
Annex		Page
1	Responding to this consultation	54
2	Ofcom's consultation principles	56
3	Consultation response cover sheet	57
4	Consultation question	59
5	Draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008	60
6	Draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008	61
7	Draft Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2008	62
8	Draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008	63

Section 1

Summary

- 1.1 This notice provides formal notice to stakeholders of Ofcom's proposal to make four statutory instruments in connection with the award of wireless telegraphy licences for use of the spectrum bands 2500-2690 MHz and 2010-2025 MHz. Copies of each of the four statutory instruments are set out in Annexes 5–8 of this document. Separately Ofcom has published the reasoning for its decision to award licences for use of the Bands (see Statement entitled "Award of available spectrum: 2500-2690 MHz and 2010-2025 MHz" published on 4 April 2008). An information memorandum setting out relevant information which potential applicants for the licences should take into account has also been published¹.

Proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008

- 1.2 These regulations set out the process and rules for the award of licences to operate within the Bands. Ofcom intends to hold an auction, although the regulations also provide for circumstances where there is insufficient demand and therefore no auction is held. The regulations include provisions describing the procedures and rules for applying and bidding for the licences, how the winning bidders will be identified and rules prescribing how applicants and bidders must conduct themselves during the award process. Section 3 of this document sets out a detailed summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

- 1.3 Ofcom has decided that the licences to operate within the Bands should be tradable. Accordingly Ofcom is proposing to make amendments to the existing regulations which govern spectrum trading to allow this to take place. Section 4 of this document sets out a summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

- 1.4 Where licences are tradable Ofcom's policy is to include relevant details of those licences on a public register to facilitate the efficient working of the spectrum market. Accordingly, Ofcom is proposing to make amendments to the existing regulations governing the register to allow details of the licences to operate within the Bands to be included. Section 5 of this document sets out a summary of the general effect of the provisions.

Proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008

- 1.5 Ofcom is required to make a licence limitation order where it considers it appropriate to limit the number of licences for a particular set of frequencies as in the case of the Bands. Section 6 of this document sets out a summary of the general effect of the provisions.

¹ Both documents are available from the spectrum awards section of the Ofcom website at <http://www.ofcom.org.uk/radiocomms/spectrumawards/>.

- 1.6 Ofcom is giving notice and consulting on each of its proposals to make these four statutory instruments. Comments or representations with respect to the four proposed statutory instruments are invited by 6 May 2008.

Section 2

Notice

Background to the proposals

- 2.1 Ofcom plans to award wireless telegraphy licences for equipment operating within the following spectrum bands ("the Bands"): 2500-2690 MHz (the "2.6GHz band") and 2010-2025 MHz (the "2010 MHz band"). The number of licences to be awarded and the precise frequencies which each licence will cover will be determined by the award process.
- 2.1 On 4 April 2008, Ofcom published its decision to hold an award process in a statement entitled "Award of available spectrum: 2500-2690MHz, 2010-2025 MHz" (the "Statement"). The Statement followed extensive consultation with stakeholders on the approach allowing use of the Bands, in particular:
- Ofcom's "Spectrum Framework Review: Implementation Plan"² (SFR:IP) published in January 2005;
 - The consultation document published in December 2006 entitled "Award of available spectrum: 2500-2690 MHz, 2010-2025 MHz and 2290-2300 MHz"³ (the "December 2006 Consultation");
 - The discussion document published in August 2007 entitled "Award of available spectrum: 2500-2690MHz, 2010-2025 MHz"⁴ (the "Discussion Document");
 - The consultation document published in December 2007 entitled "Award of available spectrum: 2500-2690MHz, 2010-2025MHz"⁵ (the "Auction Rules Consultation").
- 2.2 On 2 April 2008 the Radio Spectrum Committee of the European Commission (RSC) unanimously agreed the text of a decision on harmonised use of the 2.6GHz band ("the RSC Decision"). The RSC Decision requires Member States to designate the 2.6 GHz band within 6 months of the decision's entry into force and subsequently make it available on a non-exclusive basis for terrestrial systems capable of providing electronic communications services, subject to a number of technical parameters relating to harmful interference. The recitals to the RSC Decision state that the results of the technical work undertaken by CEPT which form the basis of the technical parameters of the RSC Decision should be made applicable in the Community and implemented by Member States without delay. It is anticipated that the decision will come into force in early June 2008.

Notice of proposals

- 2.3 This notice covers four related proposals to make regulations to allow award of licences to operate within the Bands.

² <http://www.ofcom.org.uk/consult/condocs/sfr/sfr/sfr-plan.pdf>

³ <http://www.ofcom.org.uk/consult/condocs/2ghzawards/>

⁴ <http://www.ofcom.org.uk/consult/condocs/2ghzdiscuss/>

⁵ <http://www.ofcom.org.uk/consult/condocs/2ghzrules/>

Proposed auction regulations

- 2.4 Ofcom has the statutory power to make regulations to award licences by means of an auction and it has decided to do this. Accordingly Ofcom proposes to make The Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008 in order to allow an auction to be held for the purpose of awarding licences for equipment operating within the Bands. A draft of the proposed regulations is set out at Annex 5.
- 2.5 The general effect of these regulations is set out at Section 3 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals will have on costs to business.

Proposed trading regulations

- 2.6 Ofcom has decided that the licences to be awarded for the Bands should be tradable and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008. A draft of the proposed regulations is set out at Annex 6.
- 2.7 The general effect of these regulations is set out at Section 4 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Proposed register regulations

- 2.8 Ofcom has decided that certain information relating to the licences should be published and it has the statutory power to make regulations to implement this policy. Accordingly Ofcom proposes to make The Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2008. A draft of the proposed regulations is set out at Annex 7.
- 2.9 The general effect of these regulations is set out at Section 5 of this document. A Regulatory Impact Assessment (RIA) for the regulations is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Proposed limitation order

- 2.10 Ofcom has decided that it is appropriate to limit the number of licences to be awarded in relation to the Bands for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Bands. Accordingly under section 29 of the Wireless Telegraphy Act 2006 it must make an order. Ofcom proposes to make The Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008. A draft of the proposed order is set out at Annex 8.
- 2.11 The general effect of this order is set out at Section 6 of this document. A Regulatory Impact Assessment (RIA) for the order is available at Section 7. The RIA sets out the risks, costs and benefits of the proposals and the effects that the proposals are likely to have on costs to business.

Comments or representations

- 2.12 Comments or representations with respect to the four proposed regulations are invited by 6 May 2008. Comments should be sent to:

Brice Le Cannu
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

E-mail: brice.lecannu@ofcom.org.uk
Tel: 020 7783 4503

- 2.13 Following completion of this consultation process, Ofcom intends to make the final regulations as soon as practicable.

- 2.14 Hard copies of this notice and the proposed regulations can be obtained from:

Brice Le Cannu
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

E-mail: brice.lecannu@ofcom.org.uk
Tel: 020 7783 4503

- 2.15 Electronic copies are also available and this notice has been placed on Ofcom's website <http://www.ofcom.org.uk>.

Section 3

General effect of the proposed Wireless Telegraphy (Licence Award) (No.2) Regulations 2008

The legislative framework

- 3.1 Under section 14(1), (2), (3), (4), (6) and (7) of the Wireless Telegraphy Act 2006 ("the 2006 Act") Ofcom may make regulations to allow wireless telegraphy licences to be awarded by means of an auction. A draft of the proposed regulations is set out at Annex 5 of this document.

Extent of application

- 3.2 The proposed regulations will apply in the United Kingdom but will not extend to the Channel Islands or to the Isle of Man.

The proposed regulations

- 3.3 The proposed regulations set out the procedure and rules that will apply for the award of licences to operate within the Bands. Where there is more than one bidder for licences, the award process will include five distinct stages: the application stage, the qualification stage, the principal stage, the assignment stage and the grant stage. Where there are no bidders, there will be no auction and Ofcom will consider an alternative award process. Where there is only one bidder, the procedure described at Part 4 of the proposed regulations will apply. The proposed regulations also contain a section setting out the activity rules that will apply to applicants and bidders in the award process.

Application stage

- 3.4 The application stage is described in detail at Part 2 of the proposed regulations. Any body corporate wishing to participate in the award process must submit an application form containing the application information required by the proposed regulations.
- 3.5 The application information includes details of all members of the applicant's applicant group, which is defined in the proposed regulations as including the applicant, each associate of the applicant and any person in respect of whom the applicant or bidder has delivered to Ofcom a completed form as set out in Schedule 3 to the proposed regulations. Applicants are also required to provide Ofcom with details of any circumstances relevant to Ofcom's determination of the applicant's qualification to bid (including details of all exchanges of confidential information by the applicant to a party other than Ofcom or a member of its applicant group). The date, time and place for submission of applications will be published on the Ofcom website.
- 3.6 The application form must also be accompanied by an application document in the form provided for in the regulations. The application document requires an applicant to certify, amongst other things that:

- it has the legal authority to participate in the auction and to be granted a licence;
 - the information provided in its application is true, accurate and complete; and
 - it is aware of the provisions relating to disclosure of confidential information.
- 3.7 In addition applicants must also submit documents in the form provided for in the proposed regulations for each person who is not an associate of the applicant but who the applicant wishes to make a member of its bidder group (for example advisers with whom the applicant wishes to exchange confidential information).
- 3.8 The term “associate” is defined in the proposed regulations as meaning any person who has a material interest in an applicant or bidder, where the term ‘material interest’ is also defined in the regulations.
- 3.9 “Confidential information” is defined in the proposed regulations as including any information in respect of an applicant or bidder which is not in the public domain, but which if it were made public or disclosed to another applicant, potential applicant, bidder or member of another bidder group, would be likely to affect decisions that such other person may make in relation to the award process.
- 3.10 Finally, the application form must be accompanied by an initial deposit of £100,000. Such initial deposits will not earn interest and will only be refunded in the circumstances set out in the proposed regulations.

Qualification stage

- 3.11 The qualification stage is described in detail at Part 3 of the proposed regulations. Following receipt of the applications, Ofcom will notify all applicants of the names of each other applicant and the names of the associates of each other applicant and of a date by which applicants must inform Ofcom and any other applicant concerned if they have any common membership overlaps (i.e. where any member of the applicant's applicant group is also an associate of another applicant or is also an applicant).
- 3.12 Where Ofcom identifies any overlap between the bidder groups, it will also notify affected applicants. Where either Ofcom or any applicant has identified a common membership overlap, Ofcom will specify a date by which each applicant must notify Ofcom of any change in circumstances which means that there is no longer any such overlap. Ofcom will then record the details of each applicant's applicant group as a bidder group.
- 3.13 “Bidder group” is defined in the proposed regulations as comprising the members of each applicant group recorded by Ofcom in accordance with the process set out above, but excluding any associate who has applied to Ofcom to be excluded from an applicant or bidder group (in accordance with the process set out below at 3.14) and whom Ofcom has determined to exclude from that applicant or bidder group.
- 3.14 Regulation 5 of the proposed regulations provides that Ofcom may determine to exclude an associate from an applicant or bidder group where Ofcom receives from the associate and the corresponding applicant, documents in the form set out in Schedules 4 and 5 to the proposed regulations. The associate must also confirm that it does not hold certain levels of interest in or control over in the applicant as set out in Regulation 5 of the proposed regulations. Applications must be received by

Ofcom before the date on which it determines which applicants are qualified to bid in the award.

- 3.15 Regulation 5 of the proposed regulations also sets out a number of factors which Ofcom will take into account when considering any application for an associate to be excluded from an applicant or bidder group. Ofcom may also require the applicant or the associate to provide further information or documentation in relation to the application.
- 3.16 Where Ofcom determine to grant an application for an associate to be excluded from an applicant or bidder group, that associate will no longer be considered to be a member of that applicant or bidder group for the purposes of the award. The associate will then be permitted to be a member of up to one other applicant's applicant or bidder group.
- 3.17 Regulation 7 of the proposed regulations provides that an applicant or bidder may make changes to the composition of its bidder group after the application stage, provided such changes are notified to Ofcom and accompanied by revised versions of the documents required in the application stage and provided that they do not result in a breach of the activity rules provided for at Part 6 of the proposed regulations.
- 3.18 Following the period for resolution of overlaps, Ofcom will determine which applicants are qualified to bid in the auction. An applicant may not qualify to bid where a member of its bidder group is also a member of another bidder group. However, in making its qualification determination, Ofcom will take into account a number of other factors, including whether the grant of a licence to the applicant would be prejudicial to the interests of national security, whether the applicant is a fit and proper person to hold a licence, whether the applicant or any member of its bidder group is in any way attempting to distort the award process or collude with another party, or whether the applicant or any member of its bidder group has disclosed confidential information to someone outside its bidder group (subject to certain exceptions). Ofcom will also take into account whether, in connection with an application for an applicant to be excluded from an applicant or bidder group in accordance with regulation 5 of the proposed regulations, either the applicant or the associate in question has failed to deliver to Ofcom the relevant documents necessary to make such an application.
- 3.19 Applicants must provide Ofcom with any information which Ofcom requires in order to determine whether an applicant is qualified to bid in the auction. Failure to provide such information within the specified time will also be taken into account by Ofcom when determining which applicants qualify to bid in the auction.
- 3.20 Ofcom will notify each applicant of whether it has qualified to bid in the auction (giving reasons where an applicant has not qualified). Ofcom will publish the identity of all applicants who are qualified to bid in the auction on its website.
- 3.21 Ofcom will notify each applicant qualified to bid of the last day on which they may withdraw from the award process.
- 3.22 Applicants wishing to withdraw from the award process before this last day for withdrawal may do so by notice in writing to Ofcom, signed by at least two authorised persons (being persons identified on the application form as authorised to bind the applicant and in respect of whom specimen signatures were provided). Ofcom will notify all other applicants of any such withdrawal. Applicants who withdraw in this way will receive a refund of their initial deposit (unless the deposit has been forfeited

in accordance with the activity rules set out at Part 6 of the proposed regulations) but not any interest which has accrued at the end of the first stage of the award process ("the principal stage"), and they may not be re-admitted to the award process.

- 3.23 Applicants who do not withdraw before the last day for withdrawal are known as bidders and Ofcom will publish the names of all bidders on its website, along with a statement saying which of the two alternative procedures set out in the regulations is to be followed for the award of the licences. A bidder is committed to purchase a licence if (1) it is the only bidder remaining and Ofcom proceeds under Part 4 of the proposed regulations; or (2) the bidder submits a winning bid under the auction to be held under the Part 5 procedure.

Meaning of individual lot, paired lot and lot in respect of the 2500-2690MHz frequency range

- 3.24 In the proposed regulations the meaning of individual lot, paired lot and lot (in relation to the 2500-2690MHz frequency range) is to be construed in accordance with Schedule 1. The frequencies between 2500-2690MHz are split into 38 lots, each of which has a number assigned to it as set out in the table in Schedule 1. An individual lot is any one of the 38 lots, and a paired lot is any one pair of lots where the separation between the lowest frequency of one lot and its corresponding paired lot is 120MHz. The frequencies between 2500-2690MHz may be awarded in a variety of combinations of paired lots and/or individual lots.
- 3.25 Licences awarded to winning bidders in respect of the 2500-2690MHz frequency range may include frequencies which are awarded as paired lots and/or individual lots, depending on the type of bids which the winning bidder has made. As set out in regulation 69 of the proposed regulations, the licences awarded under the award process set out different technical restrictions for frequencies depending on whether they are awarded as paired lots or as individual lots.

Procedure where there is only one bidder

- 3.26 Part 4 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is only one bidder. The bidder must complete a frequency range selection menu, which will list the frequency ranges in each band that are available to the bidder. Ofcom will send the bidder a notice stating the day and time by which the bidder must return its completed frequency range selection menu and the day and time by which the bidder must pay to Ofcom the appropriate sum as a licence fee.
- 3.27 The bidder must complete the frequency range selection menu by selecting no more than one frequency range in respect of each of: (a) the 2010 MHz band; (b) frequency ranges for paired lots in the 2.6 GHz band; and (c) frequency ranges for individual lots in the 2.6 GHz band. The number of eligibility points associate with each frequency range is as set out in Schedule 6 to the proposed regulations, and the total number of eligibility point for the frequency ranges selected by the bidder must not exceed 16.
- 3.28 The frequency range selection menu must be signed by two authorised persons of the bidder and returned to Ofcom by the time specified in the notice. If the bidder fails to return the frequency range selection menu or pay the licence fee by the days and times specified, the bidder will not receive a refund of its initial deposit and will not be entitled to the grant of a licence.

- 3.29 The licence fee will be the total of the prices per selected frequency range as set out on the frequency range selection menu. The sum which the bidder must pay to Ofcom will be the appropriate licence fee less the initial deposit (unless the initial deposit has already been forfeited in which case the full licence fee shall be payable). Ofcom will grant the bidder a licence for the frequency ranges selected on the frequency range selection menu once it has received payment of the appropriate licence fee.
- 3.30 Following the grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee, the frequency ranges in respect of which the licence was granted and the total licence fee paid. Ofcom will also refund initial deposits (without any interest having accrued) to applicants who were not qualified or withdrew on or before the last day for withdrawal, unless such initial deposits have already been forfeited in accordance with the proposed regulations.

Procedure where there is more than one bidder

- 3.31 Part 5 of the proposed regulations sets out the procedure to be followed where, following the last day for withdrawal, there is more than one bidder. Part 5 is split into eight chapters as follows:
- chapter 1 gives an overview of the principal stage, assignment stage and grant stage of the award process;
 - chapter 2 explains the structure of the principal stage;
 - chapter 3 sets out the procedure for primary bid rounds;
 - chapter 4 sets out the procedure for supplementary bids round;
 - chapter 5 details the determination of the winning principal stage bids and conclusion of the principal stage;
 - chapter 6 sets out the procedure for the assignment of frequencies for the 2010 MHz band and the 2.6 GHz band where only one principal stage bid includes paired lots or individual lots;
 - chapter 7 sets out the procedure for the assignment of frequencies to winning bidders for the 2.6 GHz band where more than one winning principal stage bid includes paired lots or individual lots;
 - chapter 8 details the grant stage of the auction.

Overview of the principal stage, assignment stage and grant stage

- 3.32 Regulation 15 provides that where there is more than one bidder the award process consists of three stages: the principal stage, the assignment stage and the grant stage. The principal stage starts with one or more primary bid rounds and is followed by a supplementary bids round. Bids made during this stage will be for any combination of the following (subject to the eligibility limits explained at paragraphs 3.47 to 3.51):
- the 2010 MHz band;
 - a number of paired lots in the 2.6 GHz band; and

- a number of individual lots in the 2.6 GHz band.
- 3.33 Regulation 15(2) of the proposed regulations sets out the frequencies available under the award process as follows:
- 2010-2025 MHz; and
 - 2500-2690 MHz.
- 3.34 Details relating to the principal stage are set out in chapters 2 to 5 of Part 5 (and explained in paragraphs 3.35 to 3.80 of this section). Once the principal stage is complete, winning bidders will proceed to the assignment stage and specific frequency assignments will be made in accord with the procedures set out in chapters 6 and 7 (and explained in paragraphs 3.81 to 3.112 of this section). Licences for the assigned frequencies will then be granted in accord with the procedures set out in chapter 8 (and explained in paragraphs 3.113 to 3.115 of this section).

Structure of the Principal stage

- 3.35 The principal stage of the auction is made up of a number of primary bid rounds and a supplementary bid round.

Primary bid rounds

- 3.36 Regulation 16 of the proposed regulations provides that a bid made during a primary bid round is a bid for a bid selection at an amount (in thousands of whole pounds) which will be the total amount of the round prices in that primary bid round for individual lots, paired lots and the 2010 MHz band. If the bidder includes individual lots in his selection, he must include at least two such lots.
- 3.37 A bidder may not submit more than one primary bid in a primary bid round. A “bid selection” is defined in the proposed regulations as a specified number of paired lots and individual lots (where that specified number may be zero) and a specification as to whether the 2010 MHz band is included in the bid.

Supplementary bid round

- 3.38 Regulation 18 of the proposed regulations provides that a bid made during the supplementary bids round (“supplementary bid”) is either a basic supplementary bid or an additional supplementary bid.
- 3.39 A basic supplementary bid is a bid (at an amount in thousands of whole pounds) for either a bid selection containing only paired lots or a bid selection which contains individual lots (and may or may not contain paired lots), where that bid is conditional on the bidder receiving a contiguous range of individual lots.
- 3.40 A bidder can submit any number of basic supplementary bids but not more than one bid for each bid selection. The bid selection contained in a basic supplementary bid made by a bidder may be the same as or different from the bid selection comprised in a primary bid made by that bidder. If the bidder includes individual lots in its selection, it must include at least two such lots. Bidders do not have to make a basic supplementary bid.

- 3.41 An additional supplementary bid is a bid (at an amount in thousands of whole pounds) for a bid selection which contains individual lots (and may or may not contain paired lots), where the bid is conditional on the bidder receiving two contiguous ranges of individual lots, where one range is in the lower area and the other range is in the upper area. The "lower area" and the "upper area" are defined in the proposed regulations.
- 3.42 A bidder may only make an additional supplementary bid if it has already made a valid primary bid or a valid basic supplementary bid for a bid selection which includes three or more individual lots. A bidder can submit any number of additional supplementary bids but not more than one bid for each bid selection. Bidders do not have to make an additional supplementary bid.
- 3.43 The minimum participation requirement is that a bidder must submit a valid primary bid in the first primary bid round. Regulation 17 of the proposed regulations explains that any bidder which does not meet the minimum participation requirement will be excluded from the award process and will not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 25 which will be forfeited (unless already forfeited under regulation 72 of the proposed regulations).
- 3.44 Regulation 21 of the proposed regulations explains how the number of primary bid rounds is determined. Where:
- more than one primary round bid contains the 2010 MHz band; or
 - in respect of the 2.6GHz band, it would not be possible for Ofcom to assign the total number of paired lots selected by bidders in their valid primary round bids (i.e. in aggregate all valid primary round bids contain more than the 14 maximum possible paired lots in the 2.6 GHz band); or
 - primary round bids in aggregate contain bids for paired lots and/or individual lots exceeding the total number of lots available the 2.6 GHz band overall;

(together defined as "excess demand" in the proposed regulations) a further primary bid round will be held. Where there is no excess demand, there will no further primary bid rounds and there will be a supplementary bids round. This regulation also gives Ofcom the ability, in specified circumstances, to move straight to the supplementary bids round without having further primary bid rounds even though one of the requirements set out above is satisfied.

Primary round prices

- 3.45 In the first primary bid round, the round price for each of the 2010 MHz band, paired lots, and individual lots is set out in regulation 22 of the proposed regulations. In subsequent primary bid rounds, the round price for the 2010 MHz band and paired lots will remain the same except in the following circumstances:
- The round price for the 2010 MHz band will increase if there is excess demand for this lot;
 - The round price for a paired lot will increase if there is excess demand for paired lots or the 2.6 GHz band as a whole.

The round prices for the 2010 MHz band and 2.6GHz paired lots will not increase by more than 100% between primary bid rounds.

- 3.46 The round price for an individual lot will stay the same between rounds unless there is excess demand for the 2.6 GHz band as a whole and the total number of individual lots selected in valid bids is greater than nine. If so, the round price for individual lots will be half of the round price for paired lots.

Bidders' eligibility limits

- 3.47 Regulation 24 of the proposed regulations explains that before each primary bid round Ofcom will determine an eligibility limit for each bidder. An eligibility limit is made up of a number of eligibility points and is calculated in accordance with regulation 26 of the proposed regulations. The number of eligibility points associated with the 2010 MHz band and each paired lot and individual lot is set out in Schedule 7 of the proposed regulations.
- 3.48 For the first primary bid round the eligibility limit will be a number equal to the total amount the bidder has on deposit (including the initial deposit and any additional sum that the bidder chooses to pay by way of deposit under regulation 25 of the proposed regulations) divided by 50,000. If the resulting number is a fraction then this will be rounded down to the nearest whole number. In any case the eligibility limit will not be more than 16 points.
- 3.49 Where a bidder makes a valid primary bid in a primary bid round, Ofcom will determine a bidder's eligibility limit for the next primary bid round (if any) by calculating the number of eligibility points associated with the valid primary bid. The eligibility limit will be equal to the number of eligibility points associated with the paired lots, individual lots and specification of the 2010 MHz band in the valid primary round bid. A bidder's eligibility limit can not therefore increase during primary bid rounds. If a bidder does not make a valid primary bid then its eligibility limit will be zero for any subsequent primary bid round.
- 3.50 To be "valid", and therefore taken into account when determining (i) whether another primary bid round should be held, or (ii) the winning combination of principal stage bids, or (iii) the base price payable by a winning bidder the a primary bid must meet the following conditions:
- it must be made on a correctly completed primary bid form provided by Ofcom;
 - it must be the only primary bid submitted by the bidder in that primary bid round;
 - the number of paired lots and individual lots selected must not exceed the total available in the 2.6GHz band, and the 2010 MHz band may only be selected once;
 - the eligibility points associated with the bid selection must not exceed the bidder's eligibility limit for that round;
 - where the bid selection includes individual lots, it must include at least two such lots;
 - it must be submitted using the electronic auction system (or an alternative method as provided for in regulation 32); and
 - it must be submitted by the end of round time.

- 3.51 Basic supplementary bids and additional supplementary bids will only be taken into account to determine (i) the winning combination of principal stage bids or (ii) the base price payable by a winning bidder if they too are "valid".

Valid basic supplementary bids

- 3.52 Regulation 29 of the proposed regulations sets out that a basic supplementary bid is a "valid basic supplementary bid" if the following conditions are met:

- it must be made on a correctly completed supplementary bid form provided by Ofcom;
- the number of paired lots and individual lots selected must not exceed the total available in the 2.6GHz band;
- where the bid includes individual lots, it must include at least two such lots;
- it must be the only basic supplementary bid made by the bidder for the specified selection of paired lots and/or single lots;
- it must be submitted using the electronic auction system (or an alternative method as provided for in regulation 40 of the proposed regulations) and received by the time notified by Ofcom (or during an extension period as provided for in regulation 41 of the proposed regulations);
- the amount of the bid must comply with restrictions set out in regulation 19(5) of the proposed regulations.

- 3.53 The restrictions set out in regulation 19(5) of the proposed regulations relating to the amount of a basic supplementary bid are:

- the basic supplementary bid amount for the bid selection must not be less than the total round price for the bid selection in the first primary bid round;
- if the bidder made a bid for the same bid selection during a primary bid round, the basic supplementary bid amount must be greater than the highest primary bid the bidder made for that bid selection;
- if the bidder did not make a valid primary bid in the final primary bid round, Ofcom will identify the latest primary bid round in which the bidder would have been eligible to make a primary bid for the bid selection. The amount of the basic supplementary bid cannot exceed the price specified in that primary bid round for the bid selection;
- if the number of eligibility points associated with the basic supplementary bid is greater than the number of points associated with the bidder's final primary round bid, Ofcom will identify the latest primary bid round in which the bidder would have been eligible to make a primary bid for the bid selection. The amount of the basic supplementary bid cannot exceed the price specified in that primary bid round for the bid selection.

Valid additional supplementary bids

- 3.54 Regulation 30 of the proposed regulations sets out that an additional supplementary bid is a "valid additional supplementary bid" if the following conditions are met:

- it must be for a bid selection containing the same specification of the 2010 MHz band and the same number of paired lots as the valid primary round or basic supplementary round bid for which the bid selection contained three or more individual lots;
- it must be for a bid selection containing one more individual lot than the valid primary round or basic supplementary round bid for which the bid selection contained three or more individual lots;
- it must be for a bid selection containing individual lots where the individual lots are divided into two divisions and each division contains at least two individual lots;
- the amount of the bid must comply with restrictions set out in regulation 20(6) of the proposed regulations.

3.55 The restrictions set out in regulation 20(6) of the proposed regulations relating to the amount of an additional supplementary bid are:

- the additional supplementary bid amount for the bid selection must not be less than the total round price for the bid selection in the first primary bid round;
- if the bidder has made a valid primary bid for a bid selection containing three or more individual lots but did not make a valid basic supplementary round bid for a bid selection containing three or more individual lots, the additional supplementary bid amount must not be greater than the amount of the highest valid primary bid which the bidder made for that bid selection;
- if the bidder has made a valid basic supplementary bid for a bid selection containing three or more individual lots, the additional supplementary bid amount must not be greater than that valid basic supplementary bid amount.

Procedure for primary bid rounds

3.56 Regulation 31 of the proposed regulations provides that prior to the start of each primary bid round Ofcom will notify each bidder of the date and times on that date within which bidders can make primary bids. They will also notify each bidder of the round price for the 2010 MHz band, paired lots and individual lots, and the eligibility limit of the bidder for the primary bid round as determined in accordance with regulation 26 of the proposed regulations.

3.57 The bidding for each primary bid round will be by means of an electronic auction system. To make a primary bid, a bidder must complete a form provided by Ofcom specifying a number of paired lots and individual lots and a specification of the 2010 MHz band it wishes to be included in a licence at the round price for each type of lot or the 2010 MHz band. The bidder must also specify the amount in thousands of whole pounds that the bidder is willing to bid for that licence (being the total of the round prices set by Ofcom for individual lots, paired lots, and the 2010 MHz band as applicable).

3.58 Bidders must submit their completed primary bid form to Ofcom using the electronic auction system by the time specified for the end of the round. Regulation 33 of the proposed regulations provides for provision of the form by an alternative method where Ofcom is satisfied that the bidder is prevented from being able to use the electronic auction system because of a technical failure or similar event.

- 3.59 If Ofcom does not receive a completed primary bid form from a bidder within the required time period for an auction round, it will allow an extension period, provided that the completed primary bid form is received by Ofcom no later than thirty minutes after the expiry of the round. The general rule is that a bidder will be allowed no more than two extension periods in respect of all of the primary bid rounds. However, if during a previous primary bid round, a bidder submitted a primary bid during the 30 minute time extension period but did so because of circumstances beyond the bidder's control and Ofcom is satisfied that this is the case, the bidder will be granted a further extension right.
- 3.60 Regulation 34 of the proposed regulations explains that where any primary bid form is incomplete or defective but Ofcom believes that it can ascertain the intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the primary bid form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct, the primary bid form will be rejected in its entirety and the primary bid submitted on the form will not be accepted as a valid primary bid.
- 3.61 If a bidder submits a primary bid which is not valid, Ofcom will, after the end of the primary bid round, notify the bidder and will explain why it is not valid.
- 3.62 After the end of a primary bid round and before the start of the subsequent primary bid round (or the start of the supplementary bids round if there are no further primary bid rounds), Ofcom will notify bidders of the total number of selections of the 2010 MHz band, paired lots and individual lots included in valid primary bids.
- 3.63 Ofcom may also, from time to time, decide to publish on their website the total number of selections of the 2010 MHz band, paired lots and individual lots included in valid primary bids submitted in the last primary bid round completed up to that time.
- 3.64 Where the amount of a primary bid made by a bidder is greater than twice the total amount the bidder has on deposit, regulation 37 of the proposed regulations provides that Ofcom may notify the bidder that they are required to pay a further sum in pounds as a deposit. The further sum required from a bidder will be an amount such that the bidder's total amount on deposit (subject to any amount forfeited) is not less than a proportion of the amount of the bidder's highest valid primary bid made before Ofcom gave notice to them. The proportion required will be specified by Ofcom in the same notice and must be paid into Ofcom's account via a same day electronic transfer. If the bidder fails to do this, their eligibility limit in any further primary bid rounds will be zero.

Procedure for supplementary bids round

- 3.65 Regulation 38 of the proposed regulations provides that prior to the start of the supplementary bids round Ofcom will notify each bidder of the date and times on that date within which bidders can make supplementary bids. Ofcom will also notify bidders of certain information relating to further deposits which bidders must make in accordance with regulation 44 of the proposed regulations (as described under paragraph 3.64), including the deadline by which such deposits must be paid.
- 3.66 The bidding in the supplementary bids round will be by means of the electronic auction system. To make a basic supplementary bid and/or an additional

supplementary bid a bidder must complete a form provided by Ofcom (a "supplementary bids form").

- 3.67 Bidders must submit their completed supplementary bids form to Ofcom using the electronic auction system by the time specified for the end of the round. Regulation 40 of the proposed regulations provides for the provision of the form by an alternative method where Ofcom is satisfied that the bidder is prevented from being able to use the electronic auction system because of a technical failure or similar event.
- 3.68 If the bidder is unable to submit their bids form by the time specified for the end of the round because of circumstances beyond their control, and Ofcom is satisfied that this is the case, Ofcom will accept submission of the form up to 60 minutes after the original deadline, in accordance with regulation 41 of the proposed regulations.
- 3.69 Regulation 42 of the proposed regulations explains that where a supplementary bids form is incomplete or defective but Ofcom believes that it can ascertain the intention of the bidder, Ofcom will ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the supplementary bids form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct and if the incompleteness or defect relates to the entire form, all of the bids on the form will be rejected. If the incompleteness or defect relates to just one or some of the bids on the form, only those bids will be rejected. Rejected bids will not be taken into consideration for the purposes of determining the winning combination of auction stage bids or the price payable by a winning auction stage bidder.
- 3.70 If a bidder submits a supplementary bid which is not valid, Ofcom will, after the end of the supplementary bids round, notify the bidder and explain why it is not valid.
- 3.71 Regulation 44 of the proposed regulations provides that each bidder must pay a further sum so that the bidder's total amount on deposit (subject to any amount forfeited) is not less than a proportion of the amount of the bidder's highest valid primary bid or the same proportion of the bidder's highest valid supplementary bid (whichever is the higher). The proportion required and the deadline by which the sum must be paid will be specified by Ofcom in a notice to bidders before the start of the supplementary bids round. The sum must be paid into Ofcom's account via a same day electronic transfer with accompanying information that identifies the bidder.
- 3.72 If on any occasion the bidder did not pay a further deposit in relation to a primary bid round by the deadline and in the way specified by Ofcom (as set out in regulation 36), the bidder will instead have to pay a further sum so that their total amount on deposit (subject to any amount forfeited) is not less than the full amount of their highest valid primary bid or highest valid supplementary bid (whichever is the higher).
- 3.73 Where a bidder fails to comply with these requirements, Ofcom will notify the bidder that they have been excluded from the award process and they will not receive a refund of their initial deposit or any other subsequent deposits. In addition, all of their primary bids and any supplementary bids will be deemed invalid and will not be taken into consideration for the purposes of determining the winning combination of auction stages bids or to determine the price payable by a winning auction stage bidder.

Determination of winning principal stage bids and conclusion of principal stage

- 3.74 Following the end of the supplementary bids round, Ofcom will determine the winning principal stage bids in accordance with regulation 45 of the proposed regulations. The winning principal stage bids will be the valid principal stage bids that comprise the winning combination of principal stage bids. The winning combination of principal stage bids will be the combination of valid principal stage bids having the highest total value of amounts bid.
- 3.75 A valid combination of principal stage bids is any combination of valid principal stage bids which meets the following conditions:
- it can contain no more than one valid principal stage bid per bidder;
 - the 2010 MHz band can be included in at most one of the bids;
 - it must be possible for Ofcom to assign a contiguous range of paired lots or individual lots for each of the bids that is equal to the number of paired lots or individual lots specified in each of the bids, such that each of the 38 lots which comprise the 2.6Ghz band is assigned no more than once;
 - where the combination of bids includes at least one additional supplementary bid, it must be possible for Ofcom to assign two contiguous ranges of individual lots so that the total number of individual lots in those ranges and the number of individual lots in each range is equal to the number specified by the bidder.
- 3.76 Where there is more than one combination of valid principal stage bids which result in the highest total value, the winning combination of principal stage bids will be that combination of principal stage bids which has the highest total number of eligibility points attributable to it. Where more than one of the combinations have the equal highest number of eligibility points associated with them, the combination which includes the fewest additional supplementary bids will take precedence, failing which Ofcom will use a method of random selection to determine the winning combination.
- 3.77 Ofcom will then determine an amount for each winning principal stage bid (a 'base price'), in accordance with Schedule 8 of the proposed regulations.
- 3.78 Following determination of the winning combination of principal stage bids and the base price, Ofcom will notify each bidder as to whether their bid was a winning bid or not. Ofcom will also notify winning bidders of the value of the base price for their winning bid and the further sum as a deposit that they will need to pay. Ofcom shall also refund to applicants who were not qualified (or withdrew) and to unsuccessful bidders the initial deposits and any further sums paid by way of deposit (except where these deposits have been forfeited). No interest which has accrued on the deposits will be paid.
- 3.79 Winning bidders will be required to pay a further sum to Ofcom by same day electronic transfer by a specified deadline so that the total amount on deposit is not less than the base price of the winning bid. Where a bidder does not do this, they will be excluded from the award process and will not receive any refunds for their deposits.
- 3.80 Following this, Ofcom will publish on their website the names of winning bidders, including any winning bidders who have been excluded from the auction for failing to

satisfy the final principal stage deposit requirements as set out in regulation 48 of the proposed regulations. Ofcom will also publish on their website the bid selection and any division of individual lots comprised in winning bids and the base price of the each winning bid.

Assignment of frequencies for the 2010 MHz band and for the 2.6 GHz band where only one winning principal stage bid includes paired lots or includes individual lots

- 3.81 In accordance with regulation 50 of the proposed regulations Ofcom will assign the frequencies between 2010 MHz and 2125 MHz to the bidder who submitted the winning bid for the 2010 MHz lot.
- 3.82 Where paired lots were selected in only one winning principal stage bid, the winner of the paired spectrum will be awarded the contiguous frequencies immediately above 2500 MHz and 2620 MHz corresponding to the number of paired lots that it won.
- 3.83 Where individual lots were selected in only one winning principal stage bid and that bid was not an additional supplementary bid, the bidder will be awarded the contiguous frequencies immediately below 2615MHz corresponding to the number of individual lots that it won, as well as the guard block between 2615 and 2620 MHz.
- 3.84 Where individual lots were selected in only one winning principal stage bid and that bid was an additional supplementary bid, the bidder will be awarded two ranges of contiguous frequencies, one immediately below 2615MHz and one immediately below 2690MHz (and the guard block at block 24). The larger range will always be the one containing frequencies immediately below 2615MHz.

Assignment of frequencies for the 2.6 GHz band where there is more than one winning principal stage bid that includes paired lots or includes individual lots

- 3.85 Regulation 52 of the proposed regulations provides for a further round of bidding to take place the "assignment stage round" where more than one winning principal stage bid included paired lots or included individual lots, to determine the frequencies to be assigned to each winning bidder.
- 3.86 Bidders are eligible to take part in the assignment stage if (i) they made a winning principal stage bid and (ii) at least one other winning principal stage bid contained the type of lot (i.e. paired lots and/or individual lots) included in that bidder's winning principal stage bid.
- 3.87 In other words, if more than one winning principal stage bid contained paired lots, all winning bidders whose winning bids contained paired lots will be eligible to participate in the assignment stage for paired lots. Similarly, if more than one winning principal stage bid contained individual lots, all winning bidders whose winning bids contained individual lots will be eligible to participate in the assignment stage for individual lots.
- 3.88 If a bidder's winning principal stage bid contained both paired and individual lots, and at least one other winning principal stage bid contained paired lots and one other winning principal stage bid contained individual lots, then that bidder will be eligible to participate in the assignment stage for both paired lots and individual lots.
- 3.89 A bidder in the assignment stage may only bid for a contiguous range of paired lots and/or a contiguous range (or ranges) of individual lots (corresponding to the

selection of paired lots and/or individual lots included in their winning bid) that Ofcom determines is available to the bidder (the "assignment stage options").

Assignment stage options

3.90 Regulation 54 of the proposed regulation sets out the methodology in accordance with which the assignment stage options will be determined.

3.91 In respect of paired lots, the assignment stage options will be those contiguous ranges of paired lots which satisfy the following conditions:

- the number of paired lots in that contiguous range is equal to the number of paired lots in the bidder's winning principal stage bid;
- the lowest 5 MHz of frequencies of a paired lot is such that:
 - each winning bidder that included paired lots is assigned a contiguous range of paired lots equal to the number of paired lots in its winning principal stage bid;
 - there is no overlap between the frequencies assigned;
 - the combination of all the paired lots assigned to winning bidders is a contiguous range;
 - that range starts with the frequencies at 2500 MHz.

3.92 In respect of individual lots, the assignment stage options will be those contiguous ranges, or combinations of contiguous ranges, of individual lots which satisfy the following conditions:

- where the bidder's winning principal stage bid was not an additional supplementary bid (i.e. it was a primary stage bid or a basic supplementary bid), the contiguous range of individual lots contains the same number of individual lots as were included in the bidder's winning principal stage bid;
- where the bidder's winning principal stage bid was an additional supplementary bid, the combinations of the two contiguous ranges of individual lots is such that:
 - the number of individual lots in one range is the same number of individual lots as were contained in one of the two divisions specified in the additional supplementary bid; and
 - the number of individual lots in the other range is the same number of individual lots as were contained in the other of the two divisions specified in that same bid;
- the lowest individual lot in each range is such that:
 - individual lots are awarded in contiguous ranges, or a combination of two separate contiguous ranges;
 - there is no overlap between the frequencies assigned;

- the combination of all individual lots assigned in the lower area (as defined in the proposed regulations) is a single contiguous range which includes the frequencies between 2610-2615 MHz but not lot "X" where X is the total number of paired lots in winning principal stage bids;
- the combination of all individual lots assigned in the upper area (as defined in the proposed regulations) is a single contiguous range which includes the frequencies between 2685 and 2690 MHz but not lot "Y" where Y is the sum of 24 plus the total number of paired lots in winning principal stage bids;
- where valid principal stage bids in the 2.6 GHz band contain only individual lots:
 - all individual lots are awarded in one contiguous range
 - each winning bidder is awarded a contiguous range of individual lots;
 - there is no overlap between the frequencies assigned; and
 - any of the frequencies between 2500 MHz and 2690 MHz may be assigned.

3.93 A bidder is not required to submit an assignment stage bid.

3.94 Only valid assignment stage bids will be taken into account to determine (i) the winning combination of assignment stage bids in accordance with regulation 64 of the proposed regulations, and (ii) the additional price payable by a winning bidder in accordance with regulation 66 and Schedule 9 of the proposed regulations.

Valid assignment stage bid

3.95 Regulation 56 of the proposed regulations explains that an assignment stage bid is a "valid assignment stage bid" if the following conditions are met:

- it must be made on a correctly assignment stage bid form provided by Ofcom;
- the bid must be for one of the contiguous ranges that Ofcom has determined are available to the bidder;
- it must be submitted using the electronic auction system (or an alternative method as provided for in regulation 59) and by the deadline specified by Ofcom.

Procedure for making an assignment stage bid

3.96 Regulation 53 of the proposed regulations provides that in order to make an assignment stage bid, a bidder must correctly complete an assignment stage bid form, specifying the extra amount they are willing to pay for the chosen range(s) in addition to their bid's base price.

3.97 Regulation 55 of the proposed regulations explains that each bidder that makes an assignment stage bid must pay a further sum as a deposit so that the total amount on deposit is not less than the sum of:

- the bidder's winning principal stage bid base price;
- the amount of the bidder's highest assignment stage bid for a contiguous range of paired lots; and

- the amount of the bidder's highest assignment stage bid for a contiguous range or ranges of individual lots.
- 3.98 Where the bidder does not do this, all of their assignment stage bids will be deemed to be invalid and will not be taken into account for the purpose of determining the winning combination of assignment stage bids and the additional price payable by a winning assignment stage bidder.
- 3.99 In accordance with regulation 57 of the proposed regulations, before the start of the assignment stage round, Ofcom will notify each winning principal stage bidder of the contiguous ranges of paired lots or individual lots that are available to them, and the date on which (and times on that date within which) the assignment stage round will take place.
- 3.100 Bidders must submit their completed assignment stage bid form to Ofcom using the electronic auction system by the time specified for the end of the round. Regulation 59 of the proposed regulations provides for the provision of the form by an alternative method where Ofcom is satisfied that the bidder is prevented from being able to use the electronic auction system because of a technical failure or similar event
- 3.101 If the bidder is unable to submit their bids form by the time specified for the end of the round because of circumstances beyond their control, and Ofcom is satisfied that this is the case, Ofcom will accept submission of the form up to 30 minutes after the original deadline, in accordance with regulation 60 of the proposed regulations.
- 3.102 Where an assignment stage bid form is incomplete or defective but Ofcom believe they can ascertain the intention of the bidder, Ofcom will, in accordance with regulation 61 of the proposed regulations, ask the bidder concerned to confirm that Ofcom's understanding is correct. Where the bidder confirms that Ofcom's understanding is correct, the assignment stage bid form will be accepted in its entirety on the basis of that understanding. Where the bidder does not confirm that Ofcom's understanding is correct and if the incompleteness or defect relates to the entire form, all of the bids on the form will be rejected. If the incompleteness or defect relates to just one or some of the bids on the form, only those bids will be rejected. Rejected bids will not be taken into consideration for the purposes of determining the winning combination of assignment stage bids or the additional price payable in respect of a winning assignment stage bid.
- 3.103 If a bidder submits an assignment stage bid which is not valid, Ofcom will, after the end of the assignment stage round, notify the bidder and explain why it is not valid.
- 3.104 Where a bidder does not make a valid assignment stage bid for one of the contiguous ranges available to them, the bidder will be deemed to have made a valid assignment stage bid of zero for the purpose of determining the winning combination of assignment stage bids or the additional price payable in respect of a winning assignment stage bid.
- 3.105 Regulation 64 of the proposed regulations provides that Ofcom will determine the winning assignment stage bids separately for paired lots and individual lots. In both cases, the winning assignment stage bids will be those valid assignment stage bids that comprise the winning combination of assignment stage bids. The winning combination of assignment stage bids will be the valid combination of assignment stage bids having the highest total value of amounts bid.

- 3.106 In respect of both paired lots and individual lots, a valid combination of assignment stage bids is any combination of valid assignment stage bids where:
- there is one valid assignment bid from each winning bidder; and
 - there is no overlap between the frequency ranges comprised in the combination.
- 3.107 In respect of paired lots, the winning combination of all paired lots awarded consists of one single contiguous range of paired lots, beginning with the frequencies between 2500 and 2505 MHz.
- 3.108 In respect of individual lots, the winning combination of single lots is such that:
- where at least one winning principal stage bid contains paired lots:
 - the combination of all individual lots assigned in the lower area is a single contiguous range which includes the frequencies between 2610-2615 MHz but not lot "X" where X is the total number of paired lots in winning principal stage bids; and
 - the combination of all individual lots assigned in the upper area (as defined in the proposed regulations) is a single contiguous range which includes the frequencies between 2685 and 2690 MHz but not lot "Y" where Y is the sum of 24 plus the total number of paired lots in winning principal stage bids;
 - where no winning principal stage bids contain paired lots (and so no paired lots are to be awarded):
 - all individual lots are assigned in one contiguous range;
 - each winning bidder is assigned a contiguous range of individual lots;
 - there is no overlap between the contiguous ranges of individual lots awarded;
 - any of the thirty-eight individual lots between 2500MHz and 2690 MHz may be awarded, and
 - any individual lots which are not assigned (and which therefore remain unsold) form a contiguous range of individual lots.
- 3.109 Regulation 65 of the proposed regulations provides that the frequencies between 2615-2620 MHz (lot 24) and 2685-2690 (lot 38) will be assigned as follows where winning bids contain both paired lots and individual lots:
- where the frequencies between 2610-2615 MHz (lot 23) are assigned as an individual lot, Ofcom will assign the adjacent frequencies between 2615-2620 MHz (lot 24) to the bidder who is assigned lot 23;
 - where the frequencies between 2560-2565 MHz (lot 13) and 2680-2685 MHz (lot 37) are assigned as a paired lot, and the frequencies between 2565-2570 MHz (lot 14) are assigned as an individual lot, Ofcom will assign the frequencies between 2685-2690 (lot 38) to the bidder who is assigned the paired lot which includes lot 37.

- 3.110 If there is a tie (i.e. two valid combinations with the equal highest value), the combination of assignment stage bids with the fewest number of additional supplementary bids will take precedence, failing which Ofcom will use a random selection method to determine the winning combination.
- 3.111 Ofcom will then determine an amount for each winning assignment stage bid ("additional price") in accordance regulations 66 and Schedule 9 of the proposed regulations.
- 3.112 Following this, Ofcom will notify each winning bidder of the frequencies that they have won and the additional price they will need to pay.

Grant of licences

- 3.113 Regulation 68 of the proposed regulations provides that the licence fee payable by a winning bidder will be an amount equal to the total of the base price and the additional price for each winning assignment stage bid made by the bidder.
- 3.114 Regulation 69 of the proposed regulations sets out the procedure where, after completion of the assignment stage, the amount of the bidder's deposit is less than the amount of the licence fee. Ofcom will notify the bidder of the date and time by which it must remit the difference to Ofcom. Where the bidder pays this sum, Ofcom will grant the bidder a licence for the frequencies assigned to the bidder under Chapter 6 and Chapter 7 of the proposed regulations. The technical restrictions to which frequencies will be subject (as set out in the licences awarded) will depend on whether they were awarded as paired lots or individual lots. If the bidder does not pay the required sum, then it will not be entitled to the grant of a licence or receive a refund of any of its deposit.
- 3.115 Regulation 70 of the proposed regulations sets out the procedure where, after completion of the assignment stage, the amount of the bidder's deposit is greater than or equal to the licence fee. Ofcom will grant the bidder a licence for the frequencies assigned to the bidder under Chapter 6 and Chapter 7 of the proposed regulations. Ofcom will then refund the difference (if any) between the amount of the bidder's deposit and the licence fee (but not any interest accrued on the deposit).
- 3.116 After the grant of licences and payment of refunds to winning bidders, Ofcom will complete the award process by publishing the details of all valid principal stage bids and all valid assignment stage bids made by each bidder, the names of the persons to whom the licences were granted, the details of the frequencies for which those licences were granted and the details of the licence fees paid. Ofcom will also publish the names of any bidders who would have been assigned frequencies (including details of those frequencies and the licence fees which would have been payable), but who were excluded from the award for failing to comply with the deposit requirements set out in regulation 69 of the proposed regulations.

Activity rules

- 3.117 Part 6 of the proposed regulations sets out the activity rules that apply to applicants who have qualified to bid and to bidders.
- 3.118 Where Ofcom is satisfied that any of the events set out in regulation 74 (and as set out below in paragraph 3.120) are taking or have taken place and would materially affect the outcome of the award process, the bidder or applicant concerned will forfeit all deposits and may also be excluded from the award process.

- 3.119 Regulation 73 of the proposed regulations provides that where a bidder is excluded from the award process during the principal stage, all of that bidder's principal bids will be deemed invalid and will not be taken into account for the purposes of determining the winning combination of principal stage bids or the base price payable by a winning principal stage bidder. Where a bidder is excluded during the assignment stage all their assignment stage bids will be deemed invalid and will not be taken into account for the purposes of determining the winning combination of assignment stage bids or the additional price payable by a winning principal stage bidder.
- 3.120 Regulation 74 of the proposed regulations sets out the events that may result in a bidder forfeiting their deposit(s) or being excluded from the award process. These are:
- the submission of false or misleading information to Ofcom;
 - colluding with another person to distort the award process;
 - acting in way that is likely to distort the award process;
 - disclosure of confidential information to someone who is not a member of the bidder group (subject to certain exceptions);
 - obtaining confidential information about other bidders;
 - receiving services in relation to the award process from any person who is assisting Ofcom with the award process; and
 - a director or employee of more than one bidder group taking part in the preparation of, or receiving confidential information regarding, more than one bidder group's participation in the award process; or
 - changes to the membership of the bidder group, except under circumstances prescribed in the proposed regulations.

Miscellaneous

- 3.121 Part 7 of the proposed regulations set out other miscellaneous provisions, including a general power of exclusion where Ofcom determines in its opinion that the grant of a licence to a bidder would be prejudicial to the interests of national security or that a bidder is not a fit and proper person to hold a licence.
- 3.122 Regulation 76 of the proposed regulations provides details of Ofcom's contact details for the purposes of receiving any notification from a bidder or applicant in accordance with the award process. It also states that notifications to Ofcom in accordance with the proposed regulations may be made by fax, personal delivery or email.
- 3.123 Regulation 77 of the proposed regulations provides that where Ofcom determine that it is impractical for any reason for any document to be delivered (or any action to be completed) by a deadline or to a location specified in the proposed regulations, they may change these. If so, they will take all reasonable steps to inform bidders of the revised deadline or location.
- 3.124 Regulation 78 of the proposed regulations provides that where Ofcom determine that it would be impracticable to start or end a round at the times notified to bidders, or to

use the electronic auction system, Ofcom will take all reasonable steps to notify bidders of revised timings and an alternative method of participating in the auction.

- 3.125 Regulation 79 of the proposed regulations provides that where an auction round is in progress and Ofcom determine that it is not possible to continue the round due to technical failure (or an event with similar effect), Ofcom will take all reasonable steps to notify bidders of this. Ofcom will then disregard all bids made in that round and resume the award procedure from the end of the previous auction round (or, if there was no previous round, the start of the first primary bid round).
- 3.126 If it is not possible to continue the award process due to technical failure (or an event with similar effect), Ofcom will determine whether it is necessary, in order to secure a fair and efficient outcome to the award process, to disregard bids made in one or more rounds of the auction and will then resume the award procedure from the end of the latest round for which bids are not disregarded (or to resume from the start of the first primary bid round).
- 3.127 Regulation 80 of the proposed regulations provides that Ofcom has a general discretion to refund, as it sees fit, any sums paid to it in accordance with any provision of the proposed regulations.

Section 4

General effect of the proposed Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

The legislative framework

- 4.1 These regulations are to be made under sections 30(1) and (3) and 122(7) of the Wireless Telegraphy Act 2006. Section 30 implements Article 9(3) and (4) of the Directive of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (2002/21/EC). Under section 30(1) of the Act Ofcom may by regulations authorise the transfer to another person by the holder of a wireless telegraphy licence, or the holder of a grant of recognised spectrum access, of rights and obligations arising by virtue of such a licence or grant.
- 4.2 Under section 30(4) and (5) transfers that fail to comply with these regulations (or with certain conditions in licences) will be void.
- 4.3 A draft of the regulations which Ofcom proposes to make is set out at Annex 6.
- 4.4 These Regulations amend the existing regulations on spectrum trading: the Wireless Telegraphy (Spectrum Trading) Regulations 2004 (SI 2004/3154 as amended by SI 2006/339, 2006/1807, 2007/380, 2007/3387 and 2008/688) (the "2004 Regulations").

The existing 2004 Regulations on spectrum trading

- 4.5 The 2004 Regulations and the various amending regulations are available at www.opsi.gov.uk.
- 4.6 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at www.ofcom.org.uk.

Total and partial transfers under the 2004 Regulations

- 4.7 Regulation 4(1) of the 2004 Regulations authorises the transfer of all rights and obligations arising by virtue of the wireless telegraphy licences of the classes and associated frequencies listed in the Schedule.
- 4.8 Regulation 6 of the 2004 Regulations authorises the transfer of rights and obligations relating to parts of the licensed range of frequencies and/or part of the licensed geographical area for licences of certain classes listed in the Schedule.
- 4.9 Under the 2004 Regulations two types of transfer are authorised by regulation 4(1) and regulation 6 (regardless of whether the transfer is "total" or "partial").
- 4.10 Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer ("outright transfer").

- 4.11 Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer (“concurrent transfer”).
- 4.12 Under an outright transfer, the rights and obligations being traded are transferred in their entirety from one party to another. Thus the original licensee (that traded the spectrum) no longer has any rights to use the traded spectrum.
- 4.13 Concurrent transfers, on the other hand, enable licensees to share rights to use spectrum as they see fit over a period of time without the need to undertake further transfers between themselves to effect that sharing.
- 4.14 Section 30(2)(a) and (c) of the Act determine the sorts of transfers which Ofcom may authorise in the regulations. To be sure to permit the maximum possible types of transfer Ofcom decided to mirror in the 2004 Regulations the wording used in that section.

Circumstances where transfers are not authorised under the 2004 Regulations

- 4.15 Regulations 4(1) and 6 of the 2004 Regulations which authorise transfers are both subject to regulation 7. Regulation 7 sets out particular circumstances in which transfers are not authorised.
- 4.16 These are:
- Where the licence holder (or all of the concurrent holders) and the transferee have not consented to the transfer;
 - Where licence fees are outstanding or where the licence holder has opted to pay Ofcom its licence fee by instalments. In the latter situation, the licensee could make payment for outstanding instalments and then approach Ofcom with a proposed transfer;
 - Where Ofcom has served notice of a proposal to revoke or vary the licence but that revocation or variation has not yet been made, or where the licence holder(s) has requested OFCOM to revoke or vary the licence but that revocation or variation has not yet been made;
 - Where Ofcom has not consented to it being made.

Notification of a trade under the 2004 Regulations

- 4.17 Once a transfer has been agreed, the licence holder or concurrent holders must notify Ofcom about the proposed trade (regulation 8(1) of the 2004 Regulations). Once all the information is provided, Ofcom will check the documentation in order to ensure that the mandatory information requirements have been met and that the proposed transfer is consistent with the information held by Ofcom. Ofcom will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence (regulation 8(2) of the 2004 Regulations).

Giving consent to a trade under the 2004 Regulations

- 4.18 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 9 of the 2004 Regulations) take into account the following factors:

- whether the holder (or concurrent holders) of the licence is/are in breach of the terms of the licence;
- whether the transferee (and the transferor in the case of a partial transfer) is able to meet the terms of the licence;
- whether the transferee is able to meet any criteria in relation to the persons to whom a wireless telegraphy licence may be granted;
- whether it is requisite or expedient for Ofcom to refuse consent because Ofcom has to meet national security concerns, comply with European Community or international obligations or a direction by the Secretary of State.

4.19 In some circumstances Ofcom may be able to consent to a transfer but give a direction to the parties to the trade that the transfer will only be put into effect when certain of the above matters are resolved. This is permitted by regulation 10 of the 2004 Regulations.

Enacting the transfer under the 2004 Regulations

- 4.20 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.
- 4.21 In order to effect a transfer, the transferor's licence will need to be surrendered. In the case of an outright transfer, Ofcom will then grant a new licence on the same terms and conditions to the transferee (Regulation 8(5) of the 2004 Regulations).
- 4.22 Once the transfer has been effected, Ofcom will update its public notice of the transfer to indicate that the transfer was completed and the public register, as described in the Trading Regulations, to ensure that the new licence holdings are reflected.

The amendments to the 2004 Regulations which are proposed in the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008 (the "proposed amending regulations")

- 4.23 The proposed amending regulations would amend the 2004 Regulations to permit all types of transfers (described in the 2004 Regulations) of wireless telegraphy licences of the class Spectrum Access for the frequencies 2010-2125 MHz and 2500-2690 MHz.
- 4.24 Outright, partial and concurrent transfers which are permitted by the 2004 Regulations for other licences would also be permitted for this licence class (Spectrum Access) and these frequencies. These include:
- outright total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) are transferred in entirety from one party to another;
 - concurrent total transfers, i.e. transfers (of all of the rights and obligations arising under a licence) to a third party which result in a concurrent holding of those rights and obligations by the transferor and the transferee(s);
 - outright partial transfers, i.e. outright transfers of some of the rights and obligations arising under a licence to a third party; and

- concurrent partial transfers, i.e. transfers of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s).
- 4.25 The circumstances where transfers are not authorised and the existing rules in the 2004 Regulations on the process for notification, consent and enactment of transfers described above, shall apply to transfers of these licences.

Section 5

General effect of the proposed Wireless Telegraphy (Register) (Amendment)(No.2) Regulations 2008

The legislative framework and the existing regulations

- 5.1 Under section 31(1) of the Wireless Telegraphy Act 2006 Ofcom may, by regulations, make provision for the establishment and maintenance of a wireless telegraphy register. Under section 31(2) of the 2006 Act Ofcom may only include relevant information in the register if it is information of a description prescribed by regulations.
- 5.2 The proposed regulations amend the Wireless Telegraphy (Register) Regulations 2004 (SI 2004/3155 as amended by SI 2006/340, 2006/1808, 2007/381, 2007/3389 and 2008/689) (the "2004 Regulations") which provided that Ofcom shall establish and maintain a register of relevant information and prescribed the relevant information.
- 5.3 The 2004 Regulations and the various amending regulations are available at www.opsi.gov.uk.
- 5.4 Ofcom's notice of its proposal to make the 2004 Regulations and a statement explaining the decisions made in the light of feedback received in response to the notice is available at www.ofcom.org.uk.

The amendments to the 2004 regulations which are proposed in the draft Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

- 5.5 A draft of the regulations which Ofcom proposes to make is set out at Annex 7. The proposed regulations add a category of licences (those to be awarded at auction under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008) for which information will be published on the register.
- 5.6 The register provides basic information about licensees such as names, contact details, class of licence, the band(s) of frequencies and, where appropriate, the geographical area of operation. It does not provide precise details about individual transmitters due to security concerns.

Section 6

General effect of the proposed Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2008

The legislative framework

- 6.1 Under section 29(1) of the Wireless Telegraphy Act 2006 Ofcom may, if it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implements Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive).
- 6.2 Under section 29(2) an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 6.3 Where Ofcom make an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to who licences will be granted.

The proposed regulations

- 6.4 A draft of the proposed order is set out at Annex 8.
- 6.5 In relation to the award of licences in the licence class Spectrum Access for the frequencies 2010-2025 MHz and 2500-2690 MHz, Ofcom will grant a limited number of licences, depending on the outcome of the award process to be held under the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 (see sections 2 and 3 of this Notice for more information on the proposed award process).
- 6.6 The proposed order consequently provides that Ofcom will only grant a limited number of licences for these frequencies, the precise number being determined by the application of the procedures set out in the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2008. The proposed order will be made and enter into force at the same time as the Wireless Telegraphy Licence (Licence Award) (No. 2) Regulations 2008.

Section 7

Regulatory Impact Assessments

- 7.1 In accordance with government practice, where a statutory regulation is proposed, a Regulatory Impact Assessment (RIA) must be undertaken. The analysis presented in this Annex represents a Regulatory Impact assessment, as defined in section 7 of the Communications Act 2003 (the "2003 Act").
- 7.2 You should send any comments on this impact assessment to us by the closing date for this consultation. We will consider all comments before deciding whether to implement our proposals.
- 7.3 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policymaking. This is reflected in section 7 of the 2003 Act, which means that generally we will carry out impact assessments where proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in our activities. However, as a matter of policy we are committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines: "Better policy-making: Ofcom's approach to impact assessment", which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008

Proposal, purpose and intended effect

- 7.4 In the Statement published in parallel with this document⁶, Ofcom sets out its decision to proceed with an auction of the Bands. The purpose of these regulations is to provide the necessary legal framework within which Ofcom can proceed with the auction. The auction has been designed in such a way as to maximise flexibility, promote competition and provide sufficient information for bidders whilst having regard to the need to minimise complexity and the risks of anti-competitive behaviour.

Introduction

- 7.5 This RIA provides a summary of our analysis of the key issues covered by each of the previous Impact Assessments as well as our conclusions on these issues, particularly where the issues relate to decisions on auction rules and procedures as set out in the Statement and reflected in the draft regulations. The RIA also considers comments received in response to our Auction Rules Consultation and sets out the changes we have made in the light of these comments.
- 7.6 The proposed regulations are designed to give effect to the policy decisions set out in the Statement on the award of the 2.6 GHz and 2010 MHz bands published in parallel with this Notice.

⁶ A link to the Statement is available on the spectrum awards section of the Ofcom website at <http://www.ofcom.org.uk/radiocomms/spectrumawards/>.

Packaging options

7.7 In the 2.6 GHz band, the two main issues are the size of lots which should be auctioned and the planning of the band in terms of the split between paired lots and individual (unpaired) lots. In the 2010-2025 MHz band, the issue is the size (and therefore number) of the lots which should be offered. The alternative options for each issue are discussed in the table below.

Option	Advantages	Disadvantages
<i>2.6 GHz - size and number of lots</i>		
5 MHz lots (paired or individual)	<p>5 MHz is the smallest amount of spectrum which all potential uses of the spectrum identified by the Consultants can use.</p> <p>Allows flexibility and is mostly likely to lead to an efficient outcome - research and interviews indicate that some bidders could feasibly require any multiples of 5 MHz lots from 5 to at least 50 MHz.</p> <p>We do not have to predetermine the optimum package size that bidders may require.</p> <p>Consistent with outcome of European regulatory work on technical conditions.</p>	None identified.
10 MHz lots or greater (paired or individual)	<p>Larger lots, reducing the number of lots could potentially increase the simplicity of the auction. E.g. in a package auction format, the number of packages that could be bid on would be smaller.</p> <p>Further predetermining the packages to be bid on could eliminate the need for package bidding entirely. It could also potentially reduce the number of guard bands required.</p>	Large lots or predetermined packages will greatly limit bidders' flexibility to bid on the packages they want, and it will be impossible to enable all bidders to express demand for the packages they might want.
<i>2.6 GHz - band plan, division between paired and individual (unpaired) lots</i>		
Auction decides split, 120 MHz duplex spacing maintained	Market demand determines split of spectrum between paired and unpaired uses. Allowing this flexibility will support the objective of seeking to allocate the spectrum to those that can create greatest value from its use.	Introduces one extra potential adjacency between paired and unpaired spectrum, requiring one more 5 MHz restricted block. However, this would only happen if the resulting allocation was of higher value, as determined by bids submitted in the auction (i.e. it would only occur if this was economically efficient).

		Potential for interference from TDD terminals into FDD terminals could reduce the utility of FDD spectrum (on the basis that the market would not support UK-specific handsets). However, the analysis summarised in section 5 indicates that this should not be a material issue.
Auction decides split, alternative duplex spacings considered	Efficient outcome - market determines split of spectrum between paired and unpaired uses. No additional division between paired and unpaired spectrum is required if demand for unpaired spectrum > 50 MHz.	It is likely that an alternative duplex spacing would add significantly to equipment costs.
CEPT band plan - 2x70 MHz paired lots, 50 MHz individual (unpaired) lots	Would guarantee benefits of harmonisation in terms of European equipment market and roaming benefits if all of Europe follows CEPT band plan. Minimises risk of interference (and consumer detriment) from TDD mobile terminals transmitting in parts of the band being used for FDD downlink in the UK.	Risks a material inefficiency in the division of spectrum between paired and unpaired by not allowing flexibility. The analysis summarised in section 5 indicates that risk of terminal to terminal interference should not be a material issue.
<i>2010-2025 MHz - size and number of lots</i>		
One single 15 MHz lot	Fits the expected needs of users well. Allows potential users requiring less than 15 MHz to agree how they could coordinate to use the spectrum, rather than us setting one-size fits all restrictions on the use of smaller lots.	If there are bidders who only require 5 MHz, they will face transaction costs in trying to acquire the spectrum either by bidding with similar parties in the auction, or acquiring part of the spectrum in the secondary market.
Lots of 5 MHz	Reduces potential transaction and coordination costs for bidders that only want 5 MHz of spectrum. However, depending on the auction design, such bidders may need to coordinate anyway to overcome threshold risks to collectively displace bidders for several blocks.	The utility of the spectrum would be substantially reduced because we will have to impose as a default very restrictive usage rights in order to allow separate uses to coexist. This consideration is compounded by the requirement to avoid interference into possible future CGC operation below 2010 MHz which means that the bottom 5 MHz of this band may have restricted use on practice (as explained in the Statement).
<i>Both bands – Geographical extent of lots</i>		
UK-wide lots	It is more spectrally efficient to allocate spectrum across the UK as a whole rather than at a more	Potential bidders for spectrum at a sub-UK level will find it difficult to participate in the auction

	granular level due to the need to leave either spectrum unused and/or leave areas without coverage between different geographical services in order to avoid interference between providers in adjacent regions	
Regional lots	Would allow us to satisfy demands for spectrum on a regional basis.	<p>Difficult for the regulator to determine the appropriate geographical areas for non-UK licences</p> <p>Unclear how potentially conflicting views from likely candidates for use would be resolved ahead of an award.</p> <p>Geographical segmentation may also increase the likelihood of unassigned licences which would not promote efficient use of the spectrum.</p> <p>Difficult to rebuild a national use from regionally awarded licences.</p> <p>We received no firm expressions of interest in regional lots.</p>

7.8 Our conclusions are as follows:

- We consider that the evidence is strongly in favour of packaging the 2.6 GHz award as 5 MHz lots (paired and unpaired). This allows maximum flexibility for all potential bidders, and the costs of any additional auction complexity are likely to be small compared to the potential gains in efficiency this will bring compared to the alternatives.
- The band plan for 2.6 GHz in terms of the split between paired and individual (unpaired) lots should be determined in the auction, whilst the 120 MHz duplex spacing specified in the CEPT band plan is maintained. This will still allow the benefits of harmonisation (in terms of scale of equipment market and roaming) to be accessed, and that there are considerable benefits to giving the market the flexibility to determine the division of the spectrum between paired and individual lots.
- It is better to package the 2010-2025 MHz band as one single lot. The alternative of offering lots of 5 MHz would mean that we would have to set unduly restrictive rights on this spectrum, severely restricting the services that could be offered.
- We consider that the spectrum should be offered on a UK-wide basis for both bands.

Auction design options

Linkage between 2010 and 2.6 GHz

7.9 We considered the option of separating the award of 2010-2025 MHz versus linking it to 2.6 GHz.

7.10 These options are discussed in the table below.

Option	Advantages	Disadvantages
Link this award to 2.6 GHz rather than separate them	<p>This spectrum may be a substitute for 2.6 GHz for some uses and bidders will face substitution risks if the awards are separated.</p> <p>The 2010 MHz band is not currently used and so awarding this band as soon as possible is likely to be compatible with our duties. Given our decision to award the 2.6 GHz band as soon as possible, there are significant cost and practical advantages in holding that awards as part of the same process.</p>	<p>Linking the awards could create opportunities for strategic behaviour (e.g. parking demand on the 2010 lot during the primary bid rounds in the Principal Stage of the auction). However, the risk of such behaviour leading to a sub-optimal outcome is low.</p>

7.11 We have decided to link the award of this spectrum to the 2.6 GHz award. The efficiency advantages outweigh the minor risks of enabling a minor opportunity strategic bidding behaviour.

Key choices

7.12 There are a number of different auction formats that can be used for the award of spectrum. In selecting the appropriate format for the proposed auction of these bands, it is helpful to consider the key design options set out in the table below.

Option	Advantages	Disadvantages
<i>Simultaneous or sequential award of lots</i>		
Simultaneous award	Allows bidders to manage aggregation and substitution risk across lots.	
Sequential award		Introduces significant substitution risks and aggregation risks given the substitutability and complementarity of the available lots.
<i>Single round (sealed bid) or multiple rounds (ascending bids)</i>		
Single round (sealed bid)	<p>Simpler to administer</p> <p>May encourage participation where there are significant bidder asymmetries and related concerns about the level of competition in the auction.</p>	<p>Does not enable bidders to gain information on lot values from other bidder's behaviour.</p> <p>Bidders unable to switch their demand to different lots in response to changes in relative prices</p> <p>Bidders could be required to</p>

		submit a large number of bids in respect of all the packages they might be interested in.
Multiple rounds (ascending bids)	<p>Bidders are able to observe aggregate demand over the course of multiple rounds, thereby reducing common value uncertainty.</p> <p>Allows bidders to switch their demand to different lots in response to changes in relative prices, enabling them to avoid substitution risks.</p>	More involved than a single round award (but the multi-round process is easy for bidders to understand).
<i>Separate bids on individual lots or combinatorial (package) bidding</i>		
Separate bids on individual lots	Allows bidders considerable flexibility to shift demand across lots in response to changes in prices, and provides some opportunity for bidders to monitor their aggregation risks.	<p>Bidders lack certainty over whether, and at what price, they might win complementary lots.</p> <p>As demand for lots diminishes towards the end of an auction, there is a risk that bidders may become stranded with unwanted lots.</p>
Combinatorial (package) bidding	As long as bidders bid in line with their preferences, there is no aggregation risk of being stranded with unwanted lots.	<p>Risk exists that smaller bidders, who might want only individual lots, may be unable to adequately coordinate their demand.</p> <p>May be an incentive for individual small bidders in any ad hoc coalition which forms to bid untruthfully to seek to "free ride" on other members (although this "free-rider" risk is largely addressed in this auction design by the use of generic lots during a clock phase of the auction, by the use of a second price rule which encourages bidders to bid their full value in the supplementary bid round and by our decision not to release information on individual bids).</p>
<i>Generic or specific lots</i>		

Generic lots	<p>The generic lot approach makes it much easier to allow bidder demand to drive the allocation between paired and unpaired spectrum and do so in a way that is both less complex than a specific lot approach and likely to lead to a more efficient outcome.</p> <p>Particularly appropriate where bidders are likely to be interested in packages of more than one lot as the auctioneer can guarantee that most (if not all) bidders will receive contiguous frequencies.</p>	Requires follow-up process to assign specific spectrum packages
Specific lots	Enables bidders to accurately express the differences in valuations between lots, which is appropriate when there is a material difference in value between lots	<p>Significantly more complex than award with generic lots.</p> <p>Much greater risk of award leading to inefficient spectrum packaging.</p>
<i>Clock prices or bidder nominated prices</i>		
Clock prices	<p>Simplifies process for bidders - bidders need only express demand for their preferred package of lots at each round, rather than having to express different prices for a number of alternate packages in which they might be interested.</p> <p>Reduces complexity of both the auction rules and the algorithms used to establish the identity of the (provisional) winning bids at the end of each round and the starting prices for individual lots in the next round.</p> <p>Reduction in complexity particularly helpful for smaller bidders.</p>	
Bidder nominated prices		More complex to administer particularly in the context of package bidding and more complex for participants

- 7.13 The above factors lie behind our decision to use simultaneous, multiple round ascending auction (SMRA) process with rising clock prices and combinatorial bidding based on the use of generic lots. Further explanation is given in section 7 of this Statement.
- 7.14 When using generic lots there is a need for a subsequent process to convert the generic lots into assignments at specific frequencies. The options for how this subsequent process is conducted are covered in the table below.

Option	Advantages	Disadvantages
<i>Competitive or administrative assignment stage</i>		
Competitive bidding	Allows bidders to express differences in the value of where in the band lots are located, and is relatively quick, simple and cheap to operate.	
Administrative approach	Simplest approach if bidders are indifferent to where they are located in the band. However, this is unlikely to be the case.	Unlikely to deliver an efficient allocation if bidders place different values on different frequency assignments as administrative process cannot capture this.
<i>Single round, sealed bid process or open multi-round process</i>		
Single round, sealed bid process	Simpler process. Appropriate when there is little difference in the value of lots at different frequencies.	Does not enable a process of price discovery through bidder's ability to observe behaviour of others in a multi-round process
Open multi-round process	Can enable a process of price discovery through bidder's ability to observe behaviour of others from round to round.	Significantly more complex to implement and of limited benefit since the differences in value between lots will be specific to the bidder with little common value uncertainty. Moreover, the analysis in section 5 of this Statement indicates that there should not be large differences in the values of lots at different frequencies.

- 7.15 We have decided to use a competitive assignment stage as bidders are expected to place some difference in value between lots at different frequencies. However, a single stage sealed bid process is appropriate since these differences are not likely to be large, nor is there significant common value uncertainty in this respect.

Detailed options relating to auction design rules and procedures

- 7.16 In the Discussion Document and the Auctions Rules Consultation, we considered some of the more detailed options relating to auction design, rules and procedures. Some of these options were related to new proposals we made, while consideration of other options was prompted by responses to the December 2006 Consultation

and the Discussion Document. The key points on each of these options are covered in table form below.

Extra bidding options

Option	Advantages	Disadvantages
Whether or not to allow bidders for a split assignment of individual (unpaired) lots to specify where each part of the split award is located	Allowing this extra bidding option would enable bidders to express their preferences more exactly for unpaired lots in the upper and lower unpaired areas	<p>Allowing this option would require the creation of two types of unpaired lot which would add considerable complexity to the auction design. In turn, greater complexity could increase the risk that bidders do not fully express their preferences for different combinations of spectrum, potentially weakening the efficiency of the award.</p> <p>Could make it more difficult to fit combinations of bids into the available spectrum when there are split supplementary bids and could therefore increase the chances of having unsold spectrum.</p> <p>Differences in value of unpaired spectrum between the upper and central areas are likely to be sufficiently small that they can be treated as one category of generic lots.</p>

<p>Whether or not to allow paired spectrum bidders to make bids contingent on individual (unpaired) lots being awarded in top part of band</p>	<p>Allowing this extra bidding option would in principle allow the auction to determine the most efficient allocation of the spectrum given bidders' assessment of the impact of blocking between FDD and TDD terminals in the upper part of the band.</p>	<p>The technical analysis discussed in Section 5 of our Statement indicates that the impact of blocking (terminal to terminal interference) is unlikely to be significant. Therefore, there is limited risk that not allowing contingent bids would lead to an inefficient award.</p> <p>Allowing contingent bids creates a risk that bidders could bid less than their true values (for paired/FDD spectrum) in order to drive an outcome that restricts unpaired use in the upper part of the band. This, in turn, creates a risk that the scope for the award to deliver innovation and new competition could be reduced (because of a reduced scope for unpaired/TDD users to access spectrum)</p> <p>Introduces additional complexity for bidders which can also lead to inefficient outcomes of the award if bidders do not fully express their contingent preferences for packages in the award.</p>
<p>Whether or not to allow bidders in the Assignment Stage to make bids contingent on who occupies neighbouring spectrum</p>	<p>Allowing this option would let bidders express how their valuations would be affected by the externalities between them and their neighbours</p>	<p>Including this facility would create opportunities for some bidders to influence which spectrum their competitors would receive. This creates undue risks to the optimal use of the spectrum and is in itself a potential competition issue</p> <p>This change would significantly increase the complexity of the auction.</p>

7.17 Our conclusion for each of these options is that the costs significantly outweigh the benefits and, therefore, we have not implemented these changes.

Information release

Option	Advantages	Disadvantages
--------	------------	---------------

During the primary bid rounds

<p>1. Aggregate demand for each category of lot only</p>	<p>Allows bidders to track demand for different categories of lot and so aid in price discovery and reduction of common value uncertainty.</p> <p>By not releasing information on individual bids it will become very difficult for bidders to bid strategically in a way designed to reduce competition.</p>	<p>Benefits from reducing common value uncertainty might not be as high as providing more information on bids.</p>
<p>2. Anonymised bids without labels</p>	<p>Aids in price discovery to a greater degree than simply publishing aggregate demand</p>	<p>There is an increased risk of bidders being able to bid strategically, and coordinate through signalling, so as to reduce competition.</p>
<p>3. Anonymised bids which are labelled consistently</p>	<p>Labelling bids would enable participants to track the actions of bidders round by round on an anonymised basis, so they could understand better the behaviour of individual bidders</p>	<p>This would further increase the risk of strategic bidding behaviour.</p>

At the end of the Principal Stage

<p>Whether or not to release details of all Principal Stage bids</p>	<p>Releasing these details enables bidders to check the winner determination</p> <p>It would also provide bidders with additional information to draw on when explaining the outcome of the award up to the Assignment Stage to financial decision makers</p>	<p>Releasing this information may enable bidders to work out other bidders' budget constraints and bid strategically on this basis</p> <p>Information on Principal Stage bids should not be of any use to bidders in developing their valuations for the purpose of the Assignment Stage</p> <p>This information is also unlikely to be needed to inform a Board decision of the bidder, as the bidder will have already decided to pay at least the base price</p>
<p>Whether or not to release the base price for each bidder (in</p>	<p>Releasing this information would help to manage communication to bidders</p>	<p>Releasing the information creates a small (and probably manageable) risk of a degree</p>

addition to the identities of winning bidders and the packages they won)	and the public Doing so is also unlikely to introduce risks of strategic bidding because base prices should have no impact on bidding strategies in the Assignment Stage	of confusion amongst followers of the auction's progress because the final prices paid may be higher than the base prices
--	---	---

In the Assignment Stage

Whether or not to provide bidders with full bid options (i.e. all possible combinations of how winning bids could be accommodated)	Providing bidders with full bid options removes the small risk that some would be unable to determine this information for themselves	Providing this information would not increase the amount of information available to bidders
--	---	--

7.18 With regard to the information release options outlined above, we have decided:

- to release only aggregate demand for spectrum during the primary bid rounds;
- not to release details of all Principal Stage bids at the end of the Principal Stage;
- to release the base price for each bidder (in addition to the identities of winning bidders and the packages they won) at the end of the Principal Stage; and
- to provide bidders with information on full bid options in the Assignment Stage.

Switching rules

Option	Advantages	Disadvantages
Whether (or not) to prevent switching between paired and individual (unpaired) lots in the supplementary bids round	It is possible that switching may create the opportunity for undesirable strategic behaviour to hide the nature of demand during the primary bid rounds.	Likelihood of bidder using supplementary bid rounds to hide demand is low as doing so would create risk that bidder would win unwanted spectrum. There would appear to be very little to be gained from such a strategy (and low risk of it leading to an inefficient outcome) because of the flexibility in allocation between paired and unpaired lots. Risk that not allowing switching may prevent bidders who bid truthfully from expressing full range of preferences

7.19 We have decided not to restrict switching in the supplementary bids round.

Price ratios

Option	Advantages	Disadvantages
Whether or not there should be a link between clock prices for lots in the 2.6 GHz band and the 2010 MHz lot	If there were a high level of substitutability between 2.6 GHz and the 2010 MHz, there would be advantages in linking the clock prices, however our analysis and responses to our consultation indicate that the substitutability is likely to be low.	Creating a link between the clock prices of the bands is very unlikely to have any positive impact on the final price for the 2010 MHz band, as the prices for the bands become delinked once there is no longer excess demand in one of the bands

7.20 We have decided not to link the clock prices for lots in the 2.6 GHz band and the 2010 MHz lot.

Activity rules

Option	Advantages	Disadvantages
1. Quantity-based activity rule	Provides support for price discovery and for the reduction of common value uncertainty by making the total amount of spectrum a bidder can bid on in a given round dependent on their activity in previous rounds.	There is a risk that bidders ability to submit a full range of bids in the supplementary bids round could become overly constrained should the ratio of eligibility points between lots not be broadly reflective of the relative value of the lots (although this should not be a problem in the 2.6 GHz award because the fungible allocation between paired and unpaired lots).
2. Value-based activity rule	Encourages bidders to bid consistently throughout the auction with regards to the value they attach to each lot. More effective than a quantity based activity rule in promoting truthful bidding.	More relevant for awards where the relative value of different lots might diverge from the ratio of the eligibility points associated with different categories of lot during the auction. This is unlikely to be the case in the 2.6 GHz band. Introduces an increased level of complexity: bidders may find it more challenging to explain to their internal stakeholders (e.g. their Boards).

7.21 We have decided to use a quantity-based activity rule for this award.

Deposits

Option	Advantages	Disadvantages
<i>Level of deposits</i>		
1. Deposits to be topped up to 100% throughout Principal and Assignment Stages	Provides a disincentive for default.	100% deposit could be difficult for bidders to raise in advance of acquiring the asset in high value auctions.
2. Deposits to be topped up to 100% of base price at end of Principal Stage and for Assignment Stage, but deposit requirement set at a lower level (less than or equal to 50% with Ofcom retaining flexibility to vary the amount as the primary rounds progress) during primary and supplementary bids rounds	<p>Provides a disincentive for default, especially at the end of the Principal Stage and Assignment Stage when default could be most damaging to the award process.</p> <p>Setting the deposit level at less than or equal to 50% with Ofcom having discretion to vary the level provides flexibility to adjust the level of deposits based on the clock prices.</p>	If the deposit level was fixed at 50%: bidders could still find it difficult to raise large deposits towards the end of the auction (when bid values might be high).
3. Deposits to be topped up to less than 100% of base price at end of Principal Stage and for Assignment Stage, but deposit requirement set at a lower level (less than or equal to 50% with Ofcom retaining flexibility to vary) during primary and supplementary bids rounds	<p>Provides a disincentive for default, but not as effectively as Options 1 and 2.</p> <p>Setting the deposit level at less than or equal to 50% with Ofcom having discretion to vary the level provides flexibility to adjust the level of deposits based on the clock prices.</p>	<p>If the winning bidders at the end of the Principal Stage do not have to put 100% of the base price on deposit, there is an increased risk of default. Moreover, the requirement for the 100% deposit at this point imposes little additional financial burden as it only applies to winning bidders and these bidders will anyway be required to pay for their licences as soon as the Assignment Stage is completed.</p> <p>If the deposit level was fixed at 50%: bidders could still find it difficult to raise large deposits towards the end of the auction (when bid values are high).</p>

Timing of requests for deposits

1. Employ a fixed rule for when deposits are increased based on the ratio of existing deposits to prices	Employing such a rule would provide bidders with sufficient information to prepare for deposit top-ups during the auction.	May result in an unnecessarily high number of top-ups which could disrupt the efficient running of the auction and place an additional administrative burden on bidders
2. No fixed rule and Ofcom to request top-ups from time to time	Would potentially reduce the overall number of requests for top-ups and therefore, the administrative burden on bidders.	May not provide sufficient advance warning for bidders to prepare.
3. No fixed rule and Ofcom to provide guidance on indicative trigger levels in the Information pack provided for bidders at the time of the award.	Employing such a rule would provide bidders with sufficient information to prepare for deposit top-ups during the auction. Would potentially reduce the overall number of requests for top-ups and therefore, the administrative burden on bidders.	

7.22 We have decided:

7.23 to set the level at which deposits should be topped up as 100% of base price at the end of the Principal Stage (for bidders that will be winning bidders) and 100% of highest bid in the Assignment Stage, and at less than or equal to 50% during primary and supplementary bids rounds, with Ofcom retaining flexibility to vary this level; and

7.24 to employ no fixed rule as to when deposits should be topped up but instead to provide guidance on indicative trigger levels in the Information pack provided for bidders before the award.

Bidder association

Option	Advantages	Disadvantages
Whether to allow an exemption to the restriction on the flow of confidential information between bidders for the purpose of negotiating a national roaming agreement	Providing an exemption may enable bidders to refine their valuation by having better information on roaming agreements and charges.	Allowing an exemption creates the risk that the exchange of information between applicants may affect their decisions in relation to the award and could materially affect the outcome of the award process. If we do not specifically provide an exemption, it is

		still possible in principle for two parties to hold discussions without breaching activity rules, but we need to retain the scope to apply penalties depending on the exact nature of information exchanged.
Whether, on application, to allow entities holding a material interest in one or more bidders to be excluded from bidder groups and such that they may participate in at most one bidder group	<p>Allowing an entity to be excluded from a bidder group of which it would otherwise automatically be a part removes barriers for it to participate in the award, increasing competition, whilst the conditions associated with the exclusion should maintain the integrity of the auction process. For example:</p> <ul style="list-style-type: none"> ○ the party should not hold more than 50% of the share in the applicant; ○ the party should not have the right to appoint or remove a majority of the applicant's board of directors. <p>Conversely, not allowing entities to be so excluded could have a negative impact on competition by limiting the ability of potential bidders to raise funding.</p>	Allowing entities to be excluded from bidder groups of which they would otherwise automatically be a part could create opportunities for strategic behaviour. However, the procedure has been carefully designed to mitigate the risk and Ofcom will retain discretion to judge any case on its merits (and so guard against abuse of this facility).

7.25 We have decided:

- not to allow an exemption to the restriction on the flow of confidential information between bidders for the purpose of negotiating a national roaming agreement; and
- to allow entities holding a material interest in more than one bidder to apply to be excluded from applicant or bidder groups and participate in at most one bidder group subject to certain conditions as laid out in the draft regulations.

Spectrum cap

7.26 There are potential measures that we could take to mitigate in the auction risks to the competitive environment for the provision of services.

Option	Advantages	Disadvantages
Impose no restrictions	Bidders can express their demand for every quantity of spectrum that they might require on the grounds that there may be legitimate business cases for acquiring very large amounts of spectrum.	<p>It is possible that a bidder could try to acquire the entire spectrum with the intent of excluding other bidders from winning. In mitigation, the potential cost of buying the entire spectrum, given the large amount available, makes this unlikely.</p> <p>Alternatively, this scenario might happen if there was very weak demand for the spectrum and one bidder could therefore outbid others for a large part of the spectrum. The cost of precluding this outcome would be low under these circumstances.</p>
Impose a "strong" spectrum cap e.g. 60 MHz or even less	A tighter cap may allow more parties to win spectrum in the award.	<p>A cap at or below 60 MHz could constrain bidders from efficient uses of the spectrum (we are aware of interest which exceeds this level).</p> <p>We would have to finely judge the maximum amount of spectrum that a bidder could require. This risks setting the level too low, and preventing some users from making the most efficient use of the spectrum available. It is unlikely that we would know better than the market what the maximum level should be.</p> <p>There is no objective justification for seeking to engineer a particular industry structure through this award.</p>
Impose a "safeguard" spectrum cap e.g. 80 MHz excluding restricted blocks	<p>This guards against a low risk, but adverse scenario where one participant acquires all (or most) of the spectrum in order to exclude others.</p> <p>Although ex post competition powers can be used to address competition concerns, using these powers can be a lengthy process. Given the large amount of spectrum available, the potential costs of delay could be high.</p>	There is a risk that some legitimate applications e.g. a band manager might be excluded, however this risk appears very small given the size of the cap in relation to the amounts of spectrum that interested parties have indicated that they might want to acquire.

7.27 We consider the choice between not introducing spectrum caps and setting a safeguard cap finely balanced. However we reject setting a low cap because of the potential for regulatory failure in setting the precise level of the caps.

- 7.28 We have changed the detail of how the cap would operate from an overall cap of 90 MHz including any restricted use blocks, to a cap of 80 MHz excluding any restricted use blocks. We have made this change because the former rule would not have treated all bidders equally. While bidders for paired lots are not allocated restricted use blocks, bidders for individual (unpaired) lots are allocated a restricted use block (or two if they win a split allocation of individual lots). We consider that applying the cap only to fully usable spectrum (i.e. standard blocks with normal base station powers) is fairer. We note that the cap of 80 MHz of usable spectrum still carries a very low risk of excluding any legitimate aggregation of the spectrum.

Costs to Ofcom

- 7.29 The costs of Ofcom's decision to award the licences relate mainly to the costs of carrying out the award process. The administrative costs of the award process should be small in relation to the benefit generated to the economy.

Business sectors affected

- 7.30 The main business sectors affected by this proposal are fixed and mobile communications service provision and mobile broadband service provision.
- 7.31 Other business sectors may benefit from a more efficient supply of communications and broadband services as a result of this proposal.

Conclusions

- 7.32 Having considered the advantages and disadvantages of the options, and in light of responses to the consultations, Ofcom has concluded that:
- the spectrum should be packaged in 5 MHz lots with respect to the 2.6 GHz band and as one 15 MHz lot for the 2010 MHz band;
 - the auction should be used to determine the split between paired lots and individual lots and their respective uses in the 2.6 GHz band;
 - the spectrum should be awarded on a UK wide basis (subject to any international restrictions);
 - bidders should be subject to a "safeguard" spectrum cap to mitigate against risks of anti-competitive behaviour;
 - the award of spectrum in the 2.6 GHz and 2010 MHz bands should be linked;
 - a simultaneous, multiple round ascending auction process that allows combinatorial bidding should be used to award this spectrum;
 - it is appropriate to use generic lots rather than specific lots; and
 - the most appropriate SMRA auction format to use is a combinatorial clock auction with a competitive second phase.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No.2) Regulations 2008

Proposal, purpose and intended effect

- 7.33 The purpose of these draft regulations is to permit the transfer of all rights and obligations relating to wireless telegraphy licences in the Bands, also known as spectrum trading. Ofcom intends that all types of transfers, i.e., outright, concurrent, partial and total transfers will be permitted.

Costs and benefits to business

- 7.34 Ofcom considered the benefits of spectrum trading in the Regulatory Impact Assessment for the Spectrum Trading and Wireless Telegraphy Register Regulations 2004, published in December 2004. It concluded that the likely benefits of spectrum trading greatly outweighed the costs. It also concluded that the costs to business would be proportionate, because the costs of spectrum trading would only fall on those who traded (and for whom the benefit of the spectrum trade should exceed the costs anyway). This analysis of the general benefits of introducing spectrum trading should also apply to the Bands.
- 7.35 Ofcom considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers. Ofcom can see no reason why its general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer. It is unlikely that the additional coordination costs for third parties, that might arise as a result of concurrent or partial transfers, would be significant.

Costs to Ofcom

- 7.36 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up, and including the Bands within the framework should require little additional cost.

Business sectors affected

- 7.37 The main business sectors affected by this proposal are fixed and mobile communications service provision and mobile broadband service provision.
- 7.38 Other business sectors may benefit from a more efficient supply of communications and broadband services as a result of this proposal.

Conclusion

- 7.39 Ofcom has assessed the impact of allowing spectrum trading in the Bands and has found that the benefits are likely to outweigh the costs for all types of transfer.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2008

Proposal, purpose and intended effect

- 7.40 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences - the Wireless Telegraphy Register.
- 7.41 The intended effect of this proposal is to enable information about the Licences to be published in this Wireless Telegraphy Register. In so doing this should facilitate

spectrum trading by, except where security considerations prevent publication of information, providing information which will enable potential buyers to find out, who holds what frequencies and the constraints on the use of the specific frequencies or bands.

Costs and benefits

- 7.42 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register. This proposed amendment to those regulations only has the effect of including the Bands within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- 7.43 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for these regulations. Those conclusions were that the benefits of a having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the proposed regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and limited to updating the register for the Bands. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.
- 7.44 Moreover, now that the register has been set up, the additional costs of including the Bands within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Business sectors affected

- 7.45 The main business sectors affected by this proposal are fixed and mobile communications service provision and mobile broadband service provision.
- 7.46 Other business sectors may benefit from a more efficient supply of communications and broadband services as a result of this proposal.

Conclusions

- 7.47 Ofcom's assessment is that the benefits of including the Bands within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No.2) Order 2008

Proposal, purpose and intended effect

- 7.48 As outlined in this document and in the parallel Statement, Ofcom has decided to limit the number of users of the Bands through the award of licences, as opposed to exempting the use of radio equipment in the Bands from licensing (which would allow an unlimited number of users).

- 7.49 The draft Limitations Order to which this RIA refers will enable Ofcom to proceed with the award of this spectrum by auction. The way that Ofcom will award a limited number of licences for the Bands is set out in the proposed Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008.

Costs and benefits to business

- 7.50 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Bands are lower than the costs of making use of the spectrum licence exempt.
- 7.51 The decision to license the Bands, as opposed to making their use licence exempt, imposes a relatively small administrative compliance cost on those businesses that would like to use the spectrum. However, if the use of the Bands were licence exempt, it would not be possible to impose any constraint on the number of users or to ensure that these users co-ordinated with each other. Ofcom's technical research has shown that this would impose large costs due to interference between users. These costs would generally outweigh the benefits of licence exemption.

Costs to Ofcom

- 7.52 The costs to Ofcom of limiting the number of licences in the Bands relate mainly to the costs of awarding the spectrum. Ofcom has made regulations to auction licences for the use of the Bands and, therefore, the costs to Ofcom would be those of carrying out the auction. The administrative costs of holding the auction are likely to be small in relation to the benefit generated for the economy.

Business sectors affected

- 7.53 The main business sectors affected by this proposal are fixed and mobile communications service provision and mobile broadband service provision.
- 7.54 Other business sectors may benefit from a more efficient supply of communications and broadband services as a result of this proposal.

Conclusion

- 7.55 Ofcom has assessed the impact of limiting or not limiting the number of licences in the Bands and has concluded that the better option is to limit the number of licences. This is primarily because the number of users that would be likely to use the spectrum under licence exemption is large and would lead to all users incurring substantial costs in terms of interference and coordination with other users.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 6 May 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/2ghzregsnotice/>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email brice.lecannu@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Brice Le Cannu
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4303
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include a direct answer to the question asked in this document, which is highlighted at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Brice Le Cannu on 020 7783 4503.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to make the regulations as soon as possible.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

A2.8 In this case, we have already consulted on the detailed policy that the regulations implement on three occasions in December 2006, August 2007 and December 2007. The consultation of December 2007 also included a first draft of the auction regulations. In accordance with statutory requirements, the consultation period is therefore of four weeks.

After the consultation

A2.9 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Do stakeholders agree with the proposed statutory instruments set out in this notice for the award of this spectrum?

Annex 5

Draft Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008

DRAFT FOR CONSULTATION

STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Licence Award) (No.2) Regulations
2008**

Made - - - - - ***

Coming into force - - - - - ***

CONTENTS

PART 1

INTRODUCTORY

1. Citation, commencement, and extent
2. Interpretation

PART 2

APPLICATION STAGE

3. Applications for the grant of a licence
4. Application

PART 3

QUALIFICATION STAGE

5. Procedure for associates to be excluded from an applicant or bidder group
6. Assessment of applicant groups
7. Subsequent changes to bidder groups
8. Determination of applicants which are qualified to bid
9. Publication of determination
10. Withdrawal of an application
11. Determination of number of bidders

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

12. Frequency range selection menu
13. Grant of licence
14. Completion of the award process

DRAFT FOR CONSULTATION

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Principal stage, assignment stage and grant stage

15. Principal stage, assignment stage and grant stage

CHAPTER 2

Structure of principal stage

16. Primary bids
17. Requirement for a valid primary bid in the first primary bid round
18. Supplementary bids
19. Basic supplementary bids
20. Additional supplementary bids
21. Number of primary bid rounds
22. Determination of round prices for the first primary bid round
23. Determination of round prices for subsequent primary bid rounds
24. Bidder's eligibility limit for primary bid rounds
25. Additional deposit before first primary bid round
26. Determination of bidder's eligibility limit for the first primary bid round
27. Determination of bidder's eligibility limit for subsequent primary bid rounds
28. Valid primary bids
29. Valid basic supplementary bids
30. Valid additional supplementary bids

CHAPTER 3

Procedure for primary bid rounds

31. Notice to be given to bidders before primary bid rounds and extensions to rounds
32. Submission of primary bid form to OFCOM
33. Alternative method for submission of primary bid form
34. Incomplete or defective primary bid form
35. Notification that primary bid not valid
36. Release of information on primary bids in principal stage
37. Further deposit for primary bid rounds

CHAPTER 4

Procedure for supplementary bids round and further deposit for supplementary bids round

38. Notice to be given to bidders before supplementary bids round
39. Submission of supplementary bids form to OFCOM
40. Alternative method for submission of supplementary bids form
41. Extension to supplementary bids round
42. Incomplete or defective supplementary bids form
43. Notification that supplementary bid not valid
44. Further deposit for supplementary bids round

CHAPTER 5

Determination of winning principal stage bids and conclusion of principal stage

45. Determination of the winning principal stage bids and the winning combination of principal stage bids
46. Determination of base price of winning principal stage bids
47. Notification of results of principal stage and refund of deposits

DRAFT FOR CONSULTATION

48. Final principal stage deposit
49. Publication of results of principal stage

CHAPTER 6

Assignment of frequencies for the 2010–2025 MHz band and for the 2500–2690 MHz band where only one winning principal stage bid includes paired lots or only one winning principal stage bid includes individual lots

50. Assignment of the 2010-2025 MHz band
51. Procedure for the 2500–2690 MHz band

CHAPTER 7

Assignment of frequencies to winning bidders for the 2500–2690 MHz band where more than one winning principal stage bid includes paired lots or individual lots

52. Assignment stage round and assignment stage bids
53. Assignment stage bids
54. Determination of frequencies
55. Assignment stage bid deposit
56. Valid assignment stage bids
57. Notice to bidders before the assignment stage round
58. Submission of assignment stage bid form to OFCOM
59. Alternative method for submission of assignment stage bid form
60. Extension to assignment stage round
61. Incomplete or defective assignment stage bid form
62. Notification that assignment stage bid is not valid
63. Procedure where there is no valid assignment stage bid
64. Determination of the winning assignment stage bids and the winning combination of assignment stage bids
65. Assignment of lots twenty-four and thirty-eight in specific circumstances
66. Determination of additional price of winning assignment stage bids
67. Notification of results of assignment stage

CHAPTER 8

Grant stage

68. Determination of the licence fee
69. Procedure where the amount of a winning bidder's deposit is less than the licence fee
70. Procedure where the amount of a winning bidder's deposit is greater than or equal to the licence fee
71. Completion of the award process

PART 6

ACTIVITY RULES

72. Forfeit of deposit and exclusion from award process
73. Bids made by an excluded bidder
74. Events

PART 7

MISCELLANEOUS

75. General power of exclusion
76. Notification to OFCOM

DRAFT FOR CONSULTATION

- 77. Changes to timing or location
- 78. Changes to round times and use of electronic auction system
- 79. Rerunning rounds
- 80. Refunds

-
- SCHEDULE 1 — MEANING OF INDIVIDUAL LOT AND PAIRED LOT
 - SCHEDULE 2 — APPLICATION FORM AND WARRANTY
 - SCHEDULE 3 — DOCUMENT FOR MEMBER OF APPLICANT'S
APPLICANT OR BIDDER GROUP WHO IS NOT AN
ASSOCIATE
 - SCHEDULE 4 — DOCUMENT FOR AN APPLICANT RELATING TO AN
ASSOCIATE'S APPLICATION TO BE EXCLUDED FROM
AN APPLICANT OR BIDDER GROUP
 - SCHEDULE 5 — DOCUMENT FOR AN ASSOCIATE TO APPLY TO BE
EXCLUDED FROM AN APPLICANT OR BIDDER GROUP
 - SCHEDULE 6 — FREQUENCY RANGE SELECTION MENU WHERE THERE
IS ONLY ONE BIDDER
 - SCHEDULE 7 — ELIGIBILITY POINTS ASSOCIATED WITH INDIVIDUAL
LOTS, PAIRED LOTS AND THE 2010–2025 MHZ BAND
 - SCHEDULE 8 — DETERMINATION OF BASE PRICE
 - SCHEDULE 9 — DETERMINATION OF ADDITIONAL PRICE

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by section 14(1), (2), (3), (4), (6) and (7) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the 2006 Act”).

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the 2006 Act, published notice of their proposal in accordance with section 122(4)(b) of the 2006 Act and have considered the representations made to them before the time specified in that notice in accordance with section 122(4)(c) of the 2006 Act.

PART 1 INTRODUCTORY

Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 and shall come into force on [**date of coming into force**].

(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

Interpretation

2.—(1) In these Regulations—

“additional price” has the meaning given in regulation 66;

(a) 2006 c.36.

DRAFT FOR CONSULTATION

“additional supplementary bid” shall be construed in accordance with regulation 18(4);

“applicant” means a body corporate making an application for a licence;

“applicant group” means, in relation to an applicant—

- (a) that applicant;
- (b) each associate of that applicant; and
- (c) each person named by the applicant in compliance with the requirements of section 4 and Schedule 2 and in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 3;

“assignment stage” has the meaning given in regulation 15(1);

“assignment stage bid” has the meaning given in regulation 52(3);

“assignment stage bid form” has the meaning given in regulation 53;

“assignment stage option” has the meaning given in regulation 52(4);

“assignment stage round” has the meaning given in regulation 52(1);

“associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;

“authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;

“basic supplementary bid” shall be construed in accordance with regulation 18(2);

“base price” has the meaning given in regulation 46;

“bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;

“bidder group” has the meaning given in regulation 6(7);

“bid selection” means a specified number of paired lots (which may be zero), a specified number of individual lots (which may be zero), and an indication as to whether or not the 2010–2025 MHz band is included;

“confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

“contiguous range of individual lots”, means two or more consecutive individual lots;

“contiguous range of paired lots” means two or more consecutive paired lots;

“deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—

- (a) the time,
- (b) the date, or
- (c) the date, and the time on that date,

by which that requirement must be fulfilled by that person;

“division” shall be construed in accordance with regulation 20(2)(d);

“electronic auction system” means the system established by OFCOM for bidders to participate in the award process;

DRAFT FOR CONSULTATION

“eligibility limit” shall be construed in accordance with regulation 24;

“end of round time” has the meaning given in regulation 31(2);

“excess demand”, in relation to a primary bid round, means—

- (a) in respect of the 2010–2025 MHz band, where the 2010–2025 MHz band has been selected in more than one valid primary bid;
- (b) in respect of the 2500–2690 MHz band where it would not be possible for OFCOM to assign—
 - (i) to each bidder submitting a valid primary bid containing paired lots, a contiguous range of paired lots such that the number of paired lots contained within that range is equal to the number of paired lots selected in that valid primary bid; and
 - (ii) to each bidder submitting a valid primary bid containing individual lots, a contiguous range of individual lots such that the number of individual lots contained within that range is equal to the number of individual lots selected in that valid primary bid,

such that lot twenty-four is not assigned, and each other lot is assigned no more than once;

- (c) where no valid primary bid contains paired lots, the total number of individual lots contained in all valid primary bids exceeds thirty-eight;

“frequency range selection menu” shall be construed in accordance with regulation 12(1);

“grant stage” has the meaning given in regulation 15(1);

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“last day for withdrawal” has the meaning given in regulation 10(1);

“licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at frequencies to be determined in accordance with the procedure set out in Part 4 or Part 5 of these Regulations;

“lower area” means, in relation to the 2500–2690 MHz band, the frequencies from 2500 MHz to 2615 MHz;

“material interest” means, whether held directly or indirectly—

- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006(a)) in—
 - (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
 - (ii) any share or shares in the case of which the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or
- (b) the right to appoint or remove a majority of the applicant’s or bidder’s board of directors;

“MHz” means megahertz;

“OFCOM’s bank account” means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their internet website;

“pounds” means pounds sterling;

“primary bid” has the meaning given in regulation 16(1);

“primary bid form” has the meaning given in regulation 16(3);

(a) 2006 c.46.

DRAFT FOR CONSULTATION

- “primary bid rounds” has the meaning given in regulation 15(2);
- “principal stage” has the meaning given in regulation 15(1);
- “principal stage bid” means a primary bid, a basic supplementary bid, or an additional supplementary bid;
- “round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Part 5 of these Regulations;
- “round price” has the meaning given in regulation 16(2);
- “supplementary bid” has the meaning given in regulation 18(1);
- “supplementary bids form” has the meaning given in regulation 19(1);
- “supplementary bids round” has the meaning given in regulation 15(2);
- “2010–2025 MHz band” has the meaning given in regulation 15(2)(a);
- “2500–2690 MHz band” has the meaning given in regulation 15(2)(b);
- “upper area” means, in relation to the 2500–2690 MHz band, the frequencies from 2620 MHz to 2690 MHz;
- “valid additional supplementary bid” has the meaning given in regulation 30(1);
- “valid assignment stage bid” has the meaning given in regulation 56(1);
- “valid basic supplementary bid” has the meaning given in regulation 29(1);
- “valid primary bid” has the meaning given in regulation 28(1);
- “valid principal stage bid” means a valid primary bid, a valid basic supplementary bid or a valid additional supplementary bid;
- “valid supplementary bid” means a valid basic supplementary bid or a valid additional supplementary bid;
- “winning assignment stage bid” shall be construed in accordance with regulation 64;
- “winning principal stage bid” shall be construed in accordance with regulation 45; and
- “winning bidder” means a bidder that submitted a winning principal stage bid.
- (2) A reference in these Regulations to an “individual lot” or a “paired lot” shall be construed in accordance with Schedule 1.
- (3) A reference in these Regulations to “eligibility points” shall be construed in accordance with Schedule 7.

PART 2

APPLICATION STAGE

Applications for the grant of a licence

3. Applications for the grant of a licence shall only be made in accordance with the procedure set out in these Regulations.

Application

4.—(1) Only a body corporate may apply to OFCOM for a licence.

(2) A body corporate may only make one application.

DRAFT FOR CONSULTATION

- (3) To apply for a licence, a body corporate must—
- (a) on the day specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM a sealed envelope containing—
 - (i) a document containing the application information required by, and the warranty set out in, Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
 - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its applicant group, a document in the form set out in Schedule 3 which has been—
 - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
 - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
 - (b) by a deadline specified by OFCOM on their internet website, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of one hundred thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website.

PART 3

QUALIFICATION STAGE

Procedure for associates to be excluded from an applicant or bidder group

5.—(1) Where before the date on which OFCOM notifies applicants in accordance with regulation 9(1) of their determination under regulation 8(1)—

- (a) OFCOM receives from an applicant a document in the form set out in Schedule 4, completed by the applicant and signed on its behalf by two authorised persons;
- (b) OFCOM receives from that applicant's associate a document in the form set out in Schedule 5, completed by the associate and signed on its behalf by two authorised persons; and
- (c) that associate meets the conditions set out in paragraph (2);

OFCOM shall determine whether to exclude that associate from the applicant's applicant or bidder group.

(2) The conditions referred to in paragraph (1)(c) are that the associate does not have—

- (a) any interest (construed in accordance with section 820 to 825 of the Companies Act 2006 (a)), whether held directly or indirectly in any share which carries, or any shares which together carry, equal to or more than fifty per cent. of the votes entitled to be cast at a general meeting of the applicant; or
- (b) the right to appoint or remove a majority of the applicant's board of directors.

(3) In making their determination under paragraph (1), OFCOM shall take into account any factors which OFCOM reasonably consider relevant to the application, including:

- (a) the length of time the associate has had a material interest in the applicant, including in particular whether the associate held a material interest in the applicant before the date these regulations were made;
- (b) any information submitted to OFCOM by the associate or the applicant in the documents referred to at paragraphs (1)(a) and (1)(b);

(a) 2006 c.46.

DRAFT FOR CONSULTATION

(c) whether—

- (i) any information submitted to OFCOM by the associate or the applicant in connection with the application to be excluded from the applicant or bidder group is false or misleading;
- (ii) the grant to the associate of its exclusion from the applicant or bidder group is likely to distort the outcome of the award process.

(4) An associate or an applicant must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM reasonably require to make their determination under paragraph (1).

(5) If an associate or an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination under paragraph (1).

(6) As soon as reasonably practicable after receipt of the documents referred to in paragraphs (1)(a) and (1)(b), OFCOM shall inform the associate and the applicant in writing of their determination under paragraph (1).

(7) Where OFCOM determine to exclude an associate from an applicant's applicant group—

- (a) that associate will no longer be considered to be a member of that applicant group for the purposes of these regulations; and
- (b) that associate shall be permitted to be a member of another applicant's applicant group provided that applicant complies with the procedure set out in regulation 7(3).

(8) Where OFCOM determine not to exclude an associate from an applicant's applicant group, that associate will continue to be a member of that applicant group for the purposes of these regulations.

Assessment of applicant groups

6.—(1) OFCOM shall give notice to each applicant of—

- (a) the name of each other applicant and the names of their associates; and
- (b) the deadline by when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).

(2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its applicant group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its applicant group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM, and OFCOM shall specify a further deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is an associate of another applicant or is an applicant; and
- (b) where changes have occurred to its applicant group, provide OFCOM with a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its applicant group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM in the notice under paragraph (1).

(5) If it appears to OFCOM from any application that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group; and

DRAFT FOR CONSULTATION

- (b) where changes have occurred to its applicant group provide OFCOM with a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

(6) As soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (3) and (5), OFCOM shall record as a bidder group the members of each applicant group.

(7) For the purposes of these regulations a bidder group (“bidder group”) shall comprise the members of each applicant group recorded by OFCOM in accordance with paragraph (6) but not any associate which OFCOM has determined to exclude from that applicant group in accordance with regulation 5(1).

Subsequent changes to bidder groups

7.—(1) After the recording by OFCOM of the members of each applicant group as a bidder group in accordance with regulation (6), an applicant or a bidder may change its bidder group but, in relation to the award process, the applicant shall be subject to regulations 8(2) and 72 if they apply to any such change.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit a version of the document provided under regulation 4(3)(a)(i) which complies with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 3 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed.

Determination of applicants which are qualified to bid

8.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant’s bidder group.

(3) In making their determination under paragraph (1) OFCOM shall take into account whether—

- (a) the grant of a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a licence having regard to the probity of—
 - (i) the applicant;
 - (ii) each member of the applicant’s bidder group; and
 - (iii) each director of each member of the applicant’s bidder group;
- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) in connection with an application under regulation 5 for an associate to be excluded from an applicant or bidder group—
 - (i) the applicant has not provided to OFCOM the document referred to in regulation 5(1)(a); or
 - (ii) the associate in respect of whom the application has been made has not provided to OFCOM the document referred to in regulation 5(1)(b);
- (e) any member of the applicant’s bidder group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;

DRAFT FOR CONSULTATION

- (f) any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (g) any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose or has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of the applicant's bidder group;
 - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
 - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (h) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (i) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
 - (i) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
 - (ii) taking part in the preparation of both bidder groups for participation in the award process; or
 - (iii) receiving confidential information relating to both bidder groups.

(4) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM reasonably require to make their determination.

(5) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.

(6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

Publication of determination

9.—(1) OFCOM shall notify each applicant of their determination under regulation 8(1).

(2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant who is so qualified and shall publish the names of all applicants who are qualified to bid on OFCOM's internet website.

Withdrawal of an application

10.—(1) OFCOM shall notify each applicant qualified to bid of the last day for withdrawal from the award process and shall publish the last day for withdrawal on OFCOM's internet website ("last day for withdrawal").

(2) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall notify all other applicants of the withdrawal.

(3) Where an applicant withdraws its application in accordance with paragraph (2), that applicant shall not be re-admitted to the award process.

(4) Where an applicant withdraws its application in accordance with paragraph (2), that applicant's initial deposit shall not be forfeited for that reason.

DRAFT FOR CONSULTATION

Determination of number of bidders

- 11.**—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.
- (2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not been forfeited under regulation 72) but not any interest which has accrued on the deposits.
- (3) Where there is only one bidder, OFCOM shall grant a licence in accordance with the procedure set out in Part 4 of these Regulations.
- (4) Where the number of bidders is more than one, OFCOM shall grant a licence or licences (as the case may be) in accordance with the procedure set out in Part 5 of these Regulations.
- (5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement as to whether OFCOM will proceed to grant licences in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

PART 4

PROCEDURE WHERE THERE IS ONLY ONE BIDDER

Frequency range selection menu

- 12.**—(1) Where there is only one bidder, OFCOM shall notify that bidder of—
- (a) a deadline by when the bidder must deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA a frequency range selection menu in the form set out in Schedule 6 completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
 - (b) a further deadline by when the bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (5);
- (2) The bidder must, on the frequency range selection menu, select no more than one frequency range in respect of each of—
- (a) the 2010–2025 MHz band;
 - (b) frequency ranges for paired lots in the 2500–2690 MHz band; and
 - (c) frequency ranges for individual lots in the 2500–2690 MHz band,
- such that the total number of eligibility points associated with that selection is no greater than sixteen.
- (3) The number of eligibility points associated with each frequency range on the frequency range selection menu shall be construed in accordance with Schedule 6.
- (4) The licence fee shall be the total amount of the prices indicated on the frequency range selection menu for the frequency ranges selected by the bidder.
- (5) The sum which the bidder must pay to OFCOM shall be—
- (a) where the initial deposit has not been forfeited in accordance with regulation 72, a sum equal to the licence fee less the initial deposit;
 - (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

Grant of licence

- 13.**—(1) Where OFCOM have received from the bidder a completed frequency range selection menu in accordance with regulation 12(1)(a) and the required sum in accordance with regulation (1)(b), OFCOM shall grant the bidder a licence for the frequency ranges selected on the frequency range selection menu that the bidder delivered to OFCOM.

DRAFT FOR CONSULTATION

(2) Where OFCOM have not received from the bidder a completed lot selection menu in accordance with regulation 12(1)(a) or the required sum in accordance with regulation 12(1)(b), the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 72) be forfeited.

Completion of the award process

14. After the grant of the licence, OFCOM shall complete the award process by—
- (a) publishing on their internet website the name of the bidder to which a licence has been granted, the details of the frequency ranges in respect of which the licence was granted and the licence fee paid; and
 - (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 10, the initial deposits (where such deposits have not been forfeited under regulation 72) but not any interest which has accrued on the deposits.

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Principal stage, assignment stage and grant stage

Principal stage, assignment stage and grant stage

15.—(1) Where there is more than one bidder, the process for the award of licences shall consist of the procedure set out in Chapters 2 to 5 of this Part (“principal stage”), the procedure set out in Chapters 6 and 7 of this Part (“assignment stage”) and the procedure set out in Chapter 8 of this Part (“grant stage”).

(2) The frequencies available under this procedure are—

- (a) 2010–2025 MHz (“the 2010–2025 MHz band”); and
- (b) 2500–2690 MHz (“the 2500–2690 MHz band”).

(3) During the principal stage there shall be one or more rounds for the submission of primary bids (“primary bid rounds”) and a further round for the submission of supplementary bids (“supplementary bids round”).

(4) A bid made during the principal stage shall be a bid for—

- (a) the 2010–2025 MHz band;
- (b) a number of paired lots in the 2500–2690 MHz band, specified without reference to the frequencies or to lot numbers attaching to those frequencies which are specified and set out in the table in Schedule 1;
- (c) a number of individual lots in the 2500–2690 MHz band, specified without reference to the frequencies or to lot numbers attaching to those frequencies which are specified and set out in the table in Schedule 1.

(5) Following completion of the principal stage, the contiguous ranges of paired lots (if any) and the contiguous ranges of individual lots (if any), and the corresponding frequencies as set out in the table in Schedule 1, that are to be assigned to the winning bidders shall be determined in accordance with the assignment stage.

(6) Licences for the frequencies so determined shall be granted in accordance with the grant stage.

DRAFT FOR CONSULTATION

CHAPTER 2

Structure of principal stage

Primary bids

16.—(1) A bid made during a primary bid round (“primary bid”) for a bid selection shall be at an amount in thousands of whole pounds being the total amount of the round prices in that primary bid round for each individual lot, paired lot and the 2010–2025 MHz band (as appropriate) included in the bid selection.

(2) The round price means the price per individual lot, paired lot and the 2010–2025 MHz band determined in accordance with regulation 22 or 23 (as the case may be) at which individual lots, paired lots and the 2010–2025 MHz band are offered to bidders during a primary bid round.

(3) In order to make a primary bid a bidder must, on a form provided to the bidder by OFCOM (“primary bid form”)—

- (a) specify whether it wishes the 2010–2025 MHz band to be included in a licence at the round price for that band;
- (b) specify in respect of the 2500–2690 MHz band the total number of contiguous paired lots it wishes to be included in a licence at the round price for paired lots in that band;
- (c) specify in respect of the 2500–2690 MHz band the total number of contiguous individual lots it wishes to be included in a licence at the round price for individual lots in that band; and
- (d) specify an amount in thousands of whole pounds that it is willing to pay for the licence, being the total amount of the round prices for the selected contiguous individual lots, contiguous paired lots and the 2010–2025 MHz band as the case may be.

(4) Where the bid selection comprised in a primary bid includes individual lots, that selection must include at least two such individual lots.

(5) A bidder must not submit more than one primary bid in any primary bid round.

(6) The bid selection specified in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid in accordance with paragraph (7) does not exceed the bidder’s eligibility limit for that primary bid round determined in accordance with regulation 26 or 27 (as the case may be) and notified to the bidder in accordance with regulation 31(1)(c).

(7) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points attributed to individual lots, paired lots and the 2010–2025 MHz band (as appropriate) included in the bid selection comprised in the primary bid in accordance with Schedule 7.

Requirement for a valid primary bid in the first primary bid round

17. Any bidder which does not submit a valid primary bid in the first primary bid round shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 25, which shall (where not forfeited under regulation 72) be forfeited.

Supplementary bids

18.—(1) A bid made during the supplementary bids round (“supplementary bid”) shall be either—

- (a) a basic supplementary bid; or
- (b) an additional supplementary bid.

(2) The number of basic supplementary bids and additional supplementary bids that can be made in the supplementary bids round is set out in regulations 19(8) and 20(7).

DRAFT FOR CONSULTATION

(3) A basic supplementary bid shall be a bid at an amount in thousands of whole pounds for either—

- (a) a bid selection containing only paired lots; or
- (b) a bid selection containing only paired lots and the 2010–2025 MHz band; or
- (c) a bid selection containing individual lots in one contiguous range.

(4) An additional supplementary bid shall be a bid at an amount in thousands of whole pounds for a bid selection containing individual lots where—

- (a) those individual lots are divided into two contiguous ranges of individual lots; and
- (b) one such range is in the lower area and the other such range is in the upper area;

whether or not the bid includes paired lots or the 2010–2025 MHz band.

Basic supplementary bids

19.—(1) In order to make each basic supplementary bid a bidder must, on a form provided to the bidder by OFCOM (“supplementary bids form”) specify—

- (a) whether it wishes the 2010–2025 MHz band to be included in a licence;
- (b) in respect of the 2500–2690 MHz band—
 - (i) the total number of paired lots; and
 - (ii) the total number of individual lots,it wishes to be included in a licence; and
- (c) an amount in thousands of whole pounds that it is willing to pay for the licence.

(2) Where the bid selection specified in a basic supplementary bid includes individual lots, that selection must include at least two such individual lots.

(3) The bid selection specified in a basic supplementary bid made by a bidder may be the same as or different from the bid selection comprised in a primary bid made by that bidder.

(4) The amount of the basic supplementary bid shall be determined by the bidder, subject to the restrictions set out in paragraph (5).

(5) The restrictions are—

- (a) the amount of the basic supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the individual lots, paired lots and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in that bid;
- (b) where the basic supplementary bid is for a bid selection in respect of which the bidder has also made a primary round bid, the amount of the basic supplementary bid must be greater than the amount of the highest primary round bid made by the bidder for that bid selection;
- (c) where—
 - (i) the bidder did not make a valid primary bid in the final primary bid round; or
 - (ii) the total number of eligibility points associated with the basic supplementary bid in accordance with paragraph (9) is greater than the total number of eligibility points associated with the valid primary bid made by the bidder in the final primary bid round in accordance with paragraph (9),

the amount of the basic supplementary bid must not be greater than the amount determined in accordance with paragraphs (6) and (7).

(6) The amount referred to in paragraph (5)(c) shall be the total amount of the round prices in the primary bid round referred to in paragraph (7) for the individual lots, paired lots and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in the basic supplementary bid.

DRAFT FOR CONSULTATION

(7) The primary bid round referred to in paragraph (6) is the latest primary bid round in which a primary bid made by the bidder for that bid selection could have satisfied the restriction set out in regulation 16(6).

(8) A bidder may submit any number of basic supplementary bids in the supplementary bids round, subject to the restriction set out in paragraph (10).

(9) The number of eligibility points associated with a primary bid or a basic supplementary bid shall be a number equal to the total of the eligibility points associated with each individual lot, paired lot and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in that bid in accordance with Schedule 7.

(10) A bidder may not submit more than one basic supplementary bid for each particular bid selection.

(11) A bidder is not required to submit a basic supplementary bid.

Additional supplementary bids

20.—(1) A bidder may only make an additional supplementary bid where—

- (a) the bidder has made a valid primary bid for a bid selection including three or more individual lots; or
- (b) the bidder has made a valid basic supplementary bid for a bid selection including three or more individual lots.

(2) In order to make each additional supplementary bid a bidder must, on the supplementary bids form specify—

- (a) whether it wishes the 2010–2025 MHz band to be included in a licence;
- (b) in respect of the 2500–2690 MHz band—
 - (i) the total number of paired lots; and
 - (ii) the total number of individual lots ,it wishes to be included in a licence;
- (c) an amount in thousands of whole pounds that it is willing to pay for the licence;
- (d) that the total number of individual lots referred to in paragraph (4)(c) are to be divided into two divisions where—
 - (i) one division is to be in the lower area (the “lower division”) and the other division is to be in the upper area (the “upper division”);
 - (ii) each such division contains at least two individual lots;
- (e) for the purposes of (d), how the total number of individual lots contained in the bid is to be split numerically, but bidders may not specify the number of those individual lots that shall be in the lower division and the number of those individual lots that shall be in the upper division.

(3) Each additional supplementary bid must meet the conditions set out in paragraph (4) with respect to at least one valid—

- (a) primary bid for a bid selection including three or more individual lots; or
- (b) basic supplementary bid for a bid selection including three or more individual lots.

(4) The conditions are that the additional supplementary bid is for a bid selection containing—

- (a) the same selection of the 2010–2025 MHz band (as appropriate) as the primary bid or the basic supplementary bid meeting the conditions set out in paragraph (3)(a) or (3)(b);
- (b) the same number of paired lots as the primary bid or the basic supplementary bid meeting the conditions set out in paragraph (3)(a) or (3)(b); and
- (c) $n+1$ individual lots in total, where n is the number of individual lots in the primary bid or the basic supplementary bid meeting the conditions set out in paragraph (3)(a) or (3)(b).

DRAFT FOR CONSULTATION

(5) The amount of the additional supplementary bid shall be determined by the bidder, subject to the restrictions set out in paragraph (6).

(6) The restrictions are—

(a) the amount of the additional supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the individual lots, paired lots and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in that bid;

(b) where—

(i) the bidder has made a valid primary bid in accordance with paragraph (1)(a); and

(ii) the bidder has not made a valid basic supplementary bid in accordance with paragraph (1)(b) for the same bid selection; and

(iii) the additional supplementary bid satisfies the conditions set out in paragraph (4) with respect to the valid primary bid,

the amount of the additional supplementary bid shall be no greater than the amount of the highest valid primary bid for that bid selection;

(c) where—

(i) the bidder has made a valid basic supplementary bid in accordance with paragraph (1)(b); and

(ii) the additional supplementary bid satisfies the conditions set out in paragraph (4) with respect to the valid basic supplementary bid,

the amount of the additional supplementary bid shall be no greater than the amount of that valid basic supplementary bid.

(7) A bidder may submit any number of additional supplementary bids, subject to the restriction set out in paragraph (8).

(8) A bidder may not submit more than one additional supplementary bid for each particular selection and division of individual lots meeting the requirements of paragraphs (2)(d) and (4).

(9) A bidder is not required to submit an additional supplementary bid.

Number of primary bid rounds

21.—(1) After each primary bid round, OFCOM shall determine whether any of the conditions set out in paragraph (2) are met.

(2) The conditions are—

(a) there is excess demand for the 2010–2025 MHz band;

(b) there is excess demand for paired lots;

(c) there is excess demand for the 2500–2690 MHz band;

(d) the total number of individual lots selected in valid primary bids is more than nine.

(3) Where at least one of the conditions set out in paragraphs (2)(a) to (c) is met, there shall be another primary bid round unless OFCOM determine, in accordance with paragraph (4), that there shall be no further primary bid rounds.

(4) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be made available to bidders under regulation 36 following any such further primary bid rounds would affect—

(a) the determination of the winning combination of principal stage bids in accordance with regulation 45;

(b) the determination of the base price payable by a winning bidder in accordance with regulation 46.

(5) Where—

(a) OFCOM have determined under paragraph (3) that there shall be no further primary bid rounds; or

DRAFT FOR CONSULTATION

(b) none of the conditions set out in paragraphs (2)(a) to (c) is met, there shall be a supplementary bids round.

Determination of round prices for the first primary bid round

22. In the first primary bid round, the round price for—

- (a) each individual lot shall be fifty thousand pounds;
- (b) each paired lot shall be one hundred thousand pounds;
- (c) the 2010–2025 MHz band shall be one hundred thousand pounds.

Determination of round prices for subsequent primary bid rounds

23.—(1) Subject to paragraph (2), the round price for the 2010–2025 MHz band shall be the same amount as it was in the previous primary bid round.

(2) Where after the previous primary bid round OFCOM have determined under regulation 21(1) that there is excess demand for the 2010–2025 MHz band, the round price for the 2010–2025 MHz band shall be an amount that is higher than the amount that was the round price for that band in the previous primary bid round, subject to the limit set out in paragraph (7).

(3) Subject to paragraph (4), the round price for paired lots shall be the same amount as it was in the previous primary bid round.

(4) Where after the previous primary bid round OFCOM have determined under regulation 21(1) that—

- (a) there is excess demand for the 2500–2690 MHz band; or
- (b) there is excess demand for paired lots,

the round price for paired lots shall be an amount that is higher than the amount that was the round price for paired lots in the previous primary bid round, subject to the limit in paragraph (7).

(5) Subject to paragraph (6), the round price for individual lots shall be the same amount as it was in the previous primary bid round.

(6) Where after the previous primary bid round OFCOM have determined under regulation 21(1) that—

- (a) there is excess demand for the 2500–2690 MHz band; and
- (b) the total number of individual lots selected in valid primary bids is more than nine,

the round price for individual lots shall be equal to an amount that is half the amount of the round price for paired lots determined in accordance with paragraph (3) or (4) (as the case may be).

(7) The round price for the 2010–2025 MHz band and the round price for paired lots shall not be more than twice the amount of the round prices for the 2010–2025 MHz band and the round price for paired lots in the previous primary bid round.

Bidder's eligibility limit for primary bid rounds

24. Before each primary bid round OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 26 or 27 (as the case may be).

Additional deposit before first primary bid round

25.—(1) In addition to the initial deposit paid in accordance with regulation 4(3)(b), a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 26 for the purpose of calculating the bidder's eligibility limit for the first primary bid round.

(2) A bidder wishing to pay such an additional sum must, by such a deadline as may be specified by OFCOM, pay the additional sum into OFCOM's bank account by a same day electronic transfer with accompanying information which identifies the bidder.

DRAFT FOR CONSULTATION

Determination of bidder's eligibility limit for the first primary bid round

26.—(1) After the deadline specified in regulation 25(2) and before the start of the first primary bid round, OFCOM shall determine each bidder's eligibility limit for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by fifty thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 25, but not including any sum forfeited under regulation 72).

(3) Where the number that results from the calculation in paragraph (2) is greater than sixteen, the eligibility limit shall be sixteen.

(4) Where the number that results from the calculation in paragraph (2) is not greater than sixteen, the eligibility limit shall be—

- (a) that number, or
- (b) where the number is not a whole number, that number rounded down to the nearest whole number.

(5) Where a bidder's eligibility limit calculated in accordance with this regulation is less than two, that bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 25, which shall (where not forfeited under regulation 72) be forfeited.

Determination of bidder's eligibility limit for subsequent primary bid rounds

27.—(1) For subsequent primary bid rounds, OFCOM shall determine each bidder's eligibility limit under paragraph (2) or (5) (as the case may be).

(2) Where a bidder makes a valid primary bid in a primary bid round, OFCOM shall determine the bidder's eligibility limit for the next primary bid round by calculating the number of eligibility points associated with that valid primary bid.

(3) The number of eligibility points associated with a valid primary bid shall be a number equal to the total of the eligibility points associated with each individual lot, paired lot and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in that valid primary bid in accordance with Schedule 6.

(4) The bidder's eligibility limit shall be a number equal to the number of eligibility points associated with that valid primary bid.

(5) Where a bidder does not make a valid primary bid in a primary bid round, the bidder's eligibility limit for the next primary bid round shall be zero.

Valid primary bids

28.—(1) A primary bid shall only be taken into consideration for the purposes of determining—

- (a) whether the conditions set out in regulation 21(2) are met;
- (b) the winning combination of principal stage bids in accordance with regulation 45;
- (c) the base price payable by a winning bidder in accordance with regulation 46;

if it is a primary bid which satisfies the conditions set out in paragraph (2) (“valid primary bid”).

(2) The conditions are that—

- (a) the primary bid is made on a primary bid form that has been completed in accordance with regulation 16(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 16(5);
- (c) the primary bid complies with the restrictions set out in regulation 16(6) and with the requirement set out in regulation 16(4); and
- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 32(1) and is received by OFCOM in accordance with regulation 32(2).

DRAFT FOR CONSULTATION

Valid basic supplementary bids

29.—(1) A basic supplementary bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 45;
- (b) the base price payable by a winning bidder under regulation 46;

if it satisfies the conditions set out in paragraph (2) (“valid basic supplementary bid”).

(2) The conditions in respect of a basic supplementary bid are that—

- (a) the basic supplementary bid is made on a supplementary bid form that has been completed in accordance with regulation 19;
- (b) the amount of the basic supplementary bid specified by the bidder under regulation 19(1)(c) complies with the restrictions set out in regulation 19(5);
- (c) the basic supplementary bid complies with the restrictions set out in regulation 19(10) and with the requirement set out in regulation 19(2); and
- (d) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 39(1) and is received by OFCOM in accordance with regulation 39(2).

Valid additional supplementary bids

30.—(1) An additional supplementary bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 45;
- (b) the base price payable by a winning bidder under regulation 46;

if it satisfies the conditions set out in paragraph (2) (“valid additional supplementary bid”).

(2) The conditions in respect of an additional supplementary bid are that—

- (a) the additional supplementary bid is made on a supplementary bid form that has been completed in accordance with regulation 20(2);
- (b) the amount of the additional supplementary bid specified by the bidder under regulation 20(2)(c) complies with the restrictions set out in regulation 20(6);
- (c) the additional supplementary bid complies with the restriction set out in regulation 20(8) and with the requirements set out in regulation 20(4); and
- (d) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 39(1) and is received by OFCOM in accordance with regulation 39(2).

CHAPTER 3

Procedure for primary bid rounds

Notice to be given to bidders before primary bid rounds and extensions to rounds

31.—(1) Before the start of each primary bid round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, the primary bid round will take place;
- (b) the round price for—
 - (i) an individual lot;
 - (ii) a paired lot; and
 - (iii) the 2010–2025 MHz band,

in that primary bid round (determined in accordance with regulation 22 or 23, as the case may be);

- (c) the bidder’s eligibility limit for that primary bid round (determined in accordance with regulation 26 or 27, as the case may be).

DRAFT FOR CONSULTATION

(2) The time notified by OFCOM under paragraph (1)(a) as the end of the primary bid round (“end of round time”) may be treated by a bidder in respect of—

- (a) no more than two primary bid rounds, and
- (b) where paragraph (3) applies to the bidder, a further primary bid round,

as that time extended by thirty minutes and OFCOM shall treat that extended time as the end of round time for the purposes of paragraph (1)(a).

(3) This paragraph applies to a bidder where—

- (a) in respect of a previous primary bid round, the bidder treated the end of round time for that round as extended by thirty minutes in accordance with paragraph (2);
- (b) the bidder submitted its completed primary bid form for that primary bid round so that it was received by OFCOM by the end of round time so extended; and
- (c) OFCOM have notified the bidder that they are satisfied that, in respect of that primary bid round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its primary bid form so that it was received by OFCOM by the end of round time without such an extension.

Submission of primary bid form to OFCOM

32.—(1) Except as provided for in regulation 33, a bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.

(2) The completed primary bid form must be received by OFCOM by the end of round time.

Alternative method for submission of primary bid form

33.—(1) Where OFCOM are satisfied that a bidder is unable to submit a primary bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the primary bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Incomplete or defective primary bid form

34.—(1) Where, due to the manner of completion, a primary bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder’s intention in relation to the making of the primary bid, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder’s intention in relation to the making of the primary bid.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder’s intention, the primary bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the primary bid form in its entirety shall be rejected by OFCOM and the primary bid submitted on the primary bid form shall not be a valid primary bid and accordingly shall not be taken into consideration for the purposes of determining—

- (a) whether the conditions set out in regulation 21(2) are met;
- (b) the winning combination of principal stage bids in accordance with regulation 45;
- (c) the base price payable by a winning bidder in accordance with regulation 46.

DRAFT FOR CONSULTATION

Notification that primary bid not valid

35. Where a bidder submits a primary bid that is not a valid primary bid during a primary bid round, OFCOM shall, after the end of that primary bid round, notify the bidder of that fact and shall give the reasons why the bid is not a valid primary bid.

Release of information on primary bids in principal stage

36.—(1) After the end of a primary bid round and before the start of the subsequent primary bid round (or before the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of the total number of—

- (a) selections of the 2010–2025 MHz band;
- (b) paired lots; and
- (c) individual lots,

included in valid primary bids.

(2) OFCOM may, from time to time, publish on their internet website the total number of—

- (a) selections of the 2010–2025 MHz band;
- (b) paired lots; and
- (c) individual lots,

included in valid primary bids submitted in the latest primary bid round completed at that time.

Further deposit for primary bid rounds

37.—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 16(3)(d) is greater than double the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 25 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 72) OFCOM may, having regard to the desirability of securing an efficient outcome to the principal stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount specified by OFCOM such that the total amount that the bidder is required to have on deposit (including the initial deposit, any sum paid as a deposit under regulation 25 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 72) is at most half the amount of the highest valid primary bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and for any primary bid rounds following notice being given under this paragraph the bidder's eligibility limit shall be zero.

CHAPTER 4

Procedure for supplementary bids round and further deposit for supplementary bids round

Notice to be given to bidders before supplementary bids round

38.—(1) Before the start of the supplementary bids round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, the supplementary bids round will take place;
- (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 44; and
- (c) if applicable, the proportion referred to in regulation 44(1)(a).

DRAFT FOR CONSULTATION

Submission of supplementary bids form to OFCOM

39.—(1) Except as provided for in regulation 40, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 41, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 38(1)(a) as the end of the supplementary bids round.

Alternative method for submission of supplementary bids form

40.—(1) Where OFCOM are satisfied that a bidder is unable to submit a supplementary bids form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Extension to supplementary bids round

41.—(1) Where—

- (a) OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 38(1)(a) as the end of the supplementary bids round, and
- (b) paragraph (2) applies,

the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 38(1)(a) as the end of the supplementary bids round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 38(1)(a) as the end of the supplementary bids round.

Incomplete or defective supplementary bids form

42.—(1) Where, due to the manner of completion, a supplementary bids form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the supplementary bid or bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of the supplementary bid or bids.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the supplementary bids form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
 - (i) the winning combination of principal stage bids in accordance with regulation 45;
 - (ii) the base price payable by a winning bidder in accordance with regulation 46;

DRAFT FOR CONSULTATION

- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
 - (i) the winning combination of principal stage bids in accordance with regulation 45;
 - (ii) the base price payable by a winning bidder in accordance with regulation 46.

Notification that supplementary bid not valid

43. Where a bidder submits a supplementary bid that is not a valid supplementary bid, OFCOM shall, after the end of the supplementary bids round, notify the bidder of that fact and shall give the reasons why the bid is not a valid supplementary bid.

Further deposit for supplementary bids round

44.—(1) By the deadline notified to bidders under regulation 38(1)(b), each bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 25 or 37 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 72) is not less than—

- (a) where a bidder has on all occasions satisfied the requirements set out in regulation 37(3) in respect of every notice it has received under regulation 37(1), the greater of—
 - (i) a proportion of the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 16(3)(d); and
 - (ii) the same proportion of the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 19(1)(c) or regulation 20(2)(c) as the case may be;

where that proportion shall be specified by OFCOM in the notice to bidders under regulation 38 and shall be at most one half;

- (b) where a bidder has not satisfied the requirements set out in regulation 37(3) in respect of every notice it has received under regulation 37(1), the greater of—
 - (i) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 16(3)(d); and
 - (ii) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 19(1)(c) or regulation 20(2)(c) as the case may be.

(2) Where a bidder does not satisfy the requirements set out in paragraph (1), OFCOM shall notify the bidder and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 25 or 37 or under paragraph (1), which shall (where not forfeited under regulation 72) be forfeited, and all of that bidder's primary bids and supplementary bids (if any) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids in accordance with regulation 45;
- (b) the base price payable by a winning bidder in accordance with regulation 46.

CHAPTER 5

Determination of winning principal stage bids and conclusion of principal stage

Determination of the winning principal stage bids and the winning combination of principal stage bids

45.—(1) The winning principal stage bids shall be those valid principal stage bids that comprise the winning combination of principal stage bids.

DRAFT FOR CONSULTATION

(2) Unless paragraph (4) applies, the winning combination of principal stage bids shall be the valid combination of principal stage bids having the highest total value of amounts bid.

(3) A valid combination of principal stage bids is any combination of valid principal stage bids within which—

- (a) there is at most one valid principal stage bid from any one bidder;
- (b) the 2010–2025 MHz band is included in at most one of the bids;
- (c) subject to sub-paragraphs (d) and (e), in respect of the 2500–2690 MHz band, it would be possible for OFCOM to assign—
 - (i) in respect of each valid principal stage bid containing paired lots, a contiguous range of paired lots where the number of paired lots within that range is equal to the number of paired lots selected in that valid principal stage bid; and
 - (ii) in respect of each valid principal stage bid containing individual lots, a contiguous range of individual lots where the number of individual lots contained within that range is equal to the number of individual lots selected in that valid principal stage bid,

such that lot twenty-four is not assigned and each other lot is assigned no more than once;

- (d) where a combination of valid principal stage bids includes at least one additional supplementary bid, it would be possible for OFCOM to assign—
 - (i) in respect of each valid principal stage bid containing paired lots, a contiguous range of paired lots where the number of paired lots within that range is equal to the number of paired lots selected in that valid principal stage bid;
 - (ii) in respect of each valid principal stage bid containing individual lots, that is not an additional supplementary bid, a contiguous range of individual lots where the number of individual lots contained within that range is equal to the number of individual lots selected in that valid principal stage bid; and
 - (iii) in respect of each valid principal stage bid containing individual lots, that is an additional supplementary bid, two contiguous ranges of individual lots where—
 - (aa) the number of individual lots within one range corresponds to the number of individual lots within one of the divisions specified in accordance with regulation 20(2)(d); and
 - (bb) the number of individual lots within the other range corresponds to the number of individual lots within the other division so specified,

such that lot twenty-four is not assigned and each other lot is assigned no more than once;

- (e) where a combination of valid principal stage bids includes no bids for paired lots, it would be possible for OFCOM to assign contiguous ranges of individual lots in respect of each winning principal stage bid such that there is no overlap between those ranges and any of the thirty-eight lots in the 2500–2690 MHz band may be assigned;

(4) Where there is more than one valid combination of principal stage bids for which the total value is equal highest, the winning combination of principal stage bids shall be determined in accordance with the order of precedence set out in paragraph (5) or, where paragraph (6) applies, in accordance with that paragraph.

(5) The order of precedence shall be determined by the total number of eligibility points associated with each such valid combination of principal stage bids in accordance with paragraph (8) such that valid combinations of principal stage bids with which a greater total number of eligibility points are associated prevail over valid combinations of principal stage bids with which a lesser total number of eligibility points are associated.

(6) Where there is more than one valid combination of principal stage bids for which—

- (a) the total value is equal highest; and
- (b) the associated number of eligibility points is equal highest,

DRAFT FOR CONSULTATION

OFCOM shall select that combination of principal stage bids which includes the smallest number of additional supplementary bids.

(7) Where after the provisions in paragraph (6) have been applied more than one valid combination of principal stage bids remains, OFCOM shall employ a method of random selection from amongst those valid combinations of principal stage bids to determine the winning combination of principal stage bids.

(8) The number of eligibility points associated with a valid combination of principal stage bids shall be a number equal to the total of the eligibility points associated with—

- (a) each individual lot;
- (b) each paired lot; and
- (c) each selection of the 2010–2025 MHz band,

included in the bid selection specified in the bids constituting that valid combination of principal stage bids in accordance with Schedule 7.

Determination of base price of winning principal stage bids

46. In respect of each winning principal stage bid OFCOM shall determine an amount in accordance with Schedule 8 (“base price”) which shall be payable by the relevant winning bidder.

Notification of results of principal stage and refund of deposits

47. Following the determination of the winning principal stage bids and the winning combination of principal stage bids under regulation 45 and the determination of the base price for each winning principal stage bid under regulation 46, OFCOM shall—

- (a) notify—
 - (i) winning bidders of—
 - (aa) the bid selection included in their winning principal stage bids as determined under regulation 45;
 - (bb) the value of the base price for its winning principal stage bid as determined under regulation 46; and
 - (cc) the further sum (if any) in pounds as a deposit that it is required to pay in accordance with regulation 48 (“final principal stage deposit”); and
 - (ii) all other bidders that they have not made a winning principal stage bid as determined under regulation 45;
- (b) refund to applicants which were not qualified or which withdrew in accordance with regulation 10 and to bidders which were not winning bidders the initial deposits and any sum paid as a deposit under regulation 25, 37 or 44 (where such deposits have not been forfeited under regulation 17, 44(2) or 72), but not any interest which has accrued on the deposits.

Final principal stage deposit

48.—(1) The final principal stage deposit notified to winning bidders in accordance with regulation 47(a)(i)(cc) shall be an amount such that the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 25, 37 or 44 and any sum paid as a deposit under this regulation, but not including any sum forfeited under regulation 44(2) or 72) is not less than the amount of the base price for that bidder determined under regulation 46.

(2) The final principal stage deposit shall be paid into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(3) Where a bidder does not satisfy the requirements set out in paragraph (2), OFCOM shall notify the bidder and the bidder shall be excluded from the award process and shall not receive a

DRAFT FOR CONSULTATION

refund of its initial deposit or any sum paid as a deposit under regulation 25, 37, 44 or paragraph (2), which shall be forfeited.

Publication of results of principal stage

49. After the deadline specified under regulation 48(2), OFCOM shall publish on their internet website—

- (a) the names of the winning bidders that have satisfied the requirements of regulation 48(2);
- (b) in respect of each winning bidder that has satisfied the requirements of regulation 48(2)—
 - (i) the bid selection or bid selection and division of individual lots (as the case may be) comprised in its winning principal stage bid; and
 - (ii) the base price for its winning principal stage bid;
- (c) the names of any winning bidders that have not satisfied the requirements of regulation 48(2) and who have been excluded from the award process in accordance with regulation 48(3);
- (d) in respect of each winning bidder that has not satisfied the requirements of regulation 48(2) and has been excluded from the award process in accordance with regulation 48(3)—
 - (i) the bid selection or bid selection and division of individual lots (as the case may be) comprised in the bid which would have constituted its winning principal stage bid; and
 - (ii) the base price for the bid which would have constituted its winning principal stage bid.

CHAPTER 6

Assignment of frequencies for the 2010–2025 MHz band and for the 2500–2690 MHz band where only one winning principal stage bid includes paired lots or only one winning principal stage bid includes individual lots

Assignment of the 2010-2025 MHz band

50. OFCOM shall assign to the bidder that submitted the winning principal stage bid for the 2010–2025 MHz band the frequencies between 2010 MHz and 2025 MHz.

Procedure for the 2500–2690 MHz band

51.—(1) Where paired lots were selected in only one winning principal stage bid, OFCOM shall assign to the bidder that submitted that winning principal stage bid a contiguous range of paired lots such that—

- (a) the number of paired lots contained within that range is equal to the number of paired lots selected in that winning principal stage bid; and
- (b) lot one is contained within that range.

(2) Subject to paragraph (3), where individual lots were selected in only one winning principal stage bid, OFCOM shall assign to the bidder that submitted that winning principal stage bid a contiguous range of individual lots in the lower area such that—

- (a) the number of individual lots contained within that range is equal to the number of individual lots selected in that winning principal stage bid; and
- (b) lot twenty-three is contained within that range.

(3) Where—

- (a) individual lots were selected in only one winning principal stage bid; and
- (b) that winning principal stage bid was an additional supplementary bid,

paragraph (4) shall apply.

DRAFT FOR CONSULTATION

(4) OFCOM shall assign to the bidder that submitted the winning principal stage bid meeting the requirement of paragraph (3)(b) two contiguous ranges of individual lots such that—

- (a) one contiguous range of individual lots is assigned in the lower area such that—
 - (i) the number of individual lots within that range is equal to the number of individual lots in the division containing the larger number of individual lots specified in that winning principal stage bid; and
 - (ii) lot twenty-three is contained within that range; and
- (b) one contiguous range of individual lots is assigned in the upper area such that—
 - (i) the number of individual lots within that range is equal to the number of individual lots in the division containing the smaller number of individual lots specified in that winning principal stage bid; and
 - (ii) lot thirty-eight is contained within that range.

CHAPTER 7

Assignment of frequencies to winning bidders for the 2500–2690 MHz band where more than one winning principal stage bid includes paired lots or individual lots

Assignment stage round and assignment stage bids

52.—(1) Where more than one winning principal stage bid included—

- (a) paired lots; or
- (b) individual lots,

there shall be one further round of bidding (“assignment stage round”) to determine which frequencies in the 2500–2690 MHz band shall be assigned to each winning bidder.

(2) Where the assignment stage round relates to—

- (a) paired lots, only bidders that submitted a winning principal stage bid which included paired lots may take part in the assignment stage round;
- (b) individual lots, only bidders that submitted a winning principal stage bid which included individual lots may take part in the assignment stage round.

(3) A bid made during the assignment stage round (“assignment stage bid”) shall be in the case of—

- (a) paired lots, a bid for a contiguous range of paired lots;
- (b) individual lots where the winning principal stage bid was not an additional supplementary bid, a bid for a contiguous range of individual lots;
- (c) individual lots where the winning principal stage bid was an additional supplementary bid, a bid for a combination of two contiguous ranges of individual lots where one range is in the lower area and the other range is in the upper area,

at an amount in whole pounds specified by the bidder.

(4) A bidder in the assignment stage round may only bid—

- (a) in respect of individual lots, for the contiguous ranges or combination of two contiguous ranges of individual lots (as the case may be); and
- (b) in respect of paired lots, for the contiguous range of paired lots,

that OFCOM determine are available to the bidder in accordance with regulation 54 (“assignment stage options”).

Assignment stage bids

53.—(1) In order to make an assignment stage bid for an assignment stage option, a bidder must, on a form provided to the bidder by OFCOM (“assignment stage bid form”), specify an amount in whole pounds that it is willing to pay for a licence that includes—

DRAFT FOR CONSULTATION

- (a) the contiguous range of individual lots;
- (b) the combination of two contiguous ranges of individual lots; or
- (c) the contiguous range of paired lots (as the case may be),

in addition to the base price for that bidder's winning principal stage bid determined under regulation 46.

(2) A bidder may submit no more than one assignment stage bid for each of the assignment stage options determined in accordance with regulation 52(4).

(3) A bidder is not required to submit an assignment stage bid.

Determination of frequencies

54.—(1) The assignment stage options that are available to each winning bidder in the assignment stage round for—

- (a) paired lots, where the assignment stage round relates to paired lots; and
- (b) individual lots, where the assignment stage round relates to individual lots,

shall be determined by OFCOM such that the conditions in paragraphs (2) and (3) are satisfied.

(2) In respect of paired lots those assignment stage options shall be those contiguous ranges of paired lots which satisfy the following conditions—

- (a) the number of paired lots contained in that contiguous range of paired lots is equal to the number of paired lots included in the bidder's winning principal stage bid; and
- (b) the lowest lot of a paired lot included in that range is such that the following conditions could be satisfied—
 - (i) each winning bidder that included paired lots in its winning principal stage bid is assigned a contiguous range of paired lots that, in respect of that bidder's winning principal stage bid, satisfies the condition in sub-paragraph (a);
 - (ii) there is no overlap between the frequencies assigned;
 - (iii) the combination of all of the contiguous ranges of paired lots assigned is a single contiguous range of paired lots; and
 - (iv) lot one is included in that contiguous range of paired lots.

(3) In respect of individual lots those assignment stage options shall be those contiguous ranges, or combinations of two contiguous ranges of individual lots (as the case may be) that satisfy the following conditions—

- (a) where the bidder's winning principal stage bid was not an additional supplementary bid, the contiguous ranges of individual lots shall be such that the number of individual lots contained in each such contiguous range of individual lots is equal to the number of individual lots included in the bidder's winning principal stage bid;
- (b) where the bidder's winning principal stage bid was an additional supplementary bid, the combinations of two contiguous ranges of individual lots shall be such that—
 - (i) the number of individual lots contained in one of those contiguous ranges of individual lots is equal to the number of individual lots within one of the two divisions specified in the bidder's winning principal stage bid; and
 - (ii) the number of individual lots contained in the other of those contiguous ranges of individual lots is equal to the number of individual lots within the other of the two divisions specified in the bidder's winning principal stage bid;
- (c) the lowest individual lot included in each contiguous range of individual lots is such that the following conditions could be satisfied—
 - (i) each winning bidder that included individual lots in its winning principal stage bid is assigned a contiguous range of individual lots, or in the case of a winning principal stage bid that was an additional supplementary bid, a combination of two contiguous ranges of individual lots that, in respect of that bidder's winning principal stage bid,

DRAFT FOR CONSULTATION

satisfies the condition set out in sub-paragraph (a) or the conditions set out in sub-paragraph (b) as the case may be;

- (ii) there is no overlap between the frequencies assigned;
 - (iii) the combination of all contiguous ranges of individual lots assigned in the lower area (if any) is a contiguous range of individual lots which includes lot twenty-three but does not include lot X, where X is equal to the total number of paired lots selected in winning principal stage bids;
 - (iv) the combination of all contiguous ranges of individual lots assigned in the upper area (if any) is a contiguous range of individual lots which includes lot thirty-eight but does not include lot Y, where Y is equal to the sum of twenty-four and the total number of paired lots selected in winning principal stage bids;
- (d) where no valid principal stage bids contained paired lots—
- (i) all individual lots awarded are awarded in one contiguous range of individual lots;
 - (ii) each winning bidder is awarded a contiguous range of individual lots;
 - (iii) there is no overlap between the contiguous ranges of individual lots awarded to winning bidders; and
 - (iv) any of the thirty-eight individual lots in the 2500–2690 MHz band may be assigned.

Assignment stage bid deposit

55.—(1) Each bidder that makes an assignment stage bid must, by a deadline specified by OFCOM where that deadline shall expire after the end of the assignment stage round, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 25, 37 or 44 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 72) is an amount that is not less than the amount (“*d*”) calculated in accordance with the formula set out in paragraph (2).

(2) The formula is—

$$d = b + a_p + a_u$$

where—

“*b*” is the amount of the base price of the bidder’s winning principal stage bid (determined in accordance with regulation 46);

“*a_p*” is the amount of the highest assignment stage bid made by the bidder for an assignment stage option in relation to paired lots;

“*a_u*” is the amount of the highest assignment stage bid made by the bidder for an assignment stage option in respect of individual lots.

(3) Where a bidder does not satisfy the provisions set out in paragraph (1)—

- (a) all of the assignment stage bids submitted by the bidder in the assignment stage round shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—
 - (i) the winning combination of assignment stage bids under regulation 64;
 - (ii) the additional price payable by a winning bidder under regulation 66;
- (b) the bidder will be deemed to have made a valid assignment stage bid of zero for each assignment stage option available to the bidder in accordance with regulation 54 for the purposes mentioned in sub-paragraph (a).

DRAFT FOR CONSULTATION

Valid assignment stage bids

56.—(1) An assignment stage bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 64; and
- (b) the additional price payable by a winning bidder under regulation 66,

if it satisfies the conditions set out in paragraph (2) (“valid assignment stage bid”).

(2) The conditions are—

- (a) the assignment stage bid is submitted in accordance with the restrictions set out in regulation 52(4) and 53(2);
- (b) the assignment stage bid is made on an assignment stage bid form that has been completed in accordance with regulation 53; and
- (c) the completed assignment stage bid form is submitted to OFCOM in accordance with regulation 58(1) and is received by OFCOM in accordance with regulation 58(2).

Notice to bidders before the assignment stage round

57. Before the start of the assignment stage round, OFCOM shall notify each bidder that may make an assignment stage bid in the assignment stage bid round in accordance with regulation 52 of—

- (a) the assignment stage options that are available to that bidder as determined in accordance with regulation 54;
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

Submission of assignment stage bid form to OFCOM

58.—(1) Except as provided for in regulation 59, a bidder must submit the completed assignment stage bid form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 60, the completed assignment stage bid form must be received by OFCOM by the time notified to the bidder under regulation 57(b) as the end of the assignment stage round.

Alternative method for submission of assignment stage bid form

59.—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the assignment stage bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

Extension to assignment stage round

60.—(1) Where—

- (a) OFCOM have not received a completed assignment stage bid form from a bidder by the time notified to bidders under regulation 57(b) as the end of the assignment stage round; and
- (b) paragraph (2) applies,

DRAFT FOR CONSULTATION

the time by which the bidder's completed assignment stage bid form must be received by OFCOM shall be the time thirty minutes after the time notified to bidders under regulation 57(b) as the end of the assignment stage round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its assignment stage bid form so that it was received by OFCOM by the time notified to bidders under regulation 57(b) as the end of the assignment stage round.

Incomplete or defective assignment stage bid form

61.—(1) Where, due to the manner of completion, an assignment stage bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of assignment stage bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of assignment stage bids.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the assignment stage bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the assignment stage bids made on the assignment stage bid form, that assignment stage bid or those assignment stage bids (as the case may be) shall be deemed to be invalid, and regulation 63 shall apply accordingly;
- (b) in all other cases, the assignment stage bid form in its entirety shall be rejected by OFCOM and all of the assignment stage bids made on that assignment stage bids form shall be deemed to be invalid, and regulation 63 shall apply accordingly.

Notification that assignment stage bid is not valid

62. Where a bidder submits an assignment stage bid that is not a valid assignment stage bid, OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the bid is not a valid assignment stage bid.

Procedure where there is no valid assignment stage bid

63. In respect of each assignment stage option available to a bidder in accordance with regulation 52(4), where the bidder does not make a valid assignment stage bid for that option, the bidder shall be deemed to have made a valid assignment stage bid of zero for that option for the purposes of determining—

- (a) the winning combination of assignment stage bids in accordance with regulation 64;
- (b) the additional price payable by a winning bidder in accordance with regulation 66.

Determination of the winning assignment stage bids and the winning combination of assignment stage bids

64.—(1) OFCOM shall determine separately the winning assignment stage bids for paired lots and individual lots in accordance with paragraphs (2) to (4).

(2) The winning assignment stage bids shall be—

- (a) in the case of paired lots those valid assignment stage bids with respect to paired lots that comprise the winning combination of assignment stage bids;
- (b) in the case of individual lots those valid assignment stage bids with respect to individual lots that comprise the winning combination of assignment stage bids.

DRAFT FOR CONSULTATION

(3) Unless paragraph (4)(f) applies, the winning combination of assignment stage bids shall be the valid combination of assignment stage bids having the highest total value of amounts bid.

(4) For paired lots and individual lots respectively, a valid combination of assignment stage bids is any combination of valid assignment stage bids with respect to paired lots and individual lots respectively within which—

- (a) there is one valid assignment stage bid from each winning bidder that specified paired lots or individual lots or both paired lots and individual lots in its winning principal stage bid;
- (b) there is no overlap between the contiguous ranges of individual lots or paired lots comprised in those valid assignment stage bids;
- (c) in the case of paired lots—
 - (i) the combination of all of the contiguous ranges of paired lots comprised in those valid assignment stage bids is a contiguous range of paired lots; and
 - (ii) one of those contiguous ranges of paired lots includes lot one;
- (d) in the case of individual lots where at least one winning principal stage bid contains paired lots—
 - (i) the combination of all contiguous ranges of individual lots in the lower area comprised in those valid assignment stage bids (if any) is a contiguous range of individual lots which includes lot twenty-three but does not include lot X, where X is equal to the total number of paired lots selected in winning principal stage bids;
 - (ii) the combination of all contiguous ranges of individual lots in the upper area comprised in those valid assignment stage bids (if any) is a contiguous range of individual lots which includes lot thirty-eight but does not include lot Y, where Y is equal to the sum of twenty-four and the total number of paired lots selected in winning principal stage bids;
- (e) in the case of individual lots where none of the winning principal stage bids contains paired lots—
 - (i) all individual lots are assigned in one contiguous range of individual lots;
 - (ii) each winning bidder is assigned a contiguous range of individual lots;
 - (iii) there is no overlap between the contiguous ranges of individual lots awarded to winning bidders;
 - (iv) any of the thirty-eight individual lots in the 2500–2690 MHz band may be assigned; and
 - (v) any individual lots which are not included in valid assignment stage bids themselves form a contiguous range of individual lots which will not be assigned to any bidder.
- (f) Where there is more than one valid combination of assignment stage bids for which the total value is equal highest OFCOM shall employ a method of random selection from amongst those valid combinations of assignment stage bids to determine the winning combination of assignment stage bids.

Assignment of lots twenty-four and thirty-eight in specific circumstances

65.—(1) Lot twenty-four shall be assigned in accordance with paragraph (2) and lot thirty-eight shall be assigned in accordance with paragraph (3) where—

- (a) a valid combination of assignment stage bids includes both paired lots and individual lots; and
- (b) the specific conditions set out in paragraphs (2) and (3) respectively apply.

(2) Where lot twenty-three is assigned as an individual lot, OFCOM shall add lot twenty-four to the assignment of frequencies for the winning bid which includes lot twenty-three.

(3) Where—

DRAFT FOR CONSULTATION

- (a) lots thirteen and thirty-seven are assigned as a paired lot; and
- (b) lot fourteen is assigned as an individual lot,

OFCOM shall add lot thirty-eight to the assignment of frequencies for the winning bid which includes lot thirty-seven.

Determination of additional price of winning assignment stage bids

66. In respect of each winning assignment stage bid OFCOM shall determine an amount in whole pounds in accordance with Schedule 9 (“additional price”) which shall be payable by the relevant winning bidder.

Notification of results of assignment stage

67. Following determination of the winning assignment stage bids and the winning combinations of assignment stage bids under regulation 64, and the determination of the additional price for each winning assignment stage bid under regulation 66, OFCOM shall notify each winning bidder of—

- (a) the frequencies in respect of which the bidder made winning assignment stage bids;
- (b) the additional price for each winning assignment stage bid made by the bidder.

CHAPTER 8

Grant stage

Determination of the licence fee

68. The licence fee payable by a winning bidder shall be an amount equal to the total of—

- (a) the base price determined by OFCOM in accordance with regulation 46; and
- (b) the additional price for each winning assignment stage bid made by the bidder determined by OFCOM in accordance with regulation 66.

Procedure where the amount of a winning bidder’s deposit is less than the licence fee

69.—(1) Where, after completion of the assignment stage, the amount of a winning bidder’s deposit (including the initial deposit and any sum paid as a deposit under regulation 25, 37, 44 or 55, but not including any sum forfeited under regulation 72) is an amount that is less than the amount of the winning bidder’s licence fee calculated in accordance with regulation 68—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with subparagraph (b); and
- (b) the bidder must by the deadline specified pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum in pounds calculated in accordance with paragraph (2).

(2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the winning bidder’s licence fee calculated in accordance with regulation 68 and the amount of the bidder’s deposit (including the initial deposit and any sum paid as a deposit under regulation 25, 37, 44 or 55, but not including any sum forfeited under regulation 72).

(3) Where a bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the bidder a licence for—

- (a) the frequencies that are to be assigned to the bidder in accordance with Chapter 6 of this Part; and
- (b) the frequencies for which the bidder submitted a winning assignment stage bid or winning assignment stage bids in accordance with Chapter 7 of this Part.

(4) Where frequencies are awarded as—

DRAFT FOR CONSULTATION

- (a) paired lots, they shall be subject to the technical restrictions set out in the licence which apply to paired frequencies, as defined in the licence;
- (b) individual lots, they shall be subject to the technical restrictions set out in the licence which apply to unpaired frequencies or restricted unpaired frequencies, as defined in the licence.

(5) Where a bidder does not satisfy the requirement set out in paragraph (1)(b), the bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 25, 37, 44 or 55, which shall (where not forfeited under regulation 72) be forfeited.

Procedure where the amount of a winning bidder's deposit is greater than or equal to the licence fee

70.—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 25, 37, 44 or 55, but not including any sum forfeited under regulation 72) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 68, OFCOM shall—

- (a) grant the winning bidder a licence for—
 - (i) the frequencies that are to be assigned to the bidder in accordance with Chapter 6 of this Part; and
 - (ii) the frequencies in respect of which the bidder submitted a winning assignment stage bid or winning assignment stage bids in accordance with Chapter 7 of this Part;
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (3).

(2) Where frequencies are awarded as—

- (a) paired lots, they shall be subject to the technical restrictions set out in the licence which apply to paired frequencies, as defined in the licence;
- (b) individual lots, they shall be subject to the technical restrictions set out in the licence which apply to unpaired frequencies or restricted unpaired frequencies, as defined in the licence.

(3) The sum which OFCOM shall refund to a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 25, 37, 44 or 55, but not including any sum forfeited under regulation 72) and the amount of the winning bidder's licence fee calculated in accordance with regulation 68, but not any interest which has accrued on the deposit.

Completion of the award process

71. After the grant of licences and the payment of refunds to winning bidders in accordance with regulation 70(1), OFCOM shall complete the award process by publishing on their internet website—

- (a) details of all valid principal stage bids and all valid assignment stage bids made by each bidder;
- (b) the names of the persons to whom licences were granted, including—
 - (i) details of the frequencies in respect of which the licences were granted; and
 - (ii) details of the licence fees paid;
- (c) the names of any persons who did not meet the requirements of regulation 69(1)(b) and who were excluded from the award process in accordance with regulation 69(5), including—
 - (i) details of the frequencies in respect of which licences would have been granted to them; and

DRAFT FOR CONSULTATION

- (ii) details of the licence fees which would have been payable for those licences had they been granted.

PART 6 ACTIVITY RULES

Forfeit of deposit and exclusion from award process

72. If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 74 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulation 25, 37, 44 or 55 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

Bids made by an excluded bidder

73.—(1) Where a bidder is excluded from the award process under regulation 72(b) during the principal stage, all of the principal stage bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids in accordance with regulation 45;
- (b) the base price payable by a winning bidder in accordance with regulation 46.

(2) Where a bidder is excluded from the award process under regulation 72(b) during the assignment stage, all of the assignment stage bids submitted by the bidder (including any bids which the bidder is deemed to have submitted under regulation 63) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids in accordance with regulation 64;
- (b) the additional price payable by a winning bidder in accordance with regulation 66.

Events

74. The events referred to in regulation 72, in relation to an applicant or bidder, are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
 - (i) to OFCOM;
 - (ii) to a member of that applicant's or bidder's bidder group;
 - (iii) to a provider of finance for the purpose of raising finance for a bid; or
 - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;

DRAFT FOR CONSULTATION

- (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group is—
 - (i) taking part in the preparation of both bidder groups for participation in the award process; or
 - (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group;
 - (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of —
 - (ii) a person ceasing to be a member of that bidder group;
 - (iii) a person joining that bidder group under the procedure in regulation 7(3);
 - (iv) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

PART 7

MISCELLANEOUS

General power of exclusion

75. OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold a licence.

Notification to OFCOM

76. If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel who are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM—

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA; or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their internet website.

Changes to timing or location

77.—(1) Subject to regulations 78 and 79, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations to be delivered at the place specified or by the deadline specified under these Regulations; or
- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed by the deadline specified.

(2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify the applicants or bidders (as the case may be) that—

DRAFT FOR CONSULTATION

- (a) delivery must be made on a different day or within different times on that day or at a different place;
- (b) the action must be completed on a different day or by a different deadline.

Changes to round times and use of electronic auction system

78.—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all reasonable steps to notify bidders of an alternative method of participating in the award process and any requirements relating to the authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the award process in accordance with a notification under paragraph (3).

Rerunning rounds

79.—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect on the continuation of the round).

(2) Where this paragraph applies, OFCOM shall—

- (a) take all reasonable steps to notify bidders of its determination under paragraph (1);
- (b) disregard the bids made in that round;
- (c) resume the award procedure from the end of the previous round (or, if there was no previous round, from the start of the first primary bid round).

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 of these Regulations because of technical failure (or an event or circumstance with similar effect on the continuation of the award process).

(4) Where this paragraph applies, OFCOM shall—

- (a) determine the rounds for which bids made in those rounds should be disregarded in order to have a fair and efficient outcome to the award process;
- (b) take all reasonable steps to notify bidders of its determinations under paragraph (3) and sub-paragraph (a); and
- (c) resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a), or, where all bids are to be disregarded under that sub-paragraph, to rerun the award process from the start of the first primary bid round.

Refunds

80. OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations.

[Signature]

[Date]

DRAFT FOR CONSULTATION

SCHEDULE 1

Regulation 2(2)

MEANING OF INDIVIDUAL LOT AND PAIRED LOT

In these Regulations—

- (a) “individual lot” means any one of the lots listed in column (1) of the following table comprising the frequencies listed in the corresponding entry in column (2) of the same table;
- (b) “paired lot” means any one pair of lots listed in column (1) of the following table where the separation between the lowest frequency of one such lot and the lowest frequency of the other such lot is 120 MHz.

<i>Column (1)</i>	<i>Column (2)</i>
<i>Lots</i>	<i>Frequencies (MHz)</i>
Lot 1	2500–2505
Lot 2	2505–2510
Lot 3	2510–2515
Lot 4	2515–2520
Lot 5	2520–2525
Lot 6	2525–2530
Lot 7	2530–2535
Lot 8	2535–2540
Lot 9	2540–2545
Lot 10	2545–2550
Lot 11	2550–2555
Lot 12	2555–2560
Lot 13	2560–2565
Lot 14	2565–2570
Lot 15	2570–2575
Lot 16	2575–2580
Lot 17	2580–2585
Lot 18	2585–2590
Lot 19	2590–2595
Lot 20	2595–2600
Lot 21	2600–2605
Lot 22	2605–2610
Lot 23	2610–2615
Lot 24	2615–2620
Lot 25	2620–2525
Lot 26	2625–2630
Lot 27	2630–2635
Lot 28	2635–2640
Lot 29	2640–2645
Lot 30	2645–2650
Lot 31	2650–2655
Lot 32	2655–2660
Lot 33	2660–2665
Lot 34	2665–2670
Lot 35	2670–2675

DRAFT FOR CONSULTATION

Lot 36	2675–2680
Lot 37	2680–2685
Lot 38	2685–2690

SCHEDULE 2

Regulation 4(3)(a)(i)

APPLICATION FORM AND WARRANTY

1. Details of the applicant

Provide the following details for the applicant—

Applicant's full name

Registered number of company

Registered office of company

Applicant's contact address (if different from registered office)

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

2. Authorised persons

Provide details of the name and position in the applicant of at least three and no more than five persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

3. Directors or members of managing body

Provide the name and job title of each of the directors of the applicant or each of the members of the managing body of the applicant.

4. Applicant group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 ("the Regulations")) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of any of the applicant's associates who wish to apply to be excluded from the applicant's applicant group in accordance with regulation 5(1) of the Regulations.

Provide the names of all other members of the applicant group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 3 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 8 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether any member of the applicant's applicant group has colluded, or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;

DRAFT FOR CONSULTATION

- (d) state whether any member of the applicant's applicant group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;
- (e) state whether any member of the applicant's applicant group, or any person to whom confidential information has been disclosed, has disclosed confidential information, whether directly or indirectly, to any person, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure—
 - (i) was to a member of the applicant's applicant group; or
 - (ii) was to OFCOM;
- (f) state whether any member of the applicant's applicant group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (g) state whether any member of the applicant's applicant group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process and provide a description of the services concerned; and
- (h) state whether (and provide a description of any circumstances in which) any person who is a member or a director or employee of a member of the applicant's applicant group and also a director or employee of a member of another applicant group is—
 - (i) taking part in the preparation of both applicant groups for participation in the award process; or
 - (ii) receiving confidential information relating to both applicant groups.

6. Other information

Provide a brief description of the substance of—

- (a) agreements (if any) relating to the management of the applicant; and
- (b) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its applicant group or its directors or officers.

7. Warranty

Provide the following warranty as part of your application—

“[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that—

- (a) the persons authorised in section 2 of this application have read and understood the Regulations, the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 72 and 74 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.”

SCHEDULE 3

Regulation 4(3)(a)(ii)

**DOCUMENT FOR MEMBER OF APPLICANT'S APPLICANT OR
BIDDER GROUP WHO IS NOT AN ASSOCIATE**

[Insert name of applicant or bidder] (the “applicant/bidder”) wishes to include [insert name and address of person to be included in applicant or bidder group who is not an associate] as a member of the applicant/bidder’s applicant or bidder group as defined in the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 (“the Regulations”) for the purpose of the award process under the Regulations.

Under regulation 8(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant’s bidder group. Regulations 72 and 74 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

1. Applicant/bidder

In relation to regulations 8(2), 72 and 74 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications (“OFCOM”) that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in applicant or bidder group who is not an associate] is not a member of any other applicant’s or bidder’s applicant or bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in applicant or bidder group who is not an associate]—

- (a) has ever been or becomes a member of any other applicant’s or bidder’s applicant or bidder group;
- (b) has ever been or becomes a subsidiary of a member of any other applicant’s or bidder’s applicant or bidder group during the award process; or
- (c) has ever obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

2. [Insert name of person to be included in applicant or bidder group who is not an associate]

[Insert name of person to be included in applicant or bidder group who is not an associate] represents and warrants to OFCOM that it—

- (a) consents to be a member of the applicant/bidder’s applicant or bidder group;
- (b) is not a member of any other applicant’s or bidder’s applicant or bidder group; and
- (c) is aware of the provisions in regulations 72 and 74 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder applicant or group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder—

- (a) if it has ever been or becomes a member of any other applicant’s or bidder’s applicant or bidder group;
- (b) if it has ever been or becomes a subsidiary of a member of any other applicant’s or bidder’s applicant or bidder group during the award process; or
- (c) if it has ever obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

**DOCUMENT FOR AN APPLICANT RELATING TO AN
ASSOCIATE'S APPLICATION TO BE EXCLUDED FROM AN
APPLICANT OR BIDDER GROUP**

[Insert name of applicant] is an applicant (as defined in the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 (the "Regulations")). [insert name of associate] is an associate (as defined in the Regulations) of [insert name of applicant] and is therefore a member of [insert name of applicant]'s bidder group.

Under regulation 8(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant's bidder group. Under regulation 5 of the Regulations an associate of an applicant may apply to OFCOM to be excluded from that applicant's applicant or bidder group in order no longer to be a member of that applicant or bidder group for the purposes of the Regulations.

[Insert name of associate] wishes to be excluded from [insert name of applicant]'s applicant or bidder group in accordance with regulation 5 of the Regulations. [Insert name of associate] has delivered to the OFCOM a document in the form set out at Schedule 5 of the Regulations.

1. [Insert name of applicant]'s Representations and Warranties

[Insert name of applicant] represents and warrants to OFCOM that it has not received any confidential information (as defined in the Regulations) which relates in any way to [insert name of associate] or any other applicant or bidder.

2. [Insert name of applicant]'s Undertakings

[Insert name of applicant] undertakes to OFCOM that—

- (a) it has not sought or accepted receipt of any confidential information relating to [insert name of associate] or any other applicant or bidder, and will not do so prior to the date of completion of the award process under regulation 71 of the Regulations;
- (b) no person who is a director or employee of, or seconded to [insert name of applicant]—
 - (i) has taken part in; or
 - (ii) will take part inany discussion or activity which relates in any way to any potential or actual bid by [insert name of associate] or any applicant or bidder group to which [insert name of associate] belongs;
- (c) any person who is a director or employee of, or seconded to [insert name of associate] and also a director of [insert name of applicant] will be excluded from any meeting or any part of any meeting of the board of directors of [insert name of applicant] at which any aspect of [insert name of applicant]'s participation in the award process under the Regulations is or is to be discussed;
- (d) any person who is a director or employee of, or seconded to [insert name of applicant] and also a director of [insert name of associate] will not take part in any meeting or any part of any meeting of the board of directors of [insert name of associate] at which any aspect of [insert name of associate]'s participation in the award process under the Regulations is or is to be discussed;
- (e) it has not taken and will not take any actions the intent or effect of which are or would be to influence in any way the behaviour of—
 - (i) [insert name of associate]; or
 - (ii) any member of any applicant or bidder group of which [insert name of associate] is or becomes a member;

DRAFT FOR CONSULTATION

in relation to any aspect of their participation in the award process under the Regulations;

(f) all employees and directors of, and persons seconded to [insert name of applicant] who in the usual course of their employment may come into contact with any employee or director of, or person seconded to—

(i) [insert name of associate]; or

(ii) any member of any applicant or bidder group of which [insert name of associate] is or becomes a member;

will be made fully aware of the undertakings given by [insert name of applicant] to OFCOM in this document.

3. Provision of Further Information in Relation to [insert name of applicant]'s Representations, Warranties and Undertakings

To the extent that [insert name of applicant] is unable to make or give any of the representations, warranties and undertakings set out in sections 1 and 2 of this document, [insert name of applicant] has set out below full details of the reasons why it is unable to do so. OFCOM will take these details into account when making a determination in relation to the application to be excluded from the applicant or bidder group in accordance with regulation 5(1) of the Regulations.

[Insert full details of any reasons why the representations, warranties and undertakings set out in sections 1 and 2 of this document can not be made or given by [insert name of applicant].]

SCHEDULE 5

Regulation 5(1)(b)

**DOCUMENT FOR AN ASSOCIATE TO APPLY TO BE EXCLUDED
FROM AN APPLICANT OR BIDDER GROUP**

[Insert name and address of associate] wishes to opt out of the applicant or bidder group (as defined in the Wireless Telegraphy (Licence Award) (No.2) Regulations 2008 (the “Regulations”)) of which [insert name of applicant] is the applicant as defined in the Regulations.

Under regulation 8(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant’s bidder group. Under regulation 5 of the Regulations an associate of an applicant may apply to OFCOM to be excluded from that applicant’s applicant or bidder group in order no longer to be a member of that applicant or bidder group for the purposes of the Regulations.

1. [Insert name of associate]’s Representations and Warranties

[Insert name of associate] represents and warrants to the Office of Communications (“OFCOM”) that—

- (a) it does not hold, whether directly or indirectly, any interest (construed in accordance with section 820 to 825 of the Companies Act 2006 (a)), in any share which carries, or any shares which together carry, equal to or more than fifty per cent. of the votes entitled to be cast at a general meeting of [insert name of applicant];
- (b) it does not have the right to appoint or remove a majority of [insert name of applicant]’s board of directors; and
- (c) it has not received any confidential information (as defined in the Regulations) relating to [insert name of applicant]’s applicant or bidder group.

2. [Insert name of associate]’s Undertakings

[Insert name of associate] undertakes to OFCOM that—

- (a) it will not prior to the date of completion of the award process under regulation 71 of the Regulations seek or accept receipt of any confidential information relating to [insert name of applicant] or any member of [insert name of applicant]’s applicant or bidder group;
- (b) no person who is a director or employee of, or seconded to, [Insert name of associate]—
 - (i) has taken part in; or
 - (ii) will take part inany discussion or activity relating to any potential or actual bid by [insert name of applicant];
- (c) any person who is a director or employee of, or seconded to, [insert name of associate] and also a director of [insert name of applicant] will not take part in any meeting or any part of any meeting of the board of directors of [insert name of applicant] at which any aspect of [insert name of applicant]’s participation in the award process under the Regulations is or is to be discussed;
- (d) any person who is a director or employee of, or seconded to [insert name of applicant] and also a director of [insert name of associate] will be excluded from any meeting or any part of any meeting of the board of directors of [insert name of associate] at which any aspect of [insert name of associate]’s participation in the award process under the Regulations is or is to be discussed;

(a) 2006 c.46.

DRAFT FOR CONSULTATION

- (e) it has not taken and will not take any actions the intent or effect of which are or would be to influence in any way the behaviour of—
 - (i) [insert name of applicant]; or
 - (ii) any member of [insert name of applicant]’s applicant or bidder groupin relation to any aspect of their participation in the award process under the Regulations;
- (f) all employees and directors of, and persons seconded to, [insert name of associate] who in the usual course of their employment may come into contact with any employee or director of, or person seconded to—
 - (i) [insert name of applicant]; or
 - (ii) any member of [insert name of applicant]’s applicant or bidder group;will be made fully aware of the undertakings given by [insert name of associate] to OFCOM in this document.

3. Provision of Further Information in Relation to [insert name of associate]’s Representations, Warranties and Undertakings

To the extent that [insert name of associate] is unable to make or give any of the representations, warranties and undertakings set out in sections 1 and 2 of this document, [insert name of associate] has set out below full details of the reasons why it is unable to do so. OFCOM will take these details into account when making a determination in relation to the application to be excluded from the applicant or bidder group in accordance with regulation 5(1) of the Regulations.

[Insert full details of any reasons why the representations, warranties and undertakings set out in sections 1 and 2 of this document can not be made or given by [insert name of associate].]

DRAFT FOR CONSULTATION

SCHEDULE 6

Regulation 12(1)(a)

FREQUENCY RANGE SELECTION MENU WHERE THERE IS ONLY ONE BIDDER

Bidder's full name:

Bidder address:

Telephone number:

Fax number:

E-mail address:

<i>Frequency range (MHz)</i>	<i>Eligibility Points</i>	<i>Price of frequency range</i>	<i>Selection of frequency ranges (indicate selected frequency ranges with a cross ("X"), selecting no more than one frequency range in respect of each of the 2010-2025 MHz band, frequency ranges for paired lots and frequency ranges for individual lots and ensuring that the total number of eligibility points attributed to the frequency ranges so selected is no more than sixteen)</i>
2010–2025 MHz band			
1. 2010–2025	2	£100,000	
Frequency ranges for paired lots (MHz)			
2. 2500–2505 paired with 2620–2625	2	£100,000	
3. 2500–2510 paired with 2620–2630	4	£200,000	
4. 2500–2515 paired with 2620–2635	6	£300,000	
5. 2500–2520 paired with 2620–2640	8	£400,000	
6. 2500–2525 paired with 2620–2645	10	£500,000	
7. 2500–2530 paired with 2620–2650	12	£600,000	
8. 2500–2535 paired with 2620–2655	14	£700,000	
9. 2500–2540 paired with 2620–2660	16	£800,000	
Frequency ranges for individual lots (MHz)			
10. 2605–2620	1	£100,000	
11. 2600–2620	2	£150,000	

DRAFT FOR CONSULTATION

12. 2595–2620	3	£200,000
13. 2590–2620	4	£250,000
14. 2585–2620	5	£300,000
15. 2580–2620	6	£350,000
16. 2575–2620	7	£400,000
17. 2570–2620	8	£450,000
18. 2565–2620	9	£500,000
19. 2560–2620	10	£550,000
20. 2565–2620 and 2680–2690	10	£600,000
21. 2560–2620 and 2680–2690	11	£650,000
22. 2555–2620 and 2680–2690	12	£700,000
23. 2560–2620 and 2675–2690	12	£700,000
24. 2555–2620 and 2675–2690	13	£750,000
25. 2550–2620 and 2675–2690	14	£800,000
26. 2555–2620 and 2670–2690	14	£800,000
27. 2550–2620 and 2670–2690	15	£850,000
28. 2545–2620 and 2670–2690	16	£900,000
29. 2550–2620 and 2665–2690	16	£900,000

SCHEDULE 7

Regulation 16(7)

**ELIGIBILITY POINTS ASSOCIATED WITH INDIVIDUAL LOTS,
PAIRED LOTS AND THE 2010–2025 MHZ BAND**

1. Subject to paragraph 2, the number of eligibility points associated with a paired lot and the 2010–2025 MHz band as set out in Column (1) is the number of points shown in the corresponding entry in Column (2).

2. Where a bid selection contains individual lots, the number of eligibility points attributed to those individual lots will be—

- (a) where the bid selection is not contained in an additional supplementary bid, ***n-1***;
- (b) where the bid selection is contained in an additional supplementary bid, ***n-2***,

where ***n*** is the total number of individual lots selected.

<i>Column (1)</i>	<i>Column (2)</i> <i>Number of eligibility points</i>
2010–2025 MHz band	2
Paired lot	2

SCHEDULE 8

Regulation 46

DETERMINATION OF BASE PRICE

Base price

1.—(1) OFCOM shall determine a base price for each winning principal stage bid by imposition of the requirements that the base prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where a base price so determined includes a fraction of a pound, the base price shall be that price rounded up to the nearest pound.

First requirement

2. The base price for each winning principal stage bid shall be—

- (a) no less than the total of the round prices in the first primary bid round for the paired lots, individual lots and the 2010–2025 MHz band (as appropriate) included in the bid selection specified in that winning principal stage bid; and
- (b) no greater than the amount of that winning principal stage bid.

Second requirement

3.—(1) Taking the base prices for the winning principal stage bids together, the base prices shall be such that if—

- (a) the amount bid by each winning bidder for the bid selection specified in its winning principal stage bid had been the base price rather than the amount of its winning principal stage bid (“reduced winning principal stage bid”), and
- (b) the amount bid by each winning bidder in respect of each other valid principal stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning principal stage bid and the base price for that winning principal stage bid,

the combination of the reduced winning principal stage bids submitted by the winning bidders would have been the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid.

(2) The bids mentioned in sub-paragraphs (1)(a) and (1)(b) shall, after a reduction of the amount of those bids in accordance with those paragraphs, be treated as valid principal stage bids for the purposes of those paragraphs.

Third requirement

4. Taking the base prices for the winning principal stage bids together, the total of those base prices shall be no greater than the total of any other prices for the winning principal stage bids that satisfy the requirements set out in paragraphs 2 and 3.

Fourth requirement

5.—(1) Taking the base prices for the winning principal stage bids together, the opportunity cost variance of those base prices calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance, calculated in accordance with sub-paragraph (2), of any other prices for the winning principal stage bids that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“ OCV_B ”) of the prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_B = \sum (p_B - c_B)^2$$

where—

“ p_B ” is the price for a winning principal stage bid; and

DRAFT FOR CONSULTATION

“ c_B ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning principal stage bid.

(3) The formula is—

$$c_B = u_B - t_B + b_B$$

where—

“ u_B ” is the amount calculated in accordance with sub-paragraph (4);

“ t_B ” is the total amount of the winning principal stage bids; and

“ b_B ” is the amount of the winning principal stage bid for which p_B is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid, where the valid combination or combinations of principal stage bids do not include any of the principal stage bids made by the winning bidder that submitted the winning principal stage bid for which p_B is the price.

Interpretation

6. In this Schedule “valid combination of principal stage bids” shall be construed in accordance with regulation 45.

SCHEDULE 9

Regulation 66

DETERMINATION OF ADDITIONAL PRICE

Additional price

1.—(1) OFCOM shall determine an additional price for each winning assignment stage bid by imposition of the requirements that the additional prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where an additional price so determined includes a fraction of a pound, the additional price shall be that price rounded up to the nearest pound.

First requirement

2. The additional price for each winning assignment stage bid shall be no less than zero and no greater than the amount of that winning assignment stage bid.

Second requirement

3.—(1) Taking the additional prices for the winning assignment stage bids in respect of paired lots together and of individual lots together, the additional prices for winning assignment stage bids in respect of paired lots and individual lots (as the case may be) shall be such that if—

- (a) the amount bid by each winning bidder for the assignment stage option selected in its winning assignment stage bid in respect of paired lots or individual lots (as the case may be) had been the additional price rather than the amount of its winning assignment stage bid (“reduced winning assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid assignment stage bid made by that bidder in respect of paired lots or individual lots (as the case may be) had been reduced by an amount equal to the difference between the amount of its winning assignment stage bid in respect of paired lots or individual lots (as the case may be) and the additional price for that relevant winning assignment stage bid,

the combination of the reduced winning assignment stage bids submitted by the winning bidders would have been the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) in respect of paired lots or individual lots (as the case may be) having the highest total value of amounts bid.

(2) Where the amount of a bid has been reduced in accordance with sub-paragraph (1)(b) and is less than zero, the amount of that bid shall be treated as if it were zero for the purposes of this paragraph.

(3) The bids mentioned in sub-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid assignment stage bids for the purposes of this paragraph.

Third requirement

4. Taking the additional prices for the winning assignment stage bids in respect of paired lots together and of individual lots together, the total of those additional prices for winning assignment stage bids in respect of paired lots or individual lots (as the case may be) shall be no greater than the total of any other prices for the winning assignment stage bids in respect of paired lots or individual lots (as the case may be) that satisfy the requirements set out in paragraphs 2 and 3.

Fourth requirement

5.—(1) Taking the additional prices for the winning assignment stage bids in respect of paired lots together and individual lots together, the opportunity cost variance of those additional prices for winning assignment stage bids in respect of paired lots or individual lots (as the case may be) calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance,

DRAFT FOR CONSULTATION

calculated in accordance with sub-paragraph (2), of any other prices for the winning assignment stage bids in respect of paired lots or individual lots (as the case may be) that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“ OCV_A ”) of the prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_A = \sum (p_A - c_A)^2$$

where—

“ p_A ” is the price for a winning assignment stage bid; and

“ c_A ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning assignment stage bid.

(3) The formula is—

$$c_A = u_A - t_A + b_A$$

where—

“ u_A ” is the amount calculated in accordance with sub-paragraph (4);

“ t_A ” is the total amount of the winning assignment stage bids in respect of paired lots or individual lots (as the case may be); and

“ b_A ” is the amount of the winning assignment stage bid for which p_A is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) in respect of paired lots or individual lots (as the case may be) having the highest total value of amounts bid, where, for each assignment stage bid for an assignment stage option relating to paired lots or individual lots (as the case may be) made by the winning bidder that submitted the winning assignment stage bid for which p_A is the price, the amount of that assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.

(5) Where the amount of an assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that assignment stage bid shall be treated as a valid assignment stage bid for the purposes of that sub-paragraph.

Interpretation

6. In this Schedule “valid combination of assignment stage bids” shall be construed in accordance with regulation 64.

Annex 6

Draft Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008

2008 No. [xxxx]

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Spectrum Trading) (Amendment)
(No. 2) Regulations 2008**

Made - - - - [***]

Coming into force - - [***]

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the Act”).

Before making the Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Spectrum Trading) (Amendment) (No. 2) Regulations 2008 and shall come into force on [date of coming into force].

Amendment of the Wireless Telegraphy (Spectrum Trading) Regulations 2004

2. Part 4 of the Schedule to the Wireless Telegraphy (Spectrum Trading) Regulations 2004(b) is amended by inserting at the end of Column 2—

“2010-2025 MHz
2500-2690 MHz”.

[insert date]

Philip Rutnam
Partner, Spectrum Policy Group
For and by authority of the Office of Communications

(a) 2006 c. 36.

(b) S.I. 2004/3154 as amended by S.I. 2006/339, S.I. 2006/1807, S.I. 2007/380, S.I. 2007/3387 and S.I.2008/688

Annex 7

**Draft Wireless Telegraphy (Register)
(Amendment) (No. 2) Regulations 2008**

2008 No. [xxxx]

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Register) (Amendment) (No. 2)
Regulations 2008**

Made - - - - [***]

Coming into force - - [***]

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred by section 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the Act”).

Before making the Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2008 and shall come into force on [insert date].

Amendment of the Wireless Telegraphy (Register) Regulations 2004

2. Part 4 of the Schedule to the Wireless Telegraphy (Register) Regulations 2004(b) is amended by inserting at the end of Column 2—

“2010-2025 MHz
2500-2690 MHz”.

[insert date]

Philip Rutnam
Partner, Spectrum Policy Group
For and by authority of the Office of Communications

(a) 2006 c. 36.
(b) S.I. 2004/3155 as amended by S.I. 2006/340, S.I. 2006/1808, S.I. 2007/381, S.I. 2007/3389 and S.I.2008/689

Annex 8

Draft Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008

2008 No. [xxxx]

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Limitation of Number of Spectrum
Access Licences) (No. 2) Order 2008**

Made - - - - [***]

Coming into force - - [***]

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by section 29(1) to (3) of the Wireless Telegraphy Act 2006(a) (“the Act”).

Before making the Order OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Spectrum Access Licences) (No. 2) Order 2008 and shall come into force on [insert date].

(2) This Order shall not extend to the Channel Islands or to the Isle of Man.

Limitation of licences

2.—(1) OFCOM shall grant a limited number of wireless telegraphy licences for the use of the following frequency bands in the United Kingdom—

2010-2025 MHz;

2500-2690 MHz.

(2) In determining the number of licences to be granted for the use of these frequency bands and the persons to whom the licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2008(b).

Philip Rutnam

Partner, Spectrum Policy Group

For and by authority of the Office of Communications

[insert date]

(a) 2006 c. 36.

(b) S.I. [insert number]