



Notice of Ofcom's proposal to make regulations in connection with the award of 1452-1492 MHz

Consultation

Publication date: 07 December 2007

Closing Date for Responses: 18 January 2008

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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 1452-1492 MHz spectrum band. 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 Band (see Statement entitled Award of available spectrum: 1452-1492 MHz published on 7 December 2007). 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) Regulations 2008

- 1.2 These regulations set out the process and rules for award of licences to operate within the Band. Ofcom intends to hold an auction, although the regulations also provide for circumstances where there is no excess 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 chosen 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) Regulations 2008

- 1.3 Ofcom has decided that the licences to operate within the Band 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) 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 Band 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) 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 Band. Section 6 of this document sets out a summary of the general effect of the provisions

¹ Both documents are available at:

http://www.ofcom.org.uk/radiocomms/spectrumawards/awardspending/award_1452/

- 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 18 January 2008.

Section 2

Notice

Background to the proposals

- 2.1 Ofcom plans to award wireless telegraphy licences for equipment operating within the following spectrum band ("the Band"): 1452-1492 MHz. The number of licences to be awarded and the precise frequencies which each licence will cover will be determined by the award process.
- 2.2 On 7 December 2007, Ofcom published its decision to hold an award process in a statement entitled "Award of available spectrum: 1452-1492 MHz" (the "Statement"). The Statement followed extensive consultation with stakeholders on the approach allowing use of the Band, in particular:
- Ofcom's "Spectrum Framework Review: Implementation Plan"² (SFR: IP) published in January 2005;
 - "Award of available spectrum: 1452-1492 MHz"³ published in March 2006 ("the March 2006 consultation");
 - two discussion documents published in February 2007, the "Discussion document on the award of available spectrum 1452 – 1492 MHz: Auction design"⁴ ("the auction discussion document") and the "Discussion document on the award of available spectrum 1452 – 1492 MHz: Technical aspects"⁵ ("the technical discussion document"); and
 - a consultation titled "The award of available spectrum 1452-1492 MHz"⁶ published in July 2007 ("the July 2007 consultation").

Notice of proposals

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

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) Regulations 2008 in order to allow an auction to be held for the purpose of awarding licences for equipment operating within the Band. 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.

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

³ <http://www.ofcom.org.uk/consult/condocs/1452-1492/>

⁴ <http://www.ofcom.org.uk/consult/condocs/1452design/>

⁵ <http://www.ofcom.org.uk/consult/condocs/1452tech/>

⁶ http://www.ofcom.org.uk/consult/condocs/1452_1492/

Proposed trading regulations

- 2.6 Ofcom has decided that the licences to be awarded for the Band 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) 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) 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 Band for the purpose of securing efficient use of the electro-magnetic spectrum and efficient use in particular of the Band. 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) 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 18 January 2008. Comments should be sent to:

Anirban Roy
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
anirban.roy@ofcom.org.uk

- 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:

Anirban Roy
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

anirban.roy@ofcom.org.uk

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) 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 Band. The award process includes an application stage, a qualification stage and two alternative procedures for the award of licences, where the procedure to be followed depends on the number of bidders. 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 containing the application information required by the proposed regulations.
- 3.5 The application information includes details of all members of the applicant's bidder 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 bidder group). The date and time for submission of applications will be published on the Ofcom website.
- 3.6 The application must also be accompanied by an application document in the form provided for in Schedule 2 of the proposed 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 Schedule 3 of 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 any information in relation to 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 an applicant, potential applicant or bidder may make in relation to the award process.
- 3.10 Finally, the application form must be accompanied by an initial deposit of £50,000. 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 bidder 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 bidder group.
- 3.13 Regulation 6 of the proposed regulations provides that an applicant 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.
- 3.14 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).

- 3.15 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.
- 3.16 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.
- 3.17 Ofcom will notify each applicant qualified to bid of the last day on which they may withdraw from the award process.
- 3.18 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, and they shall not be re-admitted to the award process.
- 3.19 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. Ofcom will grant a licence, or licences in accordance with the procedure in Part 4 of the proposed regulations if there is only one bidder, or in accordance with the procedure in Part 5 of the proposed regulations if there is more than one bidder.

Procedure where there is only one bidder

- 3.20 Part 4 of the proposed regulations sets out the procedure to be followed where there is only one bidder. The bidder must complete a lot selection menu, which will list the lots 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 lot selection menu and pay to Ofcom the appropriate sum as a licence fee.
- 3.21 The bidder must complete the lot selection menu by selecting at least one of the lots and nominating a licence condition. The lot 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 lot selection menu by the time specified, fails to pay the licence fee or does not select at least one of the lots, the bidder will not receive a refund of its initial deposit (if this has not already been forfeited) and will not be entitled to the grant of a licence.
- 3.22 The licence fee will be the total of the prices per lot (as indicated on the lot selection menu) for each lot selected by the bidder.
- 3.23 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 lots selected on the lot selection menu once it has received payment of the appropriate licence fee.

3.24 Following the grant of the licence, Ofcom will complete the award process by publishing the identity of the licensee, the lots 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 before the last day for withdrawal, unless such initial deposits have already been forfeited in accordance with the proposed regulations.

Auction stage – more than one bidder

3.25 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 six chapters as follows:

- chapter 1 gives an overview of the auction stage of the award process;
- chapter 2 explains the primary and supplementary bids;
- chapter 3 sets out the procedure for primary bid rounds;
- chapter 4 sets out the procedure for supplementary bids round and the requirement for the final auction stage deposit;
- chapter 5 details the determination of the winning auction stage bids and conclusion of the auction stage; and
- chapter 6 details the grant stage of the auction.

3.26 Regulation 14 provides that where there is more than one bidder the award process consists of the auction stage. It explains that during the auction stage bids may be made for ‘lots’.

3.27 Regulation 14(3) of the proposed regulations explains that during the auction stage there will be one or more rounds for the submission of primary bids (“primary bid rounds”) and one further round for the submission of supplementary bids(“supplementary bids round”).

3.28 Regulation 14 (4) of the proposed regulations sets out the lots available as follows:

Lot	Frequency range (MHz)
LA	1452.000-1453.816
LB	1453.816-1455.528
LC	1455-528-1457.240
LD	1457.240-1458.952
LE	1458.952-1460.664
LF	1460.664-1462.376
LG	1462.376-1464.088
LH	1464.088-1465.800

Lot	Frequency range (MHz)
LI	1465.800-1467.512
LJ	1467.512-1469.224
LK	1469.224-1470.936
LL	1470.936-1472.648
LM	1472.648-1474.360
LN	1474.360-1476.072
LO	1476.072-1477.784
LP	1477.784-1479.500
LQ	1479.500-1492.000

- 3.29 A bid made during a primary bid round is a bid for a selection of lots at an amount (in whole pounds) which will be the total amount of the round prices in that primary bid round for the selection of lots and for which the bidder has chosen a "licence condition". A "licence condition" means either
- a) the "high power licence condition" which does not limit the maximum power of individual transmitters but limits their maximum density; or
 - b) the "low power licence condition" which limits the maximum power of individual transmitters but does not limit their maximum density.
- 3.30 In order to make a primary bid the bidder must use a form provided by Ofcom ("primary bid form"). The selection of lots in the primary bid must be such that the total of the eligibility points associated with the lots in accordance with Schedule 6 does not exceed the bidder's eligibility limit for that round and a bidder may not submit more than one primary bid in a primary bid round.
- 3.31 The minimum participation requirement is that a bidder must submit a valid primary bid in the first primary bid round. 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 23 which will be forfeited (unless already forfeited under regulation 49 of the proposed regulations).
- 3.32 Following the primary bid rounds, a supplementary bids round will occur. A bid made during the supplementary bids round ("supplementary bid") will be a bid for a selection of lots at an amount (in whole pounds) which the bidder will determine (subject to the requirements of regulation 26 of the proposed regulations) and for which the bidder has chosen a licence condition. The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in the primary bids made by that bidder. A bidder cannot submit more than two thousand supplementary bids. A bidder will not be able to submit more than two supplementary bids for each particular selection of lots. Where

a bidder submits two supplementary bids for a particular selection of lots each of those supplementary bids must contain a different licence condition choice.

- 3.33 Regulation 18 of the proposed regulations explains how the number of primary bid rounds is determined. Where the combination of all bids received in a primary bid round is not a "compatible combination of bids", then there will be another primary bid round.
- 3.34 "Compatible combination of bids" means any combination of valid auction stage bids where:
- the combination includes at most one bid from any one bidder;
 - each lot is selected in no more than one bid; and
 - where any two bids within the combination contain a different choice of licence condition, the frequencies which are comprised within at least two lots which are not selected in any bid within the combination separate the lots selected in the two bids where the different licence conditions have been chosen.
- 3.35 Where the combination of all bids received in a primary bid round is a compatible combination of bids then there will be no further primary bid rounds and there will be a supplementary bids round. Regulation 18 also gives Ofcom the ability, in specified circumstances, to move straight to the supplementary bids round without having further primary bid rounds even though the combination of all bids received in the last primary bid round is not a compatible combination of bids.
- 3.36 In the first primary bid round, the round price per lot for each lot is set out in Schedule 5 of the proposed regulations. In subsequent primary bid rounds the round price for a lot will increase either:
- where there is more than one bid for that lot; or
 - where there is only one bid for that lot and those bids are for different licence conditions; or
 - where there is only one bid for that lot, there is no bid on a lot next to it, but there is one bid for the lot next to that and the two bids are for different licence conditions.

The round price for a lot will not be more than twice the amount of the round price for that lot in the previous primary bid round.

- 3.37 Regulation 20 provides that for each primary bid round Ofcom will determine an eligibility limit for each bidder.
- 3.38 Regulation 21 sets out how the eligibility limit attributed to each bidder in the first primary bid round is calculated. 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 23) 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 19.

- 3.39 Regulation 22 explains that in subsequent primary bid rounds when a bidder makes a valid primary round bid Ofcom will determine the eligibility limit for the next primary bid round bid, 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 lots in the valid primary round bid in accordance with Schedule 6 to the Regulations. If a bidder does not make a valid primary bid then its eligibility limit will be zero for any subsequent primary bid round.
- 3.40 To be a 'valid primary bid', and therefore taken into account when determining the number of primary bid rounds, the round prices for primary bid rounds, the winning combination of auction stage bids and the price to be paid for those winning bids, a primary bid must satisfy conditions which are set out in regulation 24 of the proposed regulations. These conditions are that:
- it must be made on a correctly completed primary bid form provided by Ofcom;
 - the bid is the only primary bid submitted by the bidder in that primary bid round;
 - the selection of lots in the primary bid must be such that the total of the eligibility points associated with the selection of lots in accordance with Schedule 6 do not exceed the bidder's eligibility limit for that round;
 - it must be submitted using the electronic auction system (or an alternative method, as provided for in regulation 29); and
 - it must be submitted by the end of round time.
- 3.41 Regulation 25 of the proposed regulations sets out the conditions which supplementary bids must satisfy in order to be 'valid'. These conditions are that:
- a bid must be made on a correctly completed supplementary bids form supplied by Ofcom;
 - the amount of the supplementary bid must satisfy certain requirements set out in regulation 26;
 - a bidder can submit no more than two supplementary bid for each particular selection of lots; and
 - the completed supplementary bids form must be submitted using the electronic auction system (or an alternative method, as provided for in regulation 36) and received by the time notified by Ofcom (or during an extension period, as provided for in regulation 37).
- 3.42 The requirements on the amount of the supplementary bid are that
- it must not be less than the total amount of the round prices in the first primary round for the selection of lots comprised in the supplementary bid.
 - if the supplementary bid is for a selection of lots for which the bidder also made a primary round bid and the licence condition chosen is the same in both bids, then the supplementary bid amount must be greater than the highest amount which that bidder made for that selection in a primary bid round where the licence condition chosen is the same; and

- if a bidder did not make a valid primary bid in the final primary bid round, or the total number of eligibility points associated with the selection of lots in the supplementary bid exceeds those attributed to the bidder in the final primary bid round, the supplementary bid must not exceed the total of the round prices for the lots selected in the latest primary round in which the bidder had sufficient eligibility points to bid for that selection of lots.

Procedure for primary bid rounds

- 3.43 Prior to the start of each primary bid round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make primary bids, the round price for each lot and the eligibility limit of the bidder for the primary bid round as determined in accordance with regulation 21 or 22. There is provision for extensions of up to 30 minutes where Ofcom has notified to the bidder that they are satisfied that there were circumstances beyond the bidder's control that meant they needed the extension. There can be no more than two such extensions for each bidder.
- 3.44 The bidder must submit the completed primary bid form to Ofcom using the electronic auction system by the time specified for the end of the round.
- 3.45 If a bidder is unable to submit a primary bid using the electronic auction system there is provision to submit a completed primary bid form by means of an alternative method, subject to certain conditions that are set out in regulation 29.
- 3.46 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 not be taken into consideration for the purposes of determining the number of primary bid rounds, the round prices for primary bid rounds, the winning combination of auction stage bids, or the winning price payable by a winning bidder.
- 3.47 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.
- 3.48 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 demand for each lot and the total demand for each licence condition for each lot.
- 3.49 Regulation 33 of the proposed regulations provides for Ofcom to notify to a bidder that they are required to pay a further sum in pounds as a deposit during the primary bid rounds. 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 the amount of the highest valid primary bid that the bidder made before Ofcom issued the notification. If a bidder fails to comply with the Ofcom notification then their eligibility limit in any further primary bid rounds will be zero.

Procedure for supplementary bids round and final auction stage deposit

- 3.50 Prior to the start of the supplementary bids round Ofcom will give notice to each bidder setting out the date and times on that date within which bidders can make

supplementary bids and the date and times on that date when bidders must make a further deposit in accordance with regulation 40 of the proposed regulations.

- 3.51 The bidder must submit the completed supplementary bids form to Ofcom using the electronic auction system by the time specified by Ofcom.
- 3.52 If a bidder is unable to submit a completed supplementary bid form using the electronic auction system, regulation 36 makes provision for the bidder to submit a completed supplementary bids form by means of an alternative method, subject to certain conditions.
- 3.53 If Ofcom have not received a completed supplementary bids form by the time notified by Ofcom as the end of the supplementary bids round then Ofcom will allow an additional time of sixty minutes for receipt of the completed supplementary bids form where Ofcom is satisfied that there were circumstances beyond the bidder's control that meant they needed the extension.
- 3.54 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, then if the incompleteness or defect relates to the entire form then all of the bids on the form will be rejected, and if the incompleteness or defect relates to just one or some of the bids on the form then 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.
- 3.55 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 will explain why it is not valid.
- 3.56 Under regulation 40 each bidder, by a deadline specified by Ofcom, must pay into Ofcom's bank account a further sum so that the bidder has a total deposit which is not less than the bidder's highest valid primary bid or the bidder's highest valid supplementary bid (whichever is the higher). Where a bidder fails to comply with regulation 40 Ofcom will notify the bidder and that bidder will be excluded from the award process, will not receive a refund of its initial deposit or any other subsequent deposits. In addition, all of its 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 nor the price payable by a winning auction stage bidder.

Determination of winning auction stage bids and conclusion of auction stage

- 3.57 Following the end of the supplementary bids round, Ofcom will determine the winning auction stage bids. The winning auction stage bids will be the valid auction stage bids that comprise the winning combination of auction stage bids. The winning combination of auction stage bids will be the compatible combination of bids having the highest total value of amounts bids.
- 3.58 Where there is more than one compatible combination of bids which results in the highest total value, the winning combination of auction stage bids will be that compatible combination of bids which has the highest total number of eligibility points associated with it. Ofcom will determine the winning combination of auction stage

bids by employing a method of random selection where there is more than one compatible combination of bids with the highest total value and the highest number of eligibility points associated with it.

- 3.59 Where the winning combination of auction stage bid results in only two adjoining unallocated lots being situated between winning auction stage bids with different choices of licence conditions, each of the winning bidders for those winning auction stage bids will be assigned the unallocated lot adjacent to the lot selected in their winning auction stage bid. A winning bidder's choice of licence condition will not apply to any unallocated lots assigned to it. Otherwise, where there are unallocated lots they will be withheld from being assigned.
- 3.60 Ofcom will determine the winning price for each winning auction stage bid in accordance with Schedule 7.
- 3.61 Following determination of the winning auction stage bids and the winning combination of the auction stage bids, and the determination of the winning prices, Ofcom will notify each winning auction stage bidder of:
- the lots in its winning auction stage bid;
 - the licence condition assigned to those lots;
 - any unallocated lots that it has been assigned; and
 - the winning price for that winning auction stage bid.

Grant of licences

- 3.62 Regulation 45 provides that the licence fee payable by a winning auction stage bidder will be the winning price for that winning auction stage bid.
- 3.63 Regulation 46 of the proposed regulations sets out the procedure where the amount of the winning 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 to Ofcom a sum equal to the difference between the licence fee and the amount of the bidder's deposit. Where the bidder pays this sum, Ofcom will grant the bidder a licence for the selection of lots contained in the bidder's winning auction stage bid at the licence condition nominated in that winning auction stage bid and any unallocated lots assigned to the bidder. 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.
- 3.64 Regulation 47 of the proposed regulations sets out the procedure where 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 selection of lots contained in the bidder's winning auction stage bid at the licence condition nominated in that winning auction stage bid and any unallocated lots assigned to the bidder. Ofcom will refund to the winning auction stage bidder the difference (if any) between the amount of the bidder's deposit and the licence fee.
- 3.65 After granting the licences and paying any refunds, Ofcom will complete the award process by publishing the details of all valid auction stage bids made by each bidder, the names of the persons to whom the licences were granted, the selection of lots included in those licences, the licence condition assigned to those licences and the details of the licence fees paid.

Activity rules

- 3.66 Part 6 of proposed regulations sets out the activity rules that apply to applicants which have qualified to bid and to bidders. Regulation 49 provides that where Ofcom are satisfied that any of the events set out in regulation 51 have occurred, or are occurring, and that occurrence would materially affect the outcome of the award process, the bidder or applicant concerned will forfeit all of the sums that it has paid on deposit to Ofcom. In such circumstances regulation 49 (b) of the proposed regulations sets out that the bidder may also be excluded from the award process by Ofcom giving that applicant or bidder written notice.
- 3.67 Regulation 50 provides that where a bidder has been excluded from the award process during the auction stage, then all of that bidder's primary and supplementary bids will be deemed invalid and not taken into account for the purposes of determining the winning combination of auction stage bids or the winning price payable by a winning bidder.
- 3.68 Regulation 51 of the proposed regulations sets out the details of the events referred to in regulation 49. These include, amongst others, the submission of false or misleading information to Ofcom, an attempt by a bidder or any member of its bidder group to distort the award process in any way, disclosure of confidential information to someone who is not a member of the bidder group (subject to certain exceptions) or changes occurring in the membership of the bidder group, except as provided for in regulation 51 (i) of the proposed regulations.
- 3.69 With regard to changes occurring in the membership of a bidder group, regulation 51 (i) provides that changes occurring as a result of a person ceasing to be a member of the bidder group are not breaches of the activity rules. Also, bidders and applicants are able to add members to their bidder groups under the procedure set out at regulation 6. However, the addition of associates is only permitted as a result of merger and acquisition activity where such activity is for a purpose not related to the award process. Also, a change which leads to a member of a bidder's bidder group also becoming a member of another bidder's bidder group will be a breach of the activity rules and may lead to the exclusion of either or both bidders concerned and the forfeiture of deposits.

Miscellaneous

- 3.70 Part 7 of the proposed regulations sets 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 where the bidder is not a fit and proper person to hold a licence.
- 3.71 Regulation 53 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.
- 3.72 Regulation 54 of the proposed regulations enables Ofcom to alter the deadline or location specified in relation to the delivery of any documents or for completion of any action in relation to the award process, where it would be impractical for such delivery or action to take place at the locations or by or within the deadlines originally specified.

- 3.73 Regulation 55 of the proposed regulations provides that where 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.
- 3.74 Regulation 56 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 its determination, disregard 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).
- 3.75 If it is not possible to continue the award process as set out in Part 5 of the regulations 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 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.
- 3.76 Regulation 57 of the proposed regulations provides Ofcom with 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) 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 and 2007/3387) (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 listed in Column 1 of each Part of the Schedule which apply to a station or apparatus operating within any of the frequency bands specified in Column 2 of the same Part
- 4.8 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").
- 4.9 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").

- 4.10 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").
- 4.11 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.
- 4.12 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.
- 4.13 Section 30(2)(a) to (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.
- 4.14 The concept of concurrent licence holding was new to the system of UK wireless telegraphy licensing. Under such a holding each of the concurrent licensees will jointly hold the same rights and obligations under a licence.

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 pay up its outstanding instalments under a licence and then approach Ofcom with a proposed transfer; and
 - where Ofcom has served notice under section 1E(1) of the Wireless Telegraphy Act 1949 of a proposal to revoke or vary the licence. That notice is served around two months prior to the final revocation decision. In the case of a notice concerning a licence variation this will not in fact be an obstacle to trade because if the licensee consents to the variation being made and, if that happened, the licence amendment would be implemented quickly.
- 4.17 Finally, a transfer is not authorised where Ofcom has not consented to it being made.

Notification of a trade under the 2004 Regulations

- 4.18 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

- 4.19 When deciding whether or not to consent to a transfer, Ofcom must (under regulation 10 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.
- 4.20 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 11 of the 2004 Regulations.

Enacting the transfer under the 2004 Regulations

- 4.21 Ofcom must decide whether to consent to the transfer and whether to issue directions. It must then notify the parties.
- 4.22 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).
- 4.23 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) Regulations 2008 (the "proposed amending regulations")

- 4.24 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 1452-1492 MHz. 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) 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) (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 are available on the website 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) Regulations 2008

- 5.5 A draft of the proposed regulations 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) 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) 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, 1452-1492 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) Regulations 2008 (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) Regulations 2008. The proposed order will be made and enter into force at the same time as the Wireless Telegraphy Licence (Licence Award) Regulations 2008.

Section 7

Regulatory Impact Assessments

Introduction

- 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. In accordance with section 7 of the 2003 Act, in producing this RIA, we have had regard to such general guidance as it considers appropriate including related to Cabinet Office guidance. 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) Regulations 2008

The issue being considered and the citizen/ consumer interest

- 7.4 This impact assessment concerns the award of the 1452-1492 MHz band of spectrum, including different options for packaging the spectrum and the design of the awards process. This band could potentially be used to support a wide variety of end uses, a number of which could have the potential to create substantial benefits for citizens/ consumers. As we set out previously in our spectrum framework review documents, our view is that in general, citizen and consumer interests in relation to the allocation of spectrum are best served through leaving decisions about spectrum use to the market.

The policy objective

- 7.5 We have a principal duty to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate, by promoting competition. Further, in securing these principal duties we are required to secure the optimal use for wireless telegraphy of the electro-magnetic spectrum⁷. Therefore, the objective of the policy is to award the

⁷ Ofcom's duties relevant to the award of this spectrum are set out in detail in Section 3 of the March 2006 consultation.

available spectrum in such a way as to maximum the likelihood that it will secure optimal use of the spectrum.

Identification and assessment of options and the impacts on stakeholders

Licence exemption

7.6 Ofcom could allocate this spectrum on a licence exempt basis or with licences. The options are considered in the table below.

Option	Advantages	Disadvantages
Licensed spectrum	Reduced risk of interference means that different operators will have the confidence to invest in deploying services in this spectrum	Higher costs of allocating and administering the spectrum.
Licence exempt spectrum	Notwithstanding potential interference, many service providers could exploit the spectrum and innovative uses might develop.	Given the potential uses of this spectrum, deployment of most of these technologies is likely to lead to significant interference. The high probability of interference is likely to depress the value that can be generated from licence exempt use of this spectrum

Choice of assignment mechanism

7.7 Ofcom could allocate this spectrum in a variety of ways that can be grouped in three ways, auction, "first come, first served" and comparative selection. Comparative selection was ruled out during the SFR:IP consultation process. The options are considered below

Option	Advantages	Disadvantages
Auction	Clear and simple criteria for identifying winning bids Open, transparent, and non-discriminatory Most likely to lead to an efficient outcome	Transaction and participation cost may be incurred by bidders
Comparative selection		Involves defining selection criteria and assessing candidates' submissions and so carries the risk of subjective judgements being made and of the spectrum not being awarded to the applicant able to use it to maximum advantage.

"First come, first served"		Appropriate where supply exceeds demand. In this case the market assessment suggests that this will not be the case
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Technology and service neutrality

7.8 This spectrum could be awarded on either a technology and service neutral basis or it could be mandated for a particular technology or service. These options are considered in the table below.

Option	Advantages	Disadvantages
Technology and service neutral approach	<p>The market is allowed to determine the optimum use of the spectrum</p> <p>The potential efficiency of the auction is maximised by allowing bidders the option of using the technology and service that they prefer</p> <p>Demand assessment suggests that a range of different technologies and services wish to use this spectrum, this approach allows the market to choose the best use</p> <p>Consistent with the framework directive</p> <p>Does not constrain future use</p>	<p>Bidders in auction face uncertainty over nature of adjacent users (although risks can be mitigated by defining appropriate spectrum usage rights)</p>
Mandate a specific service or technology	<p>Bidders have certainty over nature of adjacent spectrum users</p> <p>In certain circumstances, may assist in facilitating international harmonisation of equipment (though this can also be achieved by less intrusive means).</p>	<p>Requires Ofcom to choose one or more technologies or services</p> <p>Could result in a sub optimal choice of technology or services</p> <p>Could exclude technologies or services that may provide greater benefits than the chosen technologies or services</p>

Packaging options

7.9 Given the varying constraints on the use of different parts of this band. Ofcom has looked at the packaging options for two different sub-bands, namely:

- Lower 27.5MHz (1452 – 1479.5MHz)
- Upper 12.5MHz (1479.5 – 1492MHz)

Overview of packaging options for lower 27.5 MHz

7.10 Ofcom has identified and assessed four possible packaging options for the lower 27.5 MHz. The table below gives an overview of these packaging options, together with their respective advantages and disadvantages.

Option	Advantages	Disadvantages
Option A: package in 1.7 MHz lots	<p>Promotes competition</p> <p>Different interference constraints between lots are made explicit</p> <p>Market can determine optimum aggregation</p> <p>Maximum accommodation of alternative uses</p>	<p>Aggregation risk for users requiring larger amounts of spectrum (<i>may be mitigated through appropriate auction design</i>)</p> <p>Sub-optimal outcomes would need to be resolved in the secondary market</p> <p>Larger number of lots tend to add complexity to the award process</p>
Option B: package in 5.1 MHz lots	<p>Removes aggregation risk for users requiring (multiple of) 5.1 MHz lots</p> <p>Less complex award process (fewer lots)</p>	<p>Unsatisfactory for users not seeking (multiples of) 5.1 MHz. These users would need to rely on secondary trading which may involve high transaction costs</p> <p>Risk of regulatory failure through picking the sub-optimal package size</p> <p>Potentially inconsistent with approach of technology neutrality, as choice of package size may favour certain technologies</p>
Option C: package in varied-sized lots	<p>May remove aggregation risks for users requiring particular amounts of spectrum</p> <p>Potentially allows a greater variety of uses (than options B and D) and reduced aggregation risk than option A</p>	<p>Larger number of lots tend to add complexity to the award process though this can be mitigated through the auction design</p>
Option D: package in one 27.5 MHz lot	<p>Quick and simple award process</p> <p>Minimal involvement from Ofcom</p>	<p>Spectrum may be allocated inefficiently and relies on an efficient secondary market (which at present is unlikely)</p> <p>Potentially restricts the development of competition and</p>

Option	Advantages	Disadvantages
		variety of applications

Award options for the upper 12.5 MHz

7.11 In light of the international constraints that have been identified there are three broad options available for awarding the upper 12.5 MHz block:

- Award it through a pan-European process;
- Award it simultaneously with the lower blocks (1452 – 1479.5 MHz); and
- Award it separately from the lower blocks.

Option	Advantages	Disadvantages
<p>Pan-European award: This would involve withholding the award of the upper 12.5 MHz block and discussing with European neighbours how the spectrum should be awarded</p>	<p>If successful, it would take into account the externalities caused by different countries awarding spectrum for different uses, for example, the value of the spectrum across a number of countries will be greater than the sum of the value of the spectrum in each country individually, particularly for terrestrial use.</p> <p>If done quickly, it would lead to an efficient award of this block of spectrum.</p>	<p>Given the processes that would be involved, award of the spectrum would be delayed by around two years and agreement cannot be guaranteed.</p> <p>This approach would not allow complementarity and substitutability of upper 12.5MHz and lower 27.5MHz to be addressed through the award process.</p> <p>There are doubts about the feasibility and acceptability of an effective and appropriate approach to the award from the political and institutional point of view</p> <p>It would require individual nations to carry out a separate terrestrial awards for the use of the spectrum, in addition to a pan-European satellite award.</p>

Option	Advantages	Disadvantages
<p>Simultaneous award: This option would involve awarding the upper 12.5 MHz block simultaneously with the award of the spectrum in the lower 27.5 MHz blocks in a single awards process</p>	<p>To the extent to which the upper 12.5 MHz and the lower 27.5 MHz blocks are complementary or substitutable, then a simultaneous award will allow bidders to respond to these issues through changing their valuations/ bids in response to other bidders' behaviour. This will, all other things remaining equal, lead to a more efficient allocation of the available spectrum.</p> <p>It would also be quicker and administratively cheaper than holding a separate auction for the upper 12.5 MHz block.</p> <p>It would be consistent with awarding spectrum rights on a technology and usage-neutral basis.</p> <p>It would result in spectrum for both satellite and terrestrial use being awarded simultaneously.</p>	<p>Terrestrial rights in the upper 12.5 MHz block will be severely constrained (and may not be well defined) by the satellite rights that result from the various satellite filings that have been made, which may limit any interest that there would be for terrestrial rights in this block. This could result in competition in bidding for this upper block being limited.</p> <p>It increases the complexity of the award process somewhat, but this increase in complexity is not significant.</p>
<p>Separate award: This would involve holding back the award of the upper 12.5 MHz block until some time after the award of the lower 27.5 MHz blocks.</p>		<p>Awarding the upper 12.5 MHz block in a separate process from the award of the lower 27.5 MHz would prevent bidders from taking into account the extent to which spectrum in the different blocks are substitutes or compliments, risking an inefficient allocation of the spectrum.</p> <p>It will be administratively more expensive than a simultaneous award process.</p>

Geographic packaging

7.12 In addition to packaging the spectrum into lots of different sizes this spectrum could be divided geographically. In the first instance the choice is between UK-wide and regional allocation.

Option	Advantages	Disadvantages
UK wide basis	<p>The auction should be cheaper and simpler than a regional one.</p> <p>If there is a viable national use and it is the highest value use of the spectrum, the spectrum will flow immediately to this use.</p>	<p>The value of the spectrum may be higher to a group of regional users which were unable to come together to bid for the spectrum because of coordination problems. However this risk is mitigated by the tradability of the spectrum and the ability for regional users to buy part of the spectrum post auction from the national licensee. There is no evidence that this issue is significant, on the basis of the market assessment.</p>
Regional basis	<p>Potential spectrum users which only want to operate in one area or region can bid for that region</p> <p>If the most efficient use of the spectrum is regional, the spectrum will quickly be allocated to its most valuable use.</p>	<p>There is little evidence of demand for spectrum on a regional basis, raising the likelihood that this approach could lead to spectrum being inefficiently allocated</p> <p>A regional auction may be more complex and costly than a national auction.</p> <p>Co-ordination with neighbours along regional boundaries could waste spectrum and limit the viability of service provision along these boundaries.</p>

Auction design options for the different packages

7.13 There are a number of different auction formats available, which may be suitable for the award of multiple lots of spectrum frequencies. In selecting the appropriate format for this auction, it is helpful to consider four key choices in design:

- Simultaneous or sequential sale of lots;
- Single round (sealed bid) or multiple rounds (ascending bids);
- Generic or specific lots; and
- Package (combinatorial) bidding.

7.14 The advantages and disadvantages associated with each of these four choices in auction design are set out in the table below

Option	Advantages	Disadvantages
Simultaneous rather than sequential sale of lots	<p>For most categories of bidder, all the lots are potentially close substitutes meaning that bidders' preferences will be affected by the relative prices of individual lots.</p> <p>Most bidders are likely to bid for multiple lots, meaning the lots are complementary.</p> <p>Simultaneous award can reduce bidders' substitution and aggregation risks.</p>	
Multiple round (ascending bids) rather than single round (sealed bids)	<p>In the absence of competition concerns, considered to produce more efficient outcomes as bidders can learn from observing behaviour of competitors over the course of the auction – particularly important where the spectrum can be used to support new downstream services where there is greater uncertainty.</p> <p>Allowing bidders to respond to relative prices reduces substitution and aggregation risks</p>	Award process more complex than a single round award, but not so great as to justify using a significantly less efficient auction format.
Specific lots rather than generic lots	<p>Allows bidders to express a preference between lots.</p> <p>Allows bidders to reflect in their valuations differences between lots usage rights, relating to interference constraints as set out in the Maastricht Plan.</p>	More complex than award with generic lots.
Use of package (combinatorial) bidding	<p>Could enhance the efficiency of the auction, particularly where there are strong complementarities amongst lots, and the pattern of complementarities vary by bidder.</p> <p>Reduces risks of stranded lots where bidders are left with unwanted lots at the end of the auction</p> <p>Removes the risk that there could be unsold lots as a result of "step changes" in demand (which can occur in SMRAs where withdrawals are allowed).</p>	Can make the auction more complex and less transparent, especially if unlimited packages are allowed (full combinatorial SMRA).

Choice of specific auction format

7.15 Three candidate SMRA auction formats were considered in detail they were:

- The SMRA auction with augmented switching rules (“augmented switching”);
- The SMRA auction with limited package bidding (“limited package”; and
- The combinatorial clock auction (“combinatorial clock”).

7.16 The advantages and disadvantages of these three auction designs are considered against six criteria in the table below. Those criteria are:

- Bid shading;
- Aggregation risk/ stranded lots;
- Threshold problem;
- Complexity for bidders;
- Unsold lots; and
- Strategic demand reduction.

Bid shading	
Augmented switching	Bid shading is likely. This is particularly true where there is a risk of stranded lots (see below). With such a risk, bidders bid more cautiously than they would otherwise do in attempt to avoid being stranded with unwanted lots.
Limited package	Bid shading is possible. This is particularly so where bidders are seeking packages of lots that do not equate with the pre-specified package of 5.1 MHz. This is for the same reason as with a SMRA with augmented switching rules and the risk that bidders will be stranded with unwanted lots.
Combinatorial clock	This auction format should reduce any incentive for a bidder to shade its bids compared to the other candidate formats. This is because the calculation of the price that winning bidders pay will minimise payments, subject to the condition that no losing bidder or combination of bidders (including combinations of losing and winning bidders) would, on the basis of their bids, be willing to pay more. It may be that some incentive to shade bids will remain, but this incentive is likely to be weak.
Aggregation risk/ stranded lots	
Augmented switching	While augmented switching rules can mitigate aggregation risks, there remains a risk of stranded lots with this auction format. The ability of bidders to switch away from lots as prices increase mean that bidders seeking packages of lots risk being stranded with a subset of the lots on which they were bidding when the auction ends.
Limited package	By pre-packaging lots, this auction format reduces aggregation risks for bidders, removing them completely for those bidders seeking 5.1 MHz of spectrum. However, risks remain for those bidders seeking different sized packages.

Combinatorial clock	All package bids are mutually exclusive. This means that bidders will only face the possibility of winning packages that they have explicitly bid for and as such, as long as bidders bid truthfully, there is no aggregation risk for bidders or a risk of being stranded with unwanted lots.
Threshold problem	
Augmented switching	The threshold problem does not arise with this auction format because there are no package bids.
Limited package	The threshold problem could be prominent in this auction format, particularly if there is demand for single lots from some bidders and these bidders are seeking to outbid those bidders seeking 5.1 MHz packages.
Combinatorial clock	Clock auctions can help small bidders to co-ordinate their bids where there is a threshold problem. However, to the extent there is demand for small packages of lots (including single lots), the threshold problem will to some extent remain.
Complexity for bidders	
Augmented switching	This auction format would be complex for bidders. While the mechanics of bidding are quite simple and this is a variation on the widely used SMRA format, bidders will need to manage the process of switching bids across multiple lots and reconcile their own demand with that of other bidders. Further, there may be scope for strategic behaviour by bidders, which could distort outcomes (although activity rules can go some way to mitigate this risk).
Limited package	This auction format should be relatively straightforward for bidders. Bidders will interact with a relatively straightforward bidding tool and will be able to express demand for specific lots, shifting demand in response to changes in relative prices. However, as prices will be calculated using an algorithm, the calculation of these prices may not be transparent.
Combinatorial clock	The clock stage would be relatively straightforward for bidders, who would be able to bid on a mutually exclusive basis on packages of lots in each round of the clock stage. Moreover, whilst bidders may need to submit supplementary bids for a number of packages, the challenge of doing this should be reduced by the price discovery which the clock stage should provide.
Unsold lots	
Augmented switching	As there is an aggregation risk and a risk of stranded lots with this auction format, there will also be a risk of unsold lots. However, this risk can be reduced by the design of the switching rules, although reducing the risk of unsold lots will increase the risk of stranded lots as the risk would be shifted from the auctioneer to the bidders.
Limited package	There would remain some risk of unsold lots with this auction format.
Combinatorial	There is unlikely to be unsold lots with this auction format as all bids are

clock	mutually exclusive and bids from the clock stage carry through to the best and final offers stage. The risk of unsold lots will be greater where there is a lack of competition.
Strategic demand reduction	
Augmented switching	The risk of strategic demand reduction exists with this auction format, although because prices will not necessarily be uniform across lots, then there is a reduction in the incentive for bidders to strategically reduce demand, so may not be that relevant.
Limited package	There is also a risk of strategic demand reduction with this auction format, although again because prices will not necessarily be uniform across lots there is a reduction in the incentive for bidders to strategically reduce demand, so may not be that relevant.
Combinatorial clock	As prices are not required to be uniform across lots in this auction design, strategic demand reduction is unlikely to be of concern with this auction format.

Costs to Ofcom

7.17 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 and the award process is very unlikely to have a negative financial impact.

Business sectors affected

7.18 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio.

7.19 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusions

7.20 Having considered the advantages and disadvantages of the options, and in light of all of the responses to the consultation, Ofcom has concluded that:

- The spectrum should be licensed rather than licence exempted;
- The spectrum should be awarded using an auction mechanism;
- It should take a technology and service neutral approach;
- The lower 27.5 MHz should be packaged as individual lots each of approximately 1.7 MHz;
- The upper 12.5 MHz of spectrum should be packaged as a single lot;

- The upper 12.5 MHz of spectrum should be awarded simultaneously with the lower 27.5 MHz;
- All of this spectrum should be awarded on a UK wide basis (subject to any international restrictions);
- A simultaneous, multiple round ascending auction process that allows combinatorial bidding should be used to award this spectrum;
- It is appropriate to use specific lots rather than generic lots; and
- The most appropriate SMRA auction format to use is the combinatorial clock auction format.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008

Proposal, purpose and intended effect

- 7.21 The purpose of these draft regulations is to permit the transfer of rights and obligations arising from wireless telegraphy licences in the Band, 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

- 7.22 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 Band.
- 7.23 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

- 7.24 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 Band within the framework should require little additional cost.

Business sectors affected

- 7.25 The main business sector affected by this proposal is fixed and mobile communications service provision.
- 7.26 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusion

- 7.27 Ofcom has assessed the impact of allowing spectrum trading in the Spectrum Band and has found that the costs are not likely to outweigh the benefits for all types of transfer.

Regulatory Impact Assessment – the draft Wireless Telegraphy (Register) (Amendment) Regulations 2008

Proposal, purpose and intended effect

- 7.28 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.
- 7.29 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 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

- 7.30 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 Band within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- 7.31 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 Spectrum Band. 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.
- 7.32 Moreover, now that the register has been set up, the additional costs of including the Spectrum Band within the register should be very small. As a result, the benefits are even more likely to exceed the costs.

Business sectors affected

- 7.33 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio
- 7.34 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusions

- 7.35 Ofcom's assessment is that the benefits of including the Spectrum Band 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 Concurrent Spectrum Access Licences) Order 2008

Proposal, purpose and intended effect

- 7.36 Following the Statement on the award of available the spectrum Ofcom has decided to award licences by means of an auction.
- 7.37 The draft Limitation Order to which this RIA relates is intended to allow Ofcom to limit the number of users of the Band through the award of licences, as opposed to exempting from licensing the use of radio equipment in the Band and so allowing an unlimited number of users.
- 7.38 This 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 Band is set out in the proposed Wireless Telegraphy (Licence Award) Regulations 2008.

Costs and benefits to business

- 7.39 Ofcom's overall conclusion is that the relative costs imposed on business by limiting the number of licences in the Band are lower than the costs of making use of the spectrum licence exempt.
- 7.40 The decision to license the Band, as opposed to making its 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 Band 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 benefit of licence exemption.

Costs to Ofcom

- 7.41 The costs to Ofcom of limiting the number of licences in the Band relate mainly to the costs of awarding the spectrum. Ofcom has made regulations to auction licences for the use of the Band, therefore the costs to Ofcom would be those of carrying out an auction.
- 7.42 In comparison, licence exemption would mean that Ofcom would not incur auction costs. However, as discussed in the previous section, the costs to business is likely to be relatively higher under licence exemption because of the need to incur coordination costs to limit interference with other users and this would be unlikely to lead to the most efficient use of spectrum.
- 7.43 Ofcom also notes that the administrative costs of holding the auction are likely to be small in relation to the benefit generated for the economy.

Business sectors affected

- 7.44 The types of services that could be offered using this spectrum would operate in a number of different downstream markets, including mobile television/multimedia, high speed data and broadcast radio
- 7.45 Other business sectors may benefit from a more efficient supply of communications services as a result of this proposal.

Conclusion

- 7.46 Ofcom has assessed the impact of limiting of not limiting the number of licences in the Band 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 18 January 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/1452regs/howtorespond/form>, 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 anirban.roy@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.
- Anirban Roy
3rd Floor
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- 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 direct answers to the question asked in this document, which is listed in 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 Anirban Roy (anirban.roy@ofcom.org.uk).

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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals. This is a six week consultation we have already consulted on the policy issues in this statutory consultation.

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.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, 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

Name/contact details/job title

Whole response

Organisation

Part of the response

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) Regulations 2008

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STATUTORY INSTRUMENTS

2008 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Award) Regulations 2008

Made - - - - - ***

Coming into force - - - - - ***

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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

(a) 2006 c.36.

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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) 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—

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

“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;

“the auction stage” has the meaning given in regulation 14(1);

“auction stage bid” means a primary bid or supplementary bid;

“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” means, in relation to an applicant or bidder—

- (a) that applicant or bidder;
- (b) each associate of that applicant or bidder; and
- (c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 3;

“compatible combination of bids” means any combination of valid auction stage bids—

- (a) where the combination includes at most one bid from each bidder;
- (b) where each lot is selected in no more than one bid; and
- (c) where any two bids within the combination have different choices of licence condition, the frequencies which are comprised within at least two lots which are not selected in any bid within the combination separate the lots selected in the two bids where the different licence conditions have been chosen;

“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;

“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

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(c) the date, and the time on that date,

by which that requirement must be fulfilled by that person;

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

“end of round time” has the meaning given in regulation 28(2);

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

“the last day for withdrawal” has the meaning given in regulation 9(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 under either the high power licence condition or the low power licence condition;

“licence condition” means either—

- (a) the “high power licence condition” which does not limit the maximum power of individual transmitters but limits their maximum density; or
- (b) the “low power licence condition” which limits the maximum power of individual transmitters but does not limit their maximum density;

“lot” means a range of frequencies as set out in regulation 14(3);

“lot selection menu” shall be construed in accordance with regulation 11(1);

“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;

“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 15(1);

“primary bid form” has the meaning given in regulation 15(3);

“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” means the price per lot determined in accordance with regulation 19;

“supplementary bid” has the meaning given in regulation 17(1);

“supplementary bids form” has the meaning given in regulation 17(3);

“valid primary bid” has the meaning given in regulation 24(1);

“valid auction stage bid” means a valid primary bid or a valid supplementary bid;

(a) 2006 c.45.

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“valid supplementary bid” has the meaning given in regulation 25(1);

“winning auction stage bid” shall be construed in accordance with regulation 411(1);

“winning bidder” means a bidder who submitted a winning auction stage bid;

“winning combination of auction stage bids” shall be construed in accordance with regulation 41(2); and

“winning price” shall be construed in accordance with regulation 43.

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.

(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 Schedule 1, completed in respect of the applicant and signed on its behalf by two authorised persons;

(ii) a document, in the form set out in Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;

(iii) for each person, not being an associate of the applicant, which the applicant wishes to join its bidder 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 the deadline specified by OFCOM, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of fifty thousand pounds.

(4) OFCOM shall publish the day, times and deadline on their internet website no later than one week before whichever is the earlier of that day or that deadline.

PART 3

QUALIFICATION STAGE

Assessment of bidder groups

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

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- (a) the name of each other applicant and the names of its 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 respective associates and determine whether any member of its bidder group is also an associate of another applicant or is also an applicant.

(3) Where an applicant determines that a member of its bidder 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 under paragraph (1), 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 bidder group is an associate of another applicant or is an applicant; and
- (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) and (ii) and which comply with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its bidder 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 bidder group is also a member of another bidder 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 bidder group is also a member of another bidder group; and
- (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions in the changed circumstances.

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

Subsequent changes to bidder groups

6.—(1) An applicant or bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply 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 4 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

7.—(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;

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- (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) 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;
- (e) 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;
- (f) 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;
- (g) any member of the applicant’s bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) 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—
 - (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.

(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

8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(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

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

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(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) Once an applicant withdraws its application, 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.

Determination of number of bidders

10.—(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 9, the initial deposits (where such deposits have not already been forfeited under regulation 49) 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 of 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

Lot selection menu

11.—(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 lot selection menu in the form set out in Schedule 4 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 (4).

(2) The bidder must ensure that its lot selection satisfies the following conditions—

- (a) at least one lot is selected;
- (b) a licence condition is chosen for that selection of lots .

(3) The licence fee shall be the total amount of the prices indicated on the lot selection menu for the lots selected by the bidder.

(4) The sum which the bidder must pay to OFCOM shall be—

- (a) where the initial deposit has not been forfeited in accordance with regulation 49, a sum equal to the licence fee less the initial deposit; or
- (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

(5) Where, due to the manner of completion, the lot selection menu submitted by the bidder is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, OFCOM shall ask the bidder to confirm in a notice to

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OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the selection.

(6) 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 lot selection menu submitted by the bidder in its entirety shall be accepted by OFCOM on that basis.

(7) 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 lots selected on the lot selection menu, that selection or those selections (as the case may be) shall be rejected by OFCOM and accordingly the bidder shall not be entitled to the grant of a licence for those selected lots; and
- (b) where sub-paragraph (a) does not apply, the lot selection menu in its entirety shall be rejected by OFCOM and, accordingly, 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 49) be forfeited.

(8) Where the bidder does not—

- (a) deliver a completed lot selection menu to OFCOM in accordance with paragraph (1)(a); or
- (b) pay OFCOM the required sum in accordance with paragraph (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 49) be forfeited.

Grant of licence

12. Where OFCOM have received from the bidder a completed lot selection menu in accordance with regulation 11(1)(a) and the required sum in accordance with regulation 11(1)(b), OFCOM shall grant the bidder a licence for the lots selected on that completed lot selection menu at the technical licence conditions that match the licence condition chosen by the bidder.

Completion of the award process

13.—(1) 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 lots in respect of which the licence was granted, the licence conditions applying to the licence and the licence fee paid; and
- (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 49) but not any interest which has accrued on the deposits.

PART 5

PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

CHAPTER 1

Auction stage

Auction stage

14.—(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 (“the auction stage”).

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

(3) A bid made during the auction stage shall be a bid for one or more of the lots available for selection.

(4) The lots available for selection are set out below—

- (a) Lot LA - 1452.000 – 1453.816 MHz;
- (b) Lot LB - 1453.816 – 1455.528 MHz;
- (c) Lot LC - 1455.528 – 1457.240 MHz;
- (d) Lot LD - 1457.240 – 1458.952 MHz;
- (e) Lot LE - 1458.952 – 1460.664 MHz;
- (f) Lot LF - 1460.664 – 1462.376 MHz;
- (g) Lot LG - 1462.376 – 1464.088 MHz;
- (h) Lot LH - 1464.088 – 1465.800 MHz;
- (i) Lot LI - 1465.800 – 1467.512 MHz;
- (j) Lot LJ - 1467.512 – 1469.224 MHz;
- (k) Lot LK - 1469.224 – 1470.936 MHz;
- (l) Lot LL - 1470.936 – 1472.648 MHz;
- (m) Lot LM - 1472.648 – 1474.360 MHz;
- (n) Lot LN - 1474.360 – 1476.072 MHz;
- (o) Lot LO - 1476.072 – 1477.784 MHz;
- (p) Lot LP - 1477.784 – 1479.500 MHz; and
- (q) Lot LQ - 1479.500 – 1492.000 MHz.

CHAPTER 2

Structure of auction stage

Primary bids

15.—(1) A bid made during a primary bid round (“primary bid”) shall—

- (a) be a bid for a selection of lots at an amount in whole pounds which shall be the total amount of the round prices in that primary bid round for each lot included in the selection of lots; and
- (b) contain the choice of licence condition to apply to that selection of lots.

(2) The round price means the price per lot determined in accordance with regulation 19.

(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 the selection of lots it wishes to be included in a licence;
- (b) choose the licence condition it wishes to apply to that selection of lots; and
- (c) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices for each lot included in that selection lots.

(4) A bidder shall submit no more than one primary bid in a primary bid round.

(5) The selection of lots 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 (6) does not exceed the bidder’s eligibility limit for that primary bid round as determined in accordance with regulation 21 or 22 (as the case may be) and notified to the bidder in accordance with regulation 27(1)(c).

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(6) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots specified in that primary bid set out in Schedule 6.

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

16. 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 23, which shall (where not already forfeited under regulation 49) be forfeited.

Supplementary bids

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

- (a) be a bid for a selection of lots at an amount in whole pounds; and
- (b) contain the choice of licence condition to apply to that selection of lots.

(2) The amount of the supplementary bid shall be determined by the bidder, subject to the restrictions set out in regulation 26.

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

- (a) specify the selection of lots it wishes to be included in a licence;
- (b) choose the licence condition it wishes to apply to that selection of lots; and
- (c) specify an amount in whole pounds that it is willing to pay for the licence.

(4) The selection of lots comprised in a supplementary bid made by a bidder may be the same as or different from the selection of lots comprised in a primary bid made by the bidder.

(5) A bidder shall submit no more than two thousand supplementary bids in the supplementary bids round, subject to the restrictions set out in paragraphs (6) and (7).

(6) A bidder may not submit more than two supplementary bids for each particular selection of lots.

(7) Where a bidder submits two supplementary bids for a particular selection of lots, each of those supplementary bids must contain a different choice of licence condition.

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

Number of primary bid rounds

18.—(1) Where the combination of all bids received in a primary bid round is a compatible combination of bids—

- (a) there shall be no further primary bid rounds; and
- (b) there shall be a supplementary bids round.

(2) Where the combination of all bids received in a primary bid round is not a compatible combination of bids, there shall be a further primary bid round unless OFCOM determine in accordance with paragraph (3) that there shall be no further primary bid rounds.

(3) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be available to bidders under regulation 32 following any further primary bid rounds would affect—

- (a) the determination of the winning combination of auction stage bids in accordance with regulation 41; or
- (b) the determination of the winning price payable by the winning bidder in accordance with regulation 43.

(4) Where OFCOM have made a determination under paragraph (2) there shall be a supplementary bids round.

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Determination of round prices for primary round bids

19.—(1) In the first primary bid round, the round price for each lot shall be the amount set out in Schedule 5.

(2) In subsequent primary bid rounds, the round price for each lot shall be determined by OFCOM in accordance with paragraphs (3) or (5) (as the case may be).

(3) Where a further primary bid round occurs in accordance with regulation 18(2)—

- (a) the round price for any lot where that lot is included in more than one bid in the previous primary bid round;
- (b) the round price for any lot that is only included in one bid in the previous primary bid round where—
 - (i) one of the lots immediately adjacent to that lot is only included in one other bid; and
 - (ii) the bids contain different choices of licence conditions; and
- (c) the round price for any lot that is only included in one bid in the previous primary bid round where—
 - (i) one of the lots immediately adjacent to that lot is not included in any bid;
 - (ii) the next immediately adjacent lot is only included in one other bid; and
 - (iii) the bids contain different choices of licence conditions;

shall be an amount that is higher than the amount that was the round price for that lot in the previous primary bid round, subject to the limitation in paragraph (4).

(4) In the circumstances described in paragraph (3), the amount of the round price for the lot shall not be more than twice the amount of the round price for that lot in the previous primary bid round.

(5) The amount of the round price for any lot not included in the circumstances described in paragraph (3), shall be the same amount as it was in the previous primary bid round.

Bidder's eligibility limit for primary bid rounds

20. Before each primary bid round, OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 21 or 22 (as the case may be).

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

21.—(1) After the deadline specified in regulation 23(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 23, but not including any sum forfeited under regulation 49).

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

(4) Where the number that results from the calculation in paragraph (2) is not greater than nineteen, 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.

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

22.—(1) For subsequent primary bid rounds, each bidder's eligibility limit shall be determined either under paragraphs (2) to (4) or under paragraph (5) (as the case may be).

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(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 the 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 lot included in the selection of lots specified in that 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 number of eligibility points attributed to the bidder for the subsequent primary bid round shall be zero.

Additional deposit before first primary bid round

23.—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 21 for the purpose of calculating the number of eligibility points attributed to the bidder for the first primary bid round.

(2) A bidder wishing to pay such an additional sum must, by the deadline 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.

Valid primary bids

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

- (a) the number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43;

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 15(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 15(4);
- (c) the primary bid complies with the restriction set out in regulation 15(5); and
- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 28(1) and is received by OFCOM in accordance with regulation 28(2).

Valid supplementary bids

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

- (a) the winning combination of auction stage bids under regulation 41; and
- (b) the price payable by a winning bidder under regulation 43;

if it is a supplementary bid which satisfies the conditions set out in paragraph (2) ("valid supplementary bid").

(2) The conditions are that—

- (a) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 17(3);

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- (b) the amount of the supplementary bid specified by the bidder in accordance with regulation 17(3)(c) satisfies each of the requirements set out in regulation 26;
- (c) the supplementary bid is submitted in accordance with the restriction set out in regulation 17(6); and
- (d) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2).

Restrictions on amount of supplementary bid

26. The requirements referred to in regulation 25(2)(b) are that—

- (a) the amount of the supplementary bid must be not less than the total amount of the round prices in the first primary bid round for the selection of lots comprised in the supplementary bid;
- (b) where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary bid and the licence condition chosen is the same in the primary bid and the supplementary bid, the amount of the supplementary bid must be greater than the amount of the highest primary bid made by the bidder for that selection of lots for which the licence condition chosen is the same as that in the supplementary bid;
- (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 attributed to the selection of lots comprised in the supplementary bid is greater than the total number of eligibility points attributed to the selection of lots comprised in the valid primary bid made by the bidder in the final primary bid round,

the amount of the supplementary bid must not be greater than the amount determined in accordance with sub-paragraph (d); and

- (d) the amount referred to in sub-paragraph (c) is the total amount of the round prices for the selection of lots comprised in the supplementary bid in the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the condition set out in regulation 22(3).

CHAPTER 3

Procedure for primary bid rounds

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

27.—(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, bidders may make primary bids;
- (b) in respect of each lot, the round price for the lot (determined in accordance with regulation 19); and
- (c) the eligibility limit for that bidder for that primary bid round (determined in accordance with regulation 21 or 22 as the case may be).

(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) for each primary round in respect of which paragraph (3) applies to the bidder, a further primary bid round,

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

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(3) This paragraph applies to a bidder—

- (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

28.—(1) Except as provided for in regulation 29, the bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.

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

Alternative method for submission of primary bid form

29.—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours 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

30.—(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 taken into consideration for the purposes of determining—

- (a) the number of primary bid rounds in accordance with regulation 18;
- (b) the round prices for primary bid rounds in accordance with regulation 19;
- (c) the winning combination of auction stage bids in accordance with regulation 41; and
- (d) the winning price payable by a winning bidder in accordance with regulation 43.

Notification that primary bid not valid

31. OFCOM shall notify a bidder which submits a primary bid that is not a valid primary bid of that fact and shall give the reasons why the bid is not a valid primary bid.

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Release of information on primary bids in auction stage

32. 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 is no subsequent primary bid round), OFCOM shall notify bidders of-

- (a) the total demand for each lot available for selection; and
- (b) the total demand for each licence condition chosen for each lot available for selection.

Additional deposit for primary bid rounds

33.—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 15(3)(c) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) OFCOM may, having regard to the desirability of securing an efficient outcome to the auction 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 such that the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 49) is not less than the highest valid primary bid that the bidder made before OFCOM issued the notification 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 provisions 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 number of eligibility points attributed to the bidder shall be zero.

CHAPTER 4

Procedure for supplementary bids round and final auction stage deposit

Notice to be given to bidders before supplementary bids round

34. 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, bidders may make supplementary bids; and
- (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

Submission of supplementary bids to OFCOM

35.—(1) Except as provided for in regulation 366, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 377, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 34(a).

Alternative method for submission of supplementary bids

36.—(1) Where OFCOM are satisfied that a bidder is unable using reasonable endeavours 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.

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(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

37.—(1) Where OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 34(a) and 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 34(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 have submitted its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

Incomplete or defective supplementary bids form

38.—(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 auction stage bids under regulation 411; and
 - (ii) the price payable by a winning bidder under regulation 43;
- (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 auction stage bids under regulation 411; and
 - (ii) the price payable by a winning bidder under regulation 43.

Notification that supplementary bid not valid

39. OFCOM shall notify a bidder which submits a supplementary bid that is not a valid supplementary bid of that fact and shall give the reasons why the bid is not a valid supplementary bid.

Final auction stage deposit

40.—(1) By the deadline notified to bidders under regulation 34(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 23 or 33 and

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any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 49) is not less than whichever is the greater of—

- (a) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 15(3)(c); and
- (b) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 17(3)(c).

(2) Where a bidder does not satisfy the provisions set out in paragraph (1), OFCOM shall notify the bidder of that fact and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sums paid as a deposit under regulation 23, 33 or paragraph (1), which shall (where not already forfeited under regulation 49) 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 purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41; and
- (b) the winning price payable by a winning bidder under regulation 43.

CHAPTER 5

Determination of winning auction stage bids and conclusion of auction stage

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

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

(2) Unless paragraph (3) applies, the winning combination of auction stage bids shall be the compatible combination of bids having the highest total value of amounts bid.

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

(4) The order of precedence shall be determined by the total number of eligibility points associated with each compatible combination of bids in accordance with paragraph (6) such that compatible combinations of bids to which a greater total number of eligibility points are associated prevail over compatible combinations of bids to which a lesser total number of eligibility points are associated.

(5) Where the same number of associated eligibility points is associated, in accordance with paragraph (6), with any two or more compatible combinations of bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those compatible combinations of bids to determine the winning combination of auction stage bids.

(6) The number of eligibility points associated with a compatible combination of bids shall be a number equal to the total of the eligibility points associated with each lot included in the selections of lots specified in the bids constituting that compatible combination of bids in accordance with Schedule 6.

Unallocated lots

42.—(1) Where the winning combination of auction stage bids results in some lots not being included in any winning auction stage bid ("unallocated lots"), OFCOM shall—

- (a) where there are only two adjoining unallocated lots situated immediately between lots selected in winning auction stage bids with different choices of licence condition, assign to each of the winning bidders for those winning auction stage bids the unallocated lot adjacent to the lot selected in their winning auction stage bid; and
- (b) in any other situation where there are unallocated lots, withhold those lots from being assigned.

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(2) A winning bidder's choice of licence condition does not apply to any unallocated lots assigned to it.

Determination of price of winning auction stage bids

43. In respect of each winning auction stage bid, OFCOM shall determine an amount in accordance with Schedule 7 ("the winning price") which shall be payable by the relevant winning bidder.

Notification of results of auction stage

44. Following determination of the winning combination of auction stage bids under regulation 41 and the determination of the winning price for each winning auction stage bid under regulation 43, OFCOM shall notify each winning bidder of—

- (a) the lots comprised in its winning auction stage bid;
- (b) the licence condition attached to those lots;
- (c) any unallocated lots assigned to that bidder under regulation 42(1)(a); and
- (d) the winning price for that winning auction stage bid.

CHAPTER 6

Grant stage

Determination of the licence fee

45. The licence fee payable by a winning bidder shall be the amount equal to the winning price for that winning bidder's winning auction stage bid determined by OFCOM under regulation 43.

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

46.—(1) Where the amount of a winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) is amount that is less than the amount of the winning bidder's licence fee as determined in accordance with regulation 45—

- (a) OFCOM shall notify the winning bidder of a deadline by when the bidder must comply with sub-paragraph (b); and
- (b) the winning bidder must by the deadline specified in sub-paragraph (a) 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 winning bidder must pay to OFCOM shall be the difference between the amount of the winning bidder's licence fee determined in accordance with regulation 43 and the amount of the winning bidder's deposit (including the initial deposit and any sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49).

(3) Where a winning bidder has satisfied the provisions set out in paragraph (1)(b), OFCOM shall grant that winning bidder a licence for the selection of lots contained in that winning bidder's winning auction stage bid at the technical licence conditions that match the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that bidder under regulation 42(1)(a).

(4) Where a winning bidder does not satisfy the provisions set out in paragraph (1)(b), the winning bidder shall not be entitled to the grant of a licence under these Regulations and shall not

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receive a refund of its initial deposit or any sums paid as a deposit under regulations 23, 33 or 40, which shall (where not already forfeited under regulation 49) be forfeited.

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

47.—(1) Where the amount of winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33 or 40, but not including any sum forfeited under regulation 49) is greater than or equal to the amount of the winning bidder's licence fee determined in accordance with regulation 45, OFCOM shall—

- (a) grant the winning bidder a licence for the selection of lots contained in that bidder's winning auction stage bid at the technical licence conditions that match the licence condition chosen in that winning auction stage bid, and any unallocated lots assigned to that winning bidder under regulation 42(1)(a); and
- (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).

(2) 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 sums paid as a deposit under regulations 23, 33 or 40, but not including any sum forfeited under regulation 49) and the amount of the winning bidder's licence fee determine in accordance with regulation 45, but not any interest which has accrued on the deposit.

Completion of the award process

48. After the grant of licences and the payment of refunds to winning bidders, OFCOM shall—

- (a) complete the award process by publishing on their internet website details of all valid auction stage bids made by each bidder, the names of the persons to whom licences were granted, the selection of lots included in those licences, the licence condition assigned to those licences and the details of the licence fees paid; and
- (b) refund to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders, the initial deposits and any sums paid as a deposit under regulations 23, 33 or 40 (where such deposits have not been forfeited under regulation 16, 40(2) or 49), but not any interest which has accrued on the deposits.

PART 6

ACTIVITY RULES

Forfeit of deposit and exclusion from award process

49. 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 51 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 regulations 23, 33, or 40 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.

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Bids made by an excluded bidder

50.—(1) Where a bidder is excluded from the award process under regulation 49(b) during the auction stage, all of the primary bids and supplementary bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purpose of determining—

- (a) the winning combination of auction stage bids under regulation 41;
- (b) the winning price payable by a winning bidder under regulation 43.

Events

51. The events referred to in regulation 49, 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;
- (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; and
- (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 —
 - (i) a person ceasing to be a member of that bidder group;
 - (ii) a person joining that bidder group under the procedure in regulation 6(3); and
 - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

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PART 7

MISCELLANEOUS

General power of exclusion

52. 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

53. 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 which 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

54.—(1) Subject to regulations 55 and 56, 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—

- (a) delivery must be made on a different day or within different times on that day or at a different place; or
- (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

55.—(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 auction and any requirements relating to the use of passwords and authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the auction for the purposes notified to them under paragraph (3).

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Rerunning rounds

56.—(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; and
- (c) resume the award procedure from the end of the previous round of the auction (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 determine whether it is necessary in order to secure a fair and efficient outcome—

- (a) to disregard the bids made in one or more rounds; and
- (b) to 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 resume the award process from the start of the first primary bid round.

(5) Where paragraph (4) applies, OFCOM shall take all reasonable steps to notify bidders of its determination under that paragraph.

Refunds

57. 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.

[Date]

[Signature]

APPLICATION INFORMATION

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 to 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

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

4. Bidder group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) 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 all other members of the bidder 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)(iii) of the Regulations.

5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 7 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 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 and provide a description of any such collusion;
- (d) state whether 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 and provide a description of any such actions;

- (e) state whether any member of the applicant's bidder 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 bidder group; or
 - (ii) was to OFCOM;
- (f) state whether any member of the applicant's bidder 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 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 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 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.

6. Other information

Provide a brief description of the substance of—

- (i) agreements (if any) relating to the management of the applicant; and
- (j) 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 bidder group or its directors or officers.

SCHEDULE 2

Regulation 4(3)(a)(ii)

APPLICATION DOCUMENT

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

- (a) the persons authorised in section 2 of the applicant’s application have read and understood the Wireless Telegraphy (Licence Award) Regulations 2008 (“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 49 and 51 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.

**DOCUMENT FOR MEMBER OF APPLICANT'S 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 bidder group who is not an associate] as a member of the applicant/bidder’s bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2008 (“the Regulations”) for the purpose of the award process under the Regulations.

Under regulation 7(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 49 and 51 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 7(2), 49 and 51 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 bidder group who is not an associate] is not a member of any other applicant’s or bidder’s bidder group.

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

- (a) been or becomes a member of any other applicant’s or bidder’s bidder group;
- (b) been or becomes a subsidiary of a member of any other applicant’s or bidder’s bidder group during the award process; or
- (c) 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 bidder group who is not an associate]

[Insert name of person to be included in 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 bidder group;
- (b) is not a member of any other applicant’s or bidder’s bidder group; and
- (c) is aware of the provisions in regulations 49 and 51 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 group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder if it ever has—

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

SCHEDULE 4

Regulation 11(1)(a)

LOT SELECTION MENU WHERE THERE IS ONLY ONE BIDDER

Bidder's full name:

Bidder's address:

Telephone number:

Fax number:

E-mail address:

<i>Lot</i>	<i>Frequency Range</i>	<i>Price</i>	<i>Selection</i>
LA	1452.000-1453.816	£50,000	
LB	1453.816-1455.528	£50,000	
LC	1455.528-1457.240	£50,000	
LD	1457.240-1458.952	£50,000	
LE	1458.952-1460.664	£50,000	
LF	1460.664-1462.376	£50,000	
LG	1462.376-1464.088	£50,000	
LH	1464.088-1465.800	£50,000	
LI	1465.800-1467.512	£50,000	
LJ	1467.512-1469.224	£50,000	
LK	1469.224-1470.936	£50,000	
LL	1470.936-1472.648	£50,000	
LM	1472.648-1474.360	£50,000	
LN	1474.360-1476.072	£50,000	
LO	1476.072-1477.784	£50,000	
LP	1477.784-1479.500	£50,000	
LQ	1479.500-1492.000	£150,000	

Licence Condition Choice

(Please choose one licence condition only in the table below)

High Power licence condition	
Low Power licence condition	

SCHEDULE 5

Regulation 19(1)

ROUND PRICE IN THE FIRST PRIMARY BID ROUND

In the first primary bid round, the round price for a lot of a description mentioned in an entry in Column (1) is the price shown in the corresponding entry in Column (2).

<i>Column (1)</i> <i>Description of lot</i>	<i>Column (2)</i> <i>Price in the first primary bid round</i>
LA	£50,000
LB	£50,000
LC	£50,000
LD	£50,000
LE	£50,000
LF	£50,000
LG	£50,000
LH	£50,000
LI	£50,000
LJ	£50,000
LK	£50,000
LL	£50,000
LM	£50,000
LN	£50,000
LO	£50,000
LP	£50,000
LQ	£150,000

SCHEDULE 6 Regulations 15(6), 22(3) and 41(6)

ELIGIBILITY POINTS ASSOCIATED WITH LOTS

The number of eligibility points associated with a lot of a description mentioned in an entry in Column (1) is the number of points shown in the corresponding entry in Column (2).

<i>Column (1)</i> <i>Description of lot</i>	<i>Column (2)</i> <i>Number of eligibility points</i>
LA	1
LB	1
LC	1
LD	1
LE	1
LF	1
LG	1
LH	1
LI	1
LJ	1
LK	1
LL	1
LM	1
LN	1
LO	1
LP	1
LQ	3

DETERMINATION OF WINNING PRICE

Winning price

1.—(1) In determining the winning price for each winning auction stage bid, OFCOM shall impose the requirements set out in paragraphs 2 to 5.

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

First requirement

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

- (a) no less than the total of the round prices in the first primary bid round for the selection of lots comprised in that winning auction stage bid; and
- (b) no greater than the amount of that winning auction stage bid.

Second requirement

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

- (a) the amount bid by each winning bidder for the selection of lots and the licence condition chosen comprised in its winning auction stage bid had been the winning price rather than the amount of its winning auction stage bid (“reduced winning auction stage bid”); and
- (b) the amount bid by each winning bidder in respect of each other valid auction stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning auction stage bid and the winning price for that winning auction stage bid;

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

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

Third requirement

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

Fourth requirement

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

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

$$OCV = \sum (p - c)^2$$

where—

“*p*” means the price for a winning auction stage bid; and

“*c*” means the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning auction stage bid.

(3) The formula is—

$$c = u - t + b$$

where—

“*u*” means the amount calculated in accordance with sub-paragraph (4);

“*t*” means the total amount of the winning auction stage bids; and

“*b*” means the amount of the winning auction stage bid for which *p* is the price.

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

Annex 6

Draft Wireless Telegraphy (Spectrum Trading) (Amendment) Regulations 2008

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Spectrum Trading) (Amendment)
Regulations 2008**

Made - - - - 2008

Coming into force - - 2008

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) 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, “1452–1492 MHz”.

2008

Ed Richards
Chief Executive of the Office of Communications
For and by the 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 and S.I. 2007/3387

Annex 7

**Draft Wireless Telegraphy (Register)
(Amendment) Regulations 2008**

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Register) (Amendment) Regulations
2008**

Made - - - - 2008

Coming into force - - 2008

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) Regulations 2008 and shall come into force on **[date of coming into force]**.

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, “1452–1492 MHz”.

Ed Richards

Chief Executive of the Office of Communications
For and by the authority of the Office of Communications

2008

(a) 2006 c. 36

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

Annex 8

**Draft Wireless Telegraphy (Limitation of
Number of Spectrum Access Licences)
Regulations 2008**

2008 No.

ELECTRONIC COMMUNICATIONS

**The Wireless Telegraphy (Limitation of Number of Spectrum
Access Licences) Order 2008**

Made - - - - 2008
Coming into force - - 2008

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) Order 2008 and shall come into force on **[date to come into force]**.

(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 frequency band 1452-1492 MHz in the United Kingdom.

(2) In determining the number of wireless telegraphy licences to be granted for the use of these frequencies and the persons to whom the wireless telegraphy licences will be granted, OFCOM shall apply the procedure set out in the Wireless Telegraphy (Licence Award) Regulations 2008(b).

2008 *Ed Richards*
Chief Executive of the Office of Communications
For and by the authority of the Office of Communications

(a) 2006 c. 36
(b) S.I. 2008/Insert No.