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Martin Fenton
Ofcom
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20 October 2006

Dear Martin,

Hutchison 3G UK Limited (“H3G”) response to “3G Rollout obligations: statement and consultation” (the “Document”), published 28 July 2006

H3G notes that Ofcom is stating that the rollout obligation contained within each of the five 3G spectrum licences issued in 2000 is not being “changed or relaxed”. H3G strongly believes that this obligation was an important part of the policy framework put in place at the time of the auction of the 3G licences and that it cannot and should not be changed. *Inter alia*, the obligation has a key competitive effect of ensuring that the costs of innovation for 3G are shared between the incumbent operators and H3G as new entrant fairly. Failure to ensure full compliance with the obligation on the due date would be highly discriminatory against H3G and H3G would consider it a breach of a number of Ofcom's duties the terms of the 3G auction and the basis on which H3G invested.

While H3G continues to disagree that the guidance now issued was required or appropriate, Ofcom is urged to ensure that enforcement of this important obligation is appropriate given this policy framework. This is especially in light of the fact that following the publication of this final guidance it would appear at least one of the other 3G licensees still views compliance with this legal obligation as simply a "commercial" matter.

Ofcom's statement on the relevant guidance

H3G remains of the view that the guidance was not required and sends inappropriate signals. However, H3G notes that “there is an expanded discussion of the options that exist for sanction in the event of non-compliance” in Ofcom's final guidance on enforcement of the 3G rollout licence obligations. As such Ofcom has raised the possibility that some forms of non-compliance with the 3G rollout condition could lead to reduction in licence term or partial revocation.

This is an important clarification compared with the draft guidance issued in the Spectrum Framework Review: Implementation Plan consultation, published on 13 January 2005. In



dismissing H3G's arguments in the Document, Ofcom states that it believes it is appropriate to reduce areas of unnecessary regulatory uncertainty. The final version of the guidance raises the questions of when full or partial licence revocation will be proportionate; what constitutes a not rolling out to a "significant" extent; and when licence revocation is not considered appropriate what will be considered "timely" compliance with the obligation. To the extent that Ofcom considers any full or partial licence revocation appropriate the issue will also arise about ensuring that existing 3G customers of the relevant operator are not disadvantaged. The practicalities of such a situation should be managed such that customers are not forced to take an inferior service. H3G would be happy to assist in ensuring that any customers in such a situation would be able to continue to receive 3G service.

H3G will continue to monitor the situation and will provide Ofcom with its views on these issues as appropriate, in light of Ofcom's final guidance.

How Ofcom intends to measure compliance

Turning to the issues on which the Document is consulting (section 7), H3G believes that the basic methodology set out for ascertaining population coverage appears reasonable. Clearly, one important requirement for such a methodology is that it is practical, reasonable and clear. H3G currently believes that the approach proposed in the Document strikes the right balance in these terms.

H3G's answers to the consultation questions in the document are as follows (Ofcom questions shown in bold).

- 1. Do you have any comment on Ofcom's proposed basic methodology?** The basic approach of using "engineering analysis, backed up by measurements in the field to verify the results as necessary" appears a reasonable balance of practicality and the need for a robust assessment of whether the licence condition has been met. What field measurements will be used and how is, however, unclear in the Document and H3G would welcome greater discussion with the operators of what Ofcom has in mind here. Annex 6 of the Document also sets out the information required from the operators. The Document states that Ofcom will start this process "towards the end of 2007, so that [Ofcom] would be in a position to make a decision on whether or not there was compliance in early 2008". H3G would welcome more specific timings and detail on the process Ofcom is proposing (in terms of when the formal data requests will be submitted and the process for verifying the detailed engineering analysis which Ofcom will be undertaking). At present, H3G does not understand how the high level statements on the proposed process in the Document will assess whether compliance with the licence as at 31 December 2007 (the date within the relevant licence conditions by when the 80% population coverage must be achieved) can be ensured.



2. **Do you agree that his in an appropriate basis for measurement? [Referring to the Primary CPICH power discussion]** This question comes at the end of a section entitled “considerations for engineering analysis by Ofcom”, but the question refers to measurement. H3G assumes that Ofcom will be using the primary common pilot channel (primary CPICH) indicated power levels for both the engineering analysis and the measurement activities, but would welcome confirmation of this. At this stage the power levels suggested by Ofcom appear reasonable at a high level, but H3G agrees with Ofcom that these will require verification (as suggested in paragraph 7.19).
3. **Do you have any comment on this assessment criterion? [Referring to a primary CPICH signal level of -110dBm]** The proposed signal level seems appropriate, given that it is based on 3GPP standards.¹
4. **Do you have any comment on Ofcom’s proposals in relation to population data?** Given the need to ensure that the approach to assessing compliance is robust and clear, the census data and approach proposed in the Document appears reasonable.

H3G’s has one further proposed adjustment to the approach proposed in the Document. The methodology in the Document would mean that a suitably high site would be seen as giving adequate coverage to a large part of the UK. H3G believes that a methodology is required to limit the coverage of high sites in population centres to reasonable levels. If such a limitation is not applied then in practice the relevant cell would become grossly overloaded. Given the way in which W-CDMA cells “breathe” (as noted in the Document) this would imply that the relevant cell would then shrink significantly. One potential method to constrain the coverage sensibly would be to limit the maximum cell size in different geotypes when assessing the population coverage.

I would be happy to discuss any aspect of this response further as appropriate.

Yours sincerely,

A handwritten signature in cursive script, reading 'Matthew Cherry', written in black ink on a light-colored background.

Matthew Cherry
Economist

¹ H3G also believes that the assessment should take into account any range limitations in the maximum cell sizes associated with any particular vendors’ equipment.