



Dame Patricia Hodgson
Chairman
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

23 February 2017

Dear Dame Patricia

PSSR auction: an alternative proposal of competition measures

As you are aware, Three UK filed its reply to Ofcom's PSSR Auction consultation on February 6, 2017. On the same day, Three announced that it had entered into an agreement to acquire UK Broadband with a view to expanding UKB's home broadband business across the UK and, as soon as it becomes useable, utilising UKB's portfolio of high frequency spectrum.

In its response to the consultation, Three suggested that Ofcom should cap total spectrum holdings of UK operators at 30% of the total spectrum available and, inter alia, reserve 20MHz of 2.3GHz (immediately useable) spectrum for Three.

The underlying rationale for Three's position is and continues to be the need to address the severe asymmetries in spectrum holdings between UK MNOs, a competition concern that is also recognised by Ofcom.

Three's acquisition of UKB (assuming it is cleared by the CMA) will partially mitigate the potential for worsening asymmetry in the higher 3.4GHz (not immediately useable) frequency band that is under consideration in the PSSR auction. Three UK has therefore indicated in its recent meeting with the Ofcom team in relation to the UKB transaction that it recognises that a spectrum reservation in the 3.4GHz band may no longer be necessary to deliver fair and effective competition (provided of course that the UKB transaction is cleared by CMA).

For the reasons explained in detail in Three UK's consultation response, we consider that it is not in the interests of competition or consumers for the current large asymmetries in immediately useable spectrum to continue to exist and, moreover, that the damage to competition may prove to be irreversible if not addressed by Ofcom now.

We have thought hard about the absolute minimum intervention that would be required to partially mitigate the anticompetitive effect of the current spectrum asymmetry. We have also sought to find an alternative that addresses Ofcom's concerns about reserving spectrum for a specific MNO.

I am writing to set out in writing our suggested alternative proposal for the PSSR auction:

- Auction the immediately useable 2.3GHz spectrum as four lots of 10MHz each (as already proposed by Ofcom);
- Reserve two lots of 10MHz of 2.3GHz spectrum for purchasers with currently small spectrum shares (Three, O2 or a new entrant);
- Require that there to be two different purchasers of the reserved spectrum lots; and
- Allow qualified bidders for the reserved lots to also bid for the unreserved lots.
- There would be no change to our current proposal that BTEE cannot buy 2.3GHz spectrum (unless they divest spectrum).

In the short term at least, this has the potential to partially mitigate some of our (and Ofcom's own) concerns about asymmetry, though comfort for the longer term would still require a 30% cap on spectrum holdings.

This solution is intended to be a less-interventionist version of Option D in the consultation. It avoids excluding Vodafone from bidding for 2.3GHz spectrum (it could bid for up to 20MHz of that spectrum). It also allows anyone other than BTEE or Vodafone to acquire up to 30MHz of 2.3GHz spectrum, thus maintaining a high degree of competitive tension in the auction process. In effect, this would give the smaller players Three and O2, as well as potential new entrants such as Virgin, Talk Talk, Sky etc. the chance to secure at least 10MHz of much needed immediately useable spectrum.

Ofcom could set an appropriate threshold/reserve price level for each of the two reserved lots of 2.3GHz spectrum. We anticipate that there would be strong competition for the reserved spectrum as both Three and O2 have a high requirement for immediately useable spectrum and a number of other businesses such as Sky, Virgin and Talk Talk that are already well-established in the telecoms industry have indicated an interest in developing "inside-out" networks. Any concerns about a possible lack of competition could be managed using the same techniques proposed at pages 141-142 of Three UK's consultation response.

We believe that Ofcom could implement this proposal without re-opening its consultation because it is a less-interventionist variant of Option D (and indeed also a variant of option B), on which Ofcom has already consulted in all material respects.

We hope that this alternative option may appeal to Ofcom and would be pleased to discuss it further with you if you might find that helpful.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Christian Salbaing', written in a cursive style.

Christian Salbaing

c.c: Philip Marnick, Group Director, Spectrum