



Response to Ofcom's consultation on:

## **Proposed changes to spectrum trading regulations**

Statutory notices of proposals to make regulations under section 122 of the Wireless Telegraphy Act 2006

*(Issued by Ofcom on 20 December 2016)*

**BT plc and EE Ltd**  
**27 January 2017**

### **Comments on whether the regulations fully secure Ofcom's policy objective**

As set out in paragraph A4.18 of the consultation, Ofcom is concerned to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. It is for this reason that the 3.6 – 3.8GHz range is being brought into the mobile trading regulations, so that Ofcom can perform an ex-ante competition check before approving any trades.

As noted in paragraph A4.26 of the consultation document, in accordance with the terms of its existing Wireless Telegraphy Act licence, UK Broadband is able to *lease* spectrum in the bands 3605 – 3689 MHz. It appears to us that this would allow Ofcom's policy objective to be circumvented, as the effect of a long-term leasing agreement could be similar to a trade. We believe Ofcom should address this apparent "loop hole" now and, following due process, at the same time as it changes the General Trading Regulations and the Mobile Trading Regulations, amend UK Broadband's licence to remove the spectrum leasing provisions. Whilst we are not against possible leasing arrangements being concluded to further the efficient use of spectrum, we believe that leasing arrangement in spectrum suitable for mobile should be subject to the same ex-ante scrutiny as trades.

### **Comments on the draft regulations**

We have reviewed the proposed amendments to the General Trading Regulations and the proposed amendments to the Mobile Trading Regulations. Aside from the comments above, we have no further comments on the proposed changes to either of these documents.

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