

Ofcom

Award of the 2.3 and 3.4 GHz spectrum bands

A submission from the Federation of Communication Services.

The Federation of Communication Services represents companies who provide professional communications solutions to professional users. Our members deliver telecommunications services via mobile and fixed line telephony networks, broadband, satellite, wi-fi and business radio. Our members' customers range from SMEs, home-workers and micro-businesses up to the very largest national and international private enterprises and public sector users. FCS is the largest trade organisation in the professional communications arena, representing the interests of nearly 400 businesses with a combined annual turnover in excess of £45,000million.

In the context of this inquiry, FCS members are providers of radio frequency and fixed line communications to business users. We have long been concerned that the market for Mobile Telephony in the UK fails to offer the kind of equivalent, price-controlled wholesale access CPs enjoy in the fixed line voice and data market. And we encourage Ofcom to use the opportunity of this forthcoming auction to re-visit the principle seen in the 2012 4G auction of finding deliberate mechanisms to open the market to greater competition.

FCS is therefore pleased to have this opportunity to respond to this auction consultation.

1. FCS supports Ofcom's decision to impose a cap on each operator's maximum share of immediately usable spectrum.
2. But we do not accept the arguments that it would be acceptable for any one operator to acquire 100% of the 3.4GHz release on the supposed grounds that by the time it becomes useful, alternative spectrum bands will also be available. This reasoning is the spectrum equivalent of mis-selling an endowment mortgage.
3. We remember similar reasoning being used by Ofcom to create additional competition in the 4G auction, by reserving a block of spectrum specifically to encourage a new player into the market. It is significant that Ofcom now considers that strategy alone would not have created a credible competition (your paragraph 4.63: if even BT, with all its huge brand recognition and technical expertise, would not have been capable of becoming a credible MNO as a result of Ofcom's strategy, one has to question the basis of the assertions which were made at the time of the 4G auction).
4. It may well be that by the time the 3.4GHz spectrum becomes useable, other bands and other '5G' functionalities are available. Or it may not. None of us knows the future. But we can examine the past.
5. Ofcom's history of allowing single stakeholders to acquire monopoly positions in certain spectrum bands does not give FCS any confidence that failing to constrain monopoly acquisition at this stage will work to the benefit of UK consumers in three years' time. For this reason, **we believe it is equitable and correct also to cap stakeholders' maximum share of the 3.4GHz**

spectrum at 30%. 30% is a figure large enough to enable at-scale use of contiguous bandwidth, but small enough to incentivise multiple stakeholders to jointly develop ‘5G’ solutions which will work on multiple networks – thus future-proofing consumers’ ability to switch.

6. FCS takes fundamental issue with Ofcom’s repeated assertions that the UK mobile market works well for consumers. (for example 1.13: “The UK mobile market is currently working well for consumers and businesses”.)
7. The UK market undoubtedly delivers better results for consumers (including the business consumers who make up the majority of FCS members’ customers) than several other EU markets. But that is a bit like saying Hungarian communism delivered better results for consumers than East German communism did. Imagine what kind of results free markets might have delivered for those consumers over the same time frame.
8. Ofcom’s analysis starts with the assumption of an Ofcom-created status quo, and an expectation that that status quo is somehow the natural order of things. It is not. The MNOs’ present vertically integrated infrastructure-plus-resale model is at best a second generation competition model; one down from a monopoly in a market where other technologies and consumer benefits are routinely categorized by open sourcing, disruptive third-party competition and customer-driven switching.
9. The regulatory regime created to encourage the development of mobile networks was deliberately slanted towards encouraging inward investment in creating mobile infrastructure in return for a monopoly control over the rents for using that network. That model succeeded in creating today’s mobile infrastructure which exhibits four-way redundancy in some geographic areas, and sole-supplier SMP in others.
10. FCS believes the sustainable solution to this inequity is to recognize that this infrastructure ownership model has run its course. (Your paragraph 4.106) The MNOs have now had plenty of time to reap the rewards of their investment. Now is the time to **mutualise the mast sites, place them in the hands of an Openreach-style utility management company**, with a corporate governance model close to that enjoyed by Welsh Water. And then let the utility management company focus on delivering ubiquitous access and leasing mast-site capacity to the MNOs. And let the MNOs differentiate themselves to the consumer in terms of coverage, value and service while operating systems in the various spectrum bands for which they own licences.
11. In practice, today’s four MNOs do not constitute a free and competitive market; they constitute a complex monopoly. Four-way competition keeps the MNOs the right side of Ofcom’s and Berec’s definitions of SMP. But that does not mean the MNOs do not otherwise exhibit monopolistic behaviour.
12. Individually and corporately, the MNOs act to consolidate power and stifle competition and innovation. To give just one less obvious example: when Ofcom auctioned off the DECT Guard Band spectrum, (1781.7-1785MHz paired with 1876.7-1880MHz) in 2006, several of the bidders entered into the auction with a view to use the spectrum to create local private mobile networks. But the MNOs at that time refused to carry SMS traffic originating or terminating on those networks. Which restricted consumer experience, which reduced the commercial viability

of the proposal. Another, more recent and more obvious example concerns the availability of 4G to networks' MVNO customers.

13. In this context, Ofcom's assertions about MNO competition being 'supported' or 'complemented' by MVNOs cannot be allowed to pass unchallenged. (Your note 61, for example, prostates a set of theoretical market conditions which small MVNOs would not recognize in practice). There is no free market allowing MVNOs equivalence of wholesale access, such as is enjoyed by resellers in the fixed telephony market. MVNOs play only according to the rules set by MNOs.
14. In practice, MVNOs in the UK fall into two camps:
 - The first are high-profile label-slapping brand extensions for supermarkets or television broadcasters: the classic 'white label' model, where the MNO provides the service and the retail brand provides the front-end and a proxy consumer experience.
 - The second are smaller or niche businesses, seeking to differentiate their service offer or target niche customer markets. In this case, the 'commercial agreements' to which Ofcom refers are firmly weighted on the side of the party which owns the spectrum. It is by no means unknown for such contracts to contain provisions which allow the MVNO to build up a customer base in a niche market (typically an ethnic or social group), only to see the MNO take the MVNOs customers direct once a suitable volume has been achieved.
15. FCS believes mobile competition policy which is written on the basis of an unchallenged four-MNOs-own-100%-of-the-spectrum status quo will never work for the good of business consumers and the UK public. The market does not work 'well'. It merely works 'adequately'. UK consumers have not been offered the choice of something better. Nor will they be with Ofcom's current approach to this auction.
16. For this reason, FCS recommends Ofcom **re-visits the principle last used in the 4G auction**, of deliberately designating specific blocks in the forthcoming auctions to encourage new competitors into the market.
17. FCS suggests a block of, say, a contiguous 5% of the new spectrum – in both 2.3GHz and 3.4GHz releases – be reserved specifically for sale to MVNO aggregator platforms. And that a condition should be attached to each of the other blocks offered for auction to require price-controlled wholesale roaming access to the operators using those aggregator platforms' services.
18. The benefits of such an approach are obvious:
 - i. Reserving the spectrum for a specific class of users overcomes the experience of the 4G auction, where spectrum notionally ring-fenced for a 'new entrant' was simply acquired by BT, removed from the market, left largely unused for two years, and then used as a bargaining chip to drive a consolidation which Ofcom now concedes risks threatening the long term competitive nature of the market.
 - ii. Mandating price-controlled open roaming for the MVNO platforms creates a new competitive dynamic which favours smaller and more agile operators.
 - iii. Restricting the auction of these blocks to a particular type of bidder brings a new category of customer to the auction, and forces some new conversations into existing commercial

relationships (EE with Transatel, for example; Three with X-Mobility). It is hard to see that any outcomes from such conversations would result in the market becoming less competitive, or delivering poorer results for consumers.

- iv. It would be up to the MVNO operators to commercialise their offer in these bands such a way as to satisfy their shareholders. The market can therefore be relied upon to provide swift and robust feedback on the extent to which consumers (especially business consumers) are well served.
 - v. MNOs are already required by EU Directive to facilitate 'roam like at home' for equipment containing SIM cards from other EU Member States. It is worth noting in this regard that some MVNO aggregator platforms are already domiciled outside the UK.
 - vi. A lively and viable domestic market with a 'roam like at home' presumption is more likely to encourage the infrastructure investments necessary to improve this experience – especially in areas of more marginal coverage. Here the MVNO could act as a catalyst to test demand (and willingness to pay extra) for connectivity in some marginal areas, with a degree of precision which would not be cost-justified by MNOs' own product development teams.
 - vii. Restricting the total spectrum availability in this block encourages niche players without distorting the bulk of existing commercial relationships.
 - viii. Restricting the total spectrum availability in this block also encourages new, dynamic relationships between MNOs and MVNOs, but on a more even playing field than hitherto. MVNOs ought to be able to buy wholesale access at commercially attractive rates from a variety of MNO providers (especially having regards to the unintended consequences of the present regime, viz the issues of 'local SMP')
 - ix. Including the 3.4GHz spectrum in this approach has the potential to encourage new commercial partnerships and/or trade-offs between MNOs and MVNOs anxious to develop '5G' services. For example, by the MVNOs identifying niche audiences of early adopters for test-marketing purposes. Or by the MNOs offering some kind of quid pro quo; perhaps granting access to other immediately useable spectrum in return for the opportunity to consolidate holdings in the 3.4GHz range.
19. FCS's plea, as always, is for regulation which understands and empowers the specific needs of business customers (both SMEs and enterprise level users) and public sector organisations. FCS members and staff look forward to working proactively with Ofcom to develop these outputs in the months and years ahead.

SUBMISSION ENDS