



Notice of Ofcom's proposal to make regulations for
the award of 700 MHz and 3.6-3.8 GHz spectrum
- Proposals to make the Auction Regulations

BT's response to the consultation published on 28 October 2019

9 December 2019

Comments should be addressed to:

[✂]

1 Introduction

We've reviewed the consultation document¹ and draft Statutory Instrument² containing Ofcom's proposed Auction Regulations that would implement Ofcom's policy proposals that were set out in other consultation documents to which BT has responded previously^{3,4} and separately⁵.

The draft regulations appear to be consistent with Ofcom's policy proposals and our comments on them, set out in Table 1 below, are essentially editorial in nature or address relatively minor issues.

2 Detailed comments on the draft regulations

Our detailed comments on the draft regulations that Ofcom proposes to make, as Ofcom set out in Annex 5 to the consultation document, are provided in the table 1 below. These comments address Ofcom's first consultation question:

Question 1: Do you have any comments on our proposals to make Wireless Telegraphy (Licence Award) Regulations 2020, which are set out in draft form in annex 5?

Table 1 – BT's comments on the draft auction regulations

Regulation	Comment
2 (1)	Definition of "current round" includes reference to Regulation 43 for an exception to the meaning. But Regulation 43 doesn't give a definition. Regulation 40 (2) defines "current round" in relation to regulations 41 to 43, so perhaps that is the better cross reference?
Schedule 2	Suggest Ofcom does not require fax details and doesn't use it as a means to communicate with bidders in the auction as such technology is rapidly becoming obsolete.
15(1)	Surely all bidders are required to participate in the principal stage of the auction?

¹ [Consultation: Notice of Ofcom's proposal to make regulations for the award of 700 MHz and 3.6-3.8 GHz spectrum – Proposals to make the auction regulations, 28 October 2019.](#)

² [Annex 5 – Draft auction regulations, Ofcom, 28 October 2019.](#)

³ [BT, "Award of the 700 MHz and 3.6 - 3.8 GHz spectrum bands, BT's response to consultation published on 18 December 2018", 12 March 2019.](#)

⁴ [BT, "Defragmentation of spectrum holdings in the 3.4 - 3.8 GHz band - BT's Response to consultation published on 11 June 2019", 10 July 2019.](#)

⁵ BT response to Ofcom's consultation document "Award of the 700 MHz and 3.6-3.8 GHz spectrum bands – Revised proposals on auction design, 9 December 2019.

26, 27 and 28	Appears to be no limit on the amount by which Ofcom can increase prices in each round. We propose that boundaries are set for this in the regulations and Ofcom provides guidance as to its intended approach.
38	The first set of parentheses should be replaced by commas – the condition is not parenthetical, it is determinative.
41(2) and (3)	Insert “in relation to that bidder” after “an eligibility event occurred”?
84(1)	As drafted, this provision, says that winning bidders that have failed to pay the required assignment stage deposit are prohibited from participating in the negotiation period. This is contradicted by provision 85 (b) which indicates that each winner of 3.6 GHz lots can participate. If Ofcom’s intention is to prevent bidders that don’t pay their assignment deposit from <u>expressing a wish</u> to participate in the negotiation period while not preventing them from ultimately doing so, then 84(1) may need redrafting.
84(2)	Delete spurious “be” from parenthetical “(but is not be required)”.
85(1)(a)(iii)	It is stated that “The first phase is envisaged to be around twenty one days (<u>provided that all winning bidders had paid the final assignment stage deposit</u>)...”. It is unclear why this qualification is needed but if it is the case shouldn’t the regulations include explanations of whether this period will be shorter/longer and by how much?
97(1)	Append “(and after any negotiation period has ended)”?
98(1)	References to regulations 94 and 95 appear to be incorrect. Should they be references to regulations 96 and 97?
99	Reference to regulation 94 appears to be incorrect. Should it be 96?
111	Delete first instance of words “individual frequency lot”?
113	Delete word “lot” from phrase “700MHz lot licence”?
118(a)	Replace “Part 8” with “regulation 112”?
118(b)	Replace “Part 8” with “regulation 113”?
122(2)	Append “as a result”?
Schedule 9, paragraph 4	Not very clear. Could it be redrafted to be clearer?

3 Procedure for negotiation period

BT fully supports Ofcom's efforts to help facilitate defragmentation of the 3.4 – 3.8 GHz band and the policy proposals that will help achieve this objective. We have considered Ofcom's second consultation question concerning the suitability of the draft regulations for the auction negotiation period.

Question 2: In particular, do you have any comments on the procedure set out in Part 7 (and described above under 'Assignment of 3.6 GHz lots following a negotiation') regarding implementation of the proposed negotiation period for winning 3.6 GHz bidders?

Other than the drafting points highlighted in Table 1 in relation to the Regulations 84 and 85, we are content with Part 7 of the regulations in their present form.

BT places high importance on the inclusion of a negotiation period to seek unanimous or partial agreements to 3.6 GHz spectrum assignments and believes this is a crucial step to enable market mechanisms to achieve efficient and optimal use of the 3.4 - 3.8 GHz band. Whilst the regulations as drafted are suitable for this purpose, BT notes that the process could be further improved if an independent third party could be appointed to help facilitate the negotiations between the winners of 3.6GHz spectrum and help broker potential agreements. It would be helpful if Ofcom would (i) confirm that there is nothing to prevent this under the draft regulations; and (ii) consider whether a tender to appoint such a broker could be run in advance of the auction, so that the parties that win spectrum and decide to participate in the negotiation period could select and confirm the broker as soon as the negotiation period commences.
