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## **VM02 response to Ofcom's proposals to amend the Mobile Trading Regulations**

We welcome the opportunity to respond to Ofcom's Consultation in which it proposes to amend the Mobile Trading Regulations, most importantly, by removing the requirement for licensees to pay off outstanding ALF instalment payments before selling spectrum.

Our response is structured in two parts. First, we explain why we support the main proposal. Secondly, we discuss the three amendments that Ofcom proposed to Regulation 6 of the Mobile Trading Regulations, finding them to be appropriate and proportionate.

### *Removal of the accelerated ALF payment requirement would deliver tangible benefits*

As part of our ALF implementation Consultation response, we called on Ofcom and industry to look at opportunities to remove barriers to mobile spectrum trading where possible.<sup>[1]</sup>

Now, following MNO suggestions, we are pleased to see that Ofcom identified one such opportunity: removing the requirement for licensees to pay off outstanding ALF payments in full before they can sell spectrum. Ofcom argues that removing this requirement would have two impacts: 1) removing a barrier to trading of mobile spectrum, and 2) giving rise to a risk to Ofcom and HMRC should licensees default on payment of ALFs they are liable to once they have sold the spectrum, with benefits of the first impact offsetting the risk of the second impact.

We agree that removing the requirement would remove a non-insignificant trading barrier, allowing for better allocation and use of spectrum as more trades beneficial to either side

would be made.<sup>[2]</sup> By contributing to reducing trading barriers, the proposal has the potential to deliver material benefits to MNOs and in turn to users of mobile services in the UK. It could allow for more efficient delivery of mobile connectivity with potentially deeper and wider deployment of spectrum that would improve the coverage and quality of mobile connectivity across the UK.

From our perspective, payment default risk arising from this proposal would be minimal because non-payment risk itself seems very low<sup>[3]</sup> and Ofcom would be able to recover unpaid outstanding fees (akin to when fees for spectrum that MNOs do not trade go unpaid). We thus agree with Ofcom's assessment that the overall risk of payment default is minimal and outweighed by the benefits that the proposal would deliver.

The proposal serves as a practical example of how Ofcom can support Strategic Priority 2 from UK Government's SSP Consultation. This priority encourages Ofcom to conduct its spectrum management functions to drive growth through maximising efficient access to spectrum, with particular regard to supporting investment and contributing to growth. Furthermore, the proposal aligns with Ofcom's long standing objective to reduce regulatory friction or impact of its spectrum management work where possible.

*The proposed amendments to Regulation 6 are appropriate and proportionate*

To deliver its main proposal and to update for recent changes in its spectrum management publications, Ofcom proposes three amendments to Regulation 6 of the Mobile Trading Regulations:

- 1) removing the requirement under **Regulation 6(c)(ii)** for licensees to pay all instalments of ALFs due under the 2018 900 MHz and 1800 MHz ALF Regulations before a trade;
- 2) removing **Regulation 6(b)(i) and Regulation 6(c)(i)**, which refer to the Wireless Telegraphy (Licence Charges) Regulations 2011, and;
- 3) amending **Regulation 6(b)(ii)**, which prevents licensees from trading spectrum if fees are due under the 2018 Regulations which set ALFs for 900 MHz and 1800 MHz spectrum.

The first amendment delivers Ofcom's main proposal.

The second amendment arises from it not being needed to retain clause 6b(i) and 6c(i) as clauses 6b(ii) and 6c(ii) ensure that Ofcom's policy intention is kept – licensees are allowed to trade licensed mobile spectrum when they have met past ALF payment obligations.

Regarding the third amendment (which is made relative to clause 6b(ii)), Ofcom helpfully distinguishes between existing clauses 6b(ii) vs 6c. The latter requires licensees to pay outstanding ALFs that they are liable to pay before the next fee payment date yet that they were not yet due to pay under their chosen instalment option. The main proposal changes this requirement by not requiring licensees to pay fees in full before selling spectrum.

Clause 6b(ii) requires licensees to pay outstanding ALFs which are past their due payment date before they engage in a spectrum trade. Preventing licensees from trading spectrum when they have not paid ALFs due gives Ofcom leverage to ensure outstanding fees are paid. It seems proportionate for Ofcom to apply its spectrum powers, ie, by not allowing spectrum trades to be made, when a licensee is in arrears on ALFs it should have paid already. We thus recognise why Ofcom wants to retain this clause. Additional, we accept that proposed amendments to clause 6b(ii) are needed to ensure they are based on the most current Wireless Telegraphy Regulations 2025 and to expand their application to the 2100 MHz band. It is appropriate and beneficial to harmonise licence terms between the mobile bands for which licensees are liable to pay ALFs.

It would be helpful if Ofcom ensures that the same principles and requirements are reflected in regulations it will draft for spectrum in bands for which ALFs will be introduced going forward (1.4 GHz soon, and 800 MHz and 2.6 GHz in 2033). That would avoid unnecessary differences between regulations across differing bands providing a transparent basis for licensees to explore potential spectrum trades.

We are available to discuss our response with Ofcom in more detail.

<sup>[1]</sup> See pages 3-4 of our response to Ofcom's ALF implementation Consultation.

<sup>[2]</sup> It is our experience that challenges relating to payment of ALFs in the context of spectrum trades can be addressed but they require material inputs from finance, regulatory and legal colleagues and they can have a bearing on negotiations and agreement on terms of trade.

<sup>[3]</sup> Mobile network operators will need and want to meet payment requirements, especially in circumstances where Ofcom and UK Government are the entities they are contractually obliged to pay.