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O2 response to the Independent Audit of Spectrum Holdings Consultation on Emerging Issues

Dear Martin

On behalf of both O2 Airwave Ltd and O2 (UK) Limited, O2 plc [O2] is delighted to be able to respond to the consultation on emerging issues relating to the Independent Audit of Spectrum Holdings. In general we find that the team has undertaken a thorough review of the issues associated with use of radio spectrum by the public sector, this is to be commended. In our response to the consultation, we focus on those areas that are of most direct interest to O2, but we offer a view on all emerging issues.

In a Confidential Annex to this response we address the specific questions posed in the consultation document, but we highlight here the small number of specific concerns we have with some of the emerging issues. Our key concerns are:

Public sector access to spectrum : As the team identifies, the introduction of spectrum trading and liberalisation has implications for public sector access to and use of the radio spectrum. In general, O2 agrees that public bodies should be expected to meet future spectrum needs through the spectrum market. However, we also believe that there are some key public services for which Government should retain tighter control over spectrum holdings. In our response to Ofcom's consultation on the Spectrum Framework Review (SFR), we noted that there will continue to be cases where it will be in the public interest to set spectrum aside for specific purposes, to support public policy objectives. In these cases, the continued use of administrative incentive pricing will ensure that the licensees to whom this spectrum is administratively assigned are given an incentive to use spectrum efficiently.

International benefits of spectrum usage : O2 has consistently supported UK Government and spectrum regulatory authority objectives to allow market forces to manage more of the radio spectrum. In our responses to the various consultations since Government first commissioned your Review of Radio Spectrum Management, we have highlighted that:

- There is a need for a consistent UK national regime that gives all spectrum users an incentive to use spectrum more efficiently;
- Careful development, introduction and application of efficiency enhancing mechanisms is required to ensure that spectrum is used efficiently;

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- The development of efficiency enhancing mechanisms will be assisted by supporting the introduction of a freer spectrum market, and in particular secondary trading; and
- To support a freer spectrum market, the UK will need to strive for greater consistency of spectrum management procedures across the European Community and beyond.

Much progress has been made in many areas. Shortly before this consultation was published in July 2005, we note that Ofcom published the conclusion of its Spectrum Framework Review¹, which confirms that market forces are beginning to prevail over central management of the radio spectrum.

However, we remain concerned that the UK is moving rapidly ahead of other European administrations in the move away from “command and control”. O2 believes that the benefits of lighter-touch regulation must be viewed in a long term and international context, since long term investments have been made by many radio industry sectors, including those in the public sector, and many players in the radio industry are multi-national. A stable regulatory environment, a clear picture of current licences and available spectrum, and clarity of future opportunities through planned spectrum releases are all required both nationally and across the region to ensure the maximum benefit to the UK as a whole. A 2004 report for the EC² calculates the benefits that the introduction of key market mechanisms (trading and liberalisation) would convey, but the report also highlights that up to 40% of the competition and innovation benefits stem from pan-European effects. We believe that the Audit team should consider what effect such a rapid change in spectrum policy could have on international investments where reciprocal opportunities in other European markets are longer term.

Sharing : O2 agrees that spectrum sharing contributes to efficient usage and in general we support the principle of spectrum management organisations being allowed to manage the shared use of spectrum by public sector and commercial users. In the cases where it is in the public interest to set spectrum aside for specific purposes, to support public policy objectives, particular attention will need to be given to the scope of any such sharing agreements to ensure that the public interest remains served effectively.

Spectrum Usage Rights : Finally, also as noted in our response to Ofcom’s SFR consultation, we believe that the market led approach to spectrum management may be limited by uncertainties surrounding the rights of spectrum users. These uncertainties relate to the ongoing consideration of spectrum usage rights and interference guidelines in a liberalised spectrum management regime, and how they relate, for example, to Ultra-WideBand (UWB) and other advanced wireless technologies. We continue to play a full and active part in the discussions of spectrum usage rights, with Ofcom’s consultants, and of UWB, in the ongoing national and

¹ “Spectrum Framework Review”, 28 June 2005, Ofcom.

² “Study on conditions and options in introducing secondary trading of radio spectrum in the European community”, May 2004, Analysys Consulting Ltd and partners.



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international debates. However, O2 considers that the benefits of a full market forces approach (with complete technology neutrality and total change of use freedom) may not be wholly achieved if there is little appetite to move away from specific usage rights due to such uncertainties as these. These concerns apply equally to public sector usage of spectrum as they do for commercial spectrum usage. In particular, we look forward to reviewing the Audit's recommendations on the removal of obstacles to public sector spectrum trading, the suggested timetable for agreeing clearly defined rights, and any proposals for incentives to encourage spectrum trading.

If you would like to discuss any of these issues further with me or any of my colleagues, please do not hesitate to contact me. We look forward to publication of your final report later in 2005.

Yours sincerely,

A handwritten signature in black ink that reads "Simon Wilson".

Simon Wilson
Spectrum Policy Manager
O2 plc