

Spectrum Trading

We are of the view that spectrum trading should be permitted by the regulator so as to evolve optimal spectrum utilisation practices. Spectrum trading should also include a spectrum trading fees so as to ensure that Government gets its due share from the trading of this valuable national resource. That means government should every time levy a transfer fee, as is the case when change in ownership takes place in real estate. Any entity having a plain vanilla UAS license can be permitted to carry out acquisition of spectrum in spectrum trading. Existing UAS licensees can also be permitted to carry out spectrum trading, such that efficient allocation of the scarce resource takes place. Thus, plain vanilla licensees can have the option of participating in governmental auctions to acquire spectrum or also have the option of acquiring spectrum in the open market via spectrum trading. The authority should, in principle, allow spectrum trading. The amount of spectrum to be traded can be governed by the limits set out in the M & A guidelines to prevent hoarding.

Proposed Spectrum Trading Framework

Spectrum trading is the ability to trade the rights and obligations in radio spectrum, which is used for a variety of communications needs, including mobile telecoms, broadcasting, the emergency services and coastal station radio.

Types of transfer

There are two different ways of holding a licence (i.e. sole holding or concurrent holding) and the two different ways in which a licence can be transferred (total or partial transfer). The four types of transfer are:

1. An outright transfer of all of the rights and obligations arising under a licence to a third party (outright total transfer);
2. A transfer (of all of the rights and obligations arising under a licence) to a third party which results in a concurrent holding of those rights and obligations by the transferor and the transferee(s) (concurrent total transfer);
3. An outright transfer of some of the rights and obligations arising under a licence to a third party (outright partial transfer);
4. A transfer of some of the rights and obligations arising under a licence to a third party which results in a concurrent holding of those partial rights and obligations by the transferor and the transferee(s) (concurrent partial transfer)

Liberalization

In parallel with the introduction of spectrum trading, regulator should be open to licensees requesting a change in the use of their licence. Spectrum trading and liberalization are separate developments. However, it is anticipated that liberalization will provide an additional impetus for spectrum trading and generate additional benefits.

Licence term and period of notice

Regulator should modify certain wireless telegraphy licences to give players a rolling term. In addition, Regulator will have to clarify the circumstances under which licences will be revocable and Regulator must clearly state the reasons for revocation.

The transfer process

1. Notification of a trade

- Once a transfer has been agreed, the licence holder or concurrent holders must notify the Regulator about the proposed trade. Regulator should intend to introduce the least administratively burdensome process to support effectively the transfer of licences.
- Regulator must propose to require that it receives a document confirming that all parties to the trade have consented to the proposed transfer. This should be signed by or on behalf of:
 - The holder or each concurrent holder of a licence; and
 - The transferee or transferees to whom rights and obligations are to be transferred.
- Regulator will also require other information such as the name and address of the proposed transferee, a description of the type of transfer which is to be affected and any information necessary for Regulator to determine whether it shall consent to the transfer.
- Request will also have to request parties to trades to provide other information on a voluntary basis which may be useful to monitor the success of spectrum trading. Such voluntary information might include details of the underlying commercial transactions (such as price) but this will not be made public. However, Regulator can analyse the data and may, from time to time, publish details of our conclusions, including aggregated figures though anonymity and confidentiality will be preserved.
- Once all the information is provided, Regulator will have to check the documentation in order to ensure that the mandatory information requirements have been met and that the proposed transfer is consistent with the information held by the Regulator. Regulator will then publish a notice stating the names of the transferor and the transferee and setting out basic information about the licence.

2. Giving consent to a trade

- A transfer of a licence will be allowed subject to Regulator's consent. In order to provide as much commercial certainty as possible, Regulator will have to limit the reasons under which it will not consent to a trade to the minimum necessary.
- Where a licence to be transferred includes a non-spectrum licence condition (such as a roll out obligation) Regulator will have to assess the ability of the transferee to fulfil the condition.

3. Enacting the transfer

- If satisfied that the parties comply with all requirements for a trade, Regulator can contact the parties to the trade and inform them that it consents. Regulator may request a date by or on which the transfer is to be formally completed.
- In order to affect a transfer, the transferor's licence will need to be surrendered. In the case of a total transfer, Regulator will have to grant a new licence on exactly the same terms and conditions to the transferee. In the case of a partial transfer Regulator will have to grant new licences with the appropriate terms and conditions to both the transferor and the transferee.
- Once the transfer has been affected, Regulator will have to update its public notice of the transfer to indicate that the transfer was completed.

4. Spectrum Trading Fees

Spectrum trading process should include a spectrum trading fees so as to ensure that Government gets its due share from the trading of this valuable national resource. That means government should every time levy a transfer fee, as is the case when change in ownership takes place in real estate.

Need for spectrum trading and liberalization

- Large users of spectrum, such as telecommunications companies, will benefit from a greater certainty over the term of their rights to use spectrum, the opportunity to improve returns from under-used spectrum resources, and the potential to access more spectrum for expanding technologies.
- Small users of spectrum, such as private business radio users, will benefit from the opportunity to profit from investing in new equipment and selling any spectrum that is released as a result, or to purchase more spectrum if they require it due to the expansion of their business.
- Firms will have more opportunity to compete for spectrum for new technologies or services with incumbents. Spectrum trading and opportunities to change the use of spectrum will also remove barriers to entry in markets where lack of access to spectrum previously restricted entry by new players.

Benefits for the industry

- There is a worldwide problem of spectrum scarcity, even with more spectrum coming on-stream through the re-farming of switched-off analogue TV frequencies. The increasing sophistication of mobile phone usage - moving in just a few short years from basic voice calls and texting to smart phones that allow video calls, the streaming of movies, ever-more advanced "apps", etc - has led to an exponential rise in the quantity of data traffic, creating increased demand for spectrum. This requires more efficient allocation of spectrum by means of spectrum transfer so that mobile operators with plenty can offload some on to others that don't have enough.
- Spectrum transfer also facilitates competition, which is seen as essential to driving down prices and stimulating improvements in quality and innovation, to the benefit of consumers and the economy generally. Market entry by smaller players is easier when it is possible to buy spectrum from an existing network operator, rather than having to wait for the next auction.
- Spectrum transfer encourages bidding in spectrum auctions. If the purchasers know that the danger of having purchased too much is mitigated by the possibility that they can on-sell excess spectrum, they will be less inhibited about bidding in auctions.

Points to be considered while finalizing Spectrum Trading

- Ownership of Regulator
- Commercial Issues
- Capital Gain
- Tax Related Issues
- M&A
- Time Lapse between acquisition of spectrum and trade of spectrum
- Ratio of acquisition and sale via trade