



**Commercial Radio Companies Association**  
**Response to the Consultation Document**  
**“Implementing Spectrum Trading”**

**1. CRCA**

The Commercial Radio Companies Association is the trade body for UK commercial radio. It represents commercial radio to government, regulators, copyright societies and other organisations concerned with radio. It manages the Radio Advertising Clearance Centre which clears national and special category advertisements prior to broadcast. It is one of the two shareholders in JFMG Limited, a spectrum licence service supplier to the Radiocommunications Agency. CRCA also jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC and was instrumental in the formation of the Digital Radio Development Bureau, a company owned by UK digital radio multiplex owners.

**2. Introduction**

In the early stages of examining the “Implementing Spectrum Trading” document, CRCA noted that the vision underlying the document’s proposals recognised that there needed to be a minimum level of regulation to ensure “sufficient spectrum (would be) set aside for achievement of Government public policy objectives (eg for public service television and sound broadcasting)” (2.6c). We sought guidance as to whether the phrase “sound broadcasting” included independent national and local radio. Subsequent discussions with representatives from DCMS and DTI indicated that it did but did not guarantee that the current amount of spectrum used by radio broadcasters would necessarily always be available in the same quantity. In other words, there may currently be more than sufficient spectrum used by broadcasters for pure broadcasting purposes and some could therefore be traded.

Any discussion of “spectrum trading” and “broadcasting” is complicated by broadcasting spectrum being licensed for a specific purpose by a content licensor who predetermines the allocation, occupancy, use and ownership of blocks of spectrum. The licensee is unable to do as he wishes with the spectrum he is licensed to use either under current rules or those being proposed for OFCOM.

We believe that analogue independent radio cannot trade its spectrum beyond Mode 1 (paragraph 6.2) because only change of ownership is permitted. There is very little flexibility in analogue broadcast spectrum use. Regulators only allocate sufficient spectrum to a single independent radio station to enable it to broadcast to its licensed coverage area. By and large, in local radio, this consists of a single frequency. National independent radio services use more than one frequency but national coverage would be severely impaired if one of these frequencies was either withdrawn or “traded” to another party for different use. CRCA has noted Professor Martin Cave’s recommendation (11.2) in the “Review of Radio Spectrum Management” that “broadcasters should be given the ability to lease spectrum to other uses and/or users, once they have met their public service broadcasting commitments and other obligations (and, furthermore) be able to keep the resulting revenues”. However, CRCA does not believe that analogue independent radio

stations are able to find the spare spectrum to enable this to happen beyond the as yet rare allocation of side-band activity.

CRCA recognises that digital spectrum allows more freedom and more opportunities. It is already the case that the broadcast radio licensing body (currently the Radio Authority, soon to be OFCOM) allows a proportion of the bit rate owned by a multiplex licensee to be used for non-radio broadcasting services. In addition, a multiplex owner leases out portions of his multiplex's bit rate to radio or other data services in exchange for money. However, this is not "spectrum trading" as described in the consultation document because the blocks of spectrum occupied by terrestrial DAB multiplexes cannot be sub-divided or amalgamated and the spectrum occupancy of each is fixed.

### **3. Variance of Trading: Modes**

As things stand, under current and expected legislation, independent radio multiplexes could most readily be considered as falling under Mode 4, where a percentage of capacity within a multiplex (changeable by order in Parliament) might be subject to a change of use. The multiplex itself might also be subject to a change of ownership while service providers using the multiplex might also change. However, it should be noted that the relevant amount of spectrum and its associated WT licence would not change and "reconfiguration" as defined in the document cannot occur.

### **4. Variance of Trading: Duration & Extent**

We envisage that OFCOM, as the licensor of independent radio services, will be involved in dispute resolution and will prevent interference.

Under expected new legislation, service providers broadcasting on a multiplex will not need a licence to do so. However, the multiplexer will have guaranteed to the regulator what sort of services he will provide during the duration of his licence (currently 12 years with the possibility of a further roll of another 12 years). The duration and other conditions of audio service and other service providers' contracts with a multiplex owner are currently a matter for the multiplex owner rather than the regulator. Given the speculative, early nature of digital radio terrestrial transmissions, this seems a fair and proper way to proceed. OFCOM will no doubt re-examine the situation when the technology is bedded in, and consumers are familiar with and supportive of it.

### **5. Sectors for Phased Implementation of Spectrum Trading**

We note that sound broadcasting will not be subject to spectrum trading regulations until the second wave of implementation. We have already explained why the spectrum used by analogue independent radio can not be traded although station ownership can change. We agree that digital sound broadcasting should not become subject to spectrum trading rules until the second wave. If spectrum trading is to be introduced in digital terrestrial sound broadcasting then we recommend that this should be confined to Mode 4 and should not happen until the second licence periods begin. This starts to occur from 2010 onwards.

We are unable to give any precise advice on the likely volume of trading. As far as change within a multiplex is concerned, as technology currently stands, it is possible to have 9 or 10 audio broadcasting services on a multiplex with a small reserve left over for other data transmission. The capacity allowed for other data transmissions cannot currently exceed 20% and this is not fully used on any multiplex as far as we

know. Given that new services to consumers take time to bed in, we do not believe there is likely to be a heavy churn in services once they have started to establish themselves.

## **6. Modes Applicable to Sectors for First Implementation of Spectrum Trading**

CRCA does not think it is appropriate to comment on how those involved in the first wave of spectrum trading should be treated save to say that, if a group or person pays a full administrative or auction price for a segment of spectrum, they should be allowed to use it much as they think fit although probably within certain parameters (eg sound broadcasting). The same restrictions should generally apply to those with whom they trade spectrum. Nevertheless, some change of use and, depending on the nature of the initial licence, reconfiguration is probably desirable. As the consultation document makes clear, there will be further consultation based on the experience of the first wave before the second wave of trading begins. On the face of it however, the points we have made regarding the first wave would also seem to apply to the second. As far as “different trading rules for different licence sectors” are concerned, we assume that spectrum will continue to be issued for reasonably specific purposes (for example, radio broadcasting) and having different rules applied to each would not seem to be undesirable provided this was reflected in the amount paid initially by the original OFCOM licensee for the relevant spectrum. In other words, the more onerous the rules, the lower the price and vice versa.

## **7. Competition**

We assume that digital independent radio multiplex licences will continue to be issued with a view to particular activities taking place, generally funded by advertising revenues. Current ownership rules (and those being proposed for the future) seek to ensure plurality of opinion and fair competition. It would clearly be wrong if a digital spectrum trade allowed a particular digital radio broadcasting player to dominate the relevant market in a way that allowed him to compete unfairly. In the event that this is likely to occur we expect OFCOM to require clearance or consent prior to a proposed trade.

## **8. Packaging Spectrum**

At present terrestrial digital radio multiplex licences are awarded with a view to either national or local coverage. We do not believe that this approach is likely to change. Local and regional broadcast licences will tend to have clear fixed boundary conditions. We are not sure that this facilitates trading but it makes it easier to know what you are buying and selling. In the broadcast environment, we do not see that OFCOM digital radio multiplex licensees will be able to deal in user-negotiable boundaries. In addition, it seems to us that digital radio multiplex licensees do not fall into licence classes or sectors in which spectrum reconfiguration on demand can occur.

## **9. Licence Term and Security of Tenure for Tradeable Licences**

At this stage in digital radio development (incomplete coverage, no listeners, no advertisers, insufficient receivers in shops) it is difficult to think in any other than the long term. We are pleased that digital radio multiplex licences are for 12 years with the opportunity for a further roll. Long licence terms are bound to be attractive to customers in new areas of business.

## **10. Information Requirements for Trading**

CRCA firmly believes in the market. Potential customers involved in trading will want to exercise due diligence and will not trade if their questions are not answered. It does not seem to us that OFCOM has a place in this.

It is difficult to see how the Competition Authorities can be expected to do their job properly if OFCOM does not publish details of what they consider to be “significant” potential trades before they take place.

## **11. Start of Trading**

As has been indicated earlier, only Mode 1 spectrum trading can take place in analogue commercial radio spectrum and, eventually, Mode 4 can be applied to the digital terrestrial radio sector. Sensibly, because of the large investment sums required and the risk involved, terrestrial digital radio multiplex owners have not been required to pay any form of bid fee. These developments will come much later (say in 10 years), if at all. As far as analogue radio broadcast spectrum is concerned, we see no reason why trading should move beyond changes in ownership. We do not see why the Government needs to take any steps to recoup capital gains realised as a consequence of the introduction of spectrum trading. Broadcast transmission licences are for a set term. The merit of any price increases should be discussed and, if necessary, implemented at renewal time. We do not see that OFCOM needs to take any steps to facilitate the start of spectrum trading markets.

CRCA has no comment to make on the analysis of the draft regulatory impact assessment.

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**7 October 2002**