

**THE WIRELESS MESSAGING ASSOCIATION RESPONSE TO
RADIOCOMMUNICATIONS AGENCY CONSULTATION DOCUMENT ENTITLED
“IMPLEMENTING SPECTRUM TRADING” JULY 2002**

1. Introduction

This document is the response of the Wireless Messaging Association (WMA) to the “Implementing Spectrum Trading” Consultation Paper dated July 2002. Contained in this document are the collective views of the WMA. Members of the Association may choose to respond to the Consultation Paper in their own right or on behalf of their company.

The WMA represents and promotes the common interests of participants in the Wireless Messaging Industry. The prime aim of the WMA is to consolidate the aims and objectives of its members and to strengthen the industry.

The members of the WMA are :-

MMO2 Ltd.
Multitone Electronics plc
PageOne Communications Ltd
Tecnomen Oy
Vodafone Paging Ltd

The format of this response is to provide our views directly to the “List of Questions” as shown in the Consultation Paper pages 43 through 45.

As a principal the WMA is in favour of Spectrum Trading as long as it supports a truly free and open market. Regulation should only be used to enforce the following proposed conditions of use. To: -

- a. ensure there is no market manipulation or distortion through market dominance,
- b. ensure there is no market manipulation or distortion through hoarding,
- c. ensure compliance with international standards, and
- d. prevent harmful interference.

All of the answers given below are provided subject to these conditions on regulation

LIST OF QUESTIONS AND OUR RESPONSES

Question 1 Do you have any comments on the proposed modes of trade? Are there others that should be considered?

To have a truly free and open market as many restrictions as possible should be removed from licence holders (subject to the conditions of use shown in the introduction of this document). The WMA recommends that any trade should be allowed to take place if it does not break these conditions. Hence we favour mode three as listed in the consultation document, that is change of ownership, reconfiguration and use. All other modes are a subset of mode three.

In addition to this we believe that the existing operators should be entitled to change the use of their channel(s) subject to the proposed conditions of use. Change of use should not be dependent on change of ownership of the channel(s); it should be based on commercial and / or other decisions made by the owner of the channel.

Question 2 How should interference disputes be resolved? How far should Ofcom become involved and what should its role be in relation to interference?

It is the view of the WMA that the first port of call for interference disputes should be contact between the operators in question. The next line should be either the current Radio Interference Service (RIS) or a very similar body maintained within the Ofcom organisation. Indeed the RIS ought to have the final say in all disputes unless the disputing operators wish to resort to the courts.

We also believe in the “polluter pays” principle whereby any changes made by one operator that adversely affect the operations of another operator, in any way and to any degree, should be remedied and paid for by the original operator (the polluter). This remedy should be to the complete satisfaction of the polluted operator. Should there be disputation regarding the remedy then the RIS should be brought in to arbitrate.

We believe that in cases of severe interference and / or illegal transmission the RIS should retain the rights and the ability to switch off the offending transmissions.

Question 3 It is proposed to give scope for trades with as wide as possible a variety of time periods and opportunities for reversion. Which combinations do you think will deliver greatest benefits?

The WMA applauds the concept that there should be as wide a scope as possible for time periods and opportunities for reversion. However, we also believe that this whole question should be left to the parties involved in any transaction. To get the best commercial advantage from the new arrangements both spectrum “owners” and “purchasers” will want as much flexibility as possible. Ofcom should not, therefore, get

involved in the details of any trade (subject to our proposed conditions of use as listed in the introduction of this response). Nor should Ofcom limit trade by imposing artificial barriers such as time periods or reversion for any particular trade.

Question 4 It is proposed to give scope for trades where the extent of transfer of rights and obligations is complete or concurrent. What is your view on this proposal?

Subject to our proposed conditions of use, the WMA believes that there should be as much freedom as possible for trading parties. However, care must be taken with the answers to this question. We believe that each trade should have as much freedom as possible and that either complete or concurrent trades should be allowed. However, it is imperative that all of the current licence obligations should be the responsibility of one of the trading partners. This is simple in the case of complete transfer; the buying party would acquire the whole set of rights and obligations. For trades involving concurrent transfers of rights and obligations it is not so simple. For instance if a party obtains the rights to transmit from a single site under a multi site licence and causes interference then who is responsible for the elimination of the interference if this is not covered in the contract for the trade? The WMA believes that the obligations of any licence should be the responsibility of the owner. These obligations may be passed on under the terms of a trading contract but if this is not done then it will be the responsibility of the owner to cure the effects of the interference.

Question 5 Licence classes from the following sectors are proposed for a first wave of the introduction of spectrum trading: public wireless networks; broadband fixed wireless access, private business systems and terrestrial fixed links. Additionally for the first wave the simplest mode of trading (change of ownership only) is proposed for all other licence sectors and licence classes (with a few exceptions).

a) What is your view of these proposals?

b) What is your view on the appropriate timing of the introduction of trading for particular licence classes within sectors, and in particular for Third Generation Mobile (3G) licences?

The WMA represents all of the current national paging network operators in the UK, all of our members are happy for public wireless systems to be included in the “first wave” of the introduction of spectrum trading.

We do not agree that trades in all other sectors should be allowed in the first wave for two reasons. Firstly, Ofcom might be overcome with the volume of work in the early days of spectrum trading if it is as successful as most industry players believe. This will cause mistakes to be made and / or delays in early trades. This will not be a good introduction of what is believed to be a real step forward. Secondly, we believe that there should be an absolute minimum of conditions of trade in all sectors, by allowing mode one trades

only in the first wave, Ofcom will automatically be introducing restrictive practices and hence barriers to trade.

We agree that trades in 3G should be delayed for three years. If this is not done then it could have serious implications for their roll out and perhaps other licence obligations.

Question 6 Licence classes from the following sectors are proposed for a second wave of spectrum trading: sound broadcasting (analogue and digital), television broadcasting (analogue and digital), programme making and special events, and aeronautical and maritime. What is your view of these proposals?

The WMA is happy with these proposals but we do not believe that any trades in these licence classes should be allowed in the “first wave”.

Question 7 In your view, what is the best approach for introducing the more complex forms of trading?

The WMAs view is that trading should be introduced in two waves as described in the consultation document, but excluding mode one trades only for the classes of licence listed for the second wave in the consultation document.

More complex forms of trade should be the business of the trading parties but should be subject to ex ante and / or ex poste scrutiny by Ofcom if they, or other interested parties, consider it necessary. The only grounds for preventing trades should be if they break our proposed conditions of use (or there is a strong likelihood that they do so).

Question 8 What is your view on the overall timing of the introduction of spectrum trading?

The WMA is happy with the overall timing.

Question 9 In planning for the introduction of spectrum trading, it would be helpful to have an estimate of the likely volume of trading. For each licence sector and licence class on which you can express a view, what volume of trades would you expect? Would you expect a different volume depending on the available modes of trade?

The WMA has not done any research into the volume of trading and does not feel that we can give an accurate estimate. However, we would expect that fewer trading

restrictions would result in greater volumes of trade and thus we only support mode three type trades.

Question 10 For the proposed licence sectors from which licence classes will be selected for the first wave of the introduction of spectrum trading with more complex trading modes (ie for the sectors: public wireless networks, broadband fixed wireless access, private business systems and terrestrial fixed links) do you have any views on how extensively change of use or reconfiguration should be permitted?

Subject to our proposed conditions of use we believe that there should be total freedom to change the use or the configuration of channels. Trades should be subject to ex ante and / or ex poste scrutiny by Ofcom if they, or other interested parties, consider it necessary. The only grounds for preventing trades should be if they break our proposed conditions of use (or there is a strong likelihood that they do so).

Question 11 For the proposed licence sectors from which licence classes will be selected for the second wave of spectrum trading, do you have any views on how extensively change of use or reconfiguration should be permitted?

Subject to our proposed conditions of use we believe that there should be total freedom to change the use or the configuration of channels. Trades should be subject to ex ante and / or ex poste scrutiny by Ofcom if they, or other interested parties, consider it necessary. The only grounds for preventing trades should be if they break our proposed conditions of use (or there is a strong likelihood that they do so).

Question 12 Would having different trading rules for different licence sectors and licence classes have any undesirable impact?

Different rules for different licence classes would unnecessarily distort the market. It would also be more difficult to introduce and to administer. In addition it would create confusion for the traders. Let us keep it simple, clear, and fair.

Question 13 In what circumstances do you consider it would be appropriate for Ofcom to (a) require prior clearance or consent (ex ante) for competition purposes for a proposed trade and (b) withhold consent for a trade on competition grounds?

Ofcom should require prior clearance or consent for competition purposes for a proposed trade if there is any likelihood that the purchaser could obtain a position of market dominance as a result of the trade. Ofcom should also require prior clearance if

there is any evidence, or an upheld complaint from players in the industry, that the purchaser is hoarding spectrum.

Ofcom should withhold consent for a trade on competition grounds if it is shown that the purchaser could obtain a position of market dominance as a result of the trade. Ofcom should also withhold consent if there is any evidence that the purchaser is hoarding spectrum, or if there is an upheld complaint from players in the industry that the purchaser is hoarding spectrum.

The WMA also believes that Ofcom should have the power to force purchasers of spectrum to sell part or all of their holdings if it is shown that the trade has created a position of market dominance, or if it shown that the purchaser is hoarding spectrum.

Question 14 How should tradable licences be structured? Views on all aspects of structuring the licences would be appreciated including on the technical construction of boundary conditions.

Tradable licences should be structured in such a way that the geographical coverage and technical parameters are specified. That is area of coverage and maximum permitted ERP of the transmitters within that area. Use of the spectrum should not be a factor unless a change of use increases the likelihood of interference or affects compliance with international regulations.

Changes of modulation should also be allowed subject to the conditions of use listed in the introduction of this document.

Question 15 Are there licence classes, or licence sectors, for which division of spectrum into predefined frequency trading units with fixed boundary conditions would facilitate trading?

The WMA does not have a view on this question.

Question 16 Are there licence classes, or licence sectors, for which user-negotiable boundaries would facilitate trading?

The WMA does not have a view on this question.

Question 17 Are there licence classes, or licence sectors, for which spectrum reconfiguration on demand would facilitate trading?

The WMA does not have a view on this question.

Question 18 What changes, if any, do you consider are needed to licence term and security of tenure to promote the successful introduction of spectrum trading? Please be as specific as possible about the licence sector(s) and licence class(es) to which you are referring.

The licences of the national radiopaging operators lie within the public wireless network sector. All national radiopaging licences have an undefined term along with a licence fee that is payable annually, they suffer from the associated limited security of tenure. In order to promote a successful introduction of spectrum trading there needs to be a lengthy term for the licence and an assured security of tenure.

The WMA believes that the best and simplest way of dealing with this is to issue perpetual licences with well-defined scope for Ofcom to recover the licences through compulsory purchase if necessary.

The consultation document states that this solution gives “Ofcom less strategic scope”. The WMA does not think this is an issue. We are attempting to successfully introduce spectrum trading so that the UK can benefit from all of its associated advantages. The advantages to the UK will derive from the commercial benefits obtained by our industries from the trades that are made, and the freedom for industry to provide more and better services through relaxing their licence constraints. In doing this we are to giving Ofcom the powers it needs to provide an environment that will support spectrum trading. The fact that Ofcom has less strategic scope is not relevant.

Question 19 What are your views on continuation of annual licence fees for traded licences?

The WMA is not in favour of a continuation of annual licence fees for licences. This will reduce the value of the licences, creates work for the licencees and for the administrator. However, Ofcom has to be funded and how this has to be done somehow. We favour the funding to come from the public purse rather than for licensees to pay for the service. This will enable the full value of the licenses to be realised by the seller and the government will receive taxes on profits to compensate for the funding of Ofcom. This way everyone will benefit from the trade to the maximum extent.

Question 20 a) Ofcom could provide only a minimum level of information for spectrum trading (identification and some description of licensed spectrum, and ability to send a message to the licensee) and leave further information provision to the market, or Ofcom could provide higher levels of information. What is your view on the optimum level for spectrum trading of information by Ofcom? b) What type of information would assist or encourage you to trade? c) Should Ofcom have power to compel disclosure of market information?

Ofcom should provide only minimum levels of information to the market. Further information should be provided through the market and through the due diligence

exercises of potential purchasers. If a channel owner wants to sell a holding they can approach purchasers either directly or through an agent.

If the proposed conditions of use as listed on page one of this response is accepted then the only information required by the purchaser would be the licenced coverage area, the maximum permitted erp, and whether or not their proposals are likely to break international standards.

Ofcom should have the power to compel disclosure of market information if they suspect a company of market manipulation and / or hoarding. This should also be the case in situations where conglomerates and / or holding companies can be used to distort markets through ownership of a number of companies that have smaller holdings.

Question 21 Should Ofcom publish details of potential trades before they take place?

In cases where Ofcom suspects hoarding or potential for market manipulation they should publish details and consult the industry and if necessary prevent the trade from taking place. However, Ofcom should not unduly delay trades so the whole process of publication, consultation and decision should take no longer than one month.

If there is no question of hoarding or manipulation then details should not be published prior to the trade.

Question 22 Are there topics other than those listed in Table two paragraph 17.1 that will need to be considered before Trading Regulations are finalised and trading is introduced for particular licence sectors and classes?

This list is far too extensive and presumes much of the process for a trade. WMAs advice is to keep this simple and allow mode three trades to occur subject to the conditions of use. If trades are subject to these conditions then Ofcom need do little more than register the trades and its technical parameters. The real value of Ofcom would be in monitoring the trades for malpractice such as market manipulation and hoarding.

Question 23 For licence sectors and licence classes in which you have an interest how would you like to see trading start?

We would like to see all current operators issued with perpetual licences to operate their current services. This would effectively become an asset of their company. Should they wish to trade they can do so. Any profit from the trade would then be taxed in the normal way so the treasury would obtain revenue for the trade. This would compensate for the funding of the relevant parts of Ofcom.

The market would form its own agencies and intelligence organisations as in any other lightly regulated industry or marketplace (eg the housing market). After a short period there will be a well structured and professionally operated marketplace that is demand driven and not managed by a central government department.

The WMA believes it is imperative for the whole mobile radio industry that auctions for existing licences do not take place. The experience of the 3G auctions makes it perfectly clear that although the treasury may have gained in the short term from auctions, in the long term the damage done to the industry, and indeed the country, has been absolutely immense. Auctions in the public wireless networks sector (or any other sector) for existing, populated channels is little short of blackmail. The incumbent will have to bid and win or face the fact that one of their vital assets (access to their radio channels) has been purchased by another company with only profit in mind. Many operators will face the possible loss of their business interests in the services they offer. Should the incumbent lose the auction their customers will at best be unsettled by the change of ownership of the channels, probably have to pay higher prices and see a reduction in their Quality of Service, and at worst lose their services altogether. The WMA will do everything in its power to avoid this scenario.

Question 24 What steps, if any, should the Government take to recoup capital gains realised as a consequence of the introduction of spectrum trading?

Capital gains (and losses) realised as a consequence of the introduction of spectrum trading should be taxed in the same way as any other capital gain (or loss). Companies and individuals are making gains (or losses) on share portfolios or buildings all the time. The introduction of spectrum trading should not be treated any differently.

Question 25 a) What steps, if any, should Ofcom take to facilitate the start of spectrum trading markets?

b) How can Ofcom assist the development of successful spectrum trading markets?

c) Do you consider that intermediaries are likely to emerge through the market if there is demand, or will Ofcom need to assist, and if so how?

To facilitate the start of spectrum trading markets Ofcom should issue perpetual licences to all incumbent licencees who operate services to existing customers. However, Ofcom should retain a well-defined scope to recover the licences through compulsory purchase if necessary.

Ofcom can assist the development of successful spectrum trading markets by ensuring that the introduction is kept as simple as possible. That is allowing any service to operate as long as it does not interfere with other services and does not break international regulations.

The WMA has no doubt that intermediaries will emerge through the market if there is demand. Ofcom will not need to assist this process; if it does there will be immediate distortion in the marketplace.

Question 26 Do you agree with the analysis in the draft Regulatory Impact Assessment?

Is there additional information or data you can provide to help assess either costs or benefits?

The WMA believes that the benefits estimated in the RIA are severely under estimated. We believe that the benefits over twenty years will be much greater than the £138M quoted in the document.

The WMA has no additional information that would benefit the RIA.