



BT Response to the Ofcom Consultation on:

**Notice of proposals to make 900 MHz, 1800 MHz & 2100 MHz
public wireless network licences tradable**

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Summary of BT views

The proposed method to implement what the Government has directed in relation to making 900 / 1800 / 2100 MHz licenses tradable seems a reasonable approach, but there does appear to be certain details that require clarification and possibly a need to amend the draft regulations.

BT supports the introduction of spectrum trading for public wireless network licenses and our comments below are intended to simply get clarification on certain details and to help ensure that the final regulations are as clear and useful as possible.

Answers to the questions in the consultation document

Do you have any comments on the proposals to enable spectrum trades in respect of the 900 MHz, 1800 MHz and 2.1 GHz bands?

We note that the proposals (para 3.4) indicate the possibility of trading with *concurrent* use of either (i) all of the rights and obligations of the license; or (ii) part of the rights and obligations of the license. However it is unclear to us how this concurrent use, with each licensee fulfilling all or part of the original obligations, as the case may be, would be possible in some cases.

In the case of concurrent use with *all* the rights and obligations remaining in both licenses, (provision **4(2)** of the draft trading regulations) it does not seem feasible that both licensees could independently and separately both meet coverage obligations (interference would not enable the frequencies to be used by both parties to enable each to achieve the required population coverage). The regulation appears to exclude more feasible sharing arrangements, for example the possibility for a licensee to retain the coverage obligations but allow another party to concurrently use the frequencies without the coverage obligation (e.g. for low power shared use). We therefore question whether the required conditions for concurrent use of all of a license would be useful for the case of 2.1GHz licenses with coverage obligations, but we do not have any specific objections to the regulation.

In the case of concurrent use of part of the frequencies, or part of the geographic area of an original license, it is unclear how, as required by provision **5(b)** of the draft trading regulations, the original population coverage obligations would be apportioned between the original and additional licensee where the concurrent use is on a geographic basis, nor how in the case of concurrent use of part of the original frequencies the coverage obligation would be apportioned or possible to achieve. For example with a 90% population coverage obligation in the original 2.1GHz license, if half of the frequencies are traded for concurrent use what coverage obligation would apply in each license (90% in both, which is technically not possible, or 45% in each, which would not equate to 90% as they would serve the same geographic area?). A similar issue arises with *partial* trade of 2.1GHz frequencies without concurrent use, where again the implementation of regulation **5(b)** could be challenging.

Assuming that the aim is to ensure that the original coverage obligations are satisfied by the combination of revised licenses, we would suggest that for the above reasons it may not simply be a case of transferring the obligations as indicated in paragraph 3.8 of the consultation paper, but it is a more complicated matter. The apportionment of the obligations would itself affect the license value (and presumably the trade price) and would perhaps be a matter to be proposed by the parties. In summary we have some doubt as to how Ofcom could implement regulation **5(b)** for certain possible types of trade in relation to the 2.1GHz licenses that have coverage obligations, but we do not specifically object to the regulation.

In a similar vein it is unclear to us how, especially in the case of partial transfers and concurrent transfers, Ofcom will determine the annual fees for licenses of traded spectrum, particularly since the Government directions require this to be set at full market value. This could also create uncertainty for the potential purchaser since the annual fee attached to the traded spectrum rights would not be known until after the trade had occurred. There appears to be no explicit requirement to notify Ofcom of the price of the spectrum trades, which must surely make Ofcom's task all the more difficult in this regard. While there is a general obligation for the parties to provide Ofcom with "*all information necessary for OFCOM to determine whether or not they shall consent to the transfer*" (regulation **7(f)**), there is no clarification of the types of information which would be included. It would be helpful if Ofcom would clarify whether or not the value of trades would be notified to Ofcom for example, pursuant to regulation 7(f) and whether these would be published. In light of the comments made below in relation to the possible involvement of interested stakeholders in the decision whether or not to instigate an ex ante competition law check, we would welcome greater clarity on the data which must be provided by the parties and if appropriate, include the requirement to notify the price of the spectrum trade within the trading regulations.

Do you have any comments on the proposal regarding an ex ante competition check?

BT welcomes the proposal for Ofcom to have the ability (where appropriate) to undertake an ex ante competition check prior to making a decision on a proposed spectrum trade. We suggest that the proposal is amended to give interested parties the ability to input into this process.

Other spectrum users may have a useful role to play in assisting Ofcom in reaching a decision on whether a detailed assessment is appropriate and also during any competition assessment which may be undertaken. Therefore, we recommend that there should be a short period of time (after a Notice of a proposed trade is published) within which stakeholders are able to provide comments to Ofcom on the potential impact of a spectrum trade. This should not unduly delay the trading process and should aid the transparency of Ofcom's decision making process.

Do you have any comments on the proposed statutory instruments set out in this notice?

As noted above we are unsure how regulation 5(b) will be implemented in certain cases.

As explained above, we note that regulation 4(2) could be impractical to make use of in some cases and would possibly unnecessarily exclude certain commercial arrangements.

As explained above we question whether a requirement to notify and publish prices of spectrum trades should be included.