



Statement on proposal to make  
900 MHz, 1800 MHz and 2100  
MHz public wireless network  
licences tradable

Statement

Publication date:

20 June 2011



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## Section 1

# Executive summary

- 1.1 Ofcom published on 2 February 2011 a Notice proposing to make tradable the licences for 900, 1800, and 2100 MHz spectrum (collectively referred to in this document as the 'mobile spectrum'). We were required to do this as a result of a direction made by the Secretary of State to Ofcom that came into force on 30 December 2010.
- 1.2 We have considered all the responses to the Notice. In line with our proposals in the Notice we made the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the 'Mobile Spectrum Trading Regulations') and the Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2011 (the '2011 Register Regulations') on 16 June 2011 and these come into force on 4 July 2011. These will be available on the website [www.legislation.gov.uk](http://www.legislation.gov.uk) under the titles listed above. Copies in draft form are also shown in Annex 2 to this statement for indicative purposes in the form submitted for registration and publication after making by Ofcom. [www.legislation.gov.uk](http://www.legislation.gov.uk) is the only authorised source for published statutory instruments. Copies of the Regulatory Impact Assessments are also included in Annex 3 to this statement.
- 1.3 We include at Annex 1 a note setting out guidance on the procedures we will follow in considering whether competition is likely to be distorted as a result of a transfer of the rights and obligations in licences for the use of the mobile spectrum.

## Section 2

# Introduction

## Consultation on proposed trading regulations

- 2.1 We published a Notice (the 'Notice')<sup>1</sup> on 2 February 2011 that set out proposals for making tradable the licences for the mobile spectrum. Our proposals were:
- to allow all types of trade permitted under the Wireless Telegraphy Act 2006 ('the Act');
  - to allow us, in determining whether or not to consent to a trade or to consent to a trade subject to certain conditions, to take into account whether competition was likely to be distorted.
- 2.1 The proposals were a consequence of the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010 ('the Direction'<sup>2</sup>), which was made on 20 December 2010 and came into force ten days later.
- 2.2 The Notice related to paragraph 7 of the Direction, which provides:
- " OFCOM must exercise their powers under section 30 of the WTA to amend the Wireless Telegraphy (Spectrum Trading) Regulations 2004 to make provision to permit the transfer of all or part of the rights and obligations arising as a result of 900MHz, 1800MHz and 2100MHz licences from the licensee to another person"*
- 2.3 Spectrum trading is governed by section 30 of the Act. This provides for us to authorise by regulations the transfer to another person, by the holder of a licence under the Act, the rights and obligations arising as a result of that licence. Spectrum trading of other types of licence has already been authorised by The Wireless Telegraphy (Spectrum Trading) Regulations 2004<sup>3</sup> (the '2004 Regulations'), but these do not authorise the trading of mobile spectrum.
- 2.4 In the Notice we proposed to make new regulations (the Mobile Spectrum Trading Regulations) that would authorise the trading of rights and obligations arising by virtue of a wireless telegraphy licence to use the mobile spectrum, replicating the relevant provisions of the 2004 Regulations. We considered it would be administratively more convenient to make new regulations rather than amend the 2004 Regulations. We also proposed to make Register Regulations which amend the Wireless Telegraphy (Register) Regulations 2004 to provide for information on 900MHz, 1800MHz and 2100MHz licences to be added to the wireless telegraphy register.
- 2.5 We asked interested parties to consider the following questions when responding to the Notice.

*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?*

<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/trading-900-1800-2100/>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2010/3024/introduction/made>

<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2004/3154/contents/made>

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

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

## Responses

2.6 We received five responses to the Notice and have published them on our website<sup>4</sup>.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/consultations/trading-900-1800-2100/?showResponses=true>

## Section 3

# Assessment of the responses to the Notice

- 3.1 In this section we review the responses to our Notice.
- 3.2 None of the responses disagreed with the enabling of spectrum trading in respect of the mobile spectrum. Some responses explicitly agreed with the decision to do so. H3G said it generally supported the proposals. Everything Everywhere broadly welcomed the proposals. BT supported the introduction of spectrum trading for public wireless network licences.
- 3.3 The responses raised issues on several aspects of the detailed proposals. These can be conveniently covered under six main headings:
- the proposed competition assessment;
  - links with merger procedures;
  - the procedural framework;
  - other points, including fee payments;
  - the proposed statutory instruments; and
  - spectrum leasing.
- 3.4 Below, under these headings, we summarise the responses and set out our response to them.

## Competition assessment

### Justification

- 3.5 Vodafone argued that we need to consider carefully the justification for *ex ante* assessment given the range of *ex post* competition powers available to us and the scope for an *ex ante* approach to inhibit spectrum trading. Everything Everywhere similarly did not see why we need the power for *ex ante* assessment in addition to our powers under the Communications Act 2003 and the EC Framework. Everything Everywhere also argued if Ofcom is to have such a power it did not see why trades of other spectrum should not be treated similarly, particularly as other spectrum can be used for mobile telephony.
- 3.6 In contrast, Hutchison 3G ('H3G') agreed that trades of mobile spectrum should be treated differently from spectrum trading in general. It said *ex ante* assessment of trades would be essential to maintaining competition in the mobile sector. BT also welcomed the proposal to undertake (where appropriate) an *ex ante* competition check.
- 3.7 We set out in the Notice (paragraphs 3.9ff) our assessment of the case for an *ex ante* competition check on mobile spectrum trades. We considered mobile spectrum was

different from spectrum in general, in part because there was a material risk that concentration of mobile spectrum holdings could affect downstream competition. The different nature of mobile spectrum in our view justifies the provision in the trading regulations for an *ex ante* competition check where we consider it appropriate. Nothing in the responses causes us to alter our view on this.

3.8 We set out in the Notice why we considered relying on existing competition law alone would not lead to a better outcome for consumers compared to our proposals (paragraph 3.22). In summary the points we made were:

- A significant period of time may pass between when a trade happens and when there is enough evidence of a distortion of competition to intervene *ex post*.
- It may be difficult to detect anti-competitive behaviour and there is no guarantee that an *ex post* competition law intervention will be successful.
- It is not certain that merger control would apply to every mobile spectrum trade.

3.9 On the question of whether an *ex ante* approach might act as a disincentive to trading activity, we intend our procedures for assessing whether or not to consent to a trade should not unduly complicate the trading process. In particular we will carefully consider in our initial assessment whether a proposed trade raises sufficient competition issues to justify our undertaking a further competition assessment (see the guidance note at Annex 1).

## Competition test

3.10 On the *ex ante* competition check itself, there were comments from several respondents. Everything Everywhere said instead of referring only to ‘distortion’ of competition we should use ‘prevention, restriction or distortion’ as in general competition law. O2 also said we should clarify the test for determining whether a distortion of competition is likely.

3.11 Article 5(6) of the Authorisation Directive (2020/20/EC)<sup>5</sup> requires us to ensure that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies. The proposed competition test is consistent with this requirement.

3.12 In considering whether a distortion of competition is likely, the factors to be taken into account are likely to include the following:

- The potential impact of the transfer on competition, which, depending on the circumstances, might include the possible impact on prices, on service quality and on innovation.
- Possible changes to the competition landscape arising from the trade.
- Likely prospects for competition with and without the trade going ahead.
- Efficiencies and other benefits, including benefits for citizens and consumers, that might arise from the trade.

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<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0140:EN:NOT>. This Article replaces a similar obligation in Article 9(4) of the Framework Directive – see [http://euwiki.org/2002/21/EC#Article\\_9](http://euwiki.org/2002/21/EC#Article_9).

- Concerns raised by third parties.

### **Decision to carry out a competition assessment**

- 3.13 O2 believed the approach to competition assessment we proposed was pragmatic, but we should clarify the factors we would take into account in deciding whether to undertake a competition assessment. Vodafone also expressed a desire for clarity on the jurisdictional criteria that will be used to determine when an *ex ante* assessment is deemed to be appropriate.
- 3.14 We will consider on a case-by-case basis whether to undertake a competition assessment. In making our decision we will consider whether the proposed transfer raises sufficient competition issues to justify a further assessment, taking into account the types of factor listed above.

### **Matters the assessment should take into account**

- 3.15 Everything Everywhere said the competition assessment should take into account any reservation of spectrum for new entrants and our decision not to redistribute 900 MHz spectrum. It said we should apply an exemption where there were benefits of promoting technical and economic progress, as under competition law. It also said we need to take into account other matters, such as the need to limit spectrum defragmentation, which it saw as part of our general duties to ensure efficient use of spectrum.
- 3.16 In the Notice we said the extent of the competition assessment would depend on the context and any assessment would factor in any appropriate competition analysis undertaken and conclusions reached in the context of any relevant auction. We also said we believed it was unlikely to be in the interest of consumers to allow a spectrum trade to take place shortly after the combined auction of 800 MHz and 2.6 GHz if that trade would be inconsistent with any competition rules established for the auction.
- 3.17 Both Article 101 of the Treaty on the Functioning of the European Union (TFEU)<sup>6</sup> and Chapter I of the Competition Act 1998<sup>7</sup> set out prohibitions relating to anti-competitive activities. In an *ex post* regime an exemption is required to allow for the possibility of agreements that prevent, restrict or distort competition but from which certain benefits accrue in order to allow for such agreements without breaching competition law. However, in an *ex ante* process, such as in the case of the proposed competition check, an exemption is not necessary since a trade cannot be put into effect without our consent. In considering whether to give consent to a proposed transfer, we will take into account any prior evidence and the circumstances of the proposed trade, including any potential benefits. In doing so, we will have regard to our primary duty, namely whether a particular trade furthers the interests of citizens in relation to communication matters and the interests of consumers in relevant markets, where appropriate by promoting competition. We shall also have regard to our duty to secure the optimal use of the spectrum.

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<sup>6</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:EN:PDF>

<sup>7</sup> <http://www.legislation.gov.uk/ukpga/1998/41/contents>

## Links with merger controls

### Avoiding double jeopardy

- 3.18 Everything Everywhere felt strongly that we were obliged to follow the findings of a merger control review and not make subsequent changes that might be seen as a further remedy to the review. It would also expect us to give effect to the reasoning of the merger clearance. O2 welcomed our proposal not to have an assessment where a trade formed part of a merger reviewed by EC or UK regulators as it avoided double jeopardy. It went on to say that where there had been a merger review we should clarify the circumstances in which we might or might not follow its findings, including factual findings such as market definition.
- 3.19 As we made clear in the Notice, where a proposed trade forms part of a transaction reviewed by a merger control authority we would expect not to carry out a separate *ex ante* competition assessment and would expect to follow the merger review findings (see paragraph 3.19 of Notice). While we cannot currently foresee circumstances in which we would depart from this expectation, we consider that it would be inappropriate for us to fetter our future discretion.

### Everything Everywhere merger

- 3.20 Everything Everywhere welcomed our acknowledgement that any trade required of Everything Everywhere by the merger clearance would not be the subject of a competition assessment. H3G asked, as the EC merger decision was taken some time ago, how we would take subsequent market developments into account if consenting to a trade without an assessment. O2 said our decision to consent to any trade required of Everything Everywhere by the merger clearance without a competition assessment would have to be consistent with our position in our competition assessment of the mobile market and the combined 800 MHz/2.6 GHz auction.
- 3.21 In clearing the T-Mobile/Orange merger, the European Commission (the 'Commission') accepted commitments from France Télécom and Deutsche Telekom to divest spectrum in accordance with the process set out in those commitments<sup>8</sup>. Under that process, the spectrum can only be divested to a purchaser approved by the Commission and Ofcom, in order to ensure that the divestment addresses the competition concern identified by the Commission. We do not therefore propose to undertake an *ex ante* competition check under the proposed Mobile Spectrum Trading Regulations in this case. So far as other regulatory decisions are concerned, we fully intend to take the impact of the divestment into account.

## Procedural framework

### Legal standard

- 3.22 Vodafone said considerably greater clarity would be required on the legal standard for a competition review and the procedural framework. It suggested clear guidance should be given on the legal standard of review and conditions that would determine withholding consent, with practical examples of how we would apply our legal test. O2 also said clarity was needed on legal standard to be applied and there should be an outline of procedures and timescales.

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<sup>8</sup> [http://ec.europa.eu/competition/mergers/cases/decisions/M5650\\_20100301\\_20212\\_247214\\_EN.pdf](http://ec.europa.eu/competition/mergers/cases/decisions/M5650_20100301_20212_247214_EN.pdf)

- 3.23 The legal test to be applied is whether or not 'competition is not distorted'. We set out above some of the factors we would expect to take into account in making our decision on whether or not competition is likely to be distorted. We provide at Annex 1 guidance on our intended competition assessment process, including the procedures we currently intend to follow.

### **Right of appeal and review**

- 3.24 O2 considered decisions to carry out a competition assessment and to consent to a trade would be reviewable under section 192 of the Act as they would be taken as part of our statutory duties. Vodafone said it needed confirmation of the right of appeal, which should be merits-based.
- 3.25 Any decision to consent or not to a trade would be subject to appeal to the extent provided for under administrative law and/or the Act.

### **Two phase process as per EC controls**

- 3.26 Vodafone proposed a process in two phases, on the lines of EC merger regulation.
- 3.27 Our procedures for assessing whether or not to consent to a trade will involve an initial assessment of whether it raises competition issues requiring further analysis. If we decide to undertake a further analysis of whether or not the trade is likely to distort competition the parties to the trade will be able to put their views to us and comment on our provisional conclusion. Third parties will also have the opportunity to put their views to us.

### **Exclusion from Competition Act controls**

- 3.28 O2 said it would be useful, to avoid double jeopardy, if we could clarify whether trades subject to a competition assessment should be excluded from Chapter 1 prohibition under section 3 of the Competition Act.
- 3.29 The powers to exclude agreements under section 3 are exercisable by the Secretary of State and therefore, this is not a matter falling within our jurisdiction.
- 3.30 From our perspective, we would expect to act consistently in reviewing any mobile spectrum trade under any of our powers. However, any competition assessment under the proposed regulations would not fetter our discretion. Further, we have concurrent powers to enforce Articles 101 and 102 of the TFEU and Chapter I and Chapter II of the Competition Act with the OFT (and other regulators). The Commission also enforces Article 101 and 102. Therefore, no matter the approach we take, it cannot fetter the enforcement activities of the OFT and the Commission.

### **Information requirement**

- 3.31 Both O2 and BT wanted to know what information would be required from interested parties. In particular BT said it would help if we clarified whether we would ask for the price paid for the transfer of rights and whether we would publish the information.
- 3.32 Regulation 7(1)(f) says that the licensee must provide all information necessary for Ofcom to determine whether or not to consent to the transfer. We would expect the licensee to provide with its trading application any information it considered relevant to a competition check. This information might include the following:

- Nature of the spectrum to be transferred.
- Current spectrum holdings of the trading parties and of other mobile spectrum licensees.
- Services and technologies the spectrum to be transferred is likely to support.
- How the spectrum is currently being used.
- Seller's contractual obligations attached to the spectrum to be transferred.

This list is not meant to be exhaustive and the information provided will have to be tailored to the specific case. We may ask for information provided to be clarified or supplemented.

- 3.33 We do not normally request information on the price paid for the transfer of rights. However, where the price paid was relevant to assessing whether or not the trade is likely to distort competition we would request this information (if not already provided) and take it into account. The information might be commercially confidential, in which case we would not publish it without the agreement of the parties, unless required to do so under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

### **Third party input**

- 3.34 BT said interested third parties should be able to input into the competition check process and there should be a short period within which they could comment on the potential impact of a trade. O2 also wanted guidance on the extent we envisaged consulting with third parties.
- 3.35 Our trading guidance notes<sup>9</sup> say in general we would not formally consult before deciding whether or not to consent to a trade but we would take into account relevant information supplied by third parties in reaching our decision. Third parties can learn about proposed trades via the online Trading Notification Register ('TNR'). When we publish details of a mobile trading application on the TNR we will invite interested parties to submit to us information on concerns they may have about the proposed trade. We may also ask for additional information from them if we decide to undertake a further competition assessment.

## **Other points**

### **Fees**

- 3.36 Everything Everywhere asked for clarification of the position on fees with partial trades. BT also said it was unclear how we would determine licence fees for traded spectrum, particularly as the Direction requires this to be set at full market value and there is no requirement on parties to notify the price paid for the trade. Such a requirement might be included in the regulations.
- 3.37 Where licence fees are payable they are calculated as provided for in the Fees Regulations. With regard to full market value, in the combined award consultation

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<sup>9</sup> <http://stakeholders.ofcom.org.uk/spectrum/spectrum-trading/trading-guidance-notes/>

document we said that we did not propose to use trade prices to derive spectrum fees<sup>10</sup>.

### **Instalment payments**

- 3.38 Everything Everywhere said we should allow instalment payments to be transferred.
- 3.39 We see no reason to change our current practice of ensuring that all licence fees owing have been paid in full before a transfer can take place. This includes the payment of outstanding instalments.

### **Obligations and concurrent and partial trades**

- 3.40 BT said it was unclear how any coverage obligation would be apportioned where a concurrent or partial transfer occurred.
- 3.41 In deciding whether or not to consent to a trade we will take into account whether the transferee is able to meet the obligations in the licence. In the case of a partial transfer we will also consider whether the transferor is able to continue to meet the obligations. In the case of a concurrent transfer the transferor and transferee will together be required to meet the licence obligations. Note that in the 2003 spectrum trading consultation<sup>11</sup> we accepted not all obligations would need to be transferred - a licensee might want to transfer some of its spectrum rights free from the associated roll-out obligation (e.g. where it could meet the obligation with less spectrum).

### **Contracts between parties**

- 3.42 Everything Everywhere said we should not interfere in conditions in contracts between trading parties unless they conflicted with our competition assessment or statutory duties.
- 3.43 We will take into account the arrangements between the parties insofar as they are relevant to our decision whether or not to consent to the trade.

### **Proposed statutory instruments**

- 3.44 H3G supported our proposed statutory instruments. O2 said it had no comments on the drafting of the regulations. BT commented on the draft Mobile Spectrum Trading Regulations annexed to the Notice. It questioned the feasibility of the parties to a concurrent trade under regulation 4(2) both meeting coverage obligations. It was uncertain how regulation 5(b) would be implemented for certain trades involving 2100 MHz coverage obligations. It also said the SI should require parties to notify the price paid for the trade.
- 3.45 We do not consider that any comments made in responses justify amending the draft Mobile Spectrum Trading regulations, which are based on the 2004 Regulations for non-mobile spectrum trades and largely replicate those provisions.
- 3.46 There were no comments on the draft 2011 Register Regulations.

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<sup>10</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/combined-award/summary/combined-award.pdf> - see paragraph 10.23

<sup>11</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/spec\\_trad/summary/pdf\\_version.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/spec_trad/summary/pdf_version.pdf) - see paragraphs 6.8.1ff

## Spectrum leasing

- 3.47 In the Notice we said we intended to give further consideration to spectrum leasing in connection with the mobile spectrum bands once the revisions to the Framework Directive had been implemented. In its response to the Notice Vodafone expressed support for the introduction of spectrum leasing.
- 3.48 The changes to the Framework, including those on leasing, have been transposed into UK law and took effect on 26 May 2011<sup>12</sup>. The amendments to section 30 of the Act will enable us either to vary Wireless Telegraphy licences in a way that will allow licensees to undertake leasing or to make trading regulations for that purpose. We will consult in due course on whether leasing should be allowed for mobile spectrum licences.

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<sup>12</sup> See The Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011/1210) - [http://www.legislation.gov.uk/uksi/2011/1210/pdfs/uksi\\_20111210\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/1210/pdfs/uksi_20111210_en.pdf)

## Section 4

# Next steps

- 4.1 Ofcom made the two statutory instruments on 16 June 2011 and they will come into force on 4 July 2011. Drafts of these statutory instruments are annexed to this statement in the form submitted for registration and publication after their making by Ofcom for indicative purposes. The statutory instruments will be officially published on the [www.legislation.gov.uk](http://www.legislation.gov.uk) website in due course.

## Annex 1

# Guidance note on procedures for competition assessments

## Introduction

- A1.1 This note sets out guidance on the procedures Ofcom will follow in considering whether competition is likely to be distorted as a result of a proposed transfer of the rights and obligations for the use of spectrum in the 900 MHz, 1800 MHz, and 2100 MHz bands (the 'mobile spectrum').
- A1.2 This note supplements our Trading Guidance Notes, which set out spectrum trading processes that apply to all spectrum trades. The basic steps in the transfer process are set out in the appendix to this note.
- A1.3 Before formally applying for a spectrum transfer we would encourage the parties involved to approach us for informal discussion of the process that would be involved in assessing the proposed transfer, in particular if they think the transfer may raise competition issues.
- A1.4 Regulation 7(1)(f) says that the licensee must provide all information necessary for Ofcom to determine whether or not to consent to the transfer. We would expect the licensee to provide with its trading application any information it considered relevant to a competition check. This information might include the following:
- Nature of the spectrum to be transferred.
  - Current spectrum holdings of the trading parties and of other mobile spectrum licensees.
  - Services and technologies the spectrum to be transferred is likely to support.
  - How the spectrum is currently being used.
  - Seller's contractual obligations attached to the spectrum to be transferred.

This list is not meant to be exhaustive and the information provided will have to be tailored to the specific case. We may ask for information provided to be clarified or supplemented.

## Initial competition assessment

- A1.5 When we publish details of a proposed transfer on the Trade Notification Register ('TNR') we will publish an Ofcom update that will invite interested parties to submit to us within 10 working days details of any competition concerns they might have about the proposed transfer.
- A1.6 We will undertake an initial assessment of whether the proposed transfer raises sufficient competition issues to justify further analysis. This will involve the following:
- Assessment of information parties provide with the application.

- Request, if necessary, for further information or clarification from parties.
- Consideration of whether there is a possible distortion of competition that needs assessing. This will include consideration of any representations from third parties.
- Notifying trading parties of our decision on whether to undertake a competition assessment.

A1.7 We would aim to complete this part of the transfer process within 20 working days of publication on the TNR.

### **Further competition assessment process**

A1.8 Where we decide to undertake a competition assessment, in our notification to the trading parties we will ask them to provide their analysis and evidence for believing the trade should be approved. We will also invite further comments from third parties. In both cases responses should be submitted within 10 working days. The competition assessment process will usually involve the following:

- Providing the trading parties with a statement of the issues we consider need to be addressed, including issues raised by third parties.
- An opportunity for the trading parties to comment on the issues raised.
- Meeting(s) with the trading parties to discuss the issues.
- Meetings, if necessary, with third parties to discuss their concerns.
- In light of discussion with all parties, and evidence provided, Ofcom will assess the potential of the transfer to distort competition.
- In considering whether a distortion of competition is likely the factors to be taken into account are likely to include the following:
  - The potential impact of the transfer on competition, which, depending on the circumstances, might include the possible impact on prices, on service quality and on innovation.
  - Possible changes to the competition landscape arising from the trade.
  - Likely prospects for competition with and without the trade going ahead.
  - Efficiencies and other benefits, including benefits for citizens and consumers, that might arise from the trade.
- A provisional decision by Ofcom on whether to consent to the transfer. In determining whether to consent there are a number of matters in addition to the potential for the transfer to distort competition that we may consider (see the appendix to this note).
- Informing the trading parties and other interested parties of our provisional decision, including our reasoning, and giving them 10 working days within which to make representations.

- Assessing any representations from the trading parties and others.
- Informing the trading parties of our final decision, including where appropriate any conditions that apply to our consent.
- If we refuse a transfer request we will make clear the grounds on which we have withheld consent.
- We will publish our decision on whether or not to consent to a trade, including the reasons for our decision.

### **Administrative timetable**

A1.9 The Trading Guidance Notes indicate that our general aim is to complete all trades within 42 calendar days (see appendix). We consider this timetable is appropriate for the completion of a mobile spectrum trade where we undertake an initial competition assessment only, though in some cases we may take longer.

A1.10 Where we do undertake a further competition assessment, we consider that the timetable is likely to take up to four months to complete. This should be taken as an indicative target. The time taken for an assessment will depend on the complexity of the issues it raises.

## Appendix

### Basic steps in the transfer process

The basic steps in the transfer process are set out in our Trading Guidance Notes<sup>13</sup>. They are as follows:

- The licence holder submits the appropriate trading application form.
- We consider whether we require further information to be able to process the requested transfer.
- We publish a notice on the Trade Notification Register ('TNR')<sup>14</sup> setting out basic details of the requested transfer.
- We check that none of the circumstances in which transfers are not authorised apply.
- We consider whether to consent to the transfer and, if we consent, whether to direct that the transfer shall be put into effect only after compliance with specific conditions.
- In determining whether to consent we must take into account whether
  - the licence holder is in breach of the terms of the licence under which the rights and obligations are to be transferred;
  - the transferee is able to meet the terms, provisions and limitations of the telegraphy licence that is to be granted as a result of the transfer;
  - in the case of a partial transfer, the transferor is able to meet the terms, provisions and limitations of the telegraphy licence that is to be granted as a result of the transfer;
  - the transferee is able to meet any criteria relating to the persons to whom a wireless telegraphy licence of the class under which rights and obligations are to be transferred may be granted;
  - competition is likely to be distorted as a result of the transfer; and
  - it is requisite or expedient to refuse consent to the transfer -
    - in the interests of national security;
    - for the purposes of complying with a Community obligation or with any international agreement or arrangements; or
    - for the purposes of complying with a direction by the Secretary of State.

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<sup>13</sup> <http://stakeholders.ofcom.org.uk/binaries/spectrum/spectrum-policy-area/spectrum-trading/tradingguide.pdf>

<sup>14</sup> <http://spectruminfo.ofcom.org.uk/spectrumInfo/trades>

- We inform the parties of our decision. If we refuse a transfer request we will make clear the grounds on which we have withheld consent.
- A transfer is put into effect by the licence holder surrendering its licence and us issuing new licences to the parties to the transfer.
- We update the status of the trade in the TNR.

We have not set rigid guidelines in trading regulations on the time to complete the transfer process. However, we aim to complete all trades within 42 calendar days, measured from the day we receive a valid application to the day the transfer is effected or rejected.

## Annex 2

# Draft statutory instruments

A2.1 This annex includes a copy of the statutory instruments as made by Ofcom on 16 June 2011 and in the form submitted for registration and publication. These are marked as draft because [www.legislation.gov.uk](http://www.legislation.gov.uk) is the only authorised source for published statutory instruments.

A2.2 The statutory instruments are:

- The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011
- The Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2011.

**2011 No.**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Mobile Spectrum Trading)  
Regulations 2011**

*Made* - - - - *16th June 2011*  
*Coming into force* - - *4th July 2011*

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the Act”), make the following Regulations.

Before making the Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

**Citation, commencement and extent**

1. These Regulations may be cited as the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 and shall come into force on 4th July 2011.
2. These Regulations shall not extend to the Bailiwick of Guernsey.

**Interpretation**

3. In these Regulations “concurrent holders” means persons who concurrently hold the rights and obligations under a wireless telegraphy licence by virtue of a transfer authorised by these Regulations which has that effect.

**Transfer of all of the rights and obligations arising by virtue of a wireless telegraphy licence**

4.—(1) Subject to regulation 6, a transfer by the holder of a wireless telegraphy licence to which this paragraph applies of all of the rights and obligations arising by virtue of that wireless telegraphy licence is authorised if it satisfies one of the two conditions set out in paragraph (2).

(2) Those conditions are —

- (a) that the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer;
- (b) that the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer.

(3) Paragraph (1) shall apply to wireless telegraphy licences within the Public Wireless Network licence class which authorise the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the Schedule.

#### **Partial transfer of rights and obligations arising by virtue of a wireless telegraphy licence**

5. Subject to regulation 6, transfers satisfying one of the two conditions set out in regulation 4(2) are also authorised where the transfer is of —

- (a) all of the rights arising by virtue of a wireless telegraphy licence which relate to—
  - (i) a part of the range of frequencies under a wireless telegraphy licence within the Public Wireless Network licence class which authorises the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the Schedule;
  - (ii) a geographical area being part of the total geographical area in which the holder is authorised to establish, install and use radio transmitting and receiving stations or apparatus under a wireless telegraphy licence within the Public Wireless Network licence class which authorises the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the Schedule; or
  - (iii) both of the situations set out in sub-paragraphs (i) and (ii); and
- (b) the corresponding part of each of the obligations under the licence.

#### **Circumstances in which a transfer is not authorised**

6. A transfer of rights and obligations arising under a wireless telegraphy licence is not authorised where —

- (a) any of the licence holder, or all of the concurrent holders, and the transferee have not consented to the transfer;
- (b) any sum payable under the Wireless Telegraphy (Licence Charges) Regulations 2011(a) in respect of that licence is owing to OFCOM because it has not been paid by the time it became due;
- (c) any instalment payment is to be paid to OFCOM under regulation 4(8)(b) of the Wireless Telegraphy (Licence Charges) Regulations 2011 in respect of that licence;
- (d) OFCOM has served notice under paragraph 7(1) of Schedule 1 of the Wireless Telegraphy Act 2006 on the holder, or the concurrent holders, of that licence of a proposal to revoke or vary that licence but that revocation or variation has not yet been made;
- (e) the holder has, or all of the concurrent holders have, requested OFCOM to revoke or vary the licence or have consented to a revocation or variation proposed by OFCOM but that revocation or variation has not yet been made; or
- (f) OFCOM have not given their consent, under regulation 7(3)(a), to the transfer being made.

#### **Transfer procedure**

7.—(1) The holder, or concurrent holders, of a wireless telegraphy licence who wishes, or who wish, to make a transfer authorised by regulations 4(1) or 5 must provide to OFCOM —

- (a) the reference number of the wireless telegraphy licence under which rights and obligations are to be transferred;

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(a) S.I. 2011/1128.

- (b) the name and address of the holder or concurrent holders of the wireless telegraphy licence;
- (c) the name and address of the proposed transferee;
- (d) a description of which type of transfer authorised by regulation 4(1) or regulation 5 is proposed;
- (e) a document signed by or on behalf of the holder, or each concurrent holder, of the licence and signed by or on behalf of the transferee, under which each of those persons warrants to OFCOM that he has consented to the proposed transfer;
- (f) all information necessary for OFCOM to determine whether or not they shall consent to the transfer; and
- (g) in the case of a transfer authorised by regulation 5, a description of which rights and obligations under the licence are to be transferred.

(2) OFCOM shall, after determining that the requirements of paragraph (1) have been met, publish a notice stating —

- (a) the name of the wireless telegraphy licence holder or concurrent holders and the name of the transferee to whom it is proposed that the rights and obligations arising under the licence shall be transferred;
- (b) the date when OFCOM determined that the requirements of paragraph (1) were met;
- (c) the licence class and the reference number of the wireless telegraphy licence under which rights and obligations are to be transferred; and
- (d) in the case of a transfer authorised by regulation 5, a description of which rights under the licence are proposed to be transferred.

(3) After publishing a notice under paragraph (2) OFCOM shall decide —

- (a) if they consent to the transfer in accordance with regulation 8; and
- (b) if they shall give any directions under regulation 9.

(4) OFCOM shall notify the parties to the proposed transfer of their decisions under paragraph (3).

(5) A transfer shall be effected by the holder or concurrent holders of the wireless telegraphy licence under which rights and obligations are to be transferred surrendering that licence and by OFCOM granting a new one to the transferee and —

- (a) in the case of a transfer which satisfies the condition set out in regulation 4(2)(b), the holder or concurrent holders who made the transfer; and
- (b) in the case of a transfer authorised by regulation 5, to the holder or concurrent holders who made the transfer.

(6) OFCOM shall publish the information specified in paragraph (2) in relation to transfers that have been effected pursuant to paragraph (5).

### **Consent by OFCOM**

**8.** In determining whether or not to consent to a proposed transfer OFCOM shall take into account whether —

- (a) the holder is, or the concurrent holders are, in breach of the terms of the wireless telegraphy licence under which the rights and obligations are to be transferred;
- (b) the transferee is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;
- (c) in the case of a transfer authorised by regulation 5 the transferor is able to meet the terms, provisions and limitations of the wireless telegraphy licence which is to be granted as a result of the transfer;

- (d) the transferee is able to meet any criteria relating to the persons to whom a wireless telegraphy licence of the class under which rights and obligations are to be transferred may be granted;
- (e) competition is likely to be distorted as a result of the transfer; and
- (f) it is requisite or expedient to refuse consent to the transfer —
  - (i) in the interests of national security;
  - (ii) for the purposes of complying with a Community obligation of the United Kingdom or with any international agreement or arrangements to which the United Kingdom is party; or
  - (iii) for the purposes of complying with a direction by the Secretary of State given to OFCOM under section 5 of the Communications Act 2003(a) or section 5 of the Wireless Telegraphy Act 2006.

**Directions by OFCOM**

9.—(1) If OFCOM consent to a transfer they may also direct that a transfer shall only be put into effect in accordance with regulation 7(5) after compliance with conditions which may relate to any matter mentioned in any of the paragraphs of regulation 8.

(2) A transfer may not be put into effect in accordance with regulation 7(5) until after compliance with the conditions set out in any such direction.

*Ed Richards*

Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

16th June 2011

**SCHEDULE**  
**FREQUENCY BANDS**

Regulations 4 and 5

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*Frequency bands*

880 – 915 MHz

925 – 960 MHz

1710 – 1781.7 MHz

1805 – 1876.7 MHz

1899.9 – 1980 MHz

2110 – 2170 MHz

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(a) 2003 c.21.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations are made under section 30(1) and (3) and section 122(7) of the Wireless Telegraphy Act 2006. Section 30 implements Article 9b(1) of the Council Directive 2002/21/EC (OJ No L 108, 24.4.2002, p33), as amended by Council Directive 2009/140/EC (OJ No L 337, 18.12.2009, p37).

Regulation 4(1) (subject to the exceptions in regulation 6) authorises the transfer of all rights and obligations arising by virtue of a wireless telegraphy licence within the Public Wireless Network licence class which authorises the operation of a wireless telegraphy station or wireless telegraphy apparatus on any of the frequency bands specified in the Schedule.

Under regulation 5 (subject to the exceptions in regulation 6) certain transfers of rights and obligations relating to parts of the licensed range of frequencies are authorised. The transfer of the rights and obligations relating to a part of the licensed geographical area is also authorised.

Two types of transfer are authorised by regulation 4(1) and 5. Firstly, a transfer may be one in which the rights and obligations of the person making the transfer become rights and obligations of the transferee to the exclusion of the person making the transfer. Secondly, a transfer may be one in which the transferred rights and obligations become rights and obligations of the transferee while continuing, concurrently, to be rights and obligations of the person making the transfer.

Regulation 6 specifies circumstances in which transfers are not authorised which include where OFCOM has not given its consent. Regulation 8 sets out the matters which OFCOM shall take into account in determining whether or not to consent. If OFCOM consents to a transfer they may also direct that a transfer shall only be put into effect after compliance with conditions. Regulation 7 sets out the procedure for making transfers.

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the OFCOM internet website at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.

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STATUTORY INSTRUMENTS

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**2011 No.**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Register) (Amendment) (No. 2)  
Regulations 2011**

*Made* - - - - *16th June 2011*  
*Coming into force* - - *4th July 2011*

The Office of Communications (“OFCOM”), in exercise of the powers conferred by section 31(1) and (2) and section 122(7) of the Wireless Telegraphy Act 2006(a) (“the Act”), make the following Regulations.

Before making the Regulations, OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the Act and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

**Citation and commencement**

1. These Regulations may be cited as the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2011 and shall come into force on 4th July 2011.

**Amendment of the Wireless Telegraphy (Register) Regulations 2004**

2.—(1) The Wireless Telegraphy (Register) Regulations 2004(b) (“the Principal Regulations”) shall be amended in accordance with these Regulations.

(2) Regulation 4(1)(a) of the Principal Regulations is amended by substituting for “and 10”, “, 10 and 11”.

(3) After Part 10 of the Schedule to the Principal Regulations insert —

**“PART 11**

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<i>Column 1</i>	<i>Column 2</i>
<b>Class</b>	<b>Frequency bands</b>
Public Wireless Network	880 – 915 MHz 925 – 960 MHz 1710 – 1781.7 MHz

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(a) 2006 c.36.

(b) S.I. 2004/3155 as amended by S.I. 2006/340, S.I. 2006/1808, S.I. 2007/381, S.I. 2007/3389, S.I. 2008/689, S.I. 2008/2104, S.I. 2008/3193, S.I. 2009/14 and S.I. 2011/439.

1805 – 1876.7 MHz  
1899.9 – 1980 MHz  
2110 – 2170 MHz”

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16th June 2011

*Ed Richards*  
Chief Executive of the Office of Communications  
For and by authority of the Office of Communications

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Wireless Telegraphy (Register) Regulations 2004 (S.I. 2004/3155 as amended by S.I. 2006/340, S.I. 2006/1808, S.I. 2007/381, S.I. 2007/3389, S.I. 2008/689, S.I. 2008/2104, S.I. 2008/3193, S.I. 2009/14 and S.I. 2011/439) (“the Principal Regulations”).

The Principal Regulations require OFCOM to establish and maintain a public register of relevant information relating to wireless telegraphy licences or grants of recognised spectrum access of certain classes which apply to a wireless telegraphy station or wireless telegraphy apparatus operating within the frequency bands specified in the Schedule to the Principal Regulations.

Regulation 2 amends the Principal Regulations and includes in the Schedule a further set of frequencies in respect of which the transfer of rights and obligations may be authorised.

A full impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available to the public from OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA (Tel: 020 7981 3000) or on the OFCOM internet website at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the report have also been placed in the libraries of both Houses of Parliament.

## Annex 3

# Regulatory Impact Assessments

## Regulatory Impact Assessment – The Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011

### Introduction

- A3.1 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”) for the Wireless Telegraphy (Mobile Spectrum Trading) Regulations 2011 (the “Regulations”).
- A3.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate.

### Proposal, purpose and intended effect

- A3.3 The purpose of the Regulations is to permit the transfer of rights and obligations relating to wireless telegraphy licences in the frequency bands 880-915 MHz, 925-960 MHz, 1710-1781.7 MHz, 1805-1876.7 MHz, 1899.9-1980 MHz and 2110-2170 MHz (the “Mobile Spectrum Bands”). Ofcom intends that all types of transfer, i.e. outright, concurrent, partial and total transfers will be permitted. The Regulations implement a Direction to Ofcom from Government requiring wireless telegraphy licences in the Mobile Spectrum Bands to be made tradable<sup>15</sup>. In making this Direction, the Government carried out an impact assessment.
- A3.4 Article 5(6) of the Authorisation Directive (2002/20/EC) requires Ofcom to ensure “*that competition is not distorted by any transfer or accumulation of rights of use of radio frequencies*”. Although Ofcom’s policy to date has been that a competition assessment is not necessary for the generality of trades, Ofcom considers that there are a number of reasons for considering the impact on competition of mobile spectrum trading. Therefore, the Regulations provide for Ofcom in deciding whether to consent to a trade, to take into account, among other things, whether competition is likely to be distorted as a result of the trade.
- A3.5 The intended effect of the Regulations is to enable spectrum to migrate to the users that value it most. It should also lower the barriers to acquiring spectrum and promote innovation and new services. This will help Ofcom achieve one of its key duties: to ensure the optimal use for wireless telegraphy of the electro-magnetic spectrum.

### Equity and fairness

- A3.6 Ofcom has considered the fairness of its proposals and is confident that they are fair to users of spectrum, businesses and consumers. Firstly, the introduction of spectrum trading to the Mobile Spectrum Bands will not force any existing user of spectrum to take any action. Spectrum trading will be an entirely voluntary activity.

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<sup>15</sup> The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010, paragraph 7.

It will only take place where both parties benefit from the trade, therefore no user should be at a disadvantage because of it.

- A3.7 Ofcom has carefully reviewed the potential of spectrum trading to distort competition, as it is required under European legislation. As indicated above, Ofcom considers that there are a number of reasons for considering the impact on competition of mobile spectrum trading.

## **Costs and benefits to business and the voluntary sector**

- A3.8 Ofcom considered the benefits of spectrum trading in the RIA for the Spectrum Trading and Wireless Telegraphy Register Regulations 2004, published in December 2004. It concluded that the likely benefits of spectrum trading generally outweighed the costs. Ofcom also concluded that the costs to business of spectrum trading would be proportionate because these costs would fall only on those who traded. Ofcom considers that this analysis of the general benefits of introducing spectrum trading should also apply to the introduction of spectrum trading in the Mobile Spectrum Bands.
- A3.9 Since no user will have to take any action once spectrum trading is permitted no additional costs need be imposed on business as a result of the introduction of spectrum trading. Those users and businesses that decide to trade spectrum will only do so if the benefits of trading outweigh the transaction costs.
- A3.10 Ofcom intends that the procedures for assessing a trade will not be unduly burdensome for the parties involved. In relation to assessing whether competition is likely to be distorted as a result of the trade, Ofcom considers that the burdens to business associated with such an assessment are outweighed by the benefits of not allowing trades which distort competition. Further, the burden associated with a competition assessment will be limited in that Ofcom will undertake an initial assessment of whether a proposed transfer raises sufficient competition issues to justify further analysis. It is only where such further analysis is justified that Ofcom will undertake a further competition assessment process. This should ensure that the assessment undertaken is proportionate to the competition issues arising out of a particular trade.
- A3.11 Ofcom considered whether all types of transfer should be allowed, i.e. total, partial and concurrent transfers, for spectrum trading in the Mobile Spectrum Bands. Generally, the more flexibility allowed in spectrum trading, the greater the potential benefits to consumers; it creates a wider range of potential opportunities for trades to occur, which further the efficient and optimal use of the spectrum. Ofcom can see no reason why its general conclusion that the benefits of trading are likely to substantially outweigh the costs would not be true for all types of transfer.
- A3.12 Ofcom does not consider that there are any significant costs to the voluntary sector arising out of the Regulations while the sector is likely to share in at least some of the general benefits of spectrum trading referred to above.

## **Costs to Ofcom**

- A3.13 Ofcom would incur very little additional cost as a result of this proposal. The framework for spectrum trading has already been set up and including the wireless telegraphy licences in the Mobile Spectrum Bands within the framework should require little additional cost. Administration of the spectrum trading regime will not

impose significant costs on Ofcom when considered relative to the overall benefits of spectrum trading.

## **Business sectors affected**

A3.14 The main business sector affected by this proposal is mobile communications service provision.

## **Conclusion**

A3.15 Ofcom has assessed the impact of allowing spectrum trading in the Mobile Spectrum Bands and has found that the costs are not likely to outweigh the benefits for all types of transfer.

## **Regulatory Impact Assessment – The Wireless Telegraphy (Register) (Amendment) (No.2) Regulations 2011**

### **Introduction**

A3.16 The analysis set out in this document represents a Regulatory Impact Assessment (“RIA”) for the Wireless Telegraphy (Register) (Amendment) (No. 2) Regulations 2011 (the “Regulations”).

A3.17 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. In producing the RIA in this document, Ofcom has had regard to such general guidance as it considers appropriate.

### **Proposal, purpose and intended effect**

A3.18 In order to enhance the general development of a secondary market for the right to use spectrum, Ofcom has established and maintains a register about spectrum licences – the Wireless Telegraphy Register.

A3.19 The intended effect of the Regulations is to enable information about the Licences in the available spectrum 880-915 MHz, 925-960 MHz, 1710-1781.7 MHz, 1805-1876.7 MHz, 1899.9-1980 MHz and 2110-2170 MHz (the “Mobile Spectrum Bands”) to be published in the Wireless Telegraphy Register. In doing so, this should facilitate spectrum trading by providing information which will enable potential buyers to find out, who holds what frequencies and the constraints on the use of the specific frequencies or bands (except where security considerations prevent publication of information). This should also provide basic information about proposed and completed transfers to facilitate the transparency of secondary trading.

A3.20 The amendment results from a Direction to Ofcom from Government requiring wireless telegraphy licences in the Mobile Spectrum Bands to be made tradable<sup>16</sup>. In making this Direction, the Government carried out an impact assessment.

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<sup>16</sup> The Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2010, paragraph 7.

## Equity and fairness

- A3.21 Ofcom has considered the fairness of its proposals and is confident that they are fair to users of spectrum, business and consumers. Ofcom is not proposing to publish any information which would compromise the security or commercial standing of either licensees or parties to a spectrum trade. Neither is any one type of user being treated differently from another under the Regulations.

## Costs and benefits to business and the voluntary sector

- A3.22 Ofcom carried out a regulatory impact assessment for the Wireless Telegraphy (Register) Regulations 2004 (published December 2004), which established the Wireless Telegraphy Register. This amendment to those regulations only has the effect of including the Mobile Spectrum Bands within the regulations. Ofcom therefore considers that the same arguments apply in assessing the impact of these regulations as in the original regulations.
- A3.23 Accordingly, the conclusions of the RIA for the Wireless Telegraphy (Register) Regulations 2004 on the costs and benefits are equally valid for the Regulations. Those conclusions were that the benefits of having a register exceeded the costs that would be incurred by Ofcom and business in establishing and maintaining the register, and in publishing information. Indeed, the costs to Ofcom of the Regulations will be even lower than the previous assessment because the register has been established and is being maintained anyway. The additional costs to Ofcom would be minimal and would be limited to updating the register for the wireless telegraphy licences in the Mobile Spectrum Bands. The RIA also noted that if a register were not established, there was a real risk that the effectiveness of spectrum trading would be damaged, transaction costs for businesses wanting to trade spectrum could be higher, and that commercial information providers might not bring the same benefits as an independent register.
- A3.24 Ofcom does not consider that there are any significant costs to the voluntary sector arising out of the Regulations while the sector is likely to share in at least some of the general benefits referred to above.

## Business sectors affected

- A3.25 The main business sector affected by this proposal is mobile communications service provision.

## Conclusions

- A3.26 Ofcom's assessment is that the benefits of including the Mobile Spectrum Bands within the Wireless Telegraphy Register are likely to outweigh the costs. The benefits could be significant in terms of improving the effectiveness of potential spectrum trades and the costs would be minimal because the register has already been established.