



Simplifying spectrum trading

Reforming the spectrum trading process
and introducing spectrum leasing

Interim statement

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Section 1

Introduction and summary

1.1 On 22 September 2009, we published a consultation document on proposals to streamline the spectrum trading process to make the spectrum market more dynamic and efficient (the 'September consultation')¹. This interim statement is to inform stakeholders that, in view of the positive response to the consultation, we have decided in principle to proceed with our proposals. We are currently in the process of refining our proposals in the light of the responses to the consultation and plan to present detailed conclusions, and consult further, later this year or early next. We expect to bring the new trading rules into effect in May 2011 in line with the timetable for implementing changes in the applicable European Union (EU) law.

Definitions

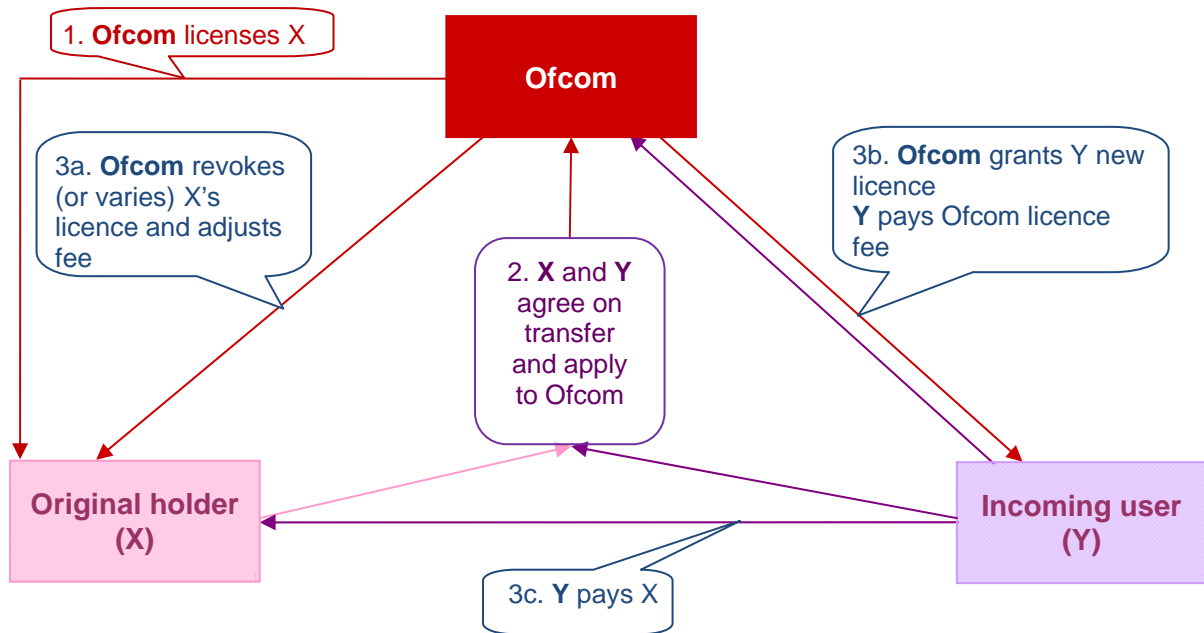
- 1.2 As in the September consultation, we use the following terminology, which reflects our view of the trading possibilities that would be available in the future as opposed to those available under current legislation.
- *Spectrum trading* denotes the ability to sell and buy access to radio spectrum within the overall terms of the original assignment. Spectrum trading is a generic term that encompasses both *spectrum transfer*, which is currently allowed under spectrum trading regulations, and a new process of *spectrum leasing*.
 - *Spectrum transfer* is the form of spectrum trading recognised under current law. It involves the transfer of rights and obligations under a wireless telegraphy (WT) licence or grant of recognised spectrum access (RSA)². Spectrum transfer involves the grant of a new licence to the transferee.
 - *Spectrum leasing* is a new form of spectrum trading that would be put into effect by a contract between the parties without the grant of a new licence to the party gaining access to the spectrum.
 - *Band manager* has no precise definition but is generally understood to denote a public or private sector organisation that plans assignments and carries out on a commercial basis the trading of rights to radio frequencies to its clients. Any holder of a tradable spectrum licence may function as a band manager even if this is not its primary activity.
- 1.3 The difference between transfer and lease is illustrated in figure 1 below. Paragraphs 6.7 onwards of the September consultation explain the implications in greater detail. The main difference lies in the absence in leasing of a direct licensing relationship between the user and us. As a broad generalisation, leasing may be expected to be advantageous in particular for band managers offering spectrum assignments that are individually of low value and for relatively short periods. However, much will depend on the parties' particular circumstances and preferences.

¹ <http://www.ofcom.org.uk/consult/condocs/simplify/>

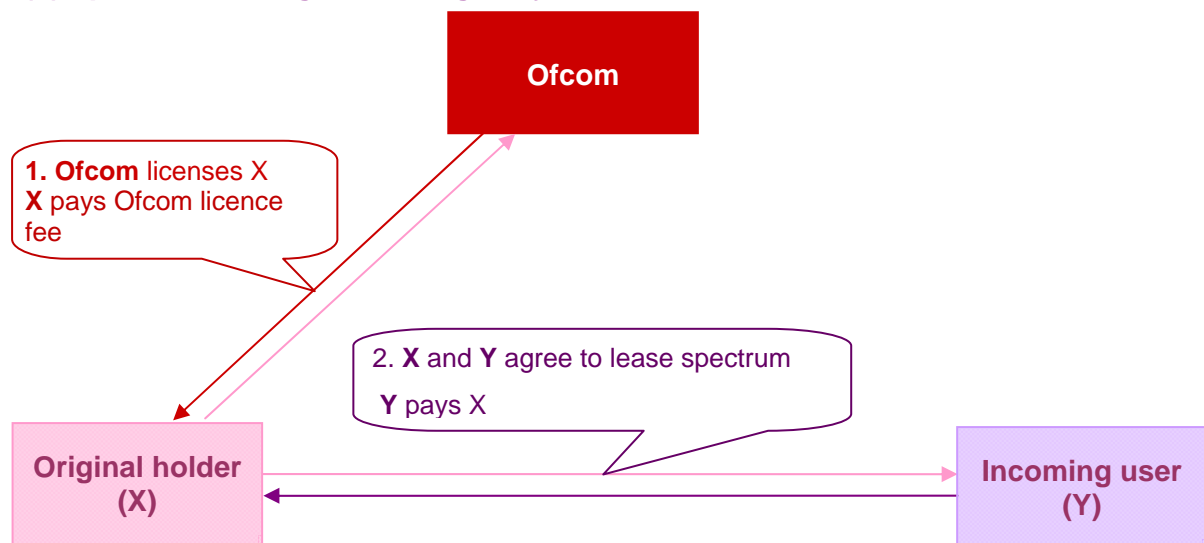
² To avoid repetition, we do not refer separately to RSA in the rest of this document unless the context requires. Broadly similar considerations apply to trading licences and RSA although the position on leasing RSA is more complicated as explained in paragraph 6.29 of the September consultation.

Figure 1: The difference between spectrum transfer and leasing

(a) Spectrum transfer



(b) Spectrum leasing as envisaged by us



EU developments

1.4 Spectrum trading is subject to provisions of the EU Directive on a common framework for electronic communications networks and services (the 'Framework Directive'). The current directive³ allows Member States to permit spectrum transfer subject to various regulatory requirements. Revisions to the directive that were adopted on 25 November 2009⁴ allow them to authorise spectrum leasing as well

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0033:0050:EN:PDF>

⁴ <http://register.consilium.europa.eu/pdf/en/09/st03/st03677-re06.en09.pdf>

and make this mandatory where the European Commission so decides. The deadline for Member States to implement the revisions is 25 May 2011. The implementing legislation in the UK will be prepared by the Department for Business, Innovation and Skills (BIS).

Matters on which we sought views in the September consultation

- 1.5 We sought evidence on whether the present regulation of spectrum trading was impeding desirable market developments or imposing disproportionate transaction costs and we consulted on specific proposals for removing unnecessary regulatory burdens. Specifically, we sought views on streamlining the current regime by:
- removing the need for the parties to obtain our consent to spectrum transfers;
 - allowing time-limited trading without the need for a separate closing transfer by the parties;
 - introducing a variant of spectrum transfer ('transfer without licence issue' or TWLI) that could proceed without the need for us to grant a new licence document to the transferee; and
 - introducing, when permitted under EU law, a spectrum leasing process that is potentially faster and more efficient than spectrum transfer.

Responses to the consultation

- 1.6 The consultation closed on 1 December 2009. We received 11 responses from a broad spread of sectors and stakeholders: six commercial spectrum-using organisations, including three from the programme-making and special events (PMSE) sector, two mobile network operators (MNOs), two trade associations and one consultancy. The responses, except for some material provided in confidence, have been published on our website⁵. Annex 1 contains a list of organisations that responded.
- 1.7 The responses generally agreed that the present trading process is impeding desirable spectrum market developments and supported many of the changes proposed. Some (Arqiva, Transfinite, Intellect) urged us to go ahead faster or further, especially in view of the revisions to the Framework Directive on leasing.
- 1.8 In summary, the reactions to the main elements of our proposals were as follows.
- **Removal of the need for consent to a transfer** – some respondents agreed with our proposal to retain the need for our consent for transfers in certain sectors. Transfinite argued that the requirement for consent should not be retained. Arqiva and Intellect queried what regulatory concerns would justify retention.
 - **Time-limited transfers** – there was broad agreement with our proposal for single transaction time-limited transfers although one respondent queried its value if leasing is possible.

⁵ <http://www.ofcom.org.uk/consult/condocs/simplify/responses1/>

- **TWLI** – respondents generally saw this as an improvement on the current system but did not consider it to afford the same scale of advantages as leasing.
- **Leasing** – there was strong support for introducing leasing and a desire for its early introduction.
 - *Application to specified licence classes* – most respondents wanted leasing to be available for all tradable licences.
 - *Restriction on lease length* – there were mixed views on our proposal to restrict leasing without the need to inform us to 24 months. Transfinite suggested a limit of seven years, Arqiva five years and Intellect four years. JRC suggested a rolling 12 or 24 month term.
 - *Sub-leasing* – responses were split on whether we should allow sub-leasing.
 - There was no enthusiasm for *automating the trading process* as an alternative to leasing.

1.9 There were some sector-specific concerns.

- *MNOs*: 3UK and T-Mobile highlighted mobile-specific issues. They noted that cellular radio licences were not yet tradable and argued that they would need to be treated as a special case in the context of mobile liberalisation. T-Mobile argued that consent should be required for all sub-1 GHz transactions and referred to the spectrum modernisation issues that the Government's Digital Britain report raised. 3UK was concerned about the removal of consent for mobile telecommunications spectrum trades and considered they should automatically be investigated.
- *PMSE*: BEIRG and PLASA did not want to see simplification of the trading process at the expense of PMSE. JFMG thought it was unclear how we would deal with unauthorised use under leasing.
- *Business radio*: the FCS was concerned about the implications for common base stations (CBS) and short-term hire (STH), where customers currently access spectrum under contract.

Our conclusions

1.10 In light of stakeholders' support for simplifying the present spectrum transfer process and introducing leasing, we have concluded as follows.

- We should proceed to **simplify the transfer process** on the lines that we proposed, in particular by removing the need to obtain our consent for proposed trades in most cases. This will be done in a manner that is consistent with the requirements of the revised Framework Directive. We recognise the sector-specific issues that were raised by some stakeholders and will reflect these in the new general trading regulations that we intend to make or later sector-specific adaptations. In particular, we will consider whether our consent should be required for some or all trades of cellular GSM and 3G spectrum at the time of making these licences tradable.
- We also plan to simplify the process for **time-limited transfers**.

- We intend to introduce **spectrum leasing** in line with the revised Framework Directive. In the course of drafting detailed regulations on leasing, we will be exploring further with interested stakeholders their comments, summarised in section 3 of this document, on certain aspects of our proposals including sub-leasing, the proposed 24-month period and the implications for CBS and STH. We will also discuss our proposals and their timing with BIS in view of that department's responsibility for the legislation to implement the revisions to the Framework Directive.
- 1.11 We will reflect further on whether it would be worthwhile to introduce TWLI in view of the imminent introduction of spectrum leasing. We have not yet reached a final conclusion on TWLI but stakeholders' responses suggest that it may not be worthwhile proceeding with that option, especially in light of the interim statement we are publishing today announcing our decision to defer awarding spectrum to a band manager with obligations to PMSE until after the London 2012 Olympic Games and Paralympic Games⁶.

The need for new regulations

- 1.12 In order to introduce the simplified transfer process and spectrum leasing, we will need to consult on and make regulations to specify the details of the new procedures. As we explain in section 3 of this statement, we intend to consult later this year or early next on these.

Matters covered in this document

- 1.13 This document is structured as follows.
- Section 2 gives background information on the current spectrum trading regime.
 - Section 3 considers responses to our proposals on various changes to the current spectrum trading process and our conclusions so far.
- 1.14 The September consultation included an impact assessment (IA) on which some respondents commented. We will review this and publish a revised version when we consult on the draft regulations.

⁶ <http://www.ofcom.org.uk/consult/condocs/bandmanager09/statement/>

Section 2

The current spectrum trading regime

Introduction

2.1 This section provides background information on the current spectrum trading regime.

The UK spectrum management framework

2.2 The present legislation on the management and use of the radio spectrum is contained in the WT Act 2006 ('the WT Act'), which consolidated earlier legislation dating back to 1949. We took over responsibility for managing non-military use of the spectrum in the UK in December 2003 with a duty to secure its optimal use. We are required to have regard in particular to the desirability of promoting:

- efficient management and use of spectrum;
- economic and other benefits;
- innovation; and
- competition.

2.3 We carry out our spectrum management functions within the framework of our general duties set out in section 3 of the Communications Act 2003 to further the interests of:

- citizens in relation to communications matters; and
- consumers in relevant markets, where appropriate by promoting competition.

2.4 This includes having regard to choice, price, quality and value for money.

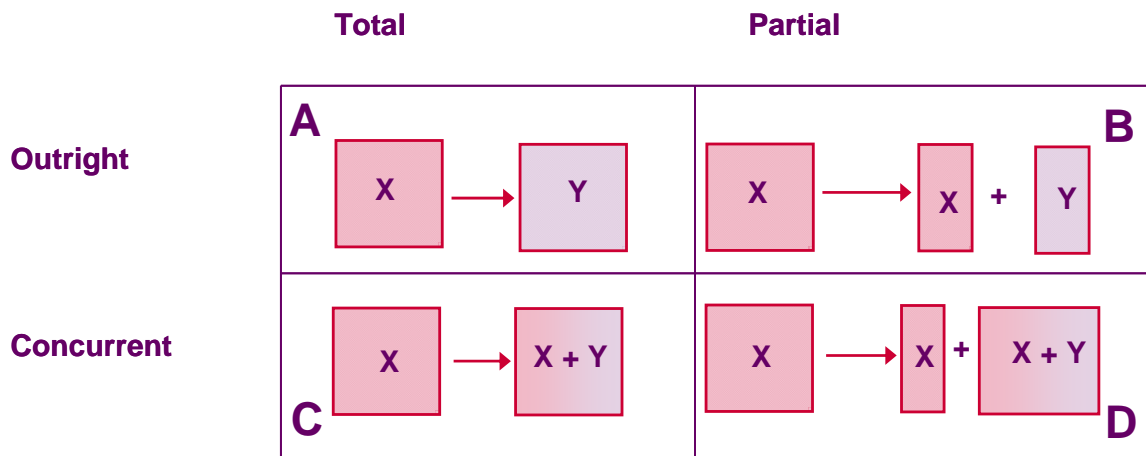
2.5 We are also required to have regard to best regulatory practice, including in particular ensuring that regulatory activities are transparent, accountable, proportionate, consistent and targeted only where needed, and to the opinions of consumers and the public generally.

2.6 The legislation requires us to keep regulation under review and to remove any unnecessary regulatory burdens. In accordance with our regulatory principles, we have considered the minimum regulation of spectrum trading that is necessary in order to enable us to manage spectrum effectively in the interests of securing its optimal use and to comply with applicable EU requirements.

The spectrum trading process

- 2.7 Spectrum trading is governed by section 30 of the WT Act and the Wireless Telegraphy (Spectrum Trading) Regulations 2004 ('the Trading Regulations')⁷, which specify the basis on which a licensee's rights to use spectrum may be transferred. They permit various different types of transaction:
- *outright total* in which all the rights and obligations under a licence are transferred to a third party;
 - *outright partial* in which only some of the rights or obligations are transferred to a third party and the rest remain with the original holder;
 - *concurrent total* in which all the licence rights and obligations are transferred to a third party while continuing at the same time to apply also to the original holder; and
 - *concurrent partial* in which some of the licence rights and obligations are transferred to a third party while continuing at the same time to apply also to the original holder and the rest of the rights and obligations remain with the original holder.
- 2.8 The different types of transaction (or 'modes of trading') are illustrated in figure 2, in which X represents the transferor and Y the transferee. The choice of mode will depend on the requirements of the parties. For example, a transferor wishing to retain rights to the holding in parallel with the transferee can achieve this through a concurrent transfer. The parties can also agree contractually that the spectrum will be vacated by the transferee if a certain contingency arises.

Figure 2: Modes of trading spectrum



- 2.9 The Trading Regulations specify the types of transactions that are permitted for each tradable licence category and, in some cases, the minimum units into which assignments may be subdivided in partial transfers. There are restrictions on partial trading in certain licence classes. We prefer as a general rule to keep these constraints to the minimum necessary so that parties have flexibility to enter into the

⁷ SI 3154/2004, www.opsi.gov.uk/si/si2004/uksi_20043154_en.pdf. These Regulations have been amended from time to time and are complemented by the Wireless Telegraphy (Recognised Spectrum Access and Licence) (Spectrum Trading) Regulations 2009, SI 17/2009.

arrangements that best suit them. However, certain restrictions are needed in order to ensure compatibility with our spectrum planning and frequency assignment processes.

- 2.10 In partial transfers, the rights or obligations may be divided by frequency band, geographical coverage or time. As described in the following paragraph, sub-division by time is not allowed under the present Trading Regulations.

Time-limited transfers

- 2.11 By 'time-limited transfers' we mean transfers that are intended to be temporary for a period less than the duration of the licence. Time-limited transfers can be carried out under the current Trading Regulations but require the parties to undertake a separate transfer to reverse the initial trade after the agreed period. The requirement on the transferee to initiate the reverse trade may be specified contractually by the parties. We said in our August 2004 spectrum trading statement⁸ (see paragraphs 3.17 onwards of that document) that we intended to provide for trades that unwind automatically after a predetermined time without the need for an additional transaction. That document also stated our view that it would be beneficial to allow short-term spectrum hiring across a wide range of licence classes (paragraphs 7.31 onwards).

The transfer process

- 2.12 The process defined in the current Trading Regulations involves six distinct stages with procedural checks to ensure, for example, that the parties have agreed to the transfer of rights, that no fees are outstanding and that we have not given notice of revocation or variation of the assignment in question.
- i) The parties notify us under regulation 8(1) of the request to transfer.
 - ii) We publish the request to transfer under regulation 8(2).
 - iii) We decide whether or not to consent to the transfer under regulations 8(3) and 9.
 - iv) We notify the parties under regulation 8(4) of our decision on the proposed transfer.
 - v) We put the transfer into effect under regulation 8(5), subject to any directions we have given under regulation 10. This involves the surrender of existing licences and grant of replacements that reflect the effect of the transfer.
 - vi) We publish information under regulation 8(6) about the transfer after it has been effected.
- 2.13 Some of these are embedded in EU or UK legislation. Others could be changed by amending the Trading Regulations.

Need for our consent

- 2.14 The grounds on which we may withhold our consent to a proposed trade were deliberately circumscribed so as to minimise regulatory uncertainty. Regulation 9 of the Trading Regulations limits them to:

⁸ http://www.ofcom.org.uk/consult/condocs/spec_trad/statement/

- breach of the licence terms by the holder or holders;
- inability to meet the terms, provisions and limitations of the post-transfer licence;
- inability to meet relevant criteria relating to transferees; or
- in the interests of national security, compliance with EU or other international obligations or compliance with a direction from the Secretary of State.

2.15 In addition, regulation 7 sets out circumstances in which trading is not authorised. These concern non-payment of licence fees or circumstances in which the licence is in the process of being varied or revoked, as well as where we have not given our consent.

Consequences of failure to follow the specified procedure

2.16 If the holder of a WT licence transfers the rights and obligations under the licence to another by means of a transaction that is not carried out in accordance with the Trading Regulations, subsections 30(4) and (5) of the WT Act provide that the transfer is void unless the licence:

- specifically allows the holder to ‘confer the benefit’ of the licence on another; and
- was granted before 29 December 2003, the date on which the spectrum trading provisions of the Communications Act 2003, now consolidated in section 30 of the WT Act, entered into force.

2.17 A void transfer could have serious consequences for the parties. For example, the transferor might find itself unable to enforce payment by the transferee if a dispute arose and a court held that the contract was void because of non-compliance with the Trading Regulations; and the transferee might be at risk of committing the criminal offence of unauthorised use of radio equipment.

EU requirements

2.18 The trading process set out in the WT Act and Trading Regulations is subject to EU requirements that are binding on the UK. Section 30 of the WT Act and the Trading Regulations give effect to Article 9 of the Framework Directive (see paragraph 1.4 above). We summarise below the current and new provisions on spectrum trading.

The current Framework Directive

2.19 Article 9 of the current Framework Directive allows Member States to provide for the transfer of spectrum rights and imposes certain requirements about the process to be followed:

- the intention to transfer spectrum rights has to be notified to the national regulatory authority (NRA), which is Ofcom in the UK;
- transfers must take place in accordance with procedures laid down by the NRA;
- transfers that have taken place must be made public; and
- the NRA must ensure that transfers do not distort competition or conflict with EU obligations.

- 2.20 The present Trading Regulations are compatible with the current Framework Directive. They also impose additional requirements. For example, under the Regulations, we publish details of proposed transactions before they are made, as well as actual transactions after they take place. Also, article 9 does not oblige transfers to be effected by the surrender and issue of WT licences.

The revised Framework Directive

- 2.21 The revised Framework Directive, which Member States are required to implement by 25 May 2011, enables NRAs to allow spectrum users to transfer or lease their usage rights to third parties. Article 9b covers the transfer or lease of individual rights to use radio frequencies. This replaces Article 9 of the current Framework Directive. Its main provisions are as follows.

- Member States shall ensure that undertakings may, in accordance with conditions attached to the rights of use of radio frequencies and in accordance with national procedures, transfer or lease to other undertakings individual rights to use radio frequencies in the bands for which this is provided in the implementing measures adopted pursuant to paragraph 3 (see below).

In other bands, Member States may make provision for undertakings to transfer or lease individual rights of use in accordance with national procedures.

Conditions attached to individual rights of use shall continue to apply after the transfer or lease, unless otherwise specified by the competent national authority.

- Member States shall ensure that an undertaking's intention to transfer rights of use, as well as the effective transfer of rights, is notified in accordance with national procedures to the competent NRA and is made public.
- Paragraph 3 states that the Commission may adopt appropriate implementing measures, which shall not cover frequencies used for broadcasting, to identify the bands in which Member States must allow rights of use to be transferred or leased.

- 2.22 In addition, article 5 of the revised Authorisation Directive 2002/20/EC requires NRAs to ensure that competition is not distorted by any transfer or accumulation of spectrum rights⁹.

- 2.23 These provisions differ in two important ways from the current Framework Directive.

- The intention to transfer spectrum rights (as well as transfers that have taken place) must be made public. This is already a requirement of the current Trading Regulations.
- Member States may introduce spectrum leasing. As envisaged by us, this would not involve notification to the NRA or publication of the intention to trade or completion of a trade. This opens the way for us to introduce spectrum leasing as proposed in the September consultation. Member States may be required by the Commission to allow transfer or leasing in specified bands not used for broadcasting.

⁹ As amended by article 3 of the new directive

Section 3

Changes to spectrum trading processes

- 3.1 This section describes our proposals for simplifying the trading process and reducing transaction costs, discusses some aspects of the responses and explains how we intend to proceed.

Responses on revising the trading regime

- 3.2 In the September consultation, we asked stakeholders for evidence on the need to review the trading regime as well as on our specific proposed changes. We asked the following question.

Question 1: Are there any features of the present spectrum trading regime that need to be changed in order to encourage or facilitate spectrum market developments? If so, have we correctly identified the features that need changing? What features, in addition to those described in following sections, would be advantageous to change?

- 3.3 In response, there was a general agreement that the present spectrum trading regime needed to be changed in order to encourage or facilitate spectrum market developments.
- Arqiva said there was considerable pent-up demand for spectrum, much of which could be met from licensees releasing under-used spectrum. The absence of a legal means for leasing spectrum prevented this. They therefore strongly supported our core proposals for streamlining the transfer process and introducing leasing and suggested that lack of information on licences and spectrum usage made it difficult for companies to meet their spectrum needs in the secondary market. Our proposals were a step in the right direction but they urged us to go further. Intellect made similar points.
 - Transfinite argued that the current trading regime was not designed with band managers in mind and did not facilitate their operation and that, although it was possible in principle to use the transfer process to support a band management operation, this would in practice involve complex and untested contractual arrangements that present substantial risks.
 - JRC said that the current regime was a severe impediment to efficient exploitation of spectrum for short-term, low-cost use by organisations that managed spectrum in bulk and that the need for the surrender and re-issue of licences made such activity impractical.
 - PLASA considered that the current regime stifled spectrum trading but was concerned that a revised regime should preserve safeguards for the PMSE sector. BEIRG made similar points.
 - FCS pointed out that business radio users rely on spectrum for their primary business activities without seeking to trade it and sought clarification of how our proposals would affect CBS and STH services, which are delivered by giving customers access to spectrum under contract.

- T-Mobile recognised the case for streamlining the current trading regime but suggested that we should have constant access to up-to-date licence information to allow us to investigate interference complaints.

Responses on the licence transfer process

3.4 In the September consultation, we proposed to streamline the spectrum transfer process by omitting the need for the parties to obtain our consent before proceeding and, consequently, the need for us to notify to the parties our decision on consent to the proposed transfer. The streamlined process would consist of the following steps:

- the parties notify us before they trade;
- we publish details before the trade takes place;
- we put the transfer into effect by processing and issuing licences; and
- we publish information on completed transfers.

3.5 We noted that certain licence sectors might possess particular characteristics that require the need for our consent to be retained.

3.6 We also proposed to allow time-limited trades to be more straightforward by dispensing with the need for a separate reversing transaction when the agreed period for the transfer of rights expires.

3.7 We asked some specific questions on these proposals.

Question 2: Do you agree with our targeted approach to deciding which trades need to be subject to more rigorous procedures and our specific proposals? Are there other factors that we should take into consideration or particular licence sectors or types of transaction that should be subject to additional procedural requirements?

Question 3a: Do you agree that the requirement for Ofcom's consent to proposed transfers should be dispensed with for the generality of tradable licences subject to justified exceptions?

Question 3b: If the need for prior consent was removed, do you consider that Ofcom should continue to have a power to give ex-post directions?

Question 3c: Do you agree with our proposal to introduce single-transaction time-limited transfers?

3.8 There were divided opinions on these questions, apart from time-limited transfers, which virtually all respondents supported.

- Arqiva and Intellect thought the default position should be for trades to proceed without the need for our consent and that exceptions should be few and well-justified. They queried the need for concerns in relation to policy, competition and spectrum management. They considered that disproportionate constraints on trading would maintain barriers to accessing spectrum, constrain innovation and undermine market confidence in spectrum liberalisation.
- Transfinite supported a targeted approach while suggesting that most trades would not need consent. It was unclear how partial trades would introduce the

risk of interference as the parties would continue to be subject to the technical conditions in licences, which would be unchanged after the trade.

- 3UK was concerned about the application of our proposals to the mobile telecommunications sector and considered the requirement to obtain our consent to trades should be retained there in view of the potential impact on interference and competition. Trading of spectrum used by mobile operators – their existing spectrum and possible future bands such as 2.6 GHz – should be automatically investigated. We should make clear the consultation process for such investigations. In a similar vein, T-Mobile expressed the expectation that we would consult on which licence classes should continue to require our consent for trades. It was important for us to clarify this before revising the trading regime. In particular, T-Mobile thought that all trades of sub-1 GHz mobile spectrum should require consent.
- PLASA agreed with a targeted approach to more rigorous procedures and considered that dispensing with the need for consent would generally benefit the spectrum-using community and was an essential step if band managers were to operate efficiently. However, the band manager with obligations to PMSE users should need consent for trading for non-PMSE use and it was important for us to retain the power of ex-post direction to ensure protection for PMSE users. BEIRG made similar points.
- David Hall Systems queried whether the facility for time-limited transfers would be worthwhile if leasing was possible.

Responses on spectrum leasing and TWLI

- 3.9 The September consultation sought views on the introduction of spectrum leasing. This would avoid the need for the parties to notify us and for us to publish details of transactions and issue a new licence to the new user and would be based solely on contractual arrangements between the parties. We proposed that spectrum leasing in its simplest form would apply to transactions that were intended to last for periods of up to 24 months. Leases for periods longer than 24 months might also be possible but, in view of their potentially greater market significance, would need to be notified to us so that we could, in the interests of market transparency and information, publish details as we do for transfers.
- 3.10 We proposed that the leasing process would, like the process for transfers, be subject to regulation by us. For example, we would require licensees to keep records of those to whom they had leased spectrum rights and to make these available to our authorised personnel so that they might investigate interference.
- 3.11 We asked the following questions.

Question 5a: Do you agree with our proposal to create a regime for spectrum leases? What do you see as the advantages and disadvantages?

Question 5b: What advantages would spectrum leasing offer over TWLI? Please provide as much quantitative and qualitative evidence as possible to support your view.

Question 5c: Specifically, do you agree with our proposal to have a simpler lease procedure without reference to Ofcom for shorter leases of up to 24 months or would

you suggest a different figure or metric? If you suggest an alternative, it would be helpful if you could describe how this would work in practice.

Question 5d: Do you agree with our proposal (i) for longer leases to be subject to similar procedural requirements as licence transfers and (ii) to allow partial leasing but not sub-leasing?

Question 5e: Do you agree that spectrum leasing should be available for all tradable licence classes? If not, which should be omitted and why?

Leasing

3.12 All those responding to these questions strongly supported the introduction of spectrum leasing and agreed that it should be available for all tradable licence classes. The advantages of leasing included reduced transaction costs, lower barriers to spectrum access and secure spectrum access. There was a divergence of view on the proposed time limit of 24 months and our proposal not to allow sub-leasing. We will return to these issues when we consult on the implementing regulations.

- JFMG, PLASA and David Hall Systems all agreed with the 24-month limit. Transfinite strongly disagreed and thought a seven year limit would be preferable. Arqiva thought there should be a five year limit and Intellect a limit of four years. JRC suggested a rolling 12- or 24-month term.
- Arqiva and Intellect thought that sub-leasing should be allowed. Transfinite, PLASA and David Hall Systems thought that there should be no sub-leasing. JFMG suggested that this aspect requires further thought.
- JFMG was concerned about additional procedural requirements to prevent evasion of the 24-month limit as many PMSE users renew their licences annually.
- Transfinite thought that leases longer than 24 months should not have additional procedural requirements.
- David Hall Systems pointed out that leasing would not apply to the public sector unless the grant of RSA was modified and JFMG asked whether TWLI would be available as an alternative in such cases.

TWLI

3.13 Several responses expressed reservations about TWLI. The overall consensus was that TWLI would be better than the present trading process but was variously inferior to leasing, seriously flawed or unnecessary given the option of leasing. On the other hand, there were those that considered that TWLI should, if introduced for PMSE, be available more widely beyond that sector and that it would be advantageous to give parties the additional option of TWLI as well as leasing.

Responses on automating the trading process

3.14 We also asked whether, as an alternative to leasing, it would be advantageous to speed up the trading process by automating our business systems, for example by installing a system to handle the process electronically and provide on-line licensing. We pointed out that, although automation could improve the efficiency of the process,

it would incur substantial costs that could be avoided were leasing to be introduced as we proposed. Amending the regulatory regime to simplify the trading process and thereby eliminate certain costs entirely seemed to us to be preferable to automating an intrinsically more cumbersome process and more consistent with our duty to avoid unnecessary regulatory burdens.

3.15 We asked:

Question 6: What capital and operational costs would automated trading impose on band managers and their customers? Do you agree with our assessment that automated trading would be second-best to leasing but would provide a workable alternative?

3.16 All those responding agreed that simplifying the current trading process would be preferable to automating that process.

Our conclusions

Streamlining the transfer process

3.17 We have concluded that we should streamline the transfer process by removing the need for the parties to obtain our consent for trades in the generality of licence classes. However, we recognise that there may be sectors in which this would not be appropriate. This will need to be assessed on a sector-by-sector basis. In particular, we will give careful consideration to this issue in the context of developing our proposals for liberalising and trading spectrum currently used for GSM and 3G cellular.

3.18 We agree that there is a degree of overlap between time-limited transfers and leasing but, given the difference between the transfer and leasing processes as described in paragraph 1.3 and figure 1 above, we think there could be value in giving parties a choice of whether to structure time-limited trades as transfers or leases. We will announce our conclusions on this when we consult on new trading regulations.

Spectrum leasing

3.19 Now that the revisions to the EU Framework Directive have been adopted, and in view of the positive feedback from stakeholders, we intend to proceed to introduce spectrum leasing. We plan over coming months to give further consideration to the detailed points made by stakeholders about the leasing process, including the need for us to review transactions in certain sectors, and will consult on detailed regulations later in the year once we have clarified with BIS their intentions in relation to implementing those revisions.

Should we streamline spectrum transfer before introducing leasing?

3.20 We have considered whether to introduce the changes to the transfer process in advance of spectrum leasing. This could be done slightly earlier as transfer simplification does not require the WT Act to be amended, as may be necessary to introduce leasing. However, it would involve making separate sets of related regulations on transfer and leasing that would come into effect a short period apart following two overlapping or consecutive consultations. This would make the process more complex and burdensome for stakeholders and for us. Given that the time difference would amount to no more than a few months, assuming the revisions to the Framework Directive are implemented in the UK by May 2011, we consider that it

would be preferable to make all the changes at the same time. However, we would review this conclusion if the introduction of leasing was unexpectedly delayed.

TWLI

3.21 The IA in the September consultation concluded that:

“there could be advantage in introducing option 3 [TWLI] more widely [than PMSE] if there were substantial delay in amending the EU framework”.

3.22 As stated in paragraph 1.10 above, the balance of responses suggests that TWLI would be unlikely to offer any clear practical advantage over leasing for the generality of tradable sectors. Moreover, adoption of the revisions to the Framework Directive means that leasing will likely be in place by May 2011. Now that we have decided to defer the PMSE band-manager award until after the Olympics, we are minded not to proceed with TWLI. However, we have not yet reached a final conclusion.

Automating the trading process

3.23 We agree with respondents that this option would not be worth pursuing.

Next steps

3.24 In order to implement the changes discussed in this statement, we will need to consult on and make regulations to specify the details of the new trading procedures. Our timetable is largely dictated by BIS's plans for implementing the revisions to the Framework Directive, including any amendment necessary to the WT Act to allow spectrum leasing to be introduced.

3.25 We expect to consult later this year or early next on the details of the new spectrum trading regime following further consideration of issues raised in the September consultation and discussion with interested stakeholders on some aspects. We will respond at that time to points that we do not deal with fully in this document, including on the 24-month limit, sub-leasing, TWLI and public sector RSA.

3.26 Some of the enhancements that we intend to make to the trading process will require changes to our business systems and processes. The nature and timing of these will depend on finalising the points referred to above.

3.27 We expect to bring the new trading rules into effect in May 2011.

Annex 1

Organisations responding to the September consultation

3UK (Hutchison 3G UK)

Arqiva

BEIRG (British Entertainment Industry Radio Group)

David Hall Systems

FCS (Federation of Communications Services)

Intellect

JFMG

JRC (Joint Radio Company)

PLASA (Professional Lighting and Sound Association)

T-Mobile

Transfinite

Annex 2

Glossary of abbreviations

3G	Third-generation mobile-phone standards and technology
BIS	Department for Business, Innovation and Skills
CBS	Common base station
EU	European Union
GHz	Gigahertz
GSM	Global System for Mobile Communications
IA	Impact assessment
MNO	Mobile network operator
NRA	National regulatory authority
PMSE	Programme-making and special events
RSA	Recognised spectrum access
STH	Short-term hire
TWLI	Transfer without licence issue
WT	Wireless telegraphy