



Response to Ofcom Consultation: Simplifying spectrum trading Regulatory reform of the spectrum trading process and introduction of spectrum leasing

JFMG Ltd is the dedicated band manager for programme making, entertainment, special events and related activities. It is a privately owned company created specifically to ensure continued and equitable spectrum access to all areas of the programme-making industry.

JFMG successfully coordinates the use of spectrum, issues licences and collects licence fees on behalf of Ofcom, and have done so since 1997. The spectrum we manage ranges from 47MHz to 48GHz and requires expert knowledge of the bands, their uses and restrictions. JFMG own bespoke tools that uniquely enable us to coordinate interleaved spectrum, ensuring both protection for broadcasting and effective access for programme makers.

In the UK, the professional use of radio for programme making and entertainment purposes is referred to as Programme Making and Special Events (PMSE). PMSE applications include:-

- Television production
- Broadcast television and radio coverage of news, sport or other public events including state occasions
- Theatre and touring shows
- Music and other entertainment productions
- Conferences, and corporate presentations and events
- Movie film productions

Band manager with PMSE obligations

In December 2007 Ofcom announced their intention to award the frequencies currently managed by JFMG to a commercial band manager. The band manager will pay Ofcom for a licence for the spectrum and will then charge PMSE users for access. These fees will be retained by the band manager in contrast to the current model where all fees are passed to Ofcom.

The licence is due to be awarded during 2010 and will need to be tradable to allow the band manager to provide access to the PMSE industry. That band manager will be expected to authorise access to around 90,000 individual frequency assignments every year however it is clear that Ofcom's current trading regulations will make this extremely difficult. It is therefore necessary to find an alternative approach to trading to simplify this process in the future. It is only with reference to how the new proposals will affect the ability of the band manager with PMSE obligations to operate that we respond to this consultation.

1. Consultation Questions

Reasons for reviewing the trading regime and options:

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 the following sections, would be advantageous to change? It would be helpful if you would explain the reasons for your suggestions with evidence of practical difficulties being caused at present and estimates of the costs that these impose and the savings that your suggestion would gain.*

The present spectrum trading regime has a number of features that would make it difficult for the band manager with PMSE obligations to operate effectively. The need to wait for approval and the issue of 2 licences prior to every trade would make it impossible for the band manager to meet the often tight timescales required by PMSE customers for granting access. It would also generate a large amount of unnecessary paperwork, an amount that would seem disproportionate to the length of many trades (1/2 days etc). With that in mind Ofcom have correctly identified the specific issues that need to be changed to facilitate band manager operation in the future.

We believe that the introduction of TWLI presents a workable solution to trading for the band manager with PMSE obligations if spectrum leasing is not feasible within award timescales. The concerns identified by Ofcom in relation to TWLI are easily surmountable and we provide further clarification of this view under the section that specifically deals with this option.

We do not therefore agree with Ofcom's assertion that automating the existing process would provide a second-best option to leasing. We do not believe it would proffer any advantages over the existing process, indeed we believe it could prove costly to both Ofcom and those wishing to process multiple trades.

In addition, we would be interested to hear how Ofcom sees spectrum under RSA being traded (in particular for short-term access) in the future if TWLI and leasing will not apply to such spectrum. There currently appears to be no mechanism or proposed mechanism for a crown body to facilitate third party sharing either on their own or via an independent band manager.

We also believe there are a couple of areas that Ofcom will need to clarify prior to the band manager award. In particular regarding what access would be prohibited under Ofcom's anti-evasion provision. It could affect the band manager's ability to issue authorisations for the same frequencies for more than 2 years in a row to PMSE users, but we believe that this does not necessarily characterise the behaviour Ofcom are trying to prevent. We also highlight the prevalence of sub-leasing in the PMSE sector and the need for further thought on the impact an enforced change in behaviour may have on the industry and their approach to licensing.

We also outline some questions regarding interference investigation and the detail concerning the identification and handling of unauthorised use.

Changes to the licence transfer trading process:

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?*

N/A

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?

N/A

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?

N/A

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

N/A

Transfer without licence issue:

Question 4a): Would our proposal for TWLI offer a worthwhile reduction in regulatory burden compared to the status quo? Please provide as much quantitative and qualitative evidence as possible of the benefits and the practical seriousness of any drawbacks.

We believe Ofcom's proposals for TWLI would offer a worthwhile reduction in regulatory burden compared to the status quo. If unchanged the current regulations would inhibit the band manager with PMSE obligations from operating effectively. The requirement to publish, approve, notify and re-issue licences for all 90,000 individual trades that the band manager would routinely make would severely limit its ability to provide its customers with the swift service they currently enjoy. It is likely that the customer's requirement would have already passed by the time approval had been achieved forcing them to operate illegally. The additional 90,000 transactions required to transfer rights back to the band manager from the customer would make the process yet more unworkable. It is clear that without amending the trading regulations it would be impossible for the band manager to operate with this severe administrative burden.

Whilst our response focuses on the band manager with PMSE obligations we can also see that the TWLI proposal would also reduce the regulatory burden for other tradable licences, in particular those licensees that are interested in short-term transfers.

Question 4b): Would TWLI streamline the trading process sufficiently for the band manager with PMSE obligations to operate?

We believe TWLI would streamline the trading process sufficiently for the band manager with PMSE obligations to operate.

Whilst the requirement to notify Ofcom in advance of every trade could prove burdensome if done manually we believe it could be automated fairly simply and at small cost to the band manager.

However Ofcom would need to take into account that they would receive hundreds of notifications a day from the band manager. Ofcom will therefore need to ensure that their systems are robust enough to receive this level of data and that resource was made available to administer the information.



In addition, many of the notifications sent to Ofcom would be as a result of customers requiring instant access to spectrum. This would mean that notifications would be sent at the time of each transaction.

Under TWLI the band manager will also be required to send data of all completed transactions to Ofcom on a monthly basis. This data will be of considerable size. However, we don't foresee its production being unduly difficult or costly for the band manager as long as the data format requested by Ofcom is compatible with its database system.

Ofcom has highlighted a number of potential drawbacks to the introduction of TWLI but we do not believe these to be of any major concern. As the current organisation responsible for providing spectrum access to PMSE users on Ofcom's behalf we hold all PMSE licensing information. In event of any enforcement action Ofcom requires us to provide them with the relevant information to take action. We believe that the new band manager with PMSE obligations will store sufficient data to provide detailed information to Ofcom for enforcement and that the system need not change in the future.

In addition Ofcom are concerned that the contractual arrangements between the transferor and transferee will not provide sufficient certainty and clarity of spectrum rights. Whilst we cannot speak for non-PMSE use we believe that this should not be an issue for the band manager with PMSE obligations. Prior to the award potential band manager's will be privy to aspects of the current JFMG description of service that indicates the level of information required in any authorisation. We therefore believe that the contractual arrangements between the band manager and its customers will be just as clear. In fact it is in any transferor's interest to ensure rights are as clearly defined as possible since they will be liable for any resulting interference issues.

Question 4c): *Would TWLI generate worthwhile benefits for other licence classes, frequency bands or types of transaction despite the drawbacks? If so, in which other categories should it be introduced and how might the drawbacks be mitigated in practice?*

Whilst we are sure there are other frequency bands and types of transaction that may benefit from the introduction of TWLI we are responding to this consultation primarily from the perspective of being a potential band manager with PMSE obligations.

With that in mind we seek further clarification on the extent the band manager with PMSE obligations will be able to utilise TWLI. The consultation states that TWLI would only apply between the band manager and PMSE users. It therefore can be assumed that the band manager will have to use the simplified trading method when providing access to any non-PMSE use.

However, we believe the band manager should be allowed to utilise TWLI for non-PMSE use, albeit with an additional approval requirement, as this would provide a consistent approach to all trades that the band manager undertakes.

We also note that Ofcom state leasing cannot apply to RSA but it is not clear whether Ofcom would consider applying TWLI instead to facilitate access to spectrum under RSA. Without such a provision we would like to know how an organisation such as the MoD could facilitate short-term trades similar in nature to those required by PMSE users. There currently appears to be no mechanism or proposed mechanism for a crown body to facilitate third party sharing either on their own or via an independent band manager.

Spectrum leasing under a future EU legislative framework:

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

We agree with Ofcom's proposal to create a regime for spectrum leases as it would present the least cost option for both Ofcom and the band manager with PMSE obligations.

Whilst the notification process for TWLI would be fairly simple and inexpensive to implement; leasing would remove the need to transfer information on a daily and monthly basis. This would represent both financial and resource savings over time.

This section of the document also highlights the relationship between Ofcom and the lessee and under what circumstances it is likely to investigate harmful interference. We can understand Ofcom's intention to charge for investigations that show equipment fault, band-planning errors or the band manager's failure to deal with the complaint adequately. However it is unclear how Ofcom would deal with unauthorised use of spectrum (the band manager's for instance). Who would pay for the enforcement in this scenario? Would Ofcom fine the unauthorised user and charge the band manager? Or would they require the user to pay the authorisation fee to the band manager as well as an additional levy to Ofcom? We believe this is an important area that needs to be fully clarified regardless of whether TWLI or leasing is introduced.

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

As Question 5a) above.

Question 5c): *Do you agree with our proposal to limit the simpler leasing procedure without reference to Ofcom to shorter leases of up to 24 months? Would you suggest a different cut-off or a parameter other than lease length? If you suggest an alternative, it would be helpful if you would describe how this would work in practice*

From the band manager with PMSE obligations perspective the 24 month cut-off for the simpler leasing procedure would be perfectly reasonable. It would seem logical to presume that leases of a longer duration may be of more significance in competition terms and so may benefit from an approval aspect. In addition it could be argued that because the nature of the lease was long-term there would more likely be fewer time constraints on the deal than shorter-term leases.

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?*

We agree with Ofcom's proposal for longer leases to be subject to similar procedural requirements as licence transfers. It would seem logical to presume leases of a longer duration may be of more significance in competition terms and so may benefit from an approval aspect. In addition it could be argued that because the nature of the lease was long-term there would more likely be fewer time constraints on the deal than shorter-term leases.

However we do have some concerns regarding Ofcom's intention to include an anti-evasion provision to prevent long-term transactions being structured as a succession of short leases to take advantage of the lesser degree of regulatory oversight. Whilst this seems like a sensible safe-guard to implement we can think of many examples where PMSE users renew their licence year on year and so end up having access to the same frequency for several years. They would not necessarily have intended to have access to the frequency for that duration, yet it would appear they had tried to avoid

the long-term leasing procedures. We would be interested to hear Ofcom's thoughts on this scenario and how it should be dealt with. We would also like clarification on whether this would apply to TWLI.

Finally we would like to highlight the fact that sub-leasing is currently common practice amongst the PMSE industry and its prohibition would require a significant re-education of licensing behaviour. We therefore believe that this issue will require further thought and investigation before implementation.

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

We can see no logical reason for not making spectrum leasing available for all tradable licence classes. The procedural requirements for longer-term leases would appear to cover any issues concerning large value trades that may be subject to competition concerns. We therefore agree with Ofcom's proposal to extend leasing to all tradable licences when introduced.

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

We do not believe that automated trading would be the second-best option to leasing as it would prove both difficult and expensive for the band manager with PMSE obligations and Ofcom to implement.

We believe that an automated system would require the band manager to incorporate significant additional complexity to handle this requirement. PMSE users' requirement for instant access to spectrum would need to be supported so the system to notify and gain approval from Ofcom would need to allow direct interaction with their automated system with no delay.

Setting up automated trading would increase the costs and complexity of the IT systems the band manager would need to have ready when it started operation at end 2010/beginning 2011.

We therefore believe that TWLI represents the second-best alternative to leasing.

Impact assessment:

Question 7a): *Are there other options we should consider?*

N/A

Question 7b): *Do you have further evidence on the benefits, costs or risks of the options?*

N/A

Question 7c): *Do you agree with the conclusions of this impact assessment, in particular on the preferred options?*

We agree that option 3 (TWLI) is the best way forward to simplify trading if option 4 (leasing) is unlikely to be in place prior to the band manager with PMSE obligations coming into operation. Without this change we believe it would be extremely difficult for the band manager to operate in a way that would serve the PMSE industry appropriately.