JRC Response to the Ofcom Consultation on 'Simplifying Spectrum Trading'.'

JRC Ltd
Dean Bradley House
52 Horseferry Road
London SW1P 2AF
☎ 020 7706 5199
020 7222 4862
info@JRC.co.uk

Key Points

- JRC is grateful for the opportunity to respond to this consultation, and for the opportunity which Ofcom provided to discuss the implications of the proposals in detail with Ofcom staff.

- The existing regulatory framework is a severe impediment to efficient exploitation of the spectrum by organisations managing spectrum in bulk who have opportunities to lease spectrum to other users on a short term basis as required by the PMSE community.

- The contractual and administrative costs of spectrum trading exceed the value of licences unless they relate to a significant network operation.

- The cost of radio spectrum licences for on-site systems generally offers good value for money, but wide area systems and licences are prohibitively expensive. This is concentrating most communications onto the public cellular networks creating vulnerability to common mode failures when the public networks congest due to unforeseen events, or all shut down as a result of a wide-area power failure.

- The Ofcom analysis presumes little interest in the radio spectrum beyond its purely commercial value as a commodity. For many radio users, especially critical national infrastructure, part of which is served by JRC, the functionality provided by the use of radio spectrum greatly exceeds its value as a telecommunications service.

- The Ofcom analysis also assumes no common interest amongst the parties involved in the trading process, which in the case of mission critical users, is not the case. Users of the shared/traded spectrum will often explicitly or implicitly be supporting one-another, and have a common interest in collaborating for the overall public good. For example, interference investigation amongst users operating on the same channel benefits from a desire to resolve the problem for the benefit of all users without any need to invoke regulatory powers.

- According to Ofcom's trading register, JRC appears to be the most prolific trading organisation, and submits its comments on the basis of this experience.

Question1: 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? 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.

A. According to our understanding, the present system whereby licences have to be surrendered and re-issued for a trade to take place makes it impractical to make single assignments to third parties within large spectrum holdings.

B. By way of example, JRC hold a licence for 48 UHF2 telemetry channels. Table 1 in the consultation document defines this as a tradable licence. For historic reasons, overseas racing teams find this spectrum valuable for telemetry to moving vehicles. Most years, JRC co-operates with JFMG to co-ordinate use of some channels for the British Grand Prix at Silverstone. Co-ordination and licence issue usually has to be accomplished within a few days, sometimes on the same day in the run up to the Grand Prix. Currently, JRC co-ordinates the assignments without receiving any remuneration, JFMG issues the licence to the user and Ofcom collects the fee for spectrum for which JRC has already paid a national channel fee.

C. JRC continues to co-operate in this way as it is considered by the energy sector preferable to co-ordinate use free of charge rather than risk the motor racing teams using spectrum illegally and interfering with the supply of energy services to Silverstone during the Grand Prix.

D. If JRC were to undertake this activity using the current spectrum trading regime, we would have to surrender our current ST Licence to Ofcom and obtain a concurrent licence for the spectrum in the name of JRC and Motor Racing Team A. Ofcom would have to publicise the trade and clear the deal in a couple of days for it to work. If Team B then approached JRC for an assignment, JRC and Team A would have to surrender the licence and the process would be repeated for JRC, Team A and Team B. [It might be possible to separate out the second trade from the first, but at present JRC understands the trading system would not be able to accommodate area and technical assignments on the same channels with any ease.]

E. Assuming Team A co-operated in this venture (bearing in mind it would be time critical and for the benefit of their competitors), it is unlikely that several concurrent trades could be accomplished in a single week.

F. After the Grand Prix, to return the situation back to normal, JRC would have to get teams A and B to sign the trading forms to return the channels to full ownership by JRC. However, after the Grand Prix was passed, the teams would have left the country and have little interests in completing the paperwork. If they failed to do so, JRC would have to seek legal redress through the courts – all for licences costing in the region of £100.

G. It will be readily apparent from this account why in JRC's view, the current system cannot be used effectively for efficient trading.

H. Bearing in mind the complexity of the current system, and the legal processes associated with trading licences, unless it can be simplified, it will not be cost effective to undertake any contractual activity for such unique low cost items.

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?

I. JRC is content with Ofcom's approach as described in the consultative document.

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?

J. JRC supports this proposal.

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?

K. Although there might be problems with the proposed approach, it appears on balance to be most sensible way to proceed in the medium term.

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

L. This appears a very necessary and sensible change.

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.

M. In the example quoted in response to Question 1 above, it will become obvious that this type of trade (or lease as we would term it) would benefit greatly from the proposed TWLI process. It is also unlikely the organisation benefitting from the lease would have any problems.

N. There might be an area where the organisation taking advantage of the lease might have concerns with the lack of legal certainty if the licence owner subsequently reversed the transfer for any reason. Before an organisation makes a substantial investment in a mission critical radio communications system, they would want some legal certainty, possibly beyond that obtainable through contract law since the lessee would be contravening the Wireless Telegraphy Act if the licence owner cancelled the transfer, and would be unable to communicate legally using the radio system in contention until the civil action was resolved.

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

O. This area of activity is outside JRC's current operating remit.

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?

P. TWLI appears an option which radio users could chose to use, or not use according to their preference. As such JRC would think this flexibility useful across all licence classes.

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

Q. JRC would wish to see a leasing regime introduced as it appears from the consultative document to offer greater legal clarity than TWLI.

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

R. Answer as in (Q) 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.

S. JRC finds the leasing proposal attractive, but the arbitrary time limit of 24 months appears to be determined by PMSE considerations rather than a broader perspective. JRC would prefer to see a 12 month, or even 24 month rolling lease permitted.

T. The background to this suggestion is that spectrum holders such as JRC might not wish to relinquish spectrum acquired to support anticipated projects, but these projects can take up to 10 years to come to fruition – for example the sites designated for future nuclear power stations, or the new proposed electricity transmission line from Beaulieu to Denny. In the meantime, there is economic benefit to all parties if a lessee is interested in a lease. JRC might in such circumstances be interested in a long term lease, and whilst not able to define precisely the term of the lease, would be able to guarantee to the lessee that a minimum of 12 months notice would always be given before requiring the return of the spectrum.

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?

U(i). Provided competition authorities could still take action to investigate anti-competitive behaviour, we do not see a great deal of merit in subjecting longer leases to greater scrutiny.

U(ii). JRC has not reached a conclusion on the issues surrounding 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?

V. JRC agrees that spectrum leasing should be available to all licence classes.

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?

W. For the reasons explained in response to Question 1, JRC does not believe automating the trading system addresses the fundamental problems.

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

X. Within the legislative constraints described in the consultative document, there appears little more that Ofcom can do without changes in primary legislation or changes to the EU Framework.

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

Y. In JRC's experience, unless licences for large systems are involved, the cost of legal and contracts advice makes anything but the most simple trade uneconomic. Specialist legal advice on contracts on radio spectrum issues can easily incur costs of £1000 per day, totally overwhelming any potential financial benefit from the trade.

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

Z. In the time available, JRC has not been able to assess the impact assessment.

Adrian Grilli
Managing Director
JRC Ltd
1 December 2009