



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

November 2009

Introduction to PLASA (Professional Lighting and Sound Association)

**PLASA is the lead professional body for those who supply technologies and services to the event, entertainment, communication and architectural industries. PLASA has a membership approaching 600 members worldwide, including the leading specialists in professional audio, lighting, AV, staging, communications and related disciplines.**

### 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 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.

Yes there are. Encouraging spectrum trading is essential to realising a more efficient allocation of spectrum in every band that is subject to a band manager's administration. As Ofcom correctly notes, in sectors where licences are issued of low individual value but in large number, a greatly simplified procedure for trading licences is required. It is clear that the current six step process as detailed in the current Trading Regulations are cumbersome and that their complexity is stifling the trade of licences. If implemented appropriately users of spectrum will benefit from the revision of the existing system which is, to be frank, clunky. It is a system which is ripe for revision, but this must not be at the expense of PMSE users who are already dealing with a fundamental change to their industry. Furthermore, it is vital that Ofcom work to ensure that the changes to spectrum trading allow PMSE users to operate greater control and enjoy more flexibility to enable them to work better. Before the award for the band manager with special responsibilities to the PMSE sector is announced, it is vital that Ofcom set in place a revised framework that revises spectrum trading procedures whilst preserving safeguards for the PMSE sector and insuring the integrity of safety of life services whilst allowing Ofcom's enforcement team to take action against those who either break the terms of their licence or operate without one. Everyone involved in this process recognises that the eviction of PMSE from its current spectrum allocation is a major change for the industry. Whilst PLASA recognise that changes to the spectrum trading regime may bring benefits to the industry and its operatives, it is vital that these are implemented in a way that consistently ensures that PMSE users are protected as promised. It is



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

worth noting that the band manager would still have to secure Ofcom's consent before licensing the spectrum for anything but PMSE and PLASA supports this.

Furthermore, it is PLASA's view that for the band manager with obligations to the PMSE sector to function effectively they must be able to manage the spectrum under their control. Users of spectrum will be much more willing to engage in trading spectrum if they know that they only need deal with one body whose core focus is realising the maximum utility from its spectrum holdings whilst protecting PMSE users during the transitory phase.

## 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?

PLASA agree that there should be variation between licence classes, type or business sector in which they are used. However, we feel that the deadlines for partial trades or for variation of licence terms and conditions must be significantly reduced. Ofcom's retention of a 42-day timeframe would not help in achieving its goal of revising the regime for trading spectrum. Furthermore, PLASA welcomes the fact that Ofcom continues to recognise the need to protect PMSE users as noted in 4.18 of the consultation 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?

Yes, PLASA believe that this is an essential step that must be taken if the band manager with responsibilities is to manage the spectrum under its control in an efficient manner. Transfers of spectrum must be allowed to take place without requiring Ofcom's consent so that potential applicants for the band manager award, and the eventual band manager themselves, will be able to develop strategies for innovating and for basing their service levels on with some certainty that they will have the ability to deliver them. The continuation of the requirement to obtain Ofcom's consent will hinder rather than help in the delivery of these objectives. More broadly speaking, PLASA are also in agreement that the removal of the requirement to obtain Ofcom's



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

consent would greatly benefit the wider spectrum using community and help deliver Ofcom's aim of removing unnecessary regulatory burdens. In line with Ofcom's previous statements and our own position, we do not interpret this question to indicate that Ofcom are planning on removing the requirement for the band manager to seek Ofcom's consent in order to licence spectrum for non-PMSE use until at least 2018.

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?

Whilst it might be argued that the retention of ex-post powers might serve to undermine the integrity of the spectrum trading market, and as such would potentially deter affected parties from engaging in trading, it is important that Ofcom retain ex-post directional capacity in order to ensure protection for PMSE users. Ofcom have further assured users of spectrum that they will have certainty that when they obtain spectrum access via a trade or when they obtain monies from a buyer paying for such access that they will not be forced from the spectrum they intend to use nor obliged to return any fees paid by stating that "it would be unnecessary and undesirable to take this fallback power".<sup>1</sup> It is clear that Ofcom will only seek to exercise this power where it is obviously necessary and does not wish to overuse it because to do so would almost certainly increase the risk that those wishing to obtain spectrum would begin to over-rely on seeking pre-clearance for their trades.

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

PLASA will support the measures outlined in the section on time-limited transfers. It is an unnecessary and overly bureaucratic requirement that demands a separate reversing transaction at the conclusion of a time-limited transfer. Whilst the reforms promised by the introduction of TWLI and, the eventual framework for leasing being put in place should help, we recognise that there is a need to make trading spectrum far more fluid and easier to administer.

<sup>1</sup> Ofcom, Simplifying spectrum trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing, p. 28



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

November 2009

### 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.

PLASA believe that any serious move to reduce the regulatory burden is to be welcomed. The quicker that transactions take place, the sooner that those involved in the trade of spectrum can access their spectral rights and the more incentive there is for people to engage with the trading process. This is a vital development that would allow the band manager to run its business well whilst meeting the protective obligations that it will have towards the PMSE industry. PLASA recognises that Transfer Without Licence Issue would represent a significant reduction in the regulatory burden compared to the existing six step procedure. The fact that it would require three steps (notification of information required to enact the transfer prior to its effect, action of the transfer and the publication of information by Ofcom following the transfer) is to be welcomed. It removes the need for Ofcom to explicitly consent to trades, it removes the need for Ofcom to issue new licences and generally tidies up the existing regime which is overly laborious. If the band manager remains the sole licence holder with responsibilities to the PMSE sector and it administers its own arrangements for PMSE without having to go through Ofcom, this will allow for greater flexibility, efficiency and allow the band manager to best meet the PMSE sector's needs. In absence of this, administration costs will be much higher and there will be reduced ability of the band manager and PMSE users to adapt by transferring rights of use. Without TWLI or, indeed and ideally, spectrum leasing, the band manager would risk being the victim of regulatory failure and rather than assisting Ofcom in ensuring the most efficient allocation of spectrum it would instead serve as little more than a middle man for a process which it would have little control over. This is especially worrying given that the band manager will have explicit obligations to the PMSE sector and thus should have the ability to take greater ownership of decisions made regarding spectrum allocation.

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

PLASA agrees with the basic premise that TWLI represents a streamlining of the trading process. What is less clear is whether it goes far enough, whether it could go further within the constraints of both the WT act and the existing EU Framework Directive. Specifically if an electronic notification procedure were followed we would expect that in order to maximise the effectiveness of TWLI, notification would merely



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

consist of electronic transmission and that the band manager would not have to wait for confirmation of receipt of the required information from Ofcom.

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?

Yes, the implementation of TWLI for other licence classes, bands or transactions would have a beneficial impact. Whilst spectrum leasing procedures would offer the greatest flexibility for the band manager and its customers, it must be recognised that any change in the current overly burdensome arrangements would be welcomed. We might suggest that Ofcom work with the relevant parties in the event that TWLI is more widely adopted to produce a framework or model contract for transferors and transferees to utilise rather than these documents having to be produced to bespoke specifications in order to effect a transfer.

## 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 fully support Ofcom's proposals to create a regime for spectrum leases. However, we do have some reservations as to how this will be implemented. Of major concern is the issue of responsibility for managing harmful interference. As Ofcom have noted, band managers will not have the statutory powers to investigate such interference, however under spectrum leasing they would remain ultimately responsible for the use of the spectrum contained within their licence. Moreover, Ofcom have stated that they expect band managers to monitor their spectrum and to ensure their customers are abiding by the rules of their lease. It might appear from this that Ofcom wish to transfer the responsibility for funding enforcement activities to the band manager whilst this body does not have the statutory powers to make effective use of the results of such monitoring through the imposition of fines or revocation of licences. PLASA believes that this is not Ofcom's intention and envisages a partnership approach between the band manager and the regulator in tackling such issues. As such it would be unfair if either party were subject to obligations which it could not reasonably fulfil.



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

PLASA believe it would be unwise to further complicate what is arguably an already ineffectual system by involving and making responsible the band manager despite the fact that only Ofcom has statutory powers of investigation under the Wireless Telegraphy Act. If spectrum leasing is to be implemented, it could be argued that Ofcom should either advise the Government to make legislative changes such that band managers will have the statutory powers to monitor and investigate harmful interference along with the powers to take appropriate action where such interference is taking place or, more realistically, Ofcom should accept that as it possesses the only statutory powers of investigation then it should also shoulder the burden of monitoring spectrum and carrying out enforcement activities at its own cost and with the aim of fulfilling its duty to ensure the most efficient use of spectrum. That is not to say that this is a burden Ofcom should bear alone, and the band manager with responsibilities to the PMSE sector should be expected to work in partnership to ensure that monitoring and enforcement action is carried out in a way that assists the regulator and those who make use of spectrum.

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

Spectrum leasing would provide the obvious advantage of further removing the bureaucratic burden of transferring spectrum between different parties. This would enable the band manager to allocate spectrum more quickly, efficiently and in line with a holistic approach to spectrum planning than would be the case with TWLI. The removal of stages needed to effect spectrum transfers cuts down on the amount of time needed to conduct such transfers. For example, at a major event where it becomes apparent that one party needs greater spectrum than they have access to, spectrum leasing would enable them to quickly borrow spectrum via the leasing mechanism without having to involve Ofcom to the same degree as TWLI. This is because under spectrum leasing licensees would not have a direct relationship with Ofcom, instead they would deal exclusively with the band manager with obligations to the PMSE sector. Secondly, transfers under the leasing system would, as Ofcom note, not need to be published and Ofcom would not have to know about the details of the transactions. This would substantially speed up the process through which PMSE users would be able to access spectrum on demand. It would also enable the band manager as the primary licensee to retain effective control over spectrum usage so as to ensure that it was being awarded in an FRND manner. Of course, none of this should be taken to imply that the restrictions on non-PMSE use of the band manager's spectrum would be diluted. PLASA understand that such use would still, rightly, require



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

Ofcom's consent and we would also hope that any band manager, whilst not obligated to do so, would seek out the industry's consent if it proposed to make such non-PMSE awards of spectrum or spectrum leases.

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.

We do agree with the proposed cut off for shorter leases of up to 24 months. If the PMSE sector is to benefit from changes to the current spectrum trading regime then it must be able to have access to spectrum when needed. Allowing any body the opportunity to tie up spectrum for a period of time in excess of 24 months would run the risk of precluding PMSE operatives from gaining access to spectrum. This is clearly not the intention behind Ofcom's desire to reform the trading regime and thus we agree with the proposal. PLASA also feel that there should be no mechanism through which a lease of greater length than 24 months is obtainable. If the object of modifying the current spectrum trading regime is to encourage the trade of leases and the emergence of a more dynamic and responsive market, we do not see how allowing leases for periods greater than 24 months can help to achieve these goals. Leasing spectrum for a period of more than 2 years implies a permanence to the use of the spectrum concerned, therefore such a transaction should be effected through a transfer where Ofcom is notified, the details published and the transaction subjected to the Trading Regulations.

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?

As stated above and as further reinforced by Ofcom's observations, longer leases than 24 months signal a usage of spectrum that does not reflect the purpose of spectrum leasing. When dealing with the use of spectrum for periods longer than 24 months these transactions should be effected by licence transfer which affords the regulator, the band manager and spectrum users the benefit of greater information on such transactions. Ofcom have also noted that it will be necessary to implement anti-evasion procedures so as to stop parties structuring a series of short-term leases to implement a long-term transaction. If this is the case then this strengthens the argument against allowing longer leases. The marketplace will benefit from leasing up to 24 months, beyond this though Ofcom should recognise that long-term transactions should rightly be



Your Association with Expertise

## Consultation Response

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

conducted through a proper transfer mechanism, not by taking advantage of a leasing system that will be designed to facilitate the efficient, short-term transfer of spectrum amongst end users.

PLASA agree that sub-leasing should be prohibited. If the spectrum leasing arrangements are implemented as broadly envisaged then there is no incentive for customers to engage in sub-leasing, if they are approached for the use of leased spectrum by a third party then the leasing framework should be flexible enough to allow for a three-way reallocation of the spectrum affected by the lease, involving the original licence holder, which we envisage would be the band manager. Furthermore, public notice of a third party's wish to take on an existing lease could be provided by the band manager on an accessible website so that other interested bodies are given the chance to become involved in applying for the spectrum, which might be considered part of the Fair, Reasonable and Non-Discriminatory standards under which it will be operating. Permitting sub-leasing of already leased spectrum, bearing in mind the removal of the need to inform the regulator and the reliance on all parties to construct adequate contractual frameworks, might serve to overly complicate matters and lead to an unfavourably high number of disputes. It would also, as noted above in relation to applications for third parties to take over existing leases, serve to undermine the band manager's ability to ensure access to spectrum for PMSE users under the FRND principles as outlined in previous Ofcom band manager consultations.

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

Yes, we envisage spectrum trading becoming a core part of the band manager's activities. It is essential to ensuring the best use of spectrum, which is a finite and highly desirable resource. Over the coming years and decades new technologies may emerge which result in users migrating to different bands, frequencies and classes of use. It is essential that the band manager and the framework Ofcom put in place serves to facilitate these developments rather than stand in their way. The ability to trade all tradable licence classes via spectrum leasing would be one way to ensure this flexibility. In line with our answers above, PLASA believes that whilst spectrum leasing for other tradable licence classes has its place, the flexibility that this model offers should always be placed in the context of maintaining those protections for the PMSE sector which the band manager will be obliged to uphold.





Your Association with Expertise

## **Consultation Response**

Simplifying Spectrum Trading – Regulatory reform of the spectrum trading process and introduction of spectrum leasing

**November 2009**

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