

1 December 2009

### **Simplifying Spectrum Trading response**

T-Mobile welcomes the opportunity to respond to Ofcom's consultation "Simplifying Spectrum Trading".

We appreciate the reasons for which Ofcom have initiated this project and the need to set up a more efficient and flexible system before a band manager can work effectively for PMSE usage of spectrum. We do not think that the current system allows for efficient trading of spectrum and these changes are necessary.

However whilst we agree that most of the changes that Ofcom have proposed will allow the system to work more efficiently, we are concerned that there may be some issues concerning harmful interference and distortion of competition that will result from the proposed changes. However, we believe that these potential problems could be avoided by modifying or clarifying the current proposals slightly.

### **Access to records following a trade**

As stated in section 3.10 of the consultation, Ofcom's investigation officers need access to accurate and up-to-date information about the identity of the user and contact details for a responsible person who may be contacted to give site access and adjust or close down the equipment if necessary. In cases of harmful interference to safety-of-life services this should be cured within 24 hours.

Therefore T-Mobile is concerned that Ofcom is not planning to hold records of licensed equipment and contact details following a trade. Ofcom proposes that it would be sufficient for a band manager to hold the information and to make it available on demand on a 'reasonably timely basis'. The term 'reasonably timely basis' is not clear and should be clarified, but in any event would not ensure harmful interference to safety of life services could be cured within 24 hours

T-Mobile proposes that Ofcom would need to have constant access to the contact details and relevant details following a trade to allow any interference to be investigated and dealt with within the targets published for Ofcom's Field Operations. This can be best carried out by stipulating that the band manager sets up an online database which details all this information. To the extent that the band manager must maintain a database would be no difficulty in ensuring that this was also accessible at any time by Ofcom. There should be regular checks made to ensure it is up-to-date. This will ensure that harmful interference is fixed as soon as possible and Ofcom's investigations officers are not delayed in dealing with it.

### **Maximum duration of Spectrum leases and "Transfer without licence issue"**

T-Mobile does not think that 24 months is an appropriate watershed for these time-limited transfers, with reduced publication and notification requirements. We think that the vast majority of PMSE assignments will be completed within a few days or weeks, while a theatre run may be for 6 months. It follows that there is therefore no reason to extend the waiver so significantly beyond this threshold. We think that 6 months is a much more appropriate maximum duration. Extending these transfers without licence beyond 6 months would make them much more permanent and we feel that it is correct that notification and publication should occur in case there are any competitive issues and to ensure market transparency.

Spectrum is an extremely valuable national resource and it is inappropriate for there to be no transparency as to who are the long-term users of it. This must be considered in the light of Ofcom's proposed duties under the Digital Economies Bill 2010.

### **The need for Ofcom's consent for some licence classes**

Ofcom have stated in paragraph 1.14 that "The need to obtain our consent would still be imposed on a selective basis for individual licence classes for which we considered it necessary and proportionate, but it would no longer be a blanket requirement." We note that Ofcom have not stipulated what licence classes they would still require trading consent for. We would expect Ofcom to consult broadly on this issue as we are sure that owners of different spectrum licences would have very specific reasons why it may be necessary or proportionate to require consent for specific licence classes.

Specifically T-Mobile considers that any trade of sub-1GHz mobile spectrum would definitely require consent from Ofcom, given that the BIS consultation proposes that "Ofcom will be required to carry out a competition assessment where an operator increases its holdings of sub-1GHz spectrum"<sup>1</sup>. Given this and the attention that has been devoted to spectrum in the Digital Britain process, it is clear that the assurance that consent would be required if considered "necessary and proportionate" provides inadequate reassurance of due process and a degree of consumer protection commensurate with the significance of this spectrum. An ex-post competition assessment would take some time to conclude and may itself not be final given the importance parties attach to this issue. An uncertain reassurance of an indeterminate and time consuming process is inadequate.

It is therefore important that Ofcom clarifies this issue before revising the rules concerning spectrum trading so that everyone is clear about which trades require consent and plan accordingly. It would be inappropriate for Ofcom to decide at a later date that a specific trade requires consent.

### **Powers of licence variation or revocation**

In situations where Ofcom does not require consent for a trade, Ofcom needs to be firm in its powers of licence variation or revocation. We understand that normally a regulator would act conservatively in this regard given that the use of these powers would cause disruption. However given that currently such trades would not have been given consent for, it is incumbent on Ofcom dealing with these in the same way from an ex-post perspective.

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<sup>1</sup> BIS, A consultation on a direction to Ofcom to implement the wireless radio spectrum modernisation programme, October 2009 para 3.41