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AMTA Submission

Australian Communications & Media Authority

Remaking the radiocommunications trading rules determination - consultation 33/2022



About AMTA

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile network operators and service providers, handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.



Executive Summary

AMTA thanks the ACMA for the opportunity to provide comments on the ACMA's proposal to remake the Trading Rules Determination (the "**Determination**"), contained in ACMA consultation IFC 37/2022.

AMTA supports the ACMA's proposal to remake the Determination. The Determination is an important instrument that sets the ground rules for spectrum licensees to trade spectrum. The ability to trade spectrum is an essential tool to enable the defragmentation of spectrum, thereby allowing spectrum to attain its highest value use, so it is necessary and important that this instrument is remade.

To this end, the Determination should be designed on the basis that market-based spectrum trading remains the most efficient means of realising the highest value use of spectrum. AMTA considers that the 2012 Determination has been largely fit for this purpose and any amendments to the Determination should maintain its light touch regulatory approach. This reflects key recommendations of the Spectrum Review which informed the 2020 amendments to the Radiocommunications Act 1992 (the Act).¹

That said, ensuring spectrum moves towards its highest value use cannot always be delivered solely through the market. For example, trading of spectrum licences may be hindered where there is fragmentation between spectrum lots, either in relation to frequency or geographic area. In such circumstances, AMTA suggests that the ACMA consider what role it may play in facilitating or supporting market led defragmentation and notes a number of new functions and powers under the Act that may be useful to the ACMA in this regard.

AMTA considers there are some important clarifications required before the instrument is remade in relation to the level of permission within the ACMA required to approve trades that violate the Minimum Contiguous Bandwidth (MCB) rule. We also recommend permission at the ACMA Authority level is required for trades of geographic area(s) that are a subset of the existing licence boundaries, as this could result in undue fragmentation of the band.

¹ Page 3 of the Explanatory Memorandum to the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 states "Given technological change and increasing demands for spectrum the current legislative framework (the Radiocommunications Act 1992) should be replaced by arrangements that provide for greater market-based activity, including by increasing the opportunity for spectrum holders to share and trade spectrum and simplify regulatory structures, streamline regulatory processes and clarify the role of Government."

Efficient and effective

The ACMA intends to remake the Determination with only a minimum of changes, described in the consultation paper as “... *minor administrative and structural changes* ...”.² AMTA strongly supports remaking the Determination before it sunsets, as the Determination is an important instrument that sets the ground rules for spectrum licensees to trade spectrum, which in turn is essential for enabling spectrum to reach its highest value use.

AMTA considers that the Determination should be drafted in a manner that reflects a light touch regulatory approach, which avoids undue administrative burden which may hinder an efficient and effective secondary trading market. In this context, AMTA considers the Draft 2022 Determination is efficient, and that overall, the changes proposed by the ACMA are of an administrative and/or structural nature, such they do not substantively change the intent or application of rules for trading spectrum-licensed spectrum.

AMTA also appreciates that a further purpose of the Determination can be to promote transparency in spectrum ownership which in turn can assist the ACMA in its spectrum management functions, including the resolution of spectrum related disputes. In this context, the ACMA’s suggested amendments under draft section 8 of the Determination to require further information from spectrum licensees appear to be reasonable and proportionate to the requirements of section 86 of the Radiocommunications Act.

Similarly, AMTA acknowledge the benefits to spectrum management to be gained from ACMA’s proposal to refuse to register details of transmitters where a certificate does not accompany information provided under section 8.3 However, AMTA notes that compliance with such a requirement to obtain new certificates to complete all trades will impose administrative and resource costs on spectrum licensees that the ACMA must carefully consider in finalising the Determination. While AMTA is generally supportive of the ACMA’s proposed approach, we consider there are aspects of the Draft 2022 Determination that could be tightened, and addressing these issues will improve its effectiveness.

Minimum contiguous bandwidth

AMTA supports the ACMA's proposal to replace the list of MCBs in specified bands in Schedule 1 of the existing Determination with a standard MCB of 5 MHz across all spectrum-licensed band, accompanied by a list of exceptions for certain bands where a bespoke MCB other than 5 MHz exists. AMTA also supports the MCBs currently specified for each of the IMT bands and welcomes confirmation of a 10 MHz MCB for the 3.4 and 3.7 GHz bands.

However, AMTA is concerned that the drafting of the 2022 Determination is unclear on the approval threshold for authorising trades, and we request further clarity is provided in the Determination. Previous experience by AMTA members shows that any trade resulting in a

² Consultation paper, top of p.5.

³ Note 1 under draft section 8(2) of the draft Determination

licensee with an assignment below the MCB, (i.e., a trade that triggers clause 10 of the Determination), requires approval by the ACMA Authority.

In the interests of efficient decision-making and consistent with a light touch regulatory approach, AMTA considers that the Authority should generally only need to approve trades that undermine defragmentation objectives. This may for example be where a trade results in holdings of less than the minimum contiguous bandwidth or non-alignment of geographic areas for spectrum lots.

For example, it may create undue administrative burden and delay spectrum trades to require the ACMA Authority to permit all trades that result in holdings below the MCB, given management of the MCB is ostensibly an administrative matter. It is AMTA's view that all assignments that result in less than the MCB should, in the first instance, be delegated to ACMA staff for review, and where ACMA staff determine that the trade will result in defragmentation of the band, be approved by ACMA staff without requiring approval from the ACMA Authority. AMTA considers that Authority involvement should only occur where ACMA staff are concerned the trade would cause fragmentation of the band, at which point, a strong justification for such an action would be required, and it would be entirely appropriate for the ACMA Authority to be involved in the decision-making process.

We recommend trades that result in a licensee having a holding below the MCB should be considered on a "practical outcomes" basis by ACMA staff, included or elaborated on in explanatory documentation to the Determination. Practical matters that should be considered include:

- Inclusion of different licence types (apparatus and spectrum) in the determination of the contiguous bandwidth held by the licensee. For example, a trade that results in a spectrum licence immediately adjacent to an AWL or an apparatus licence held by the same licensee (or same parent company) should count as contiguous spectrum, because the practical effect is that the licensee can access all the spectrum under the different licence types. In this way, the contiguous holding of the licensee would likely not be less than the MCB, thereby not triggering clause 10 of the determination. In such instances, spectrum should ideally be capable of being used for the same service.
- Licensees with different ABNs should not be treated as "different licensees" where they are owned by the same parent entity. In this case, adjoining spectrum holdings that might result from a trade of spectrum less than the MCB would count as a "single assignment", even if the two licensees are different but ultimately owned by the same entity.

Practical considerations such as these by ACMA staff would reduce unnecessary bureaucracy and reduce red tape and reduce cost to the ACMA and industry. We consider there is one clarification that should be made to the determination:

- Clause 10, which deals with granting permission for an assignment less than the minimum contiguous bandwidth, should be amended to allow for some permissions to be approved by ACMA staff, in line with the practical considerations we have outlined above. Where the resultant assignment is less than the MCB, but it serves to defragment the band, ACMA staff should be able to provide approval for the trade. Only where the resultant assignment is below the MCB and the trade worsens fragmentation in the band, should the ACMA Authority be required to authorise the trade.

Regarding timeframes, while AMTA welcomes the clarity provided by the inclusion of timeframes for the ACMA's decision-making under section 10, we suggest that clear reference be made to the need for the ACMA to consider expediting its decision where the circumstances of the case may warrant it. This may be due to financial or operational factors or priorities faced by one of the parties trading the spectrum which may demand a faster decision than the potential 90 days currently proposed (for an initial decision), plus any review or appeal process timeframes.

Alignment with existing licence geography

One matter that is not canvassed in the Consultation Paper is the geographic boundaries of an area that may be traded. However, the draft Determination specifically includes the ability to trade only a portion of the geographic area, as articulated in clause 8(2)(d), where it is possible to trade a little as a single Standard Trading Unit, which is an HCIS Level 1 unit.

AMTA and its members are concerned that allowing trades of geographic area(s) that are a subset of the existing licence boundaries for a geographic area could result in undue fragmentation of the band. However, as with our explanation of frequency trades that could result in assignments less than the MCB, there may be good, pragmatic reasons why trading of a geography that doesn't align with the licence boundaries as described in the original licence when it was sold may be prudent. Indeed, such trades may help realise defragmentation objectives. One example would be attempting to align geographic boundaries between 3.4 GHz to 3.7 GHz.

As with our request above in relation to the delegation within the ACMA required to approve trades that could result in a licensee with an assignment below the MCB, we consider the same approach should be applied to trades where the geography of the traded spectrum does not match the boundaries of the initial licence. Where it can be demonstrated that such a trade facilitates defragmentation of the band, permission should be granted by ACMA staff without a requirement for ACMA Authority approval. However, if a trade would result in increased or undue fragmentation, a strong justification for such an action should be required, and it would be entirely appropriate for the ACMA Authority to be involved in the decision-making process.

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