



TELSTRA CORPORATION LIMITED

PROPOSAL TO REMAKE THE RADIOCOMMUNICATIONS (TRADING RULES FOR SPECTRUM LICENCES) DETERMINATION 2012

Public submission

16 November 2022



SUMMARY

Telstra supports the Australian Communications and Media Authority's proposal to remake the Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012 (**the Existing Determination**), with the new instrument to be called the Radiocommunications (Trading Rules for Spectrum Licences) Determination 2022 (**the Proposed Determination**). However, we believe some changes are necessary to ensure the Proposed Determination meets its stated policy objectives.

We understand the intention of the Proposed Determination is to facilitate efficient use of the spectrum through setting standard trading units, minimum contiguous bandwidth (**MCB**) limits and to promote secondary trading between licensees within a regulatory framework that facilitates efficient spectrum use.

Provision should be made for delegated decision making of trades that may violate the MCB

The proposed determination should allow for delegated decision making. Trades that potentially violate the MCB limits should be a delegated decision to ACMA staff. It is unnecessarily bureaucratic and inflexible to require these decisions to be made by the Authority, especially in cases where the violation is technical in nature.

Practical outcomes should override technicalities

When considering applications which may technically violate MCB limits, consideration to the practical outcome of the trade should take precedence over technicalities:

- Licence types other than spectrum licences held by applicants in the same band should be considered when assessing the MCB limit.
- Licences of entities affiliated with, or controlled by, applicants should be considered when assessing the MCB limit.

Timing restrictions should not be added to the determination

The Proposed Determination should be reviewed to remove unnecessary time restrictions. For example, clause 10(7) of the proposed determination should be removed. The clause places an unnecessary restriction on when a trade can occur following a decision by the ACMA to allow a trade.

Trades that seek to alter geographical boundaries should be scrutinised

The ACMA should also consider whether—in addition to standard trading units and MCB limits—there need to be limits on the geographic area that can be traded. Allowing significant changes to geographic boundaries can result in long-term spectrum management issues and prevent defragmentation efforts. While some may view this as unfairly limiting the commercial rights of a spectrum licensee, we believe this right needs to be balanced against the long-term impacts to efficient spectrum management and use.



Answers to specific questions

Question 1: Is the determination still required? Why or why not?

Yes. Telstra supports remaking of the Determination, subject to the amendments we have suggested. Our proposed changes would enable an appropriate level of guidance to facilitate the efficient use of spectrum and to promote secondary trading.

Question 2: Is the determination operating effectively and efficiently?

Remaking the determination provides an opportunity to improve its effectiveness.

[c-i-c]:

- [c-i-c].
- [c-i-c].

[c-i-c].

[c-i-c].

Question 3: Are the proposed changes to Schedule 1 appropriate?

Telstra supports the proposed changes to Schedule 1, if the other changes we have suggested to the Proposed Determination are adopted.

Question 4: Are the proposed amendments appropriate? Are additional amendments required?

Assessing the MCB limits

[c-i-c], we strongly recommend that:

- Trades that potentially violate the MCB requirement should be a delegated decision to ACMA staff. It is unnecessarily bureaucratic and inflexible to require the Authority to make that decision, especially in cases where the violation is technical in nature.
- The MCB limit should consider any frequency adjacent apparatus or Area Wide Licences, and not just spectrum licences. In other words, the practical outcome of the trade should be considered: if the licensee (and any related bodies corporate) hold a contiguous spectrum quantity in that area that is larger than the MCB, the trade should be approved.
- The MCB requirement should consider the ultimate corporate owners of the licences, and not just take a strictly ABN view as to who the holder of the licence is. A trade that results in a contiguous holding owned by related body corporates (e.g. a company, and that company's subsidiaries) should not be considered as violating the MCB limit.

Removing unnecessary timing restrictions

The Proposed Determination should be reviewed to remove unnecessary time restrictions. For example, clause 10(7) of the proposed determination should be removed. The clause places an unnecessary restriction



on when a trade can occur following a decision by the ACMA to allow a trade which will result in less than the minimum contiguous bandwidth.

There is no restriction in the existing instrument and the consultation paper does not provide any reason as to why this timing has been prescribed in the proposed determination. The clause serves to restrict the ACMA's discretion and is contrary to the purpose of the recent amendments to the Act which were stated as including to "remove unnecessary prescription and legislative barriers, add flexibility and more clearly delineate the roles of the minister and the regulator in spectrum allocation processes".

The effect of the clause is to limit the time in which a trade can take place to between the 45 and 90 days after the ACMA has granted permission under clause 6 (a). The clause would delay giving effect to private contractual arrangements and the rationale for such a delay is difficult to understand when the ACMA will have, by then, already approved the trade.

Changes to geographic boundaries

In addition, the ACMA should consider whether there need to be limits on the minimum geographic area that can be traded. This is particularly the case where existing licences are to be geographically subdivided as a consequence of the trade. We believe there should be constraints on the ability of licensees to create new spectrum licence boundaries that are completely different to the original spectrum licence boundaries set when that spectrum was first allocated. Allowing the reconfiguration of geographic boundaries can lead to long-term spectrum management issues.

While some may view this as unfairly limiting the commercial rights of a spectrum licensee, we believe this right needs to be balanced against the long-term impacts to efficient spectrum management and use. For example, the Unwired/Austar 2.3 GHz & 3.4 GHz spectrum swap in 2005 has created significant spectrum management issues. By creating entirely new metro-regional spectrum boundaries that in many cases bear no resemblance to the original licence boundaries, the 3.4-3.7 GHz band is a geographically fragmented mess, creating problems ranging from difficulties in applying auction allocation limits through to poor spectrum utility where a licensee holds tiny slivers of geography, and debates over where the geographic licence boundaries should be in future spectrum allocations. It has also created a barrier to spectrum trading and defragmentation of the band because so many geographic boundaries across this band are now inconsistent.

Licensees who wish to subdivide licences or create new geographic boundaries that differ from historical boundaries for that band should be required to justify why this is essential. Where geographic boundaries are being adjusted, we believe it is appropriate that the ACMA scrutinise these trades. The long-term spectrum management issues that can result from changes to geographical boundaries make the ACMA the appropriate decision maker.