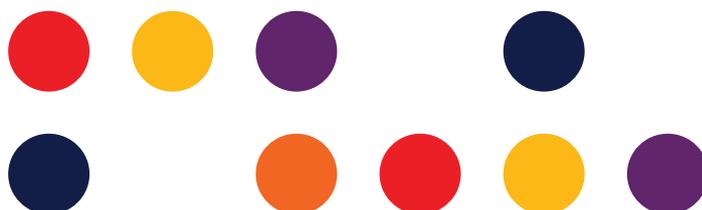


Approach to expiring spectrum licences

ACMA

August 2023

Public submission



A Introduction

TPG Telecom welcomes the opportunity to respond to the ACMA's Consultation Paper in relation to its proposed approach to expiring spectrum licences, issued in May 2023 (**Consultation Paper**). TPG Telecom appreciates the ACMA's early consultation on its proposed process for considering arrangements for expiring spectrum licences. The renewal of spectrum licences is a key priority for TPG Telecom to ensure we can continue to provide critical mobile services into the future. The delivery of faster, better, and more affordable connectivity services for consumers is critical to maintaining and growing the Australian digital economy, improving productivity, and supporting digital inclusion.

TPG Telecom supports the AMTA submissions to the same Consultation Paper and makes the following additional comments.

Amendments to the *Radiocommunications Act 1992* (the **Act**) in 2020 provided an increased level of regulatory discretion for the ACMA in terms of its role in spectrum management activities and its ability to determine appropriate spectrum licensing arrangements for different spectrum bands. While we appreciate the need for this additional flexibility, we believe this should be matched with increased transparency and predictability around decision-making. This will ensure the wider discretion afforded under the Act does not undermine the certainty required for network investment decisions.

The timing of processes and decisions is critical to providing certainty. Given the long duration of spectrum planning processes and the timeframes for network investment decision-making, certainty of spectrum access as early as possible is crucial to assist with investment certainty, facilitate the continuity of critical services for consumers and support the sustainability of the mobile industry. A core aspect of certainty is reasonable and efficient pricing for spectrum access.

An appropriate framework is essential because of the financial and operational value of the assets at stake. In an ideal expiring spectrum licence renewal process, an MNO should have reasonable confidence on the likely outcome of a public interest assessment well before the renewal application period. This would promote the long-term public benefit by encouraging economically efficient use of, and investment in, spectrum. However, the proposed criteria and process do not provide this regulatory certainty. Instead, they appear to afford significant discretion to the ACMA regarding the interpretation and application of the proposed public interest criteria. This could have a chilling effect on investment toward the end of a licence term, with that chilling effect spreading to investments in complementary licences.

The proposed process does not factor in potential risk of delay. The assessment of the public interest criteria and setting access charges could take much longer than envisaged by the ACMA, particularly given the number of bands involved. In this context, the vagueness of many public interest criteria and the scarcity of information on price could contribute to delays in the ACMA's assessment process. It is imperative that the ACMA design the public interest criteria with consideration to the length of time required to assess each criterion, particularly for any criterion where licensees might have significant discretion over the inputs they provide to the ACMA to demonstrate how they meet that criterion.

At present, TPG Telecom is concerned the ACMA's proposed process creates too much uncertainty for licensees. Specifically, the proposed process loads the licensee's activity toward the end of the process which means licensees might not have certainty of pricing until late in 2025 or early 2026. Moreover, depending on how the ACMA's process and public interest criteria evolve, licensees may not have certainty on renewal outcomes at the time a renewal application is made. We are particularly

concerned that a process with the potential for significant variance in outcomes will not be conducive to efficient investments being made during the prolonged period of spectrum licences expiring between 2028 and 2032.

The Consultation Paper indicates pricing will be revealed in Stage 3 (Q4 2024), however this is too late in the process. The ACMA has not articulated a methodology for determining the prices revealed in Stage 3. The ACMA's proposed approach does not reflect best practice. An MNO should understand how prices will be set and be consulted on the methodology and inputs early in the process (ideally early in Stage 2). However, this section of the Consultation Paper focusses more on secondary considerations related to adjustments to price (i.e. premiums or discounts) than to discussing how prices will be set. The lack of focus on the methodology for setting spectrum prices is extremely concerning given this is an area of significant uncertainty.

B Scope and application of public interest test

Scope of public interest test – licence, band or class of services?

The previous consideration of expiring spectrum licences considered a 'class of services'. In 2012, the then-Minister for Communications determined that mobile voice and data communication services in the 850, 1800 and 2100 MHz bands, and wireless broadband services in the 2300 and 3400 MHz bands, were a class of services "for which the reissuing spectrum licences to the same licensees would be in the public interest". The public interest test undertaken previously by the Minister was applied to the class of services across an MNO's entire holdings. While there were distinctions between bands, these were relatively minor.

Once the Minister made the determination, the ACMA only had to consider whether "the licence was used in the provision of a service included in a class of services" specified in the determination".¹ The determination of "use" was minimal (i.e. a single transmitter operating in a licence was considered "use").

In comparison, the Act now requires an assessment of the public interest on a per licence basis, reflecting sections 77A, 77B and 77C, which replaced section 82. These provisions empower the applicant to apply to renew the licence, however the ACMA cannot issue a new licence that is 10 years or longer unless it is satisfied that is in the public interest to do so.

However, the Consultation Paper seems to veer between a band-based assessment of the public interest test to renew licences from a class of services (largely carried out in Stage 2) and a licence-based assessment of the public interest undertaken in Stage 4.

The ACMA's proposed approach is considerably more work than the Government undertook in the previous expiring spectrum licence process. The Government relied heavily on MNOs to demonstrate renewal of licences for the two classes of services noted above was in the public interest. The ACMA is proposing to conduct this assessment internally in much the same way it prepares individual bands for reallocation. This will be a considerable amount of work for the ACMA to undertake and raises the prospect that the proposed timelines will not be met.

¹ Under then section 82(1)(a) of the Act. Section 82 was repealed under modernisation reforms to the Act in 2020.

Point-in-time and backward-looking evidence should be considered

TPG Telecom suggests the public interest criteria should be defined by reference to point-in-time and backward-looking evidence, rather than forward-looking evidence. The former are more likely to be tangible and transparent, whereas the latter could invite a high degree of unnecessary speculation into the ACMA's assessment.

An example of a backward-looking criterion is one that focuses on past investment and innovation by considering the number of sites deployed and how frequently these sites are upgraded with emerging technologies. e.g., features such as beam-forming or newer generations of technology such as the move from LTE to New Radio (NR).

An example of a point-in-time criterion is determining whether there is an excess concentration of spectrum holdings. Such an assessment could involve consideration of the spectrum available to the industry, a threshold for determining the level at which excess concentration occurs and, potentially, determination of the minimum viable amount of spectrum an MNO requires.

An example of a forward-looking approach is the promotion of investment and innovation. To demonstrate this criterion, an applicant would have to speculate on investment plans five, ten, fifteen years, and potentially up to 20 years, into the future. Forward-looking criteria could result in the ACMA making its assessment based on plans rather than tangible actions. These types of assessments lack transparency, are vulnerable to real or perceived bias, encourage speculative claims by applicants and typically involve significant time and regulatory resources for assessments to be undertaken.

Point-in-time and backward-looking criteria are transparent and tangible. Well-defined point-in-time and backward-looking criteria will be easier for the ACMA to implement and more predictable for licensees. Point-in-time and backward-looking may also have better predictive qualities than speculative assertions about a business' plans many years into the future (particularly in circumstances where future technologies may not have been commercially developed). The ACMA should endeavour to construct the public interest criteria that maximise the information it gathers from backward-looking and point-in-time estimates reduce its reliance on speculative forward-looking criteria.

C Public interest criteria

Criterion 1: Facilitates efficiency

TPG Telecom supports the "facilitates efficiency" criteria.

The reference to efficiency explicitly recognises section 3(a) of the Act, which requires the ACMA to manage spectrum in a manner that "facilitates the efficient planning, allocation and use of the spectrum".

The ACMA have cited three concepts – productive, allocative and dynamic efficiency – which will inform its decision on whether the efficiency criterion is met. The ACMA should not duplicate assessments it has previously undertaken, rather it should determine whether any new uses have emerged that would mean the primary or secondary uses no longer maximise the long-term public benefit. It may also wish to consider whether there has been a change in consumer demand or technologies that warrant a change to the ACMA's previous assessment. It is likely such an assessment would only need to be undertaken once at a band level rather than for every individual licence within the band.

When the ACMA is making an assessment about whether it is in the public interest to renew an individual licence, it should only consider whether the licensee is currently using the spectrum to deliver the primary service or an identified secondary service. TPG Telecom believes the scale of use should not be considered when the ACMA makes its assessment of this criteria. The ACMA should not include scale-related renewal requirements as “facilitating efficient use” does not require all parts of the licensed spectrum to be used. Currently some of its language in this section of the Consultation Paper appears targeted at determining what constitutes “efficient use”. We do not consider this latter emphasis to be consistent with the object of the Act and, as such, the Consultation Paper’s emphasis on “efficient use” is misplaced.

Historically, the ACMA has primarily targeted dynamic efficiency by improving the technology neutrality of licences. Specifically, it has achieved this by relaxing licence conditions to enable alternative uses for the licence outside the primary envisaged use. Like allocative efficiency, the ACMA have effectively determined the appropriate level of ‘dynamic efficiency’ for a licence when it reallocated the band.

Accordingly, any new assessment would only need to consider whether a change to the ACMA’s previous assessment is required. If, the use case is feasible but not the one originally envisaged by the ACMA, as is the case with the spectrum held by the railways, then the ACMA should be predisposed to renewing the licence and letting the secondary market determine the efficiency of the allocation within the band.

The concepts of productive and technical efficiency consider whether the capacity of spectrum is maximised. These concepts should include an assessment of the contiguity of licences in a band and the use of the spectrum by individual licensees. As part of assessing this criterion, the ACMA should acknowledge frequency fragmentation of spectrum holdings within a band. Fragmentation, when combined with competitive factors that deter trading or frequency swaps, may prevent the ACMA from “facilitating efficiency” through licence renewal. In such circumstances, the ACMA may wish to consider active steps at renewal (e.g., varying core conditions) to improve the contiguity of holdings within a band. This is consistent with facilitating efficiency (and promoting downstream competition).

The Consultation Paper states ‘reviewing spectrum planning arrangements in any band is a key step to ensuring arrangements continue to support optimal use’ (page 9-10). We assume the ACMA has intentionally referred to ‘optimal use’ rather than ‘highest value use’. If this is the case, then we encourage the ACMA to provide further guidance as to how the ACMA considers optimal use to differ to highest value use for the purposes of the expiring spectrum licences. Regardless of whether optimal use or highest value use is adopted, TPG Telecom believes renewal of our spectrum licences would satisfy this criterion.

Criterion 2: Promotes investment and innovation

The “promotes investment and innovation” criterion should be combined with criterion 1 or criterion 5. If the ACMA retain this criterion as a stand-alone criterion, it should be backward-looking rather than forward-looking, with past behaviour taken as a likely indicator of future behaviour. It should not require an operator to lodge speculative information about investment plans.

A separate criterion for investment and innovation is not warranted, and a criterion that ‘promotes investment and innovation’ may be contrary to the public interest if it encourages investments that are not economically efficient. The ACMA describes investment and innovation as important because it promotes the “public benefit by enabling the spectrum to be put to **efficient use**” (bold added for emphasis) (Consultation Paper, page 19). Investment and innovation are a means to achieving

criterion 1, they are not an end in themselves.

TPG Telecom has made considerable investments and innovation. Over the past 3 years, TPG Telecom has invested [c-i-c] to upgrade its network to deliver 5G mobile services and home broadband services using fixed wireless access technology. TPG Telecom has worked with its partners to develop innovations such as the 5G Smart Module, which reduce the time towers are off air due to upgrades, reduce time staff are working in heights and increased packaging recycling.

These investments and innovation support the efficient delivery of mobile services to consumers. Mobile services are superior to other technologies as they are proven use case. This does not mean mobile services should be discounted as not innovative.

Moreover, competition, not spectrum licences, provides the incentive for this investment and innovation to occur. A focus on the scale of investment and innovation could have a detrimental impact to competition if it encourages licensees to pursue inefficient investments as part of pursuing licence renewal.

The inclusion of a criteria to promote investment and innovation risks imposing additional obligations on incumbents that were not envisaged, and may have been explicitly rejected, at the time licences were allocated. For instance, the promotion of 'connectivity and coverage' are essentially coverage obligations, and these were not part of the original licence conditions. Coverage obligations should not be introduced in the licence renewal process without explicit policy consideration of whether they are appropriate. We note the potential introduction of such a criterion creates a renewal bias toward large incumbents, predominantly Telstra, who have benefited from considerable Government subsidies to extend or upgrade their network. This is neither fair nor reasonable.

A requirement to provide investment plans at least two years before licence expiry is unrealistic. In particular, the requirement may not coincide with ordinary business investment, or technology cycles, thereby making it more difficult for some MNOs to provide a clear view on their medium-term investment plans. This could force MNOs to provide investment plans that are overly speculative by, for instance, including technologies where a roadmap has not yet been finalised by a vendor or by referring to technologies that are expected but not yet commercialised. It may also introduce biases, whereby some vendors might have an incentive to develop purpose-specific technology roadmaps to aid MNOs in securing licence renewal. A vendor's roadmap may not reflect the actual timeline or evolution of a vendor's products. In these circumstances, it would be the difficult for the ACMA to determine what weight it should ascribe to such vendor roadmaps.

There is no credible way for the ACMA to assess future investment plans to determine whether this criterion is met. Even if operators were able to create detailed investment plans, the ACMA will not be able to assess the veracity of the investment plans at the time it needs to make its decision about licence renewal. Moreover, licence holders would also not be bound by such investment plans. As such, the ACMA could make a licence renewal decision where the information it relies on for the decision under this criterion is subsequently shown to be invalid, yet the ACMA's decision cannot be reversed.

The ACMA may have decided to include a separate criterion regarding investment and innovation due to the Government's Statement of Expectations, which refers to 'promoting investment, innovation and the adoption of new and emerging technologies, while continuing to safeguard the interests of

consumers and small businesses'.² Primacy should always be given to the object of the Act, particularly given the Statement of Expectations has no legislative force. This would support combining this criterion with criterion 1 or criterion 5.

Notwithstanding, the Government's Statement of Expectations refers to 'promoting the long-term public interest derived from spectrum, including the benefits of technological developments that improve spectrum utilisation and efficiency.' Where the ACMA is making decisions specifically related to spectrum, it should appropriately defer to parts of the Statement of Expectations which refer to spectrum, rather than introducing additional criterion reflecting other points which could be achieved, or have been achieved, through other ACMA decision processes (e.g. the allocation of area-wide licenses).

Criterion 3: Enhances competition

TPG Telecom is concerned the competition criterion is ill-defined and potentially misguided. This criterion attempts to cast the competition language in a positive frame when it is the avoidance of anti-competitive outcomes that is the most critical issue.

The issue with the proposed competition criterion can be illustrated through an example. For instance, consider a MNO with a national 2x40 MHz holding in the 2.5 GHz band and market leadership in mobile services. There might be a small, potentially negligible, adverse impact on downstream competition from renewing the MNO's 2.5 GHz licences compared to a counterfactual of refusing to renew these licences. In this case, renewal would not *enhance* competition, however if the MNO's competitors had strong holdings in the 1800 and 2100 MHz bands, it is not clear that any specific competition issues arise from the renewal of said licence. That is, renewal is not likely to lead to anti-competitive outcomes in downstream markets.

The ACMA should change the emphasis of the competition criterion to focus on whether renewal might cause a long-term detriment to competition. This enables the ACMA to consider two aspects of competition:

- has spectrum been acquired and not used and, if so, does that action deny that spectrum's use by a potential competitor in a manner that adversely impacts downstream competition; and
- does a licensee have an excess concentration in a particular category of spectrum and, if so, does this have the potential to adversely impact competition in downstream markets.

[c-i-c]

Criterion 4: Balances public benefits and impacts

The "balances public benefits and impacts" criterion is unnecessary. The criterion is vague and duplicates criterion 1. It is unclear if the intent of this criterion is to focus on special circumstances for certain types of use cases, or whether the intent is to establish a new version of the Total Welfare Standard previously used by the ACMA to assist in determining the highest value use for the spectrum.

² ACMA Statement of Expectations issued by the Australian Government dated 7 December 2022.

The Consultation Paper refers to the use of spectrum for rail safety and electronic news gathering, noting that the public interest considerations of these uses 'are likely to be different to those that arise for the spectrum being utilised for wide-area wireless'. This would suggest the intent of the criterion is to focus on special circumstances. However, both these use cases should be addressed under criterion 1 given the secondary market.

The secondary market means if spectrum is renewed by the railways, for instance, it can be traded to more efficient users (if they exist). The ACMA and renewal applicants do not need to speculate about:

- whether such users exist,
- whether the public benefits associated with rail's use of the spectrum warrant renewal, or
- whether special circumstances exist for the particular use case.

The ACMA should consider the lack of trading prior to renewal as a signal that demonstrates the value to the licence holder is greater than the value any prospective buyers place on the licence *after* accounting for transaction costs. In such circumstances, it would only need to consider whether the transaction costs are so prohibitive as to provide reasonable grounds that renewal will not facilitate efficient use of the spectrum (i.e. criterion 1).

If the intent is to replicate aspects of the ACMA's previous, quantitative approach to assessing the public interest (i.e. the Total Welfare Standard) then this should form part of its assessment against criterion 1 or possibly criterion 5 rather than acting as a stand-alone criterion.

Criterion 5: Supports relevant policy objectives

The "supports relevant policy objectives" criterion should be included due to section 3(c) of the Act, which provides for the management of the spectrum in a manner that 'supports the communications policy objectives of the Government'. This criterion will only be relevant for some licences and the degree of relevance will vary. For instance, the Commonwealth Government might insist that certain licences must be renewed, which might compel the ACMA to a specific course of action. Alternatively, the Government might indicate the ACMA should provide MNOs with sufficient spectrum to deliver 5G services. This latter position might create a renewal bias, which could be offset by the other public interest criteria.

In cases where the Government has not provided policy guidance that impacts a particular band or licence, this criterion should be considered irrelevant to the ACMA's decision on the public interest.

If the ACMA decides to retain this criterion, then aspects of criterion 2 could be absorbed in this criterion, given part of that criterion's origin appears to be the Government's Statement of Expectations.

D Additional public interest criterion and considerations

Appropriate rate of return to the community

The ACMA should include an appropriate rate of return to the community criterion in the ACMA's public interest assessment.

An appropriate rate of return of community was a key part of the last expiring spectrum licences process. The then Minister for Communications stressed that an appropriate rate of return to the community was the most important criteria for his assessment of the public interest. This criterion was

ultimately used to set a unit price (i.e., \$/MHz/pop) for each band in the previous expiring spectrum licences process.

While section 77C(2) of the Act indicates the ACMA does not have to renew a licence without the applicant paying the spectrum access charge, this is a different concept to determining whether the level of the spectrum access charge is sufficient to provide an appropriate rate of return to the community. As such, the existence of section 77C(2) should not prevent the addition of a public interest criterion related to price.

Currently, it is unclear how the ACMA will set prices (see **Section F**) and there is a risk that it sets prices in a manner that does not reflect community expectations. If the ACMA sets prices too low, then the Australian Government might recoup lower revenue from the sale of spectrum licences than is appropriate. Low prices could encourage MNOs to use spectrum inefficiently, by, for instance, renewing more spectrum than they require to deny its use to competitors. By contrast, high prices have the opposite effect causing MNOs to forego spectrum they require, which potentially has deleterious impacts on competition.

Compliance with core conditions and tax requirements

Governance-related provisions such as outstanding spectrum taxes or access charges, and contraventions of licence conditions, are captured in section 77C(7) of the Act. As such, it is not necessary to include a requirement for a public interest criterion to cover these points as the ACMA must already have regard to these matters.

E Proposed expiring spectrum licence process

There are several deficiencies with the proposed process:

1. **Significant gap between stage 1 and stage 2:** There is a gap of at least 6 months between stage 1 and stage 2, without any reason provided for this significant gap.
2. **Stage two is long and lacks focus:** Stage 2 takes around a year and is the longest stage of the renewal process. However, the ACMA have indicated it only plans to refine and communicate the steps of the expiring spectrum licence process and confirm the assessment framework during this stage. This seems an inadequate level of output given the time required for this stage.
3. **Process for setting spectrum access charges is not defined:** Depending on the approach taken by the ACMA, the process for setting access charges could be complex and require significant resources. This is not reflected in the ACMA's consideration of each stage. The process for setting spectrum access charges only receives cursory mention in Stage 3.
4. **Stage 4 occurs too late:** The ACMA intends to outline its preferred views and policy on planning, licensing, and pricing related to the relevant spectrum and licences from 2025. The first tranche of spectrum licences in the 850 MHz and 1800 MHz bands expire on 18 June 2026. If Stage 4 does not occur until early 2025, this will provide less than 18 months certainty regarding crucial inputs.

The ACMA appears to have created a process more akin to replanning bands than to licence renewals. This is not the correct approach. The allocation of several bands (e.g., 700, 850, 900 and 3500 MHz) has recently been considered by the ACMA. There is no need to reconsider this

information in Stages 2 and 3.

The proposed process is backloaded for licensees. It does not provide regulatory certainty until late in the process. The proposed timeline and consequent lack of certainty could have a chilling effect on investment over the next two and a half years, particularly given the breadth of the ACMA's proposals.

Licensees ought to have time to react to the process once it is established. Under the proposed process licensees, particularly those with licences expiring in 2028, may not have time to develop new investment strategies to meet the public interest if they believe they are at risk of an adverse outcome from the ACMA. **[c-i-c]**

TPG Telecoms supports the ACMA amending its proposed approach, taking into consideration the suggested amendments and comments in the AMTA submission in relation to key deliverables/milestones and target delivery dates. As noted in the AMTA submission, TPG Telecom would welcome the opportunity to review the schedule and its elements further with the ACMA.

Given TPG Telecom's views in relation to the concept of "use" (discussed below), it may not be necessary for the ACMA's deliverables to include matters related to this concept.

F Pricing certainty should be provided early in the process

The information on pricing in the Consultation Paper is inadequate given the importance of this matter. The magnitude of spectrum access charges is one of the most critical aspects to licence renewal for licensees.

Prices should be determined as early in the process as possible. The ACMA should undertake a transparent, detailed modelling exercise during Stage 2. The modelling was not transparent in the previous expiring spectrum licences process, which led to some interesting outcomes (e.g., the 4G-ready 1800 MHz spectrum was valued below the 3G 2100 MHz spectrum). Transparency and consultation will avoid these types of issues and deliver a sensible price-setting process.

There are several design choices and parameters required in building a pricing model. These design choices and parameters will have significant influence on price outputs. These choices can significantly impact the output hence it is essential that the ACMA consult on the modelling approach and its modelled outcomes prior to finalising its decision.

A conservative approach is required for expiring spectrum licences. This is particularly important due to the risk of regulatory error in setting prices where there are asymmetric economic impacts from an inappropriately set price – specifically, setting the price too high is much worse than setting the price too low as the latter will result in under-use of the spectrum.

The determination of prices early will also assist providers to make any relevant financing decisions to prepare for payment of fees. This is particularly important given the significant value of the spectrum licences subject to renewal. TPG Telecom strongly supports the ACMA accommodating payment through instalments. The renewal of a substantial number of spectrum licences over 4 years, which could coincide with additional investments in 6G and further spectrum allocations, is a unique circumstance involving significant and simultaneous capital investment. This warrants the ACMA accepting payment through instalments or payment deferrals. If this does not occur, there is a risk of competitive harm by advantaging larger providers who are able to meet all these investment requirements. Large incumbents could potentially receive 'first-mover' advantage over smaller providers with less financial capability, which could harm downstream markets.

G Restricted use of licences

Licences should not be authorised for a restricted purpose where it can be avoided. Such restrictions prevent spectrum moving to more efficient uses through trading on the secondary market.

H The concept of “use”

The discussion on “use” in the Consultation Paper is not consistent with the ACMA’s requirement to focus on ‘facilitating efficient use. “Use” should not be conflated with “facilitating efficient use”. These concepts are different and should be applied in different ways.

The ACMA suggest examining the “use” of licences can enable it to assess whether the existing arrangements are facilitating efficiency. It suggests that examining use is “particularly relevant” in the upcoming expiring spectrum licence process. However, this interpretation is contrary to the basis on which licences were originally sold. Specifically, licences were not sold with coverage obligations or utilisation requirements, and such requirements should not be introduced by implication through the licence renewal process.

A lack of use does not mean that the existing arrangements do not facilitate efficient use. It may simply mean that the level of efficient use is zero for all, or part of the licence, or that the value of the licence arises from the option to use that spectrum in the future as capacity requirements increase. The concept of “facilitating efficient use” reflects the objective of dynamic efficiency. It should be considered through the prism of whether any changes to core conditions can be made to improve the utility of licences without undermining the primary use. It may also entail consideration of whether there are systemic issues that might prevent spectrum trading.

To assess if the existing arrangements are meeting their objective of “facilitating efficient use”, the ACMA should determine:

1. Whether an alternative, higher value, use exists for all or part of the spectrum licence.
2. Can the person(s) with the higher value use access and use the licence with the current core conditions?
3. Can competing uses of the spectrum co-exist or does one or more of the prospective uses require exclusive access?
4. Has the person(s) with the higher value use sought access to the licence either through approaching the incumbent to acquire the licence on the secondary market or through seeking an authorisation from the incumbent for all or part of the spectrum?

I Information gathering

The ACMA has suggested it will gather information during Stage 2 on: an incumbent’s level of use, alternative use-cases, demand for the spectrum, band specific issues or inefficiencies (e.g., fragmentation), market and competition issues and the public interest.

The ACMA’s proposed information gathering may be onerous and lead to the collection of data that is inconsistent between operators due to differences in underlying methodologies. In a context, where some of the information is already in the public domain, available through various ACMA (or ACCC) record-keeping requirements, or available through the Register of Radiocommunications Licences, it

is not clear why the ACMA needs additional information particularly given the high-level nature of the proposed assessment.

The proposed information gathering is ultimately unnecessary during Stage 2. Relevantly:

- Information on use exists on the register or can be gathered when making assessments about individual licences
- Demand for spectrum requires speculation that cannot be verified by the ACMA
- Some band specific issues (e.g., fragmentation) are already in the public domain
- Licensees should not have to make multiple statements about the public interest once the ACMA have determined the criteria

If the ACMA proceeds with its proposed information-gathering arrangements in stage 2, it should provide information on proposed thresholds for service coverage, utilisation and investment levels prior to collecting information. The ACMA should be mindful in how it sets such thresholds. Service coverage and utilisation requirements were not a feature of the original allocation of licences so it is unclear why the ACMA is proposing to introduce these requirements in the renewal context.

We believe it could lead to an inappropriate emphasis on “use” that benefits providers with larger geographic reach or a large number of customers despite those users being heavily subsidised to achieve those outcomes. Renewal arrangements that merely create a bias toward large providers are unlikely to be in the long-term public interest due to the downstream impacts on competition and investment. As previously noted, the appropriate focus for the ACMA is in determining whether a licence “facilitates efficient use” not whether a licence has extensive “use”.