



ACMA's stage 2 consultation on expiring spectrum licences

ACCC submission

June 2024

Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a submission to the Australian Communications and Media Authority's (ACMA) stage 2 consultation on the future arrangements for spectrum licences that are due to expire between 2028 and 2032.

The ACCC is the economy-wide competition regulator responsible for enforcing the *Competition and Consumer Act 2010* (Cth) (CCA). We protect Australian consumers by fostering competitive, efficient, fair and informed Australian markets, including telecommunications markets.

The ACCC is responsible for the economic regulation of certain telecommunications services under Part XIC of the CCA. The ACCC also has a statutory role in providing advice on allocation limits to the ACMA upon request under the *Radiocommunications Act 1992*. To this end, the ACCC works closely with the ACMA to ensure that allocations of spectrum promote competition in relevant downstream markets that rely on spectrum as an essential input.

As noted in the ACCC's submission to the ACMA's initial consultation on its approach to the expiring spectrum licences, the ACCC considers that the expiring spectrum licences process provides the ACMA with an opportunity to facilitate positive changes in the structure of the mobile services market, in assessing what future arrangements will promote the public benefit that end-users derive from the use of spectrum. In particular, the ACCC submitted that the ACMA's process could investigate the possibility of new entry and explore future arrangements that reduce barriers to new entry.

The ACCC is providing the following comments in response to the ACMA's stage 2 consultation paper.

Alternative licence conditions

The Minister for Communications asked the ACMA to develop a considered view on the effectiveness of alternative licence conditions in achieving policy objectives. These include rollout obligations for the purpose of achieving broader coverage, and use-it-or-lose-it and use-it-or-share-it conditions for the purpose of achieving more efficient use of spectrum.¹

The ACCC supports the ACMA exploring these alternative licence conditions in the expiring spectrum licences process. In particular, the ACCC considers that there is merit in assessing whether some form of use-it-or-lose-it provisions could be practically implemented in Australia.

The ACCC understands that the ACMA will examine the current and planned use of spectrum by incumbent licensees in informing its views on the future arrangements of the expiring spectrum licences. The ACCC considers it is likely to be difficult to verify future planned use of spectrum where they are not already being used, and business plans can change due to many factors. Further, incumbent licensees are likely to have an inherent incentive to hold onto unused spectrum rather than trade them, so as to prevent competitors from potentially being able to acquire the spectrum. In these circumstances, the ACCC considers that the imposition of use-it-or-lose-it provisions is likely to lead to more efficient

¹ [Letter from the Minister Rowland to ACMA Chair](#) dated 14 December 2023.

use of the spectrum during the term of the licences than if they are not imposed. The ACCC agrees with the ACMA's initial view that any licence conditions on use should provide flexibility to the licensees to develop innovative approaches to satisfying the requirements and using their licences more broadly.

In addition, the ACCC's Regional Mobile Infrastructure Inquiry heard concerns from regional-focused operators that they do not have access to certain spectrum, such as sub-1 GHz spectrum and that the incumbent licensees are under-utilising this spectrum in regional areas. The ACCC noted in the final report that the ACMA's expiring spectrum licences process could provide an opportunity to consider whether some of this spectrum could be reallocated to smaller, regional-based operators where it is not currently used.²

In this context, the ACMA raised the possibility of transitioning some of the spectrum to apparatus licensing arrangements, which may more readily accommodate the kinds of sharing envisaged in the Minister's letter. However, the ACMA noted that the appropriateness of this would depend on the technical characteristics of the band and its ideal use case.³

The ACCC considers that the sub-1 GHz bands may be currently allocated for its ideal use case, i.e. wide-area mobile broadband deployment, due to its propagation characteristics. However, where there is no current or planned use of the spectrum, reallocating the spectrum to prospective users that have a clear use case, including by transitioning to apparatus licensing, would likely facilitate greater use of the spectrum in these areas. If there is evidence that alternative use cases are better facilitated by apparatus licensing arrangements, the ACCC considers there is merit to explore whether interference management mechanisms can be used to address concerns relating to the use of sub-1 GHz bands for more localised deployments in regional areas.

Declared mobile roaming service

In addition to seeking stakeholders' views on matters relevant to these alternative licence conditions, the ACMA also sought feedback on whether other mechanisms may be suited to achieving these outcomes. The ACMA noted that national roaming arrangements which could be effected by an ACCC declaration to be one of these alternative mechanisms.⁴

The ACCC has the power under Part XIC of the CCA to declare telecommunications services if it is satisfied doing so will promote the long-term interests of end-users.⁵

During 2016 and 2017, the ACCC held a public inquiry about whether to declare a domestic mobile roaming service, which would enable mobile network operators to access the network of another operator outside their own coverage areas.⁶ The ACCC found at the time that declared mobile roaming would not lead to improved coverage for regional Australia. While declared mobile roaming could deliver some benefits by increasing choice of providers in areas where there is limited infrastructure competition, the evidence at the time indicated that it would undermine commercial incentives to invest in expanding and

² ACCC, [Regional Mobile Infrastructure Inquiry: Final Report](#), July 2023, pp. 80–81.

³ ACMA, [Expiring spectrum licences: stage 2 – Information gathering, and views on uses of frequency bands and alternative licence conditions](#), March 2024., p. 33.

⁴ ACMA, [Expiring spectrum licences: stage 2 – Information gathering, and views on uses of frequency bands and alternative licence conditions](#), March 2024, pp. 33–34.

⁵ Section 152AL(3) of the CCA.

⁶ See [ACCC website](#) for information regarding the inquiry.

improving coverage in these areas as doing so would no longer provide any competitive benefit for an operator.

More recently, the ACCC examined how competitive dynamics in the mobile services market are influencing the provision of mobile coverage during the Regional Mobile Infrastructure Inquiry 2022-23. Based on the evidence, the ACCC found that Telstra's enduring competitive advantage in regional areas has the potential to undermine other mobile network operators' incentives to continually invest in expanding coverage into areas where there is currently limited infrastructure competition.⁷ This means consumers in regional and rural Australia and those that value significant coverage in those areas continue to have limited choice in mobile service providers. Evidence available to the ACCC suggests that Telstra has used its network superiority to command premiums for the mobile services it provides to consumers.

However, the underlying economics of mobile network deployment are subject to technological progress. Notably, low-earth orbit satellite technology, which is already being used for mobile backhaul in regional areas, is expected to be used to provide direct-to-mobile services that can augment terrestrial mobile coverage. The ACCC considers the advent of low-earth orbit satellite direct-to-mobile services in Australia has the potential to impact the competitive dynamics in the mobile services market by allowing mobile network operators to extend service coverage beyond their terrestrial network. As the technology is at its infancy, it is unclear to what extent it can provide a viable alternative to terrestrial mobile coverage and bridge the geographic coverage gap between the mobile network operators. It may have the potential to reinvigorate infrastructure-based competition and create incentives to invest in improving terrestrial mobile network in areas where terrestrial coverage is poor.

It is not possible to speculate whether declared mobile roaming would promote the long-term interests of end-users at a given point in time without conducting an inquiry and having regard to evidence. An important but challenging issue to consider in any inquiry is the geographic areas in which a declared mobile roaming service should apply. Ascertaining where it may be economically feasible to have infrastructure competition in mobiles in Australia will be the key to determining this question. Presently, the ACCC considers that any inquiry on this issue would also need to have regard to the development of the low-earth orbit satellite direct-to-mobile services and its likely impact on the market in the short to medium term.

⁷ ACCC, [Regional Mobile Infrastructure Inquiry: Final Report](#), July 2023, p. 79.