TVR/VIL/108
29 August 2013

Shri Arvind Kumar
Advisor – Network, Spectrum and Licensing
The Telecom Regulatory Authority of India
Mahanagar Door Sanchar Bhawan
Jawahar Lal Nehru Marg (Old Minto Road)
New Delhi-110002

Dear Sir,

TRAI Consultation Paper on Valuation and Reserve Price of Spectrum
- Permitting Trading of Spectrum in India

This has reference to the Authority's Press Release No. 63/2013 dated 23rd August 2013 seeking comments/counter comments from the stakeholder on permitting trading of spectrum in India. Please find enclosed our submission on the same.

We hope that our submissions will merit your kind consideration and support.

Kind regards,

Sincerely yours,

T. V. Ramachandran
Resident Director
Regulatory Affairs and Government Relations

Copy to : **Dr. Rahul Khullar, Chairman, TRAI**
: **Dr. Vijayalakshmy K. Gupta, Member, TRAI**
: **Shri R. K. Arnold, Member, TRAI**
: **Prof. Pankaj Chandra, Member, TRAI**
: **Shri Rajeev Agrawal, Secretary, TRAI**
: **Shri Sudhir Gupta, Pr. Advisor, NSL, TRAI**
: **Smt. Anuradha Mitra, Pr. Advisor, FA & IFA, TRAI**
: **Shri Manish Sinha, Advisor (F &EA) TRAI**
: **Shri Amit Mohan Govil, Legal Advisor, TRAI**

Vodafone India Limited
7th Floor, DLF Centre, Sansad Marg,
New Delhi - 110 001. India. T +91 11 2375 3657, F +91 11 2375 3659
Regd. Off.: Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai - 400 013, India
T +91 22 7171 5000, F +91 22 2496 3645, Website: www.vodafone.in

VODAFONE INDIA LIMITED - SUPPLEMENTARY SUBMISSION ON SPECTRUM TRADING

In our response to the consultation on the valuation and reserve price of spectrum we argued that spectrum trading should be introduced and we listed the important implementation issues that would need to be resolved. In this supplementary submission we give our views on the implementation of trading and respond to some of the risks outlined by others.

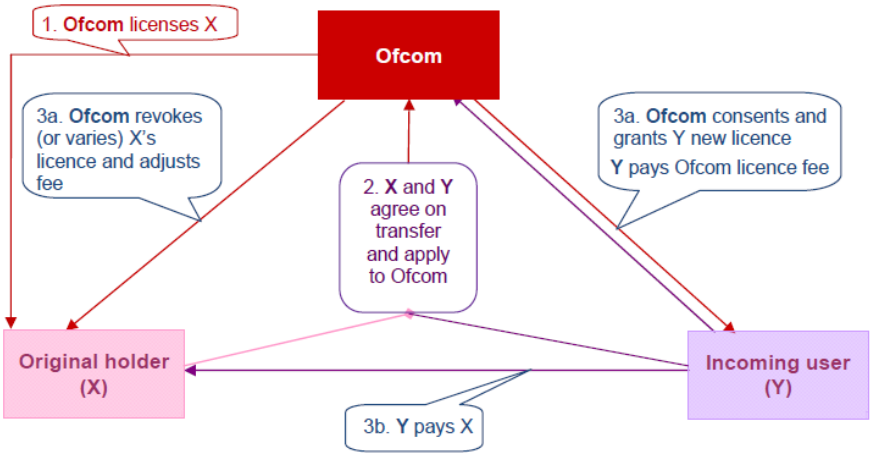
What should be the approval process for trading spectrum? We advocate a light-touch regime. Spectrum trading between operators facilitates the efficient use of spectrum. The absence of trading has meant that large amounts of spectrum in India are underutilised and, as a result, the customers of the 'spectrum-starved' potential buyers suffer a poorer quality of service. However, there is no point in allowing market mechanisms to apply operate, only to undermine their benefits with a long-winded and bureaucratic approvals process. We believe that no approval process is required; both parties would be required only to notify the Department of Telecommunications (DoT) of the trade (details of the parties to the trade, the date of the trade, the quantum of spectrum traded, the frequencies traded and the terms of the trade). The DoT should be given three months to register the trade and issue new spectrum licenses to the seller and buyer. In the meantime, the spectrum can be used by the purchaser who will be liable for spectrum usage charges (SUCs) from the date of the sale agreement. The remaining period of the spectrum license is unchanged. If DoT fails to issue a new license then operators can seek redress through the Courts (in the first instance TDSAT).

The Australian Communications Media Authority (ACMA) requires parties to a trade to notify ACMA of the trade, and a trade is not legally effective until it is entered into the licence register. In Australia, the regulator must confirm the identity of parties to the trade, and confirm that the circumstances of the trade and the characteristics of the licence or licensee comply with any rules in the relevant trading determination. ACMA processes most apparatus licence trades within 10 working days, and in the 2007-08 financial year, 47% were processed within 24 hours. The timeframe for processing spectrum trades is variable, with simple whole-licences processed within a day, while complex geographic disaggregation and re-aggregation may take up to three weeks.

Although Ofcom reserves the right to undertake a 'competition assessment' of spectrum trades on a case-by-case basis it has recognised the dangers of such an approach: "Ofcom is committed to introducing trading through the least administratively burdensome process and with maximum flexibly [sic]...Ofcom is concerned that imposing excessive regulation may deter take-up of trading by slowing down the trading process, making it less transparent and raising uncertainty...The threat of such ex ante check and the complexity it would add to the trading process may deter genuine trades which would otherwise result in increased efficiency and/or promote competition and innovation."[1] The process, in the absence of a competition assessment, is shown in the table below:[2]

[1] Ofcom, Ensuring effective competition following the introduction of spectrum trading, 29 September 2004, Paragraph 3.6

[2] Ofcom: Simplifying spectrum trading Regulatory reform of the spectrum trading process and introduction of spectrum leasing. September 2009.



Who can purchase spectrum? Spectrum can be bought by any legal entity. We see no downside in allowing 'middle-men' to purchase spectrum in the expectation of selling it at a profit later; these kinds of purchasers can bring liquidity to the market for spectrum. To *use* the spectrum the purchaser will require the requisite licenses and be bound by the spectrum caps. The DoT already has adequate sanctions if any operator breaches its license conditions or operates without a license. Entities that buy spectrum in the expectation of subsequently acquiring a license will do so at their own risk.

What SUC regime should apply? As we explained in our response to the consultation, under the escalating SUC regime operators are discouraged from buying spectrum because they have to pay additional SUCs calculated as a percentage of *all* of their AGRs from *all* other services supplied. This means that the more successful the operator, the higher is their current revenue and the more costly it is to purchase spectrum for new technologies and services or to service greater demand from new or existing customers. This observation applies irrespective of whether spectrum is purchased from the government or from another operator. A necessary condition for a successful spectrum trading regime is the move to either a flat-rate percentage SUC charge or a fixed fee per MHz.

How should any gains from trading be treated? If it is a pre-requisite of trading that the seller must have paid a market-discovered price for spectrum there is likely to be little trading. For example, if an operator who has been allocated spectrum under the SLC regime is required to pay the DoT a market related fee in order to trade the spectrum for which it will receive a market-related fee; it is unlikely to sell its spectrum as there will be no incentive to trade. Under these conditions the only spectrum that will be traded is that bought since 2010 (see below for our comments on the treatment of 2100MHz spectrum).

We advocate a simple approach to the treatment of capital gains on the sale of spectrum that will not discourage trading: we suggest that these should be taxed at a flat-rate of 20% of the capital gain made on the trade. The proceeds of the trade should not be subject to license fees [i.e. proceeds should not be added to AGR for purpose of paying license fees, etc.] in case the seller is

a telecommunications operator; and operators would not be allowed to claim a loss on the sale of spectrum as pass-through for the purposes of calculating AGR.

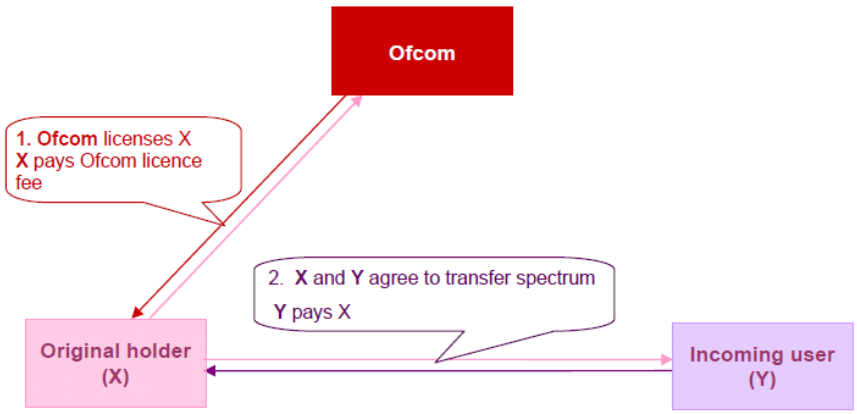
What conditions apply to the purchaser of spectrum? Telecommunications operators would be bound by their license conditions (including a requirement not to cause interference to any other authorised users of spectrum) — no special conditions are required. However, in order to permit the trading of 2100MHz and 2300MHz spectrum the DoT would have to amend the condition in the NIAs restricting operators to holding only a single block of spectrum. There would be little point in introducing trading without allowing 2100MHz spectrum to be traded.

Should information about trading activity be made public? We suggest that the DoT publishes the details of the notified trades; this will improve the liquidity of the market for spectrum. Paucity of data on spectrum values makes it less likely that buyers and sellers will estimate similar ranges of an appropriate price. Notification of trades will also alert operators to the change in the user of a particular block of spectrum in order to manage any interference issues.

What happens to the rollout obligations applicable to traded spectrum? Obligations can either be traded or retained; but trading does not create new coverage obligations, nor does it diminish or remove such requirements. Obligations do not have to have been fulfilled in order for spectrum to be traded, but the timing for the completion of the requirements is not altered by the trade. We show some examples in the following table:

	Seller Holds	Buyer Holds	Trade	Rollout Obligation
1	10MHz of 1800MHz spectrum and 5MHz of 2100MHz spectrum	5MHz of 1800MHz spectrum	5MHz of 2100MHz	The seller must sell the spectrum with its rollout obligation.
2	10MHz of 1800MHz spectrum and 10MHz of 2100MHz spectrum	5MHz of 1800MHz spectrum	5MHz of 2100MHz	The seller can sell the spectrum without its rollout obligation.
3	10MHz of 1800MHz spectrum and 5MHz of 2100MHz spectrum	5MHz of 1800MHz spectrum	5MHz of 1800MHz	Both the buyer and seller retain their rollout obligations.

Should leasing spectrum be permitted? We believe that spectrum leasing (akin to a short term trade) can give important flexibility for buyers of spectrum; for example, to deal with short-term capacity issues. We suggest that leasing arrangements are subject to the same notification (and transparency) requirements as trades; however there would be no need to reissue the spectrum licenses and SUCs would be paid by the lessor. Ofcom has outlined how this process could work in the UK:



Should partial trades be permitted? We suggest that the trading of spectrum is allowed for spectrum within areas of an LSA. If an operator was facing capacity problems in a particular location it would be able to purchase or lease spectrum from another. We note that this is only practical if the industry moves to a flat-rate percentage SUC regime: it is difficult to see how partial spectrum could be added to an operators existing stock of spectrum for the purposes of computing the applicable SUC slab rate.

Should there be a minimum block size for a trade or lease? We suggest that there is no limit on the minimum quantum of spectrum traded. In practice some operators may wish to buy 0.6MHz of 1800MHz to hold 5MHz of spectrum others will wish to buy a minimum of 5MHz of 2100MHz spectrum.

In their response to the spectrum valuation consultation some operators raised concerns about the introduction of spectrum trading. We respond to these concerns below:

Trading will benefit cash rich operators: Trading will undoubtedly only be used by operators who can afford the outlay. This is just like any other market and we do not regard it as a problem. Of course, the sellers of spectrum will also benefit especially if they are 'cash poor'. In any trade between a willing buyer and a willing seller we expect both parties to benefit.

Trading will encourage speculation: The experience of other markets where trading has been introduced—Australia and the UK—is that the market is relatively 'thin' and that spectrum is not purchased by parties for speculative purposes. Even if this proved to be the case in India, we do not regard it as a problem: 'speculators' can provide an important source of liquidity in a market where few operators may be willing to trade spectrum to a competitor.

Trading will lead to spectrum hoarding. We do not believe that this is a significant risk in India. There is no evidence of spectrum hoarding in India (see table 2.3 in the consultation showing the average holding per TSP in the 900/1800 band of 6.6MHz compared with the average 23MHz for the foreign operators shown in Annexure – C), but plenty of evidence of the inefficient use of spectrum (see table 2.10 in the consultation showing the subscribers per MHz of operators in Delhi and Mumbai). It seems very unlikely that operators would purchase spectrum and not use it. Furthermore, given the amount of spectrum that continues to be held by the government, it is impossible for an operator to buy spectrum in the expectation that it can foreclose the market to

competitors. In this vein, the DoT should continue to retain powers to require an operator to move its spectrum spots if it is attempting to thwart competition by preventing another from obtaining contiguous spectrum.

Trading will affect retail prices and choke competition: We believe that the opposite will occur. Spectrum trading between operators facilitates the efficient use of spectrum because it ensures that spectrum is put into the hands of those that can use it most productively. The absence of trading has meant that large amounts of spectrum in India are under-utilised and, as a result, the customers of the 'spectrum-starved' potential buyers suffer a poorer quality of service. If spectrum is distributed to those who can use it best then they can produce more; this tends to lead to lower prices and greater competition.

Trading will distort the playing field because operators don't hold comparable spectrum: If an operator feels at it is disadvantaged by the spectrum that it holds, spectrum trading (i.e., the purchase of spectrum outside of the auction process) allows that operator to correct any perceived disadvantage.

Trading will reduce government revenues: This risk has never been explained but, presumably, the case is that if an operator has bought spectrum from another it will no longer need to buy it from the government and the demand for (and price of) auctioned spectrum will be reduced. This is a rather myopic view. Spectrum trading will transfer spectrum into the hands of those that can put it to better use (that must be the case for a buyer to be willing to pay a price which induces the seller to sell); either through higher revenues or lower costs—in both instances the government will benefit.

Vodafone

29 August 2013