

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
Department of Communications  
and Arts – Consultation Paper

## **Spectrum Pricing**

Public Version

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## Section 1. EXECUTIVE SUMMARY

- 1.1 Optus welcomes the Department of Communications and Arts (DoCA) consultation on the recommendations raised in the Final Report of the 2015 Spectrum Review.
- 1.2 The Spectrum Review highlighted five principles in guiding the development of its recommendations set out in the Exposure Draft of the *Radiocommunications Bill 2017* (the Bill). These include: transparency; efficiency; flexibility; certainty; and simplicity. A further principle related to consistency was also instructive in developing the Bill. As such, the Bill should be viewed through the lens of being 'principles-based' and 'outcomes focused'. Optus has provided a separate submission on the substantive elements of the Bill.
- 1.3 In general, Optus notes that the Bill sets out key components while leaving transition and implementation details to further consultation. The DoCA is concurrently consulting on spectrum pricing matters, while the ACMA has also released a number of supporting documents which set out preliminary views on how they envisage various components of the Bill will be addressed. As a result, the spectrum pricing issues cannot be considered in isolation.
- 1.4 This submission focuses on Optus' response to Spectrum Pricing issues, as well as the limited related provisions set out in the Bill. Spectrum is an important regulated input required for the provision of numerous services and has wide ranging applications.
- 1.5 In summary:
  - (a) Spectrum is a key driver of competition in the mobile market. Spectrum is one of the fundamental inputs into the production of mobile services. There is a direct trade-off between the amount of spectrum allocated to an operator, the cost of deploying network assets, and the available capacity on the network.
  - (b) The ACCC should play a more formal and transparent role in providing expert competition advice to ensure that valuable spectrum assets do not become barriers to competition in mobile markets.
  - (c) The ACMA should continue to conduct a public inquiry prior to the commencement of any allocation process. Given efficient allocation of spectrum is a key object of the Bill, there will always be a role for both market-based and administrative based allocations to coexist.
  - (d) There is continued merit for the use of bespoke arrangements in determining the spectrum access charges to apply for the renewal of spectrum licences.
  - (e) Any overlapping licensing arrangements need to be streamlined. However, a careful balance will need to be achieved to ensure there is no double recovery of efficient costs and to ensure adherence to the spectrum pricing principles.
- 1.6 Optus considers that while there is a need to establish spectrum pricing principles, further consultation on the various allocation decisions and arrangements intended to apply following the transition to a single licensing framework is required.

## Section 2. COMMENTS ON THE DRAFT BILL

- 2.1 The Spectrum Review highlighted five principles in guiding the development of its recommendations set out in the Bill. These include: transparency; efficiency; flexibility; certainty; and simplicity. A further principle related to consistency was also instructive in developing the Bill. As such, the Bill should be viewed through the lens of being 'principles-based' and 'outcomes focused'.
- 2.2 Optus notes that the Bill sets out the key guiding components of the new regime, with a range of supporting documents released by the ACMA to assist interpret how the framework, including critical transition and implementation steps, will occur in practice.
- 2.3 Optus also notes that the *Transitional and Consequential Amendment Bill* is yet to be released for consultation. The new framework needs to be considered as a whole, including consideration of pricing issues.
- 2.4 A number of new provisions in the Bill will have overarching implications for the consideration of spectrum pricing issues. These include, but are not limited to:
- (a) The role of the Minister in spectrum management;
  - (b) The ACMA annual work plan; and
  - (c) Shift to a new single licensing framework.
- 2.5 It follows that without having full visibility of the new framework, it is unclear what impact the development of the spectrum pricing guidelines will have on the significant number of pricing related transition issues that will need to be addressed in the move to a single licensing framework.

### **Role of the Minister in spectrum management**

- 2.6 The role of the Minister in spectrum management activities has been refined to remove the need for the Minister to play an active role in all operational activities. Instead, it is observed that the Minister will continue to retain oversight over operational activities and provide strategic direction on specific matters, particularly where decisions with significant public policy implications.
- 2.7 In summary, the Minister's role in the new framework is to set strategic priorities to guide the ACMA in the delivery of its spectrum management regulatory functions. To achieve this, the Minister will have access to a range of tools and powers to provide his or her guidance. The Minister's general directions power available under the *Australian Communications and Media Authority Act 2005* will continue to apply.

### **Ministerial policy statements**

- 2.8 Ministerial policy statements provide a mechanism for the Minister to provide the ACMA with policy guidance on a number of specific matters. In doing so, this is intended to limit the need for the Minister to actively engage in the administrative day to day functions of the ACMA in relation to spectrum management processes.
- 2.9 The Information Paper also notes it is intended that the majority of Ministerial policy statements will be developed prior to the commencement of the new legislation. These

are specific to the ACMA's spectrum management functions and powers, and would include providing guidance on the following matters:

- (a) The ACMA's annual work program;
  - (b) The single licensing system, including licence issue and conditions, and end of licence term processes and renewal rights;
  - (c) The protection and arrangements for the RQZ for the SKA; and
  - (d) Matters relating to broadcasting spectrum.
- 2.10 The Bill also retains broad powers for the Minister (through provisions in the ACMA Act) to direct the ACMA in relation to particular licence issues and the setting of spectrum access charges.
- 2.11 Consultation should be mandatory for a Ministerial Policy Statement and undertaken prior to the finalisation of such statements.
- 2.12 This importance cannot be understated given that section 19 in the Bill requires that the ACMA should have regard to Ministerial policy statements.

### **ACMA annual work program**

- 2.13 Optus agrees there is merit in formalising the ACMA annual work program, particularly as this would provide industry with greater clarity and transparency in the short-term on information already set out in the five-year spectrum outlook (FYSO).
- 2.14 In addition to providing improved transparency, it would also provide a set of outcomes-based objectives to which the ACMA could be held account. However, further clarity needs to be provided on the role of the Ministerial Policy Statement and the interaction of the new annual work plan with the existing FYSO.
- 2.15 As noted in Optus' submission on the Bill:

*“A current gap in previous ACMA work programs has been any requirement for the ACMA to report on its progress against stated intentions, including justifications on why targets hadn't been met. Therefore Optus supports a requirement for the ACMA to self-report on commitments made in the plan. For example, reporting on the previous year could be included in the following year's work program.*

*To ensure the utility of the work program Optus also suggests that variations be permitted to be made as for example, government policy positions change. Variations should also be subject to a targeted and streamlined form of consultation with industry. These changes will help ensure that the work program remains current and agile and a useful reference document for industry.”*

- 2.16 The Information Paper describes that *“The work program will have a five year planning horizon, with a detailed annual work program for the immediately forthcoming financial year”*<sup>1</sup> with mandatory consultation provisions also included. However, Part 3 of the Bill

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<sup>1</sup> Department of Communications and the Arts, 2017, Radiocommunications Bill 2017: a platform for the future, Information Paper, May, p.11

only requires that the annual work plan be prepared at least once each financial year, cover a work program period of at least five financial years, and must be subject to at least a 14 day formal consultation period. Once accepted, it also allows the ACMA to make minor variations without need for separate consultation.

- 2.17 The current role (and continuing existence) of the FYSO has also been flagged for review following passage of the Bill. Optus therefore considers that the continuing need for the FYSO should be revisited when the scope of the annual work plan is further developed.

### **Single licensing system**

- 2.18 The single licensing framework forms the primary tenet of the Bill. As part of the new licensing framework, the Bill introduces two new concepts to be attached to the licence upon issue. It introduces a role for designated statements and regulatory undertakings. Optus' submission on the Bill provides commentary on concerns regarding the practical impact of regulatory undertakings on the property rights of licences and how both tools will be used to transition existing licences to the new regime.

## Section 3. SPECTRUM PRICING

- 3.1 Spectrum is an important input required for the provision of numerous services and has wide ranging applications. In particular, the current radiofrequency range managed by the ACMA is extensive with around 17 different spectrum licence classifications.
- 3.2 Given the diverse range of spectrum licence classifications, this will inevitably mean that there will be a significant variance in the willingness to pay by different class of users, and for spectrum in different bands. Even within the individual bands, the value of the spectrum will also differ. Any spectrum pricing arrangement should therefore be suitably flexible, transparent and allocated efficiently.
- 3.3 Optus' comments on the draft proposals in the Spectrum Pricing (the Paper) are provided below.

### Allocation decisions

- 3.4 Optus agrees there may be merit in establishing a set of pricing principles for the allocation, pricing and award of spectrum. In general, the framework should encourage transparency, certainty and consistency regardless of the approach that is taken.

### Publish guidance on spectrum allocation mechanisms

Draft proposal 1 – The ACMA should publish guidelines on how it approaches its spectrum pricing decisions.
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- 3.5 Optus agrees there is value in providing an upfront framework to guide stakeholders as to the how and when spectrum pricing decisions will be determined.
- 3.6 However, the requirement to publish guidelines on how it approaches its spectrum pricing decisions should be mitigated and assessed against use and public interest. There is no one-size-fits-all approach that suits all spectrum bands today or would fit the uses for different spectrum bands that change over time; therefore it is important that transparency over the arrangements to be applied in each pricing decision should be encouraged. This will also have important implications during the transition period, with particular regard to continuity of service, price, and investment incentives for existing licensees.
- 3.7 The ACMA currently has no role or responsibility with regard to competition issues in the telecommunications sector. As such, the ACMA does not have the necessary expertise to adequately judge the complexities of how proposed allocation processes will impact competition and should be required to devolve this assessment to the ACCC; and to publish its recommendations.
- 3.8 At the very minimum, the ACMA should be required to consult on any draft principles it intends to introduce as part of any 'licence issue scheme' in line with the intent of the Bill provisions (Part 6, section 34). The ACMA should also be required to publish a decision paper, outlining the rationale it has adopted (and how it has applied its own guidance) to its spectrum pricing decisions.

### Bespoke pricing arrangements

Draft proposal 2 – To ensure efficient use of spectrum, the Government and the ACMA should endeavour to charge users of similar spectrum at the same rate.

Draft proposal 3 – Bespoke pricing arrangements will sometimes be necessary. Where spectrum fees are determined other than by auction or by the administered pricing formula, the ACMA, or the Government where it directs the Government on pricing, should publish the reasons for this decision.

- 3.9 Efficiency should remain one of the primary guiding principles for spectrum allocation. Importantly, spectrum efficiency may sometimes mean that allocation to the most efficient user means striking a compromise between fair use and government revenue (that is, the public interest test is best met by awarding spectrum to the most efficient user of the spectrum resource).
- 3.10 Optus accepts that the efficient allocation of spectrum may take several forms, including but not limited to charging users of similar spectrum at the same rate. Past experience has shown that bespoke pricing arrangements can lead to this outcome; however in most instances the processes followed have not been entirely transparent.
- 3.11 The Paper highlights that bespoke pricing arrangements may occasionally be warranted, and that there are many reasons why the Government may wish to do so. While these exceptions exist, any published guidance on spectrum pricing mechanisms should also recognise their continued existence. For example, under the current framework, the ACMA recognises there are some licences types (such as maritime licences) that may continue to necessitate a different pricing arrangement from any standard pricing arrangement that the ACMA would seek to introduce.
- 3.12 Bespoke pricing arrangements in the past have had mixed results. The 2012 renewal process for expiring spectrum licences, while resulting in the same renewal price for all users, was non-transparent given that the process was based on bilateral negotiations between existing licensees and the Government. Following the end of the negotiation period, a Ministerial Determination was published setting out the renewal price for expiring spectrum licences that would apply to all existing licensees. This price however was subsequently reduced for state rail authorities at a discounted rate. Regardless, the use of the bespoke arrangement provided incumbent licensees with the certainty that existing holdings could be renewed for another term and therefore ensuring no loss in the efficient investment and use of spectrum assets.
- 3.13 Therefore while greater transparency should be introduced, Optus considers there is continued merit for the use of bespoke arrangements in determining the spectrum access charges to apply for the renewal of existing spectrum licences.

### *Summary – allocation decisions*

- 3.14 Spectrum is a key driver of competition in the mobile market. Spectrum is one of the fundamental inputs into the provision of mobile services. There is a direct trade-off between the amount of spectrum allocated to an operator, the cost of deploying network assets, and the available capacity on the network.
- 3.15 In general, allocation decisions should factor in the current use of spectrum and any long-term developments expected to take place within the relevant band. There may be circumstances (such as the renewal of expiring licences) which may warrant that a bespoke arrangement resulting in administered allocation is the most efficient allocation decision to be determined. In practice no operator would incur the significant costs



associated with network investment when there is any doubt over the ongoing control of critical spectrum assets.

- 3.16 A failure to re-issue existing spectrum licences, particularly where the spectrum asset forms a core network input into the business, would have negative consequences for infrastructure investment. This is because a failure to re-issue would cause significant business uncertainty, which would cause a suspension of existing investment planning. Perhaps more importantly, is the adverse consumer experience impacts that would result. Given the significance of spectrum as a key underlying network input for the provision of a mobile service, any significant reduction in an operator's core spectrum holding could result in customers losing all access to the service.
- 3.17 Optus recommends that the ACMA publish guidance on how it intends to assess allocation decisions and pricing arrangements for different spectrum bands, consistent with the objectives in the Bill.
- 3.18 Optus also supports providing the ACCC a more formal role in advising the ACMA and the Minister on spectrum-related competition issues. This advisory role should extend beyond just providing advice on competition caps where an auction-based allocation decision has been made. Any advice provided by the ACCC should also be publicly disclosed to ensure transparency with any decision (including a statement of reasons to support its decision) ultimately remaining a matter for the Minister or the ACMA.
- 3.19 A more formal and transparent process that enables the ACCC to provide expert competition advice would ensure that valuable spectrum assets do not become barriers to competition in mobile markets.
- 3.20 All spectrum pricing decisions should also be accompanied by a statement of reasons to outline the rationale for the pricing arrangement to be adopted for the relevant band. This will ensure greater transparency in the decision-making process, while not limiting the ACMA's powers to review the allocation decision for any available, or expiring, spectrum when the time arises.

### **Market-based allocations**

- 3.21 Various market-based processes have been used for the allocation of spectrum licences in the past, including spectrum auctions and tender processes. In these cases, spectrum has generally been allocated to the highest value use on a competitive basis.

#### *Transition to market-based allocations*

Draft proposal 4 – The ACMA should further identify bands to transition from administratively set fees to competitive market-based allocations in its annual work program.
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- 3.22 As the ACMA transitions towards its proposed single licensing framework, Optus considers that the ACMA should identify any potential spectrum bands (and the estimated timeframe) that it considers would be appropriate to transition from one pricing arrangement to another.
- 3.23 This information, including any preliminary views, should also be provided and regularly updated in the ACMA's annual work plan. Where no proposals are considered, the relevant band-by-band status should still be identified in the annual work plan.
- 3.24 As a starting point, the approach taken to convert apparatus licensing to the spectrum licensing framework should be formalised. Any transition from administratively set fees

to market-based allocations should be subject to consultation, with a clear path for incumbent licensees to renew existing assets where they continue to be used.

### Reserve prices

Draft proposal 5 – In setting reserve prices, the ACMA and the Government should consider the influence of the reserve price on competitive behaviour, and the scope for price discovery through upward movement toward the market value of the spectrum.

- 3.25 Optus agrees that in setting reserve prices, more consultation and transparency is required to consider the influence of the reserve price on competitive behaviour. Under the current market-based allocation framework, reserve prices are generally announced following the commencement of the spectrum application stage (i.e. once a spectrum auction is advertised), allowing potential bidders to factor it into their bidding strategies.
- 3.26 Reserve prices have played a significant role in spectrum auctions in recent years, and have generated significant government revenues. However the role it has played in terms of encouraging efficient use of spectrum is less defined. Optus supports a clear statement that the priority policy objectives for setting reserve prices is to enhance efficient use of spectrum, not to raise revenue.
- 3.27 The role of reserve prices should also take into account any competitive dynamics of the auction process being undertaken, including the auction format, number of bidders, number of spectrum lots on offer, and any applicable competition limits. Notably, the reserve price should be set at a level that encourages price discovery while still resulting in the efficient allocation of all available lots.
- 3.28 There is a large body of evidence that shows that setting low reserve prices in auctions generally result in more economically efficient allocation of the spectrum assets.
- 3.29 Auctions should not be designed with the primary objective of revenue maximisation.
- 3.30 This view was also recently recognised by the Acting Chair of the ACMA:<sup>2</sup>
- this does not mean that maximisation of the revenue obtained from the sale of spectrum is an object of either current or proposed legislation, and the ACMA has no agenda, overt or covert, of seeking to maximise cash returns.*
- 3.31 A guiding principle should be efficient allocation. The risk and unintended consequences of setting reserve prices too high is two-fold: first, it may result in unsold lots; and second, it could result in a lag or future underutilisation of the spectrum asset until a later stage of the licence period.
- 3.32 Where a market-based allocation is determined, there should also be a role for the ACCC to assess the state of competition and advise on any competition limits to apply.

### Payment terms

Draft proposal 6 – For spectrum access charges determined by auction, the ACMA should generally require upfront lump-sum payments. There may be circumstances

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<sup>2</sup> <http://acma.gov.au/theACMA/Newsroom/Newsroom/Speeches/acting-chairmans-speech-to-unwired-revolution>

where instalment payments are warranted shortly after the beginning of a licence term. In considering the use of instalments, the ACMA should assess the risks to the state of default and the potential impact on competition.

- 3.33 While upfront payment should be required for spectrum access charges determined by auction, there should be scope for instalment payments as proposed by s.194 (c) of the Bill – for example, this would formalise the spectrum payment options permitted in the 2017 unsold 700MHz auction.
- 3.34 Optus considers that the circumstances where instalment payments may be warranted should be assessed on a case-by-case basis. Notably, it should be subject to consultation and take into account a number of considerations, including that:
- (a) The total number of instalment payments should be limited, and take into account a small price premium.
  - (b) First payment must be completed prior to issue of the spectrum licence. Failure to complete first payment should result in default of awarded licence, with the ACMA retaining the discretion to award the option of the defaulted licence to the next highest bidder. If this offer is not accepted, then the licence will return to the pool of residual spectrum held by the ACMA.
- 3.35 The general rule that upfront payment is paid prior to the acquisition (or renewal) of spectrum rights should remain. While the allocation process can take place significantly ahead of the award, payment should be made as close to the licence commencement date as possible.

#### *Summary – market-based allocations*

- 3.36 The Paper highlights *“there has been an international trend towards allocation by auctions and this has led to a general consensus among regulators that auctions are the best way to distribute spectrum resources. An auction’s transparency allows market participants to witness the allocation process, understand spectrum valuations and reduces the risk of the Government picking winners.”*<sup>3</sup>
- 3.37 This statement fails to acknowledge many of the other external factors that impact on the competitive dynamics of the market-based allocation process. Not all market-based allocations will result in the efficient allocation of all available spectrum lots on offer.
- 3.38 Optus considers there remains a role for both market-based and administrative based allocations to continue to operate. In line with any allocation decision, the ACMA should continue to conduct a public inquiry prior to the commencement of any allocation process.

#### **Administered allocations**

- 3.39 Spectrum currently offered through apparatus licensing arrangements are subject to administered pricing arrangements. This Paper seeks to revise the current apparatus licence charges in line with market rates to encourage spectrum to move to its highest value use, and that those spectrum holders use it efficiently.

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<sup>3</sup> Department of Communications and the Arts, 2017, Spectrum Pricing, Consultation Paper, May, p.14

- 3.40 The ACMA has previously stated that the objects of the Act are best promoted by setting a price for administrative allocations that reflects the opportunity cost of use.<sup>4</sup> Notably that “A regulator (such as the ACMA) setting spectrum prices (as in administrative allocation) should mimic the efficient and incentive effects of market-based pricing. Such market-mimicking prices are based on the economic principle of opportunity cost.”<sup>5</sup>

### Pricing formula

Draft proposal 7 – The ACMA should undertake a detailed review of the administrative pricing formula’s parameters, including density areas, the number of pricing bands, and the number of power categories. The ACMA should implement regular updates to the location and band weightings to reflect changes in density, demography and demand.

- 3.41 The Paper notes that the current apparatus licence formula has been in place since 1995, and has not been updated other than for annual indexation and limited price adjustments. However, given that much of this spectrum is currently encumbered, it is important there is no immediate and substantial price shock for incumbent licensees.
- 3.42 Given there has been significant developments across each of the parameters employed in the pricing calculation, there should be scope for the ACMA to conduct a review on the parameters of the administrative pricing formula’s parameters. This review should be subject to consultation, with guidance published on how each of the parameters will be applied, how it is intended to change over time, and any triggers for a review process.
- 3.43 Any changes to the pricing formula will have significant implications (through possible uplift in spectrum costs) for existing apparatus licence holders during the transition to any new (or updated) pricing arrangements. It is also important to note that while the apparatus licensing arrangements appears to have adopted a single universal pricing formula approach, there remained some exceptions. It is likely that these arrangements will continue.

### Opportunity cost

Draft proposal 8 – The ACMA should apply opportunity cost pricing to a greater number of spectrum bands, especially where it is impractical to competitively allocate spectrum. This work should be identified in the ACMA’s annual work program. The ACMA should consider more time efficient approaches to implement these, and review fees as market conditions change over time.

- 3.44 The use of opportunity cost pricing should be considered when determining the relevant price range for administered-based pricing arrangements. Similar in the way that reserve prices are set for auction allocations, opportunity cost pricing should not be set at a level that exceeds the forgone cost from leaving the spectrum resource unallocated.
- 3.45 The conservative approach to spectrum pricing has previously been supported by the Government’s own spectrum management agency, the ACMA. In a report on opportunity

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<sup>4</sup> See: ACMA, 2009, Opportunity cost pricing of spectrum: Public consultation on administrative pricing for spectrum based on opportunity cost, IFC12-2009; and ACMA, 2012, Adoption of opportunity cost pricing for apparatus licences in the 400MHz band: Discussion paper, IFC09-2012.

<sup>5</sup> ACMA, Adoption of opportunity cost pricing for apparatus licences in the 400 MHz band, Discussion Paper, April 2012, p.1.

cost spectrum pricing the ACMA stated: “If there is a price range within which to set price, setting prices too high will result in under-use of spectrum. Where there is doubt it is generally better for spectrum to be slightly under price... When trying to set a market-clearing price, setting a conservative price is recommended.”<sup>6</sup>

- 3.46 This was also reiterated in subsequent consultations, where the ACMA stated that it “intends to adopt a conservative approach to spectrum pricing, noting that generally the consequences of overpricing are more inefficient and costly than under-pricing.”<sup>7</sup>
- 3.47 The efficient price of spectrum is its opportunity cost of use, that is, the highest alternative use of spectrum. The view that opportunity cost is the appropriate level is supported by many leading academics, including Professor Cave<sup>8</sup> and Dr Doyle<sup>9</sup>. Both authors have been extensively quoted by the ACMA in relation to efficient spectrum pricing.
- 3.48 Furthermore, while it may be reasonable to apply opportunity cost pricing to a greater number of spectrum bands, there will be cases where the opportunity cost is zero. In these cases, the effective value-based charge will be set at zero and any overall cost of administering the spectrum licence will be set at the efficient costs of managing that spectrum.

#### *Summary – administered allocations*

- 3.49 In general, Optus supports the use of opportunity cost for administered allocation of spectrum and considers it would be appropriate for the Government to take a conservative approach to setting spectrum access charges (that is an approach which errs on the side of low charges).

#### **Legislative and cost-recovery framework**

- 3.50 Through this spectrum reform package, the DoCA has also sought to consolidate a number of legislative instruments and streamline the spectrum pricing framework.

#### Legislative framework

Draft proposal 9 – The Government should consolidate the three existing spectrum tax Acts into one tax Act. The ACMA should continue to have the power to make determinations on the amount of tax under this Act. There should be no changes to the direct charges framework. In addition to the consolidation of the tax Acts, provisions of the separate *Radiocommunications Taxes Collection Act 1983* and the

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<sup>6</sup> ACMA, 2009, Opportunity cost pricing of spectrum: public consultation on administrative pricing for spectrum based on opportunity cost, April, p.22

<sup>7</sup> ACMA, 2012, Regional and remote apparatus licences in the 1800 MHz band, Issues Paper 1, December, p.19. This view is also repeated in ACMA’s assessment of opportunity cost pricing for 400MHz apparatus licences

<sup>8</sup> See, for example: Cave, Doyle & Webb, *Essentials of Modern Spectrum Management*, Cambridge Press, 2011.

<sup>9</sup> See: Doyle, 2007, *The Pricing of Radio Spectrum: Using Incentive Mechanisms to Achieve Efficiency*, Centre for Management under Regulation, Warwick Business School, January 2007.

*Radiocommunications Taxes Collection Regulations 1985* should be consolidated with the remaining legislation.

- 3.51 The Paper highlights that one benefit of the shift to a single licensing framework will be the consolidation of the pricing framework, whereby all licences will be subject to the following licence charge categories:
- (a) Direct cost recovery: no proposed change to the current administrative cost recovery component for direct costs by the ACMA.
  - (b) Indirect cost recovery: new proposed Radiocommunications licence tax to replace the existing spectrum licence tax and apparatus licence tax arrangements.
  - (c) Value-based charge: new proposed single pricing structure for all spectrum access charges. This can take several forms: administrative formula; market-based (e.g. auction); or bespoke arrangement (e.g. renewals).
- 3.52 The level at which these cost recovery arrangements are determined should adhere to the current spectrum pricing principles. In particular, that any direct and indirect costs to be recovered should be transparent, set at efficient costs, and apply to all licence holders.
- 3.53 Optus understands that this recommendation will be further consulted on with the release of a new *Radiocommunications Tax Amendment Bill*.

#### Value-based fee framework

Draft proposal 10 – The apparatus licence taxes and spectrum licence spectrum access charges should be combined into a single spectrum access charge. This existing apparatus licence tax formula should become the administered incentive pricing formula and should dictate the price paid for administered prices under the spectrum access charge. This formula would be adjusted to remove the minimum tax constraint.

- 3.54 The Paper highlights that the value-based fee (i.e. the spectrum access fee) will differ depending on its form of allocation. For example, the spectrum access fee may be zero for some spectrum bands in certain areas, particularly where the value-based fee is determined through administrative incentive pricing.
- 3.55 The apparatus licence fee schedule is currently published on an annual basis as a guide, which “*describes the rationale for apparatus licence fees, and provides the necessary information for licensees to calculate their own fees.*”<sup>10</sup>
- 3.56 Optus understands that even under the existing apparatus licence fee schedule, spectrum licensing charges are effectively two-fold:
- (a) First, charges to recover the cost of managing that spectrum (to be referred to as cost-recovery based charges in the new proposed framework); and
  - (b) Second, charges to reflect the value of the spectrum (to be referred to as the value-based ‘spectrum access charge’ in the new proposed framework).

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<sup>10</sup> ACMA, 2017, Apparatus licence fee schedule, April, p.2

- 3.57 In general, apparatus licences charges are reflective of the annual licence tax is based on a pricing formula not dissimilar to that referred at Draft proposal 7.<sup>11</sup>
- 3.58 Therefore, it is likely that the operation of the apparatus licence tax and spectrum licence access charges do not need to significantly change during the transition period. The only exception being that in transitioning to a spectrum access charge, the minimum tax constraint (effectively a tax floor of \$40 per licence that is currently imposed) will no longer be applied. This is to facilitate the fact that spectrum access charges (under either a first price or second price approach) may be zero in some cases, and that under the opportunity cost principle, this may result in an overall spectrum access charge of zero.
- 3.59 In line with Optus' comments on administered allocations, there should be scope for the ACMA to conduct a review on the parameters of the administrative pricing formula's parameters before it is finalised. This review should be subject to consultation, with guidance published on how each of the parameters will be applied, how it is intended to change over time, and any triggers for a future review process.

### Cost recovery framework

Draft proposal 11 – The spectrum licence tax and the minimum tax constraint of the apparatus licence taxes should be subsumed into one Radiocommunications licence tax. The ACMA may choose to set the amount of this tax to cover where the spectrum access charge would not otherwise recover the costs of managing the spectrum. The ACMA should continue to recover direct costs through charges. The ACMA should explore if there are any additional costs that can be recovered through the direct cost mechanisms.

- 3.60 The Paper highlights that as a general rule the ACMA should set charges to recover its regulatory costs in full. In the new proposed framework, this primarily relates to both the direct and indirect costs of managing the spectrum.
- 3.61 The direct costs will likely be similarly structured to the type of administrative charges which currently exist. As applied to existing apparatus licences, there are three kinds of administrative charges which apply: issue; renewal; and instalment charges.<sup>12</sup>
- (a) Issue charge applies to all assigned licences to cover the direct costs incurred by the ACMA in issuing the licence (the major cost of which is the frequency assignment task). This generally applies to the issue of previously unallocated licences.
  - (b) Renewal charge applies to assigned (and non-assigned) licences following the expiry of existing licences. The same renewal charge applies within the relevant timeframe for all licences. If payment is not received within the relevant timeframe, then any subsequent allocation for a new issue of the licence will require a new application and subject to a new issue charge.
  - (c) Instalment charge applies to all assigned licences, where a licensee chooses to pay the licence tax in annual instalments. Late payments are liable to incur

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<sup>11</sup> In contrast, spectrum licences are reflective of market rates (determined through market-based allocation) at the time of issue.

<sup>12</sup> See: ACMA, 2017, Apparatus licence fee schedule, Appendix D, April

interest penalties and licensees may forfeit the right to pay by instalments for any amounts outstanding.

- 3.62 However, the Paper has also identified that unlike direct costs, indirect costs can only be recovered through a tax, and therefore it is proposed that a new radiocommunications tax will need to be introduced. The level of fees to be set under this new proposed tax is yet to be determined.
- 3.63 In line with Optus' comments on administered allocations, there should be scope for the ACMA to conduct a review on the parameters of any revised pricing approach before it is finalised. This review should be subject to consultation, with guidance published on how each of the parameters will be applied, how it is intended to change over time, and any triggers for a future review process.

*Summary – legislative and cost-recovery framework*

- 3.64 Optus supports the need to streamline the overlapping licensing arrangements. However, a careful balance will need to be achieved to ensure there is no double recovery of efficient costs and to ensure adherence to the spectrum pricing principles.
- 3.65 Optus also supports the Associations' concern that full transparency be provided on how the costs and value of spectrum is calculated for fees, charges or taxes.