



AMTA

**Australian Mobile
Telecommunications
Association**

Department of Communications

Spectrum Review

Potential Reform Directions – Consultation Paper

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Background

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see amta.org.au.

Introduction

AMTA welcomes the release of the Consultation Paper, '*Spectrum Review – Potential Reform Directions*' (the Directions Paper) by the Department of Communications and considers the proposals presented for comment as a positive step in achieving the objective of a new 'fit for purpose' spectrum regulatory framework.

Spectrum enables economic growth and productivity

Spectrum is key infrastructure for mobile technology that plays an enabling role in Australia's economy, driving growth and productivity. The Australian Communications and Media Authority (ACMA) has noted:

*"There is widespread recognition that mobile broadband services are an economic enabler within society and the provision of these services, technologies and applications in the wider community is in the public interest."*¹

And the GSM Association stated:

*"Mobile infrastructure is now as important to a country's economy as its energy grid or transportation network. It is a key enabling infrastructure that drives and supports growth in the wider economy."*²

Spectrum is a critical resource for the delivery of mobile broadband which is forecast to deliver \$11.8 billion worth of productivity benefits to the Australian economy by 2025³.

The ACMA's report on '*The economic impacts of mobile broadband to the Australian economy, from 2006-2013*' found that mobile broadband has:

- increased the growth rate of the Australian economy by 0.28 per cent each year from 2007 to 2013; and
- led to an increase in Australia's economic activity of \$33.8 billion in 2013.⁴

¹ 2011 ACMA "Towards 2020 Future spectrum requirements for mobile broadband"

² GMSA, The Mobile Economy 2013, p 7

³ *Mobile Nation*, the Economic and Social Impacts of Mobile Technology, Deloitte Access Economics, Feb 2013

⁴ 'Centre for International Economics, p 2

Finally, US research has shown that consumer benefits are 10 times higher than the value the actual spectrum generates at auction. So a US\$30 billion investment in spectrum equates to US\$300 billion of consumer benefits.⁵

The need for regulatory reform of the spectrum management framework

AMTA has long championed reform of Australia's spectrum management framework to:

- reduce the complexity of the regime and the cost of engagement;
- improve the transparency of price setting processes and methodology for spectrum access charges and taxation arrangements; and
- find solutions to protect spectrum access rights by taking action to stop the use of non-compliant devices.

AMTA strongly supports the Review and notes that the Directions Paper is an important step in the Review process. AMTA believes that reform of the spectrum regulatory framework has the potential to un-lock significant productivity benefits, boost innovation and encourage continued industry investment in new network assets.

Designing a new regulatory framework

AMTA believes that the outcome of the Review should be a new regulatory framework that drives efficiency in spectrum use through effective processes and which also encourages innovation and promotes investment in new technologies that rely on Australia's scarce spectrum resources.

The framework must be designed to:

- promote fair and open competition;
- minimise regulatory burdens and costs that can potentially stifle productivity and innovation;
- provide the flexibility necessary for industry to adapt to the rapid pace of technological change and ongoing development of business models in media and telecommunications markets; and
- be clearly understood by both administrators and industry and applied consistently so that industry has the requisite certainty to secure future investment.

AMTA believes that the principles of transparency, efficiency, flexibility, certainty and simplicity, as outlined in the Directions Paper, are sound principles to inform the development and implementation of the proposed reforms.

Finally, AMTA believes that the Review process needs to continue to closely engage with industry stakeholders as well as with the ACMA which has current operational expertise in the processes under review.

⁵ FCC Chairman Julius Genachowski – 16 March 2011

Maintaining momentum for reform

The economic and social benefits of mobile broadband are widely appreciated and AMTA believes that reforms contemplated under the Spectrum Review have the potential to further unlock productivity benefits and encourage innovation and continued investment by the mobile industry.

AMTA notes that there is a need to undertake a detailed review of the basic building blocks of the existing framework and determine which parts of the framework are functioning effectively and which are not. Reforms based on a review of the framework at this level will enable the development of the fundamental change to the legislative and regulatory framework required to deliver effective reforms. While the development of such fundamental reform requires careful consideration, it is imperative that the Review process maintains its momentum into the legislative reform and implementation phases.

AMTA supports a disciplined and timely implementation of the outcomes of the Review, noting that transitional arrangements and timelines for implementation of reforms will also require careful consideration.

A new regulatory framework

AMTA believes the new regulatory framework must effectively and efficiently deliver the following five functions of spectrum management:

1. Define spectrum policies
2. Define spectrum property rights
3. Allocate spectrum property rights
4. Re-allocate spectrum property rights
5. Enforce spectrum property rights

Defining property rights

The current regulatory framework already defines property by setting parameters for licences and spectrum bands.

AMTA proposes that:

- the new regulatory framework should be technology neutral and therefore have more homogenous licence parameters. We believe that this could be achieved by making the new licensing regime work more like spectrum licences and less like apparatus licences; and
- licences should have generic, homogenous parameters to encourage and promote transferability and trading.

Allocating and re-allocating property rights

Ideally spectrum should be allocated and re-allocated relying on market forces and should be highly tradeable.

However, sometimes spectrum is needed for uses associated with a public benefit that is difficult to quantify. The framework needs to include a transparent and clearly defined process for making decisions in relation to social and public benefits and allocating a value to these benefits.

AMTA considers that it is important that conflicts of interest with Government agencies that are also spectrum users are avoided.

All property rights, commercial and non-commercial need to be transferrable.

AMTA believes that more homogenous licences will promote transferability. Smaller spectrum parcels (smaller frequency bands and smaller geographic areas) may also be more easily traded.

Licences should have parameters that are generic and homogenous to promote trading.

The class licence concept that exists in the current regime needs to be continued in the new framework. AMTA suggests that flexibility be provided so that this type of spectrum use can be authorised by the ACMA and possibly also authorised by rights holders within their own spectrum.

Although spectrum brokers are not seen to be necessary, the framework should allow for the possibility of spectrum brokers and should not prohibit or inhibit them.

AMTA suggests that the current Register of Radiocommunications Licences could be improved to provide a more comprehensive and accessible picture of current spectrum usage in order to better facilitate spectrum trading in secondary markets. The Register should consist of a single database interface for all spectrum use which includes geographic presentations of the data.

Enforcing property rights

The function of enforcing property rights is broadly reflected in the existing regime. While AMTA supports the proposal to develop a more principles-based compliance regime, the regime must:

- preserve the ACMA's paramount role in enforcement and ensure that it is resourced adequately for this purpose;
- achieve appropriate levels of compliance; and
- enable spectrum users to comply with the regulations in a more efficient manner.

AMTA supports the introduction of civil penalties as an enforcement mechanism for the compliance and interference-related regulations. AMTA also supports giving the owners of spectrum property rights greater powers to enforce their own property rights.

Further, the ACMA's resources need to be appropriately increased to ensure they are adequate for fulfilling its compliance monitoring, education and enforcement roles.

Comments on the 11 proposals for reform

AMTA welcomes the opportunity to make comment on the eleven proposals outlined in the Directions Paper and specific responses to the proposals are provided below.

AMTA supports fundamental reform of Australia's spectrum allocation and management regulatory framework in order to provide the foundation for development of a unified regulatory framework for the management and allocation of spectrum, including broadcasting spectrum.

In summary, AMTA supports:

- a common and consistent approach to the planning, allocation and management of all spectrum, including broadcasting and non-broadcasting spectrum;
- a market-based and transparent approach to pricing for the use of spectrum that is efficient and doesn't lead to long delays in allocation;
- a framework that enables and promotes secondary trading of all spectrum;
- a better resourced and improved compliance and enforcement regime with a more flexible enforcement tool-kit for the ACMA, particularly around the issue of unauthorised use of spectrum. The protection of spectrum property rights should be a fundamental pillar of the regulatory framework; and
- certainty for spectrum licence holders, particularly with regard to licence renewal processes, which is also critical to drive continued investment.

1. Implement a clear and simplified framework of policy accountability

AMTA believes that simplifying the framework of policy accountability will deliver significant benefits.

Spectrum management is becoming more complex to centrally administer. Demand for spectrum access is rapidly growing within existing industries and innovative new uses for spectrum are emerging. The practical reality is that it is now much more difficult, time-consuming and administratively costly to determine the highest value use of the spectrum among the myriad of different potential uses. For this reason, the emphasis of reforms to the spectrum management framework should be on finding better ways to use market systems to reallocate spectrum to higher value uses.

With that proviso, AMTA obviously considers that clear roles and accountabilities are fundamental to effective decision-making and the delivery of certainty to spectrum users.

AMTA believes that the regulatory framework needs to identify clear roles, accountabilities and decision-making timeframes for the regulators and the Department of Communications to ensure effective and efficient decisions as well as a consistent, clear approach to spectrum policy development and implementation.

Decision-making and consultation processes must be transparent, timely and clearly outlined to relevant stakeholders.

AMTA agrees that the level of Ministerial discretion to make policy decisions should be outlined clearly in the regulatory framework. AMTA suggests that a key focus for the review should be to define the Minister's role in setting policy while enabling the regulator to implement spectrum policy efficiently. Unfettered oversight provisions serve only to increase uncertainty, delay decision-making and ultimately undermine the institutions created to manage and allocate spectrum in the public interest.

The framework should clearly establish the threshold at which the Minister will become involved in decision-making processes and where Government will exercise its discretion to set policy directions. We note that if the spectrum management framework is working effectively there should be minimal need for Ministerial intervention in its operation.

AMTA suggests that more detail around the proposed ad hoc Ministerial policy statements is needed before industry can provide useful comment on how these statements might work. A further layer of complexity around consultative processes should be avoided. If such a framework is developed, policy statements should be released together with indications of when they are likely to be reviewed or updated and the criteria for their review, as well as the circumstances under which the policy may be expected to be withdrawn. It is also important that the Department of Communications be tasked with clearly communicating to stakeholders the reasoning and rationale behind any policy withdrawal or update when it occurs.

AMTA supports targeted and efficient engagement of industry and other stakeholders as 'customers' of the regulatory processes that will be established under the new regulatory framework. Transparency and public consultation are essential to effective and informed regulatory decision-making.

2. Establish a single licensing framework

AMTA supports the proposed streamlined licensing framework on the basis that it delivers:

- Well-defined property rights that are specified by the licence rather than by reference to external administrative documents such as Radiocommunications Licensing and Assignment Instructions.
- A faster, simpler and less costly process for the allocation and reallocation of licences (with much greater use of market systems for the reallocation of licences than is possible with the current mix of apparatus and spectrum licences).
- Clear arrangements for licence holders about the treatment of licences at expiry, with AMTA advocating 'a presumption of renewal right' for all incumbent licence holders, subject to certain conditions, such as evidence that the spectrum is being used.

Well-defined property rights encompass a number of dimensions. Obviously, the frequency and geographic boundaries are needed and these will differ between licences. Other dimensions such as licence expiry dates, or out of band emissions, should be homogeneous for all licences within a

spectrum band to facilitate coordination and the transferability of licences between users to promote the reallocation of spectrum to higher yield uses.

A new streamlined licensing framework must provide a genuine change in its approach to licences. It cannot merely be a rebranding of the existing mix of apparatus and spectrum licences under a new licence type. AMTA considers it important to retain the principle of technology neutrality in a streamlined licensing framework. Technology neutral licences ensure licence holders have the flexibility to sub-divide and aggregate licence via the secondary market and facilitate spectrum moving its highest value use. As such, regulatory flexibility that reduces the technology neutrality of licences may not be desirable.

Ideally, the initial allocation of property rights under the streamlined licensing framework should extend to all parts of the radiofrequency spectrum where property rights do not currently exist. However, AMTA appreciates this may not be pragmatic given the scale of the radiofrequency spectrum, the cost of allocating it and the limited demand for many parts of it. As such, AMTA supports spectrum being allocated as early as possible after there is evidence of potential future demand for the use of the spectrum.

Often the value of spectrum bands fluctuates with changes in the international environment. International coordination and standardisation of bands is a long process, with multiple steps. If Australia waits for these processes to unfold before commencing its own domestic spectrum management processes, it could significantly delay the economic benefits of reallocating spectrum and increase the administrative costs associated with doing so. By ensuring tradeable licences are already “in-market”, the system will be more flexible and efficient – and spectrum will transition to higher value uses much more quickly than is possible under the current regime.

AMTA recognises the introduction of a streamlined licensing framework will be a major reform. It is important to consider some of the issues that would arise from making this change and to identify the processes required to transition existing spectrum and apparatus licences to the new framework.

Some of the details that will need to be considered in the move to a streamlined licensing framework are:

- What are the parameters of the parameter based licensing framework?
- Which parameters will be fixed (if any) and which will be flexible? How will flexible parameters be set?
- How will disputes be resolved?
- How would the framework be guided by ad hoc Ministerial policy statements?
- How much flexibility will be provided for subdividing and aggregating rights, and for sub-leasing rights?

As is appropriate for transitioning to a framework built on well-defined property rights, AMTA stresses that existing property rights will need to be maintained during the transition period. AMTA suggests, however, that options for encouraging existing licence holders to migrate to the new framework are considered.

The Directions Paper has suggested the legislative requirement for a maximum term of 15 years for spectrum licences should be retained.

AMTA submits that this is a premature conclusion to make so early in the Review process and suggests that the duration of licences should be given further consideration.

AMTA suggests that the Review should contemplate a framework which does not legislate a cap on licence terms, but rather provides flexibility for such terms to be set by government policy. AMTA believes that terms of at least 20 years would be more appropriate for spectrum that is likely to be used for mobile services; or alternatively a framework that allows for perpetual rights but which also allows the Commonwealth to regain access to the rights at a later date by invoking a predefined process. AMTA envisages that reforms to the spectrum management framework will mean there is very little need to reconsider whether the use of particular licences is in the public interest, as a system of tradeable licences will help ensure that this is the case.

AMTA also suggests that flexibility be built into the framework so that licensees can authorise the equivalent of class licences activity under their own licences, rather than having to rely on the ACMA to create all rights for this type of activity.

3. More flexible allocation and reallocation processes

AMTA supports more flexible allocation and reallocation processes.

AMTA suggests that prescribed timeframes for decision making in relation to allocation and reallocation processes needs to be included in the framework. Prescribed timeframes will provide a useful discipline for decision-makers as well as certainty for industry. AMTA would appreciate a clearer explanation of how the processes will apply to existing licences during the transition period.

The roles of the Minister and Department of Communications and the ACMA need to be clearly defined and separated so that there is no confusion between the two. That is, if the Minister is to have the power to direct the ACMA in relation to reallocation of spectrum as mentioned, then it needs to be clearly defined how and when this can occur.

4. Establish a more transparent and flexible approach for spectrum pricing to promote efficient use and re-use of spectrum

AMTA supports a market-based system for spectrum pricing and valuation.

AMTA suggests that the interplay between the Government's fiscal objectives and its broader economic and social objectives in relation to price setting for spectrum could lead to inconsistent decision-making over time. The framework should be designed so that overall long-term economic and social benefits are given more weight than any short term fiscal gains.

The Minister's role in determining spectrum pricing outcomes needs to be clearly defined.

The market-based price setting methodology needs to be transparent and should apply to all spectrum, including Government-owned spectrum.

We expect that under a streamlined licensing framework, taxes will be aligned with the opportunity cost of spectrum and fees will represent the efficient cost of delivering the spectrum management framework. We expect changes to the licensing framework will significantly reduce the administrative cost of spectrum management along with the associated fees.

5. Structuring payment schedules for licences

AMTA supports greater flexibility in fee payment structures and timing.

AMTA also strongly supports the alignment of payment timing with spectrum licence start dates and for the current treatment of spectrum licences under Australian taxation laws to be preserved in any reform of payment schedules under a single licensing framework.

6. The ACMA to take an open data approach to substantially improve the range, availability and quality of information provided to support an efficient spectrum market

AMTA agrees with the principle that markets are more efficient with better information. However, it is important to ensure information-gathering is targeted and does not impose burdensome costs on industry. Further details on the scope and intent behind this proposal are necessary so that industry can properly consider the costs and benefits of the proposal.

If such a power is to be introduced, it must operate in a way that minimises the compliance burden on industry and the ACMA, consistent with the government's red tape reform program.

7. Payment of compensation for resuming all or part of a licence

The integrity of a streamlined licensing framework rests on the certainty that it provides to licence holders regarding their access to spectrum over the term of the licence. If higher value uses for spectrum emerge, AMTA envisages prospective users would negotiate directly with existing licence holders for access to the spectrum. In such circumstances, the need to resume all or part of licence ought to be limited.

If a decision is made to resume a licence, either in full or in part, AMTA considers that it is appropriation for compensation to be paid on just terms.

8. Facilitate greater user involvement in spectrum management

AMTA supports the ACMA being adequately resourced to perform its core spectrum management functions of:

- planning and coordinating the use of a band;
- licence assignment and renewal; and
- dealing with interference and enforcement issues to protect a licensee's rights.

AMTA is concerned that delegating some functions could result in a loss of ACMA expertise and resources which could have detrimental results for spectrum licence holders. It is important that the ACMA is sufficiently resourced and empowered to carry out its functions.

AMTA suggests that planning, licence assignment and dispute resolution are functions that could all benefit from greater user involvement. These functions could also be made more efficient with greater automation and may have some potential to be outsourced.

On the other hand, it is important that the ACMA expands and retains expertise and control over the management of interference issues, and many aspects of its compliance and enforcement functions. The ACMA's engagement is also a matter of practicality, that is, the ACMA needs to be involved in resolving interference issues at some stage.

Therefore, AMTA strongly supports the ACMA being properly resourced to carry out these functions to protect the property rights of spectrum licence holders. The ACMA's resources for interference management need to reflect the expectation of access to clear unencumbered spectrum as set out in the terms of a spectrum licence, and the significant investment mobile network operators have and will continue to make in acquiring spectrum assets.

9. Develop more principles-based device supply regulation

AMTA supports a principles-based approach, noting that the desired outcomes are improved compliance, reduced interference and a more efficient regime for spectrum licence holders.

In particular, AMTA supports the proposal in the Directions Paper to expand the concept of supply under the device supply regulations. AMTA suggests the Department of Communications consider allowing licensees more involvement in the authorisation of devices by enabling licensees to make general authorisations for compliant "smart" repeaters, rather than having to individually authorise the use of such repeaters under Section 68 of the *Radiocommunications Act 1992*.

As noted in our comments on proposal 8, AMTA strongly believes that the ACMA be properly resourced to carry out its compliance and enforcement functions. The ACMA needs to retain and expand its expertise in this area and ensure it has control over the enforcement regime. While third parties can, from time to time, provide useful expertise, AMTA strongly supports ACMA management of device supply regulation as well as compliance and enforcement generally.

10. Improve regulation by extending the suite of enforcement measures available to the ACMA

As per our comments on proposal 9, above, AMTA supports improved regulation by extending the suite of enforcement measures available to the ACMA.

AMTA notes that the desired outcome is improved compliance and reduced interference with spectrum rights. These are measurable outcomes and adequate resources need to be applied to achieve the desired results. AMTA notes that over recent years, ACMA resources in this area have

declined and we believe an increase is likely to be necessary to ensure compliance reaches acceptable levels.

While a graduated and flexible approach may be useful, it is important that offences are responded to quickly and resolved sooner, particularly when dealing with interference-related offences.

11. The ACMA to continually review options for allocating spectrum to alternative/higher value uses and to ensure that barriers to achieving this are reviewed and removed where appropriate.

It is not pragmatic to require the ACMA to continuously monitor current and prospective demand for every spectrum band across every different geographic area of Australia. Any spectrum management framework that relies on this type of approach to achieving the efficient allocation and reallocation of spectrum should not be expected to succeed.

It is better for spectrum reforms to focus on streamlining the licensing framework in such a way that spectrum reallocation is more frequently achieved via market transactions than via centrally planned decisions by the ACMA.

Priorities for reform

AMTA supports fundamental reform of the regulatory framework. Such fundamental reform must be considered from the perspective of designing a holistic regulatory framework, rather than making piecemeal changes.

With that proviso, AMTA believes there is scope for prioritising device supply regulations (to stem the supply of non-authorized mobile repeater devices etc.) as an urgent short-term reform under the existing framework. There is also opportunity to introduce a presumption of renewal for apparatus and spectrum licences, as long as this does not delay the major reform work program.

Conclusion

AMTA looks forward to continued participation in the Review process.

Any questions about the above comments can be directed to Lisa Brown, Policy Manager, AMTA at 02 6239 6555 or lisa.brown@amta.org.au.