

Proprietary Rights in Licensing

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The proposed approach to licensing described in the Consultation Paper is to dispense with the current distinction between Apparatus Licences and Spectrum Licences in favour of a new unified licensing type. We welcome this approach. In seeking improvements via new unified framework however care will be needed to ensure we do not replace one set of problems with another.

Whilst the characteristics of the new licensing arrangement are not set out in any detail in the Consultation Paper there is the sense that there will be a greater emphasis on the proprietary aspect of the licences, and their tradability. Secondary trading has always been the intention of Spectrum Licensing, though the reality for the past twenty years may not have matched the expectation. And although Apparatus licences have always been tradeable the reality there is that licensees have seen Apparatus licences as just that - licences – permissions to use spectrum under specific conditions, rather than proprietary rights.

It is arguable that the Apparatus Licensing arrangements have worked well for the most part, and continue to work well, so we would caution against radical changes that might jeopardise that situation. That is not to say that these licences cannot operate successfully within a single licensing framework. The danger however is that if the “proprietary” and “tradability” aspect of the licence are over-emphasised there is the potential for speculation and hoarding of spectrum, to the detriment of actual spectrum use.

Whether actual use of the spectrum resource is a good thing or whether it is irrelevant is probably a matter for debate between the economist and the technologist – but certainly if speculative holdings are encouraged we are certain to arrive, sooner rather than later, at a position of being unable to obtain licences for actual services.

The essence of the current apparatus licensing regime for many service types is a “pool” of spectrum resources from which system operators are able to draw spectrum as needed, and to which they return spectrum when no longer needed. The concept of holding for trading purposes has not been a feature of this licensing, and indeed it is the very absence of a perception of scarcity that has enabled current arrangements to succeed.

In developing licence conditions for various service types it will be important to recognise the difference between those service types that might use spectrum most efficiently by having exclusive access to spectrum/space, typically wide area public mobile telecommunications systems, and those that achieve maximum spectrum efficiency via a managed shared resource, typically point to point links and regional land mobile systems and the like.

In our opinion maximum spectrum efficiency for the latter service types will be achieved by licensing conditions that encourage the continuation of the model of a centrally managed pooled resource.

Licensing arrangements for such services might therefore include an anti-hoarding condition, i.e. a “use it or lose it” policy.

The alternative view of course is that utilisation is irrelevant – that maximum public benefit flows automatically where market forces are left to determine spectrum allocation.

In summary we believe there is considerable merit in the current regime of the “managed pooled resource” for particular service types in particular bands, but this regime would seem to be at odds with a model that emphasises propriety rights and tradability. If changes to the current model are contemplated the replacement model needs to be considered very carefully.