

**UMTS Forum Response to the  
OFCOM/RA Spectrum Trading Consultation  
(issued November 2003)**

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*The UMTS Forum congratulates OFCOM for its interesting consultation initiative, and for the advanced stage of OFCOM's reflection on spectrum management liberalisation and secondary trading introduction. We welcome the opportunity to comment at an early stage in the UK process, and look forward to further continuous consultations with market stakeholders that will significantly improve the various implementation stages*

*Although the Forum represents an important group of spectrum users, it does not represent all categories, nor is it specifically involved in the details of UK spectrum management, which result in this very substantial consultation document. This is why our response is independent of Ofcom's series of questions, providing instead an overview of the Forum's thoughts on spectrum trading and the evolution of spectrum management.*

1 - The UMTS Forum membership is not limited to EU companies or EU organisations. However, this consultation is made within an EU Member State, and in a rather new domain where national legal frameworks, including in the UK, are not yet very developed. This is why, for legal issues, our responses refer only to the EU legal framework (Review directives, Spectrum decision, etc...).

2 – The issue that the spectrum community is trying to address today is to ensure the appropriate evolution of spectrum management and usage, taking into account new technologies and market requirements which will benefit from a more efficient use of spectrum. At a time when radio systems should satisfy the market requirements, offering access over complete territories and with increased bandwidth and gradually becoming more flexible, new forms of flexibility in spectrum management are clearly needed.

3 – Secondary spectrum trading has some potential to bring more flexibility in business planning and more innovation as new services have better access to spectrum as well as more efficient spectrum use.

4 – Secondary spectrum trading can be one way to improve efficiency and flexibility among others such as Administered Incentive Pricing (AIP), re-farming, etc. Since the framework directive 2202/21 does not mention “spectrum trading” but “transfer of rights of use” (Article 9.3 and Recital 19), it is highly recommended that, in the light of the current consultation, OFCOM focuses on the legal definition of what secondary spectrum trading means for licence holders. Also OFCOM in 5.3.2 states that “spectrum trading will generally involve the transfer of rights to use spectrum, rather than the transfer of the licence itself.” This highlights the importance of defining what rights are transferred and under which conditions they can be used. This should happen well before the launch of a secondary spectrum market. The legal definition should encompass rights and obligations for participants, and prevent hoarding and speculation in spectrum, resulting in abuse to the detriment of end users/customer service provision.

5 - New forms of rights may emerge to reflect market and technology evolution. The framework for the transfer of rights must therefore be set up beforehand, either in the licensing conditions or in a special regulation. The situation when the licence expires must also be regulated.

6 – The conditions for transferring the right to use spectrum may have a strong impact on the internal market for telecom services. If possible, changes in this area should be made in cooperation with or even harmonised throughout the EU, either under the EU framework (i.e. Radio Spectrum Policy Group and Radio Spectrum Committee), or under the CEPT/ECC. The UMTS Forum recommends that the UK spectrum review first defines a framework for flexibility including transferable rights of use, and that this framework be debated within the RSPG or the ECC, with the objective of achieving consensus solutions to all problems of transfers of rights.

7 - The UMTS Forum has earlier pointed out that large down-payments in the beginning of deployment and strict coverage obligations can have detrimental effects on the capacity of licensees to finance network roll out, and recent events have indeed proved this to be true in Europe. Yearly fees are much more effective in fostering an efficient use of spectrum, when applied in a non discriminatory manner to all spectrum users, or at least all commercial users. This is especially so when they are coupled with spectrum re-farming funds and the possibility to trade rights of use. Also of importance is the possibility of commercially negotiating the access to network air-time in other licensees’ networks which could also be envisaged. The right to trade spectrum rights together with spectrum usage fees and other factors must be woven into a comprehensive set of rules for increased spectrum efficiency. And as has been said above, this should be done on an EU scale.

8 –There are also some rules in the new EU regulatory framework that do have an impact on this consultation. Contrary to the Spectrum Decision which covers any spectrum from 9 kHz to 3000 GHz, the Framework Directive 2002/21 and the other Review directives cover only “commercial” spectrum, that is to say spectrum used to provide a “service normally provided against remuneration” (Articles 2.c and 9.1 of the Framework Directive, whereas 5 of the Authorisation directive 2002/20). The framework for secondary spectrum trading and increased flexibility has to take into account also the interests of users of non-commercial spectrum, as suggested by the consultation. A framework for spectrum trading for such services must be carefully balanced. The Forum agrees and supports OFCOM's view that license-exempt spectrum should be excluded from trading. Moreover, secondary spectrum trading should not lead to band fragmentation, in particular if change of service is allowed.

9 - Considering the difficulties it would raise and the regulatory uncertainty it would create in the future, it would be inappropriate to introduce spectrum trading in the frequency bands allocated to satellite services. In the case of mobile public services, the buyer should assume the same rights and obligations as the seller had.

10 - Article 9.2 of the Framework Directive states « Member States shall promote the harmonisation of use of radio frequencies across the Community, consistent with the need to ensure effective and efficient use thereof and in accordance with the Decision No. 676/2002/EC (Radio Spectrum Decision) ».

11 – Article 9.4 of the framework directive states that “Where frequency use has been harmonised [...] transfer shall not result in change of use...”. The consultation of OFCOM acknowledges that. The UMTS Forum strongly supports frequency harmonization. This harmonisation has benefited the whole industry and also the users. Harmonization has also facilitated the availability of complex equipment at reasonable cost and timeframe. All efforts should be made not to undermine these positive effects. However, the UMTS Forum wishes to point out that Art.9.4 may not be as straightforward in the case of UMTS as might be expected. Today wireless access systems (including 3G) are evolving and converging. The technologies are evolving, and the service offerings are changing very rapidly. The interpretation of what a “change of use” is in the case of 3G, or in harmonised uses in general, needs to be clarified as soon as possible at EU level before trading of the frequencies concerned starts.

12 -The relationship between spectrum trading and competition is also an important element to be considered. What has to be avoided by appropriate regulations is the reinforcement of the positions of a single or a limited number of players in the market up to a quasi-monopolistic position. In other words, spectrum trading may present the risk of reducing the level of competition in a market to the detriment of the final users. If trading is implemented, adequate rules should protect from this risk. The EU should treat all these aspects relating to secondary spectrum trading in co-operation with CEPT/ECC, to ensure consistency of spectrum harmonisation.

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### **The UMTS Forum's Conclusions**

Since trading in the rights to use spectrum may have a strong impact on the EU internal market for electronic communications, the introduction of secondary spectrum trading should be done in a co-ordinated way across all EU Member States. The UMTS Forum applauds OFCOM's accomplishment and invites the UK Government to initiate a pro-active discussion at the Radio Spectrum Policy Group (RSPG) level with the aim of adopting rules that will be compatible and harmonised all over Europe. The RSPG and CEPT/ECC should be given the possibility to discuss the matter and deliver their opinion before the rules are set.

Secondary spectrum trading must be considered in a context of improved spectrum management and increased efficiency with the objectives to:

1. maintain and respect the benefits brought by regional and global harmonisation to users and the industry;
2. address the market and technology evolutions including convergence trends;
3. allow market mechanisms to determine the best allocation;
4. ensure fair conditions of access to spectrum also for new players, in particular when it comes to frequency fees.

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