



Draft spectrum re-allocation recommendation for the 850/900 MHz band Consultation paper

Vodafone Submission

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1. Introduction

Vodafone appreciates the opportunity to provide comments on the *Draft spectrum re-allocation recommendation for the 850/900 MHz band* consultation paper.

Vodafone maintains that the ACMA's decision to clear and auction the 900 MHz band is not the most appropriate course of action, having regard to the considerations the ACMA set out in its *Reconfiguring the 900 MHz band decision paper*.

Nonetheless, given the ACMA's decision to proceed with a band clearance and auction, Vodafone is concerned that the allocation process is being rushed without adequate consideration of important foundational matters. For example, it is not clear what mechanism would be used to ensure 3G service continuity, and the proposed public safety mobile broadband (**PSMB**) set aside decision has not been finalised. These matters have a material impact on various policy decisions such as auction format which the ACMA appears to be already considering. Without clarity, there is a significant risk that policy decisions are made on erroneous assumptions, which could then lead to poor outcomes.

In summary, Vodafone considers that:

- The ACMA (or the Government) should clarify, with a detailed implementation plan, how 3G service continuity will be guaranteed at the same time the Minister makes the reallocation declaration to resolve this major uncertainty. For example, if the allocation limits mechanism is used, then the allocation limits should be determined as soon as possible and prior to any further progress in the reallocation process.
- The 850 MHz downshift should be addressed as a separate administrative issue prior to the auction.
- The reallocation period should be the same for the 850 MHz expansion band as for the 900 MHz band. The reallocation period should end no earlier than 30 June 2024, and ideally at the end of 2024.
- The ACMA preferred sealed bid combinatorial auction (**SBCA**) auction format is inappropriate. The "one-shot" format increases the risk of suboptimal outcomes. Simultaneous multi-round ascending (**SMRA**), combinatorial multi-round auction (**CMRA**) and enhanced simultaneous multi-round ascending (**ESMRA**) auction formats are potentially superior depending on specific circumstances. In any case, Vodafone strongly suggests that considerations about auction format are postponed until critical issues of the proposed PSMB set aside and allocation limits are finalised.
- National licences and 15 year licence terms are appropriate.



2. Band clearance does not promote the public benefit

Vodafone continues to have serious doubts about the ACMA's preferred plan of band clearance and auction, and believes its decision is suboptimal.

In arriving at its decision in the Reconfiguring the 900 MHz band decision paper, the ACMA considered diverse opinions of three licensees regarding what to do with the 900 MHz band. The ACMA decided to proceed with a plan that closely mirrors the position favoured by Telstra.

It is difficult to see how the ACMA can conclude that a band clearance and auction would likely allocate the spectrum to its highest value use (**HVU**) when it has not undertaken a HVU assessment (or at least one that is made public).

Under a HVU assessment, it would be clear that the risk of widespread service disruption is very significant, and in our view, likely to be the most significant factor which should drive the ACMA's decision making. It would also be clear that the primary inefficiency in the 900 MHz band is not atypical licence bandwidth but is rather Telstra's underutilisation of this highly valuable asset.

Both Vodafone and Optus continue to rely heavily on access to the 900 MHz band for 3G services. Vodafone has about 5800 unique sites using 900 MHz, and Optus has about 7700 unique sites using 900 MHz. On the other hand, Telstra is underutilising its 900 MHz spectrum. Based on public records, Telstra has only about 50 sites using 900 MHz and we understand that Telstra does not operate any commercial services on this band. It is curious that Telstra does not utilise the upper parts of its 8.4 MHz allocation even if the bottom 1 MHz is unusable. The only reasonable inference we can draw is that Telstra's non-use is a spectrum strategy matter and Telstra does not need its 900 MHz spectrum.

The ACMA does not address the difference in utilisation of, and hence reliance on, 900 MHz between the operators in its decision paper in a meaningful way. Instead, the ACMA has formed the view that the panacea to Telstra's underutilisation of its spectrum is to forcibly reconfigure the band into 5 MHz blocks. This is a technical argument that does not address the key inefficiency in the 900 MHz band.

An alternative decision by the ACMA, for example, to not renew Telstra's 900 MHz apparatus licences could achieve far more equitable outcomes and still address Telstra's underutilisation of its spectrum. Vodafone would readily acquire Telstra's 900 MHz spectrum and put it to use.

Vodafone believes the ACMA has adopted a flawed policy position that will likely have lingering consequences. The message its decision sends to stakeholders about squandering highly valuable spectrum access is very problematic.



3. Concerns about process

Vodafone believes that material uncertainty for the 850/900 MHz auction should be avoided. At present, there are two critical considerations that ought to be resolved as soon as possible:

- The proposed set aside for PSMB.
- Mechanisms for ensuring 3G service continuity.

Firstly, it is still to be confirmed how much spectrum would be set aside for PSMB and where the set aside spectrum would be. This issue must be finalised as soon as possible given it will impact the quantum and position of spectrum available at auction.

Secondly, given the potential for widespread service impacts arising from the 900 MHz band clearance, the mechanism for ensuring service continuity for incumbent 3G services operating in the 900 MHz band needs to be finalised as soon as possible. The ACMA has indicated that this is intended to be implemented through allocation limits, but this is the only indication that has been given and there is self-evidently a lot more detail which is required for licensees to begin to understand the approach and implications of this mechanism.

Therefore, a delay in setting allocation limits in this auction could be problematic as critical policy decisions such as auction format may be made based on assumptions which inevitably turn out to be misplaced.

Ideally, the reallocation declaration and allocation limits should be made at the same time, and the PSMB set aside to be made immediately afterwards before any further decisions about the auction design is taken by the ACMA. This means that public consultations about the allocation limits and how they could apply to ensuring 3G service continuity need to commence immediately.

In the circumstances where the allocation limits would not ensure 3G service continuity and the ACMA is still determined to proceed with an auction, the hybrid option canvassed in its *Reconfiguring the 900 MHz band consultation papers* should be reconsidered.

4. Mismatched reallocation period

Vodafone opposes the proposed reallocation period. Vodafone does not believe a mismatched reallocation period for the 850 MHz expansion and 900 MHz bands is justified. The reallocation period for both bands should end no earlier than 30 June 2024.

In circumstances where Vodafone is unable to retain access to enough 900 MHz to continue to operate its 3G network, an even longer reallocation period may be needed due to the significant number of



customers who rely on the 3G network. Given this, we suggest the ACMA set a reallocation period until the end of 2024.

5. 850 MHz downshift

Vodafone continues to believe that it is a mistake to bundle the 850 MHz downshift with the proposed auction. We have not seen any evidence that there is actual demand for this 1 MHz of spectrum.

The ACMA stated in the consultation paper that “*the attachment of the 2 x 1 MHz of ‘downshift’ spectrum to the lower lot of the 900 MHz band may facilitate negotiations between the ‘Block 1’ licensee and licensees in the adjacent 850 MHz spectrum-licensed band to achieve the downshift of the 850 MHz spectrum-licensed band as early as possible.*”

It is unclear how the ACMA envisages the down shift would occur. If, for example, Optus acquired the lowest 5 MHz block in the 900 MHz band, there are limited aligned incentives for both Vodafone and Telstra to simultaneously shift down 850 MHz holdings (at significant cost) in order to accommodate Optus.

Even if, for example, one of the existing 850 MHz licensees were to acquire the lowest block of 900 MHz, this is no different to the current position, where no downshift has been successful even though the matter has been on the ACMA’s radar for a number of years and the ACMA has signalled it is willing to be very flexible to accommodate a downshift.

The status quo is evidence of the misaligned incentives. The ACMA’s plan to affect a voluntary downshift is unlikely to succeed unless a significant value transfer from the acquirer of the lowest 900 MHz block to one or both of the licensees in the 850 MHz band occurs.

The difficulty of a negotiated outcome (without ACMA pressure) means that there is a non-negligible risk that the lowest block of the 900 MHz spectrum is unsold and a significant risk that it remains underutilised until 2028.

Vodafone continues to believe that an ACMA guided industry negotiation (separate from the auction) would achieve far more optimal results. Vodafone maintains that it would be prepared to voluntarily downshift its 850 MHz holdings if it is guaranteed continued access to 900 MHz spectrum on terms no worse than the existing terms.

We strongly believe that the downshift issue ought to be resolved prior to the auction. As we have advocated previously, we believe that the simplest way is for the ACMA to offer the 1 MHz downshift spectrum over the counter prior to the auction.



6. Auction format

Decisions pertaining to auction format are premature. Vodafone strongly opposes any decisions being made at this stage. Decisions about how much spectrum is available (ex PSMB) and how 3G service continuity is expected to be maintained will have a material impact on decisions regarding auction format.

Nonetheless, Vodafone considers the ACMA favoured SBCA format inappropriate. The “one-shot” nature of the format risks suboptimal outcomes. Vodafone considers that other formats canvased (ie SMRA, CMRA and ESMRA) are potentially superior to the SBCA format.

As a general note, Vodafone considers it inefficient for the ACMA to adopt a new bespoke auction format for each auction it undertakes. While it is necessary to consider pros and cons of different auction formats in different allocation processes, there are efficiencies to be gained by focusing on a couple of auction formats so that bidders may not need to relearn auction mechanics for each subsequent auction. At least, there should be a rebuttable presumption that one or two auction formats should be favoured.