



Submission in response to  
ACMA Consultation Paper

**Proposal to remake the  
Radiocommunications  
(Trading Rules for  
Spectrum Licences)  
Determination 2012**

November 2022

## EXECUTIVE SUMMARY

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1. Optus welcomes the opportunity to provide feedback to the Australian Communication and Media Authority's (ACMA) Consultation Paper: *Proposal to remake the Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012* (the Determination).
2. Optus considers that market-based spectrum trading is an important mechanism to ensure that spectrum can move towards its highest value use and promotes efficient and competitive spectrum markets. Optus considers that the Determination has generally worked well and reflects a light touch regulatory approach designed to facilitate a secondary trading market while providing the ACMA with some oversight of trading activity to support its spectrum management functions.
3. That said, Optus notes that there are certain instances in which market-based spectrum trading may not always deliver the desired outcomes from a spectrum management perspective, such where there is fragmentation between spectrum holdings that hinder trade. In such circumstances, Optus considers that the ACMA may play an important role in facilitating defragmentation to support market trading of spectrum.
4. For example, from a spectrum management perspective, the preferred outcomes for the 3.4 GHz and 3.7 GHz re-allocation remains the delivery of 100 MHz contiguous spectrum and lot alignment in regional and to the greatest extent practicable, in metro areas. To this end, Optus reiterates its preference to "further defragment and consolidate spectrum-licensed holdings in the 3.4–3.7 GHz frequency range and reduce the impact of orphaned spectrum" and "to reduce the amount of spectrum encompassed in restricted use bands at apparatus and spectrum licence frequency boundaries".<sup>1</sup>
5. Defragmentation will be crucial to ensuring that the spectrum can be most effectively utilised for 5G services and Optus welcomes the ACMA's declaration that the 3.4-3.8 GHz range will be allocated to spectrum licences in most geographic areas, as a single licence type will better facilitate consolidation of spectrum holdings and enable 100 MHz contiguous bandwidths.<sup>2</sup> We also welcome confirmation in the draft Determination of a 10 MHz Minimum Contiguous Bandwidth (MCB) for the 3.4 and 3.7 GHz bands. However, Optus remains of the view that, given the complexities of the band and in particular, the different geographic boundaries between the 3.4 GHz and 3.6 GHz bands, it remains unlikely that defragmentation will be achieved without assistance from the ACMA.<sup>3</sup>
6. Optus generally supports the ACMA's proposal to remake the Determination "with only such minor, necessary changes" as are outlined the Consultation Paper and the draft instrument. Optus considers that the draft instrument will help the ACMA deliver on the objectives set out on page 3 and 4 of the Consultation Paper. Optus also refers the ACMA to the Australian Mobile Telecommunication Associations (AMTA) submission in response to the Consultation Paper. Optus supports the position set out in the AMTA submission, noting the further comments set out below.

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<sup>1</sup> Optus May 2022 submission

<sup>2</sup> Radiocommunications (Spectrum Re-allocation – 3.4 GHz and 3.7 GHz Bands) Declaration 2022 (the Declaration) issued on 14 July 2022

<sup>3</sup> Optus May 2022 submission

# RESPONSES TO ACMA ISSUES FOR COMMENT

## Question 1 – Is the Determination still required? Why or why not?

7. Optus considers that the ability to trade spectrum is an essential tool to enable the defragmentation of spectrum, thereby allowing spectrum to attain its highest value use, promoting competition in spectrum markets. The Determination is an important instrument that sets the ground rules for spectrum licensees to trade spectrum and Optus support the ACMA's proposal to remake the instrument.

## Question 2 – Is the Determination operating effectively and efficiently?

8. Optus consider that the relatively light touch regulatory approach reflected in the 2012 Determination has been largely fit for the purpose of enabling market-based spectrum trading. Optus also notes that the Determination can serve an important purpose of supporting transparency in spectrum ownership which can assist with efficient spectrum management by the ACMA. The draft instrument largely reflects a light touch regulatory model, though Optus suggests drafting may be improved to reduce administrative process where unnecessary to achieving spectrum management outcomes.
9. For example, Optus supports the proposal in the AMTA paper to have spectrum trades that result in less than the MCB be reviewable by ACMA staff at first instance and only progress to the need for Authority approval where such trade will lead to fragmentation. We would support a similar approach for trades that result in non-aligned geographic boundaries.

## Question 3 – Are the proposed changes to Schedule 1 appropriate?

10. Optus supports the ACMA's proposed changes to Schedule 1. Optus agrees with the stated rationale for the change to introduce a single standard rule for spectrum licensed bands of 5 MHz MCB, unless stated otherwise. Optus welcomes confirmation of a 10 MHz MCB for the 3.4 and 3.7 GHz bands.

## Question 4 – Are the proposed amendments appropriate? Are additional amendments required?

11. Optus considers that the ACMA's suggested amendments under draft section 8 of the Determination to require further information from spectrum licensees appear to be reasonable and proportionate to the requirements of the Radiocommunications Act.<sup>4</sup>
12. Optus notes that the Register of Radiocommunications Licences (RRL) can perform an important transparency and accountability function that supports efficient spectrum management. In this context, Optus acknowledge the benefits to spectrum management to be gained from ACMA's proposal to refuse to register details of transmitters where a certificate does not accompany information provided under section 8.<sup>5</sup> However, Optus cautions that compliance will impose administrative and resource costs on spectrum licensees that the ACMA must carefully consider in finalising the Determination.

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<sup>4</sup> Section 86

<sup>5</sup> Note 1 under section 8(2) of the Determination

13. Optus generally supports the proposal set out under section 10 of the draft instrument for the ACMA to approve spectrum trades that result in less than the MCB on the basis that it will help facilitate defragmentation. That said, Optus refers the ACMA to AMTA's proposal to delegate ACMA staff with the power to approve such a trade where an initial review determines that it will not lead to spectrum fragmentation. If a trade that results in less than the MCB does lead to fragmentation, then ACMA Authority permission should be required. A similar approach may be taken for trades that result in geographic boundaries that do not align with the original spectrum licence.
14. Optus considers that the timeframes under section 10 should be reviewed to accommodate circumstances where an expedited decision on whether the ACMA may permit a trade may be required. The Determination may refer to specific circumstances such as financial or operational factors or priorities faced by one of the parties trading the spectrum which may demand a faster decision than the potential 90 days currently proposed (for an initial decision), plus any review or appeal process timeframes.
15. Optus reiterates that ACMA intervention in a trade should be limited to realising important spectrum management objectives such as defragmentation. Optus considers that the proposed changes to the Determination largely reflect this principle and indeed, draft section 10 appears designed to provide ACMA oversight of trades that would result in spectrum holdings that may not support defragmentation. Optus supports such an approach and reiterates its encouragement to the ACMA to consider functions and powers it has available under the Act to support market led defragmentation in important spectrum bands for 5G such as the 3.4 GHz and 3.7 GHz bands.