



Submission in response to Issues Paper

Spectrum Review

June 2014

Contents

Section 1.	Executive Summary	3
Section 2.	Issues for Review	5

Section 1. Executive Summary

- 1.1 Optus has long championed reform of Australia's spectrum management framework and welcomes the establishment of a review process and the opportunity to comment on the proposed terms of reference.
- 1.2 Spectrum is a key driver of economic productivity as it provides a significant part of the underlying infrastructure for the digital economy.
- 1.3 In terms of spectrum use for mobile, a recent ACMA report¹ found that in 2013 mobile broadband led to an estimated increase in Australia's economic activity of \$33.8 billion. Of this, \$26.5 billion was attributed to time savings for businesses using mobile broadband.
- 1.4 The report also found that growth in mobile broadband productivity, use and demand has led to greater competition and affordability with the average cost of a mobile telecommunication connection decreasing by 21 per cent between 2006 and 2013.
- 1.5 Satellite use of spectrum also contributes to Australia's economic productivity via the delivery of fixed broadband and mobile services to remote work sites and at black spots and the provision of digital broadcast services for delivery of education and business programs and free to air and subscription television services.
- 1.6 It is within the context of the productivity benefits driven by the competitive mobile and satellite sectors that options for reform of the spectrum management framework should be considered.
- 1.7 Optus considers that the proposed terms of reference will provide an opportunity to streamline the current set of complex spectrum allocation, pricing and licensing processes that in practice are inefficient and have contributed to an unnecessarily costly burden on industry.
- 1.8 Optus specifically recommends the review:
 - (a) initially undertake a stocktake of existing legislative instruments that create the framework for the decision making processes that lead to spectrum planning, allocation, licensing, interference management and technical regulation outcomes;
 - (b) develop a number of case studies that detail how key decision making processes noted in (a) have worked in practice, including seeking perspectives from industry, the 'the customers of the process' that are under review and the ACMA;
 - (c) specifically seek options to streamline and simplify decision-making processes for spectrum allocation (in s.60 and S. 82 of the *Radiocommunications Act 1992* respectively) to provide certainty for investment decisions and reduce process and engagement costs for industry;
 - (d) review price-setting mechanisms for spectrum access charges including improving the transparency of the processes that set prices for auctions, licence re-issue, and

¹ 'The economic impacts of mobile broadband on the Australian economy, from 2006 to 2013' Research report prepared for the ACMA by The Centre for International Economics, April 2014 <http://www.acma.gov.au/Industry/Spectrum/Spectrum-projects/Mobile-broadband/mobile-broadband-boosts-australias-economy>

administrative pricing of spectrum and review whether spectrum should continue to be taxed.

- (e) not discount past recommendations in support of the standardisation of the planning, allocation and management of *all* spectrum and not continue separate administration regimes that dictate approaches depending on use, and don't uniformly apply market-based allocation processes;
- (f) develop solutions to resolve the current inability to enforce spectrum property rights against manufactures and distributors of non-compliant devices, including illegal repeaters and network equipment;
- (g) streamline consultation processes and consider options to fast track decisions so that review processes aren't open-ended;
- (h) aim to formally recognise the 'establishment of satellite networks' as a core function of the ACMA as part of the *Radiocommunications Act 1992*; and
- (i) review the current balance between 'delegated' decision making and the sets of decisions that require either the ACMA, the Authority, the Department, the ACCC or the Minister to determine.

1.9 In summary, Optus supports the retention of proposed Term of Reference 1-6, with some suggested amendments as noted in Section 2 below. However, Optus considers that Term of Reference 7 is not necessary and that Term of Reference 8 needs some refinement. That is:

- (a) the development of a 'whole of government approach to spectrum policy' as proposed to be considered under Term of Reference 7, would be the outcome of a reformed spectrum management framework as proposed under Term of Reference 3;
- (b) the purpose of conducting a 'whole of economy' approach to valuation of spectrum under Term of Reference 8 is not clear. That is, if the intent is:
 - (i) for price setting reasons, Optus notes that valuing spectrum is a very different exercise to price setting and notes that the proposed Term of Reference 3 has scope to review the appropriate price setting mechanisms for spectrum allocations.
 - (ii) to consider an approach to valuation of spectrum in terms of broad economic and social benefits, that is a valuation process that inputs into decisions about a potential change of use of spectrum, or economic versus non-economic value, that it is appropriate to retain this Term of Reference.

1.10 Optus also supports the review process closely engaging with industry, the customers of the processes under review, and the ACMA as the subject matters experts and participants in the key processes that the review will consider.

1.11 Optus also endorses the joint submission made to this Review by the Australian Mobile Telecommunications Association (AMTA) and Communications Alliance (CA).

Section 2.

Issues for Review

Term of Reference 1: Simplify the framework to reduce its complexity and impact on spectrum users and administrators and eliminate unnecessary and excessive regulatory provisions.

- 2.1 Optus supports the inclusion of this term of reference as its objective to supplement, in a more fundamental way, the current regulatory reform process.
- 2.2 Optus suggests the Term of Reference be slightly amended to refer to 'the customers of the process established under the framework' not just spectrum users.
- 2.3 The response to this term of reference could be assisted by:
 - (a) undertaking a stocktake of the related instruments that govern the existing set of decision making processes in relation to spectrum planning, allocation, licensing, interference management and technical regulation;
 - (b) developing case studies of how key decision making processes have worked in practice that includes the perspectives from industry, the 'the customers of the process';
 - (c) developing a revised approach for comment that details short and long term priorities for reducing complexity and cost of engagement for both government and industry.
- 2.4 An example for (c) above is the development of the complex licensing framework to facilitate the deployment of [low power stations](#) (for e.g. femtocells). This process unnecessarily required industry to develop the expertise in a number of complex legislative instruments that govern the spectrum licensing framework. It also led to industry requesting the development of a discrete page on the ACMA website to connect all of the relevant instruments that give effect to the licencing regime for future reference.

Term of Reference 2: Improve the flexibility of the framework and its ability to facilitate new and emerging services including advancements that offer greater potential for efficient spectrum use, while continuing to manage interference.

- 2.5 Optus endorses this term of reference as the development of a more flexible spectrum management framework will help drive efficient use which is critical as the pace of change in markets, business models and technology increases.
- 2.6 However, Optus also suggests that improving the flexibility of the framework needs to be balanced with providing certainty for those who have acquired or are intending to acquire spectrum assets, as certainty drives investment confidence.
- 2.7 Options developed as a result of this term of reference need to:
 - (a) ensure that any policy proposal to support spectrum sharing must not be retrospective and be consulted on prior to any future allocation process; and
 - (b) include suggestions on how to improve enforcement powers to protect spectrum property rights against manufactures and distributors of non-compliant devices, including illegal repeaters and network equipment.

Term of Reference 3: Ensure efficient allocation, ongoing use and management of spectrum and incentivise its efficient use by all commercial, public and community spectrum users.

- 2.8 Optus supports this term of reference and its objective of developing options to improve the efficiency in the way spectrum is allocated and used particularly for future IMT allocations.
- 2.9 A key part of the response to this term of reference will be the analysis of how 'efficient' the price-setting mechanisms for spectrum access charges are. This analysis should include recommendations on how to improve both the efficiency and transparency of price setting process for prices set at auction, during licence re-issue processes, for administrative allocation and a review of past justifications for the taxation of spectrum.
- 2.10 Optus suggests that the analysis undertaken in response to this term of reference use case studies of recent allocation and re-issue processes which will assist highlight where changes are required to improve efficiency outcomes for both government and industry.
- 2.11 Also, Optus supports the suggestion to revisit the efficiency objectives in the first object of the *Radiocommunications Act 1992* and in Principles 1, 3, and 5 of the *Principles for Spectrum Management*.
- 2.12 However, Optus notes there is no reference to the *Total Welfare Standard* concept which the ACMA proposed to use as '*a framework for assessing the costs and benefits of different regulatory and market mechanisms for specific spectrum management issues*'². Optus suggests that it would be useful for the review process to consider the status of this tool of analysis when allocating spectrum.

Term of Reference 4: Consider institutional arrangements and ensure an appropriate level of Ministerial oversight of spectrum policy and management, by identifying appropriate roles for the Minister, the Australian Communications and Media Authority, the Department of Communications and others involved in spectrum management.

- 2.13 Optus supports this term of reference but suggests it be redrafted to state: '*Consider how the Minister and the existing framework cooperate coherently to deliver effective process and outcomes*'.
- 2.14 The response to this term of reference would benefit from consideration of case studies from recent spectrum allocation and re-issue processes that take industry's experiences into account as the customers of the processes under review.
- 2.15 This analysis should include options for establishing frameworks that support a set of decisions being grouped together and considered as a single decision in parallel. This change would remove current impediments which generate decision making processes that have periods of urgency followed by long periods of delay. For example, the Digital Dividend Auction required Optus to:
 - (a) engage over an eight year period with four Ministers and their departments and two regulators;
 - (b) prepare nearly 50 submissions on draft policy proposals and auction rules, attendance at five briefing sessions and participation at regular industry meetings;

² 'Principles for Spectrum Management', ACMA, pg.1 www.acma.gov.au/.../principles_for_spectrum_management.doc

- (c) engage four different expert consultants by either Optus or the industry to support advocacy positions or to comprehend the complexity of proposed auction rules.
- 2.16 It is clear that the outcome of this process could have been achieved in less time, using less government and industry resources if the current framework was simplified.
- 2.17 Optus supports the proposal to consider under this term of reference, whether the ACMA's satellite filing and coordination responsibilities should be explicitly recognised.
- 2.18 Specifically Optus supports the review recommending that the *Radiocommunications Act 1992* formally recognise the 'establishment of satellite networks' as a core function of the ACMA.
- 2.19 As background Optus notes that:
- (a) the ACMA exercises responsibility as the 'Administration of Australia' in certain dealings with the International Telecommunication Union and Asia Pacific Telecommunity and other international or regional bodies;
 - (b) this role needs some formal definition and that current working is based upon an outdated Memorandum of Understanding (MoU) between the then Spectrum Management Agency (SMA) and the then Department in the mid-1990's. Optus considers that this MoU should be updated and be formalised;
 - (c) in the period from 1997 to approximately 2007, the ACA/ACMA considered the 'establishment of satellite networks' as an additional function and so were not formally required to perform that function; and
 - (d) from around 2007, the ACMA has treated satellite filings as a 'core' function which gives Australian Satellite Operators greater certainty that the satellite filings will be managed in a timely manner.

Term of Reference 5: Promote consistency across legislation and sectors, including in relation to compliance mechanism, technical regulation and the planning and licensing of spectrum.

- 2.20 Optus supports the inclusion of this term of reference as it builds on past review's recommendations to standardise the planning, allocation and management of *all* spectrum.
- 2.21 Optus also supports the intent that this term of reference will also consider options to resolve the current inability to enforce spectrum property rights against manufactures and distributors of non-compliant devices, including illegal repeaters and network equipment.

Term of Reference 6: Develop an appropriate framework to consider public interest spectrum issues.

- 2.22 Optus considers that this term of reference be either:
- (a) deleted as it dictates a policy outcome rather than a review function and that it be considered as part of public interest issues under the proposed Term of Reference 3, '*Ensure efficient allocation, ongoing use and management of spectrum and incentivise its efficient use by all commercial, public and community spectrum users*'; or
 - (b) amended to include and assessment of the role that market-based solutions will have in meeting demand for public interest spectrum.

Term of Reference 7: Develop a whole-of-government approach to spectrum policy

- 2.1 Optus does not support the inclusion of this term of reference as it is not clear what it is intended to achieve.
- 2.2 Also, Optus suggests that a reformed spectrum regulatory framework, as anticipated as an outcome of Term of Reference 3 and 4, will deliver a 'holistic' policy approach to spectrum, that will deliver efficiencies in terms of allocation and use and effective decision making processes that promote investment and innovation.

Term of Reference 8: Develop a whole-of-economy approach to valuation of spectrum that includes consideration of the broader economic and social benefits.

- 2.3 Optus is not clear about the purpose of this term of reference. That is, what would a 'whole of economy' approach to valuation be used for?
- 2.4 That is, if the intent is:
 - (i) for price setting reasons, Optus notes that valuing spectrum is a very different exercise to price setting and notes that the proposed Term of Reference 3 has scope to review the appropriate price setting mechanisms for spectrum allocation;
 - (ii) to consider an approach to valuation of spectrum in terms of broad economic and social benefits, that is a valuation process that inputs into decisions about a potential change of use of spectrum, or economic versus non-economic value, that it is appropriate to retain this Term of Reference.