هيئة الاتصالات وتقنية المعلومات
Communications & Information Technology Commission

Spectrum Trading and Secondary Market Public Consultation

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Introduction

CITC continues to pursue its mission to protect consumers, promote investment and safeguard competition in order to ensure reliable communications services and innovative digital technologies. We are pleased to publish our latest Public Consultation document, which makes proposals for the introduction of spectrum trading.

Scope and Objective

The purpose of this public consultation is to provide interested parties with an opportunity to submit their views on spectrum trading and associated secondary market activities. With reference to international best practice it outlines the principles which will underlie CITC's approach to spectrum trading, considers the range of possible options and makes proposals for a step-by-step policy implementation. Our aim is to ensure that existing users to benefit from their current assigned licenses while supporting market-led reassignment in order to optimize efficient use of spectrum in the Kingdom.

How to Respond to this Consultation

Participants who wish to submit their views/comments on this Public Consultation Document must submit holdersethem to CITC no later than the 30th of August 2021. To participate in this consultation process, stak are requested to provide their views/comments in the format shown below.

Section #	Response & Comments

Views/comments can be submitted to one or more of the following addresses:

- By email to (Spectrum.Strategy@citc.gov.sa).
- Hand-delivered (paper and electronic) at the CITC premises.
- By mail (paper copy and electronic) to the following postal address: Communications and Information Technology Commission, Al-Nakheel District- Prince Turki Bin Abdul Aziz I Street intersection with Imam Saud Bin Abdul Aziz Road, PO Box 75606, Riyadh 11588, Saudi Arabia.

CITC invites all interested parties nationally and internationally, including individuals, public organizations and commercial entities to engage in this process by submitting their views/comments. CITC encourages participants to provide detailed comments supported by relevant data, analysis, benchmarking studies and any other supporting information. CITC will consider all views/comments during its deliberation process, but CITC is under no obligation to adopt the comments or proposals of any participant. Please note that all responses provided to CITC will be treated in confidence and will not be published.

1. Definitions

Where capitalized text is used in this document it refers to the definitions given below:

Spectrum Trade: where spectrum usage rights are exchanged in return for a financial or other settlement for the full duration of a license. This may involve all the frequencies or geographic coverage of the license or a subsection of these. Spectrum Trades are the sale of a spectrum usage rights only, rather than the sale of a whole company, including its spectrum usage rights. Note that a spectrum trade does not necessarily imply that one party swaps or exchanges spectrum with another.

Spectrum Lease: where a spectrum licensee is allowed to use another licensee's spectrum rights for a limited period - shorter than the license duration - after which the rights revert to the original company.

Due Diligence Form: A form which asks the CITC to confirm that there are no impediments to transferring a particular license.

First Phase of Spectrum Trading: Measures to introduce simple forms of spectrum trading as a first step to introducing more complex transfer mechanisms.

First Stage Approval: checking that the legal criteria for a trade have been met.

Lessee Control Leasing: Where the lessee - the party taking control of the spectrum from the license holder - also takes over responsibility for all the rights and obligations associated with the license i.e. the lessee has legal and de facto control of the spectrum for period covered by the lease.

Lessor Control Leasing: Where the entity to whom the license was awarded (the lessor) retains legal and de facto control of the spectrum but allows another party (the lessee) to use it.

Outright Transfer: A Spectrum Trade where all the rights and obligations associated with the existing license are passed over to a new owner for the remaining duration of the license.

Partial Spectrum Lease: a Spectrum Lease where the agreement is for a subsection of the frequencies or geographic coverage of the license.

Partial Spectrum Trade: a Spectrum Trade where the agreement is for a subsection of the frequencies or geographic coverage of the license.

Second Phase of Spectrum Trading: more complex transfer mechanisms, such as leasing and partial transfers, which may be introduced at a later date.

Second Stage Approval: the process initiated where a trade creates potential for competitive distortion.

Second Stage Trigger: the point at which Second Stage Approval is required for a trade, usually where the trade would mean an operator acquiring approximately more than one third of the Suitable and Available Spectrum in the relevant market.

2. Context

2.1 Introduction

In its CITC's Spectrum Outlook for Commercial and Innovative Use 2021-2023[1], CITC made the following statements concerning the introduction of spectrum trading in KSA:

- To introduce spectrum trading in a measured manner to allow the market to change the ownership and in some cases the use of spectrum.
- We propose to implement trading in a number of steps, starting with the simplest forms of trading in the bands where secondary market activity is most likely. (p16)
- We will facilitate trading of spectrum to the maximum extent possible, subject to review and confirmation from CITC for major trades and in some cases competition assessments.
- The CITC's plans include partial trading of licenses (on a geographical or bandwidth basis), time-limited trading (leasing and short-term access) and other approaches.
- However, there will be some bands where trading will not be practicable
- Where bands currently have obligations then these obligations must remain in place after any trade.

This Consultation contains proposals to introduce the First Phase of Spectrum Trading, bringing in the simplest forms of trading in bands where there are no technical barriers and where market demand is anticipated. We seek stakeholder views on this and other options before publishing the final policy document.

CITC has also released a public consultation on plans to auction 400, 600, 700, 2100 and 3800 MHz, called *Spectrum Auction 2021*[2]. It is open for responses till 8 July 2021. Stakeholders are invited to take this document into consideration when they respond to the Spectrum Trading consultation, giving particular thought to any trading of the auctioned bands.

[1] CITC 2021 Spectrum Outlook for Commercial and Innovative Use 2021-2023

[2] Spectrum Auction 2021 – Preliminary Consultation https://www.citc.gov.sa/en/new/publicConsultation/Pages/144205.aspx

In this Section we explain the context and rationale for this approach, making more detailed proposals in Section 3, which also invites stakeholders to respond to 22 specific questions which will guide us in the production of the final policy document.

2.2 First Phase of Spectrum Trading: an overview of the proposals

Trading can only take place where spectrum is not being shared with other users. As such, CITC proposes to initially introduce spectrum trading for the following exclusive license types:

- IMT,
- Maritime, and
- Business radio (PMR).

Stakeholder interviews have shown support for trading among mobile operators and the experience in many regions globally is that trading is also commonly practiced among the PMR and Fixed Links communities. In the longer-term other license types may also be considered for trading.

In the First Phase of Spectrum Trading our initial proposals are that only Outright Transfers will be permitted, not Partial Spectrum Trades (based on geography or frequency) or time-limited transfers, known as Spectrum Leases. However, these are only initial proposals and we seek stakeholder input before formulating the final policy.

This initial proposal of restricting Spectrum Trading to Outright Transfers is to meet our objective of gradually introducing the policy and building confidence in the process. There is a need to consider carefully whether interference can still be effectively managed and adequate control maintained if licenses are subdivided beyond their original framework. These challenges may be surmountable but we consider they are better left to the Second Phase of Spectrum Trading.

Furthermore, Spectrum Leasing creates more grey areas as to who is responsible for fulfilling obligations associated with the license. For example, this has recently led to enforcement action in the US where the FCC ruled that obligations associated with 2.6 GHz licenses leased from educational institutions to MNOs are not being met.[3]

[3] See *FCC,* January 2021 https://www.fcc.gov/document/fcc-proposes-over-47-million-fines-ebs-spectrum-licensees

2.3 The Foundations of the Proposed Approach

The detailed proposals we make below are based on several foundations, outlined below:

- Spectrum trading is entirely voluntarily, based on commercial terms agreed by both sides
- Commercially agreed trades can only go ahead if approved by CITC
- Licensees must follow the stipulated procedures for trades to be approved
- CITC may exercise its discretion to initiate a more rigorous analytical process if it has any concerns that the proposed trade may adversely impact competition to the detriment of end users
- Notwithstanding the above liberty to exercise its discretion to initiate a more rigorous analytical process in some instances, CITC will aim to make the application and approval process as speedy as possible to preserve market dynamism
- CITC may charge fees for activities connected with Trading

2.4 The Spectrum Trading Sandbox

To build confidence in secondary markets; give stakeholders a better idea of the administrative processes involved; and to assess potential interest we have created the Sandbox Forms which are included in Annex 1. The forms allow the submission of all the transfer types discussed in this document - full and partial Spectrum Trades as well as all types of spectrum leases.

We invite stakeholders to make provisional agreements between buyers and sellers and then complete the forms to indicate their wish to complete a spectrum transfer.

A more detailed explanation is given in section 4. Please note the Sandbox forms are not a binding commitment between all parties, however, CITC will provide feedback and the process could form the basis of an actual spectrum transfer.

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3. Spectrum Trading Policy Proposals

3.1 International Best Practice in Spectrum Trading

Spectrum trading was introduced in the USA in 2000[4] and has been incorporated into the regulatory environment in many other countries, including all 27 EU member states. As part of the background to this consultation we have carried out a benchmarking study on 15 countries[5], including Australia, Canada, France, Germany, Mexico, New Zealand, Poland, South Korea, Sweden, UK and the USA, who all allow Spectrum Trading.

There is a wide consensus on the economic benefits of spectrum trading, which as part of a more flexible approach to licensing is regarded as reducing costs, boosting spectrum efficiency and stimulating innovation by facilitating easier access to scarce spectrum resources. The European Commission, introducing spectrum trading as part of the Radio Spectrum Policy Program, said it would "substantially benefit economic growth", allow players "to adapt to market evolution" and "promote innovation and investment".[6]

The FCC regards secondary markets as encouraging "licensees to be more spectrum efficient, promote spectrum fungibility, minimize administrative delays, reduce transaction costs, and otherwise generally facilitate the movement of spectrum towards new, higher valued uses".[7]

The volume of trades in some countries shows the potential commercial interest in trading. In Australia, the Productivity Commission[8] estimates the annual turnover of spectrum licenses at 6 per cent, similar to the commercial property market. In the United States, deals worth hundreds of millions of dollars are not unusual in the mobile market. A particularly high value example was in 2014 when T-Mobile announced a mutual trade with Verizon Wireless estimated to be worth $3.3 billion.[9]

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[4] See *FCC*, May 23, 2000 https://docs.fcc.gov/public/attachments/DA-00-1139A1.pdf and https://www.fcc.gov/secondary-markets-initiative-and-spectrum-leasing

[5] Listed in Table 1 below, which also shows the countries that permit spectrum leasing

[6] See European Commission, Radio Spectrum Policy Programme 2012 (points 14,19, 28 and Article 2f)

[7] See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (point 195)

[8] See https://www.policytracker.com/architect-of-uk-spectrum-liberalisation-disappointed-by-number-of-trades/

[9] See https://www.cnet.com/news/t-mobile-buys-verizon-wireless-spectrum-in-3-3-billion-deal/

3.2 Proposal 1: Types of Transfers Permitted

3.2.1 International Best Practice

The transfer of spectrum licenses takes several forms and not all countries allow all possible transaction types.

A Spectrum Trade – or a permanent transfer of the rights and obligations associated with a spectrum license – could involve the whole assigned frequency range or just part of the band. It could also involve the whole geographical area of the license or a part of it.

Spectrum Leasing is a license transfer which returns spectrum to the original owner after a specified time, that time being less than the remaining license duration. This can also be a lease of the whole frequency range or part of it; and/or of the whole geographic area or just part of it. We note three points, firstly that some major economies including Japan, Singapore, South Africa and the UAE, have not yet introduced any measures for spectrum trading and leasing. Secondly, leasing is less widely practiced than trading. Leasing is either restricted or not allowed in Australia, New Zealand and France. Thirdly, not all countries allow partial Spectrum Transfers or make them subject to more specific restrictions,(e.g. France Germany and the UK)

As KSA is just starting to introduce this policy, rather than having the decades of practical experience which exists in some countries, we are proposing a more cautious approach which starts with the more widely used forms of Spectrum Trading. The further technical and regulatory reasons for this are explained below.

3.2.2 Policy Proposals

Although in the longer term CITC will give consideration to leasing of spectrum and the partial trading of licenses on a geographical or bandwidth basis, in the First Phase of Spectrum Trading we propose to limit trading initially to Outright Transfers of licenses. We seek stakeholder views before confirming this approach and issuing a detailed policy document.

By an Outright Transfer we mean a trade where all the rights and obligations associated with the existing license are passed over to a new owner for the duration of the license. A trade of a part of the license either by frequency or geographic area would not count as an “Outright Transfer” and neither would a time limited transfer, or Spectrum Lease, because the license would revert to the original owner at some stage.

We make this proposal to follow our undertaking in the Spectrum Outlook document[10] to start "with the simplest forms of trading".

3.2.3 Regulatory Aspects

Initially we propose to only introduce Outright Transfers of spectrum because they are the simplest in regulatory terms there is no uncertainty about the rights and obligations associated with the spectrum licenses. These are all transferred to the new owner. For example, if a national spectrum license owned by Company A included an obligation to cover 80% of the population using that spectrum, following an Outright Transfer to Company B, Company B would be legally obliged to fulfil the same coverage obligation. Similarly if the license required roll-out within three years, Company B would also inherit this obligation from Company A.

Leasing is more complex because it can involve obligations being passed to the lessee or remaining with the lessor. This may offer a range of possibilities to suit different commercial needs but can create uncertainty about the fulfilment of important policy commitments, potentially leading to protracted legal disputes. CITC would like to hold more detailed discussions with stakeholders on this issue before proposing rules regarding spectrum leasing in our Second Phase of Spectrum Trading.

Partial transfers on a geographic basis may also involve the creation of local licenses, a new initiative for KSA, which we would also like to discuss further with stakeholders.

This is our regulatory rationale for restricting trading to Outright Transfers in the first phase of the policy. However, we seek stakeholder input before making final proposals

3.2.4 Technical Aspects

An Outright Transfer does not raise any technical issues - all in-band and out-of-band power limits shall remain the same (even if the service changes), and the new owner will be required to abide by them in the same way as the previous owner.

Partial frequency transfers, whether leases or trades, m potentially create interference problems if the new user uses a different technology or operates a different service to the existing user. These are most likely resolvable but it is a problem that does not arise when the whole band is operated by a single owner. It is

10 CITC 2021 Spectrum Outlook for Commercial and Innovative Use 2021-2023

within the single owner's control to amend their practices to optimize their network, but with a partial transfer this involves coordination with the new user. The potential coordination issues and the need to have an agreed mechanism to resolve any disputes mean we propose to leave partial frequency transfers to the Second Phase of Spectrum Trading.

A similar problem arises with partial geographic leases or trades. There may be interference at the dividing line between the two users if the new user deploys a different type of technology or service, making this more suitable for Second Phase implementation.

With leasing a main challenge is ascertaining who is responsible for any interference. If an adjacent spectrum band user suffering interference, do you approach the lessor or the lessee? CITC aims to develop a comprehensive framework acceptable to all stakeholders before implementing leasing hence we propose addressing leasing in the Second Phase of Spectrum Trading.

3.2.5 Options Regarding Spectrum Leasing

As discussed above the policy challenge with Spectrum Leasing is clarity over who is responsible for any license infringement- the lessor or the lessee?. Here we present one approach to this issue, not as a current proposal for the First Phase of Spectrum Trading, but as an option on which we would welcome initial stakeholder comment.

This option is similar to that used in the US[11] and involves two types of Spectrum Leasing. The first we will call Lessor Control Leasing. This is where the entity to whom the license was awarded (the lessor) retains legal and de facto[12] control of the spectrum but allows another party (the lessee) to use it. The lessor remains responsible for all rights and obligations associated with the license. To take a simple example, if an adjacent spectrum band user suffers interference, it is the lessor's responsibility to resolve this, even if the lessee has caused the problem. This means that the lessor must have the capacity to manage the spectrum used by the lessee.

The second type we will call Lessee Control Leasing. Here the party taking control of the spectrum - the lessee - takes over responsibility for all the rights and obligations associated with the license i.e. the agreement between the two parties gives the lessee legal and de facto control of the spectrum for the limited

[11] See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (point 64)

[12] This refers to actual day-to-day control of how the spectrum is used

period specified in the lease. In the simple example given above, if a neighboring user suffers interference, it is the lessee's responsibility to resolve this, not the lessor's.

Allowing both types of leasing would give maximum flexibility to meet all the possible situations in which a spectrum lease may be commercially beneficial. CITC would require that written contracts are in place for any leasing arrangements and drawing up mutually agreeable documentation would be the responsibility of the parties involved.

Consultation question 1: *What are your views on introducing Spectrum Trading as a series of steps?*

Consultation question 2: *What is your opinion on only allowing Outright Transfers in the First Phase of Spectrum Trading?*

Consultation question 3: *What is your view on introducing Spectrum Leasing at a next phase?*

Consultation question 4: *What is your opinion on the suggested method suggested for introducing Spectrum Leasing?*

Consultation question 5: *What will be the economic effect of introducing Spectrum Trading and/or Spectrum leasing?*

Consultation question 6: *Will the introduction of Spectrum Trading and/or Spectrum leasing stimulate innovation and the commercial use of spectrum?*

3.3 Proposal 2: Which Licenses Will be Tradable?

3.3.1 International Best Practice

Countries which allow spectrum trading or leasing place restrictions on the types of licenses or types of services where this is permitted. This is based on economic benefits, demand, practicality and the fulfilment of other public policy objectives.

For example, the EU requires Member States to allow trading in the commonly used mobile cellular bands[13] because of the economic benefits this can bring and to allow quicker adjustment to market conditions.[14] This EU law does not mandate the imposition of trading in other bands but the UK, an early adopter of spectrum trading in 2004 and until recently an EU member, allows trading for a wider range of services, namely:

- Mobile cellular licenses
- Business radio (PMR)
- Maritime (Coast stations)
- Satellite
- Fixed services
- Science and technology licenses[15]

Broadcasting, for example fulfils important political and cultural policy goals and its spectrum is not traded in Europe, of the benchmark countries we examined, Poland goes so far as to specifically prohibit this.

The USA, by contrast, has allowed trading and leasing since the early 2000s, permitting both forms of transfer for whole or partial licenses and this was also the driver for the 600 MHz incentive auction. This is applicable to nearly all types of commercial spectrum licenses which are not shared.[16] In Australia and New Zealand spectrum licenses for radiocommunications devices are also tradable across a range of services.[17]

International benchmarking shows that there are a wide range of approaches to spectrum trading and leasing. The most permissive countries, such as the USA, UK, Australia and New Zealand allow trading or leasing across a wide range of services. In the middle ground are most European countries where trading and/or leasing is permitted just for mobile bands. In the most restrictive countries, like Japan, Singapore, South Africa and the UAE, trading and leasing are not allowed.

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13 The bands are 790-862 MHz, 890-915 MHz, 925-960 MHz, 1710-1785 MHz, 1805-1880 MHz, 1900-1980 MHz, 2010-2025 MHz, 2110-2170 MHz, 2.5-2.69 GHz and 3.4-3.8 GHz: see Commission Decisions 2008/411/EC, 2008/477/EC and 2009/766/EC.

14 See European Commission, Radio Spectrum Policy Programme 2021 (point 19)

15 *High Duty Cycle Network* or *Relay Points* licences classes

16 See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (point 82)

17 See https://www.acma.gov.au/spectrum-licences and https://www.rsm.govt.nz/licensing/how-do-i/transfer-a-licence/

This suggests that if KSA wants to take the first steps towards spectrum trading then permitting it in the IMT bands is a good place to start, and there is plenty of international precedent for introducing the practice in other commercial wireless bands outside the broadcasting sector.

3.3.2 Policy Proposals

In the Spectrum Outlook document CITC said it would introduce spectrum trading in the bands where "secondary market activity is most likely." Based on recent stakeholder interviews and international precedent, in the long term CITC will consider introducing trading for all services in accordance with international best practice. However, in this First Phase of Spectrum Trading we propose introducing trading for bands used in the following licences:

- IMT
- Maritime
- Business radio (PMR)

3.3.3 Regulatory Aspects

As the CITC is proposing the Outright Transfer of licenses, in which all associated rights and obligations are inherited by the new owner we do not foresee any regulatory issues, beyond possible competition implications in the mobile sector. These are dealt with below.

3.3.4 Technical Aspects

CITC does not foresee any technical problems in the Outright Transfer of licenses for the above services. Interference will be prevented as long as the new license holder keeps to the same technical restrictions.

Consultation question 7: *What are your views on restricting the types of tradable licences to IMT, Maritime and business radio licences in the First Phase of Spectrum Trading?*

Consultation question 8: *Do you hold licenses for IMT, Maritime and/or business radio services and would you like to trade these licenses? Please explain your reasoning.*

Consultation question 9: *If you are not a current license holder, would you like to buy an IMT, Maritime and/or business radio license? Please explain your reasoning.*

Consultation question 10: *Would you like to be able to trade licenses other than those for IMT, Maritime and business radio services? Please explain your reasoning.*

3.4 Proposal 3: High Level Principles

3.4.1 International Best Practice

In terms of the principles underlying spectrum trading and leasing, two key elements stand out from international benchmarking.

Firstly, in all the benchmark countries which allow trading or leasing this is an entirely voluntary arrangement. As the UK's Ofcom points out in its Spectrum Trading Guidance Notes, being able to trade a "is a right of a license holder; it is not an obligation"[18] and this point is echoed in the documentation from the European Commission[19], the FCC[20] and other bodies.

Secondly, the terms on which trading or leasing occur are a matter on which the seller and purchaser must reach a commercial agreement and not something which involves regulators or governments. Ofcom puts this succinctly: "As with other tradable commodities, the terms on which spectrum trades take place, including price, are a matter for commercial negotiation between the parties."[21] In the USA the FCC has refined it procedures on several occasions to allow the commercial negotiation of spectrum transfers that are "suited to the parties' respective needs."[22] In New Zealand and Australia, the administrations are only notified once a commercial agreement for a Spectrum Trade has been reached. The current owner informs the administration via a web portal or online form, the buyer then confirms and once regulatory approval has been given the trade is complete.[23]

[18] Ofcom Spectrum Trading Guidance Notes (2020) 2.15

[19] See European Commission, Radio Spectrum Policy Programme 2012 (point 19)

[20] See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (points 44,227,291)

[21] Ofcom Spectrum Trading Guidance Notes (2020) 2.14

[22] See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (point 3; the range of possible transfer arrangements are set out in points 8-13)

[23] See https://www.rsm.govt.nz/licensing/how-do-i/transfer-a-licence/ and https://www.acma.gov.au/trade-your-spectrum-licence#tell-us-about-a-spectrum-licence-trade

3.4.2 Policy Proposals

The CITC proposes to follow international best practice by adopting the following high level principles for Spectrum Trading:

- Spectrum Trading is entirely voluntary
- The contractual and commercial terms on which Spectrum Trades take place, including price, are a matter for negotiation between the parties involved
- All proposed Spectrum Trades are provisional until they gain the final approval of the CITC which may stipulate additional conditions and requirements in addition to those that are inherent in the underlying spectrum license.

3.4.3 Regulatory Aspects

Adopting these high levels principles offers license holders greater certainty about how Spectrum Trading could affect them. They confirm that there is no compunction to engage in Spectrum Trading and it is entirely a voluntary practice, dependent on the seller accepting commercial terms offered by the buyer. The CITC would have no involvement in the process of arriving at terms for a trade, its role would be to accept or reject the trade, including conditional approvals subject to specific requirements, according to the terms set out below.

3.4.4 Technical Aspects

As the commercial terms of any trade must be agreed by the parties involved, it is the buyer's responsibility to check that the technical terms of the license and any other associated obligations, are acceptable. If the buyer's business model is dependent on the use of a particular technology and a certain level of deployment, then they need to be certain that these are permitted under the license they are buying. The purchaser must bear in mind that all the rights, obligations and technical requirements of the existing license will remain the same once they have purchased it (including, for example, any coverage obligations). It is the buyer's responsibility - not the CITC's - to carry out these checks.

Consultation question 11: *What is your opinion of the high-level principles for Spectrum Trading set out above?*

3.5 Proposal 4: Principles of The Approval Process

3.5.1 International Best Practice

In all the benchmark countries which allow Spectrum Trading, the transfer has to be approved by the relevant regulatory or administrative body. This:

- ensures that trading is permitted in the relevant license,
- prevents fraudulent activities - such as the trading of a license which has been cancelled by the regulator;
- ensures that the regulator can maintain its awareness of who is the licensee for every piece of spectrum; and
- ensures that the seller does not have outstanding debts to the regulator.

A Spectrum Trade can also raise competition issues and the requirement for regulatory approval makes sure that any potential competition implications are addressed.

In some countries, some limited forms of Spectrum Leasing are permitted without regulatory approval[24] but as CITC does not propose including Spectrum Leasing in these First Phase proposals we will not consider that issue in detail.

3.5.2 Policy Proposals

Following international best practice, the CITC will approve each Spectrum Trade to ensure that the rules are being followed, to prevent fraud and to ensure all outstanding fees are paid. In order to speed up the process and to give greater certainty for businesses we propose a two-stage approval process. Trades where there is no danger of distorting competition and no national security considerations would only require First Stage Approval. Trades where there is a possibility of distorting competition or a national security issue would also require Second Stage Approval. The detailed criteria for moving to a Second Stage Approval is given below.

Spectrum Trade will not require Second Stage Approval and CITC will grant First Stage Approval if it can confirm:

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[24] For example, the USA allows leasing without regulatory approval if the licensee retains both legal and actual control over the leased spectrum - referred to as "spectrum manager" leasing. See FCC, 2003, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING (point 9)

- That all parties have consented to the Trade
- No fees are outstanding on the license
- CITC has not served notice to revoke the license
- The current spectrum owner has not cancelled the license
- The current spectrum owner is not in breach of its license conditions or other legal requirements
- The transferee is able to meet the terms, provisions and limitations of the license which it will be granted as a result of the transfer
- The transfer will not affect KSA's ability to meet any international agreement or arrangements

CITC's Stage 1 assessment of the impact of the proposed Trade on competition and consumer welfare concludes that there is no cause for concern based on the commercial terms and conditions of the proposed Trade.

3.5.3 Regulatory Aspects

Our proposals are designed to enhance confidence in the trading system by ensuring that buyers do not pay for a license which they cannot use because it is not included with the current Spectrum Trading framework, or because it is shortly to be cancelled.

The proposals are designed to deliver one of the principal benefits of Spectrum Trading – giving business the opportunity to speedily adapt to changing market conditions – while ensuring that the market remains competitive. The process of deciding whether a trade can be given First Stage Approval is not a complex or lengthy one. This will ensure that trades with no competition implications are approved in the shortest time possible.

3.5.4 Technical Aspects

There is no technical aspect to the approval process because in the First Phase of Spectrum Trading we are only allowing transferees to operate based on the same spectrum rights proffered in the original licenses. From a technical co-ordination perspective the situation has not changed, the only difference is that the traded license now has a new owner.

Consultation question 12: *What is your view of the proposal for a two-stage approval process for all trades?*

3.6 Proposal 5: Procedures for the Approval Process

3.6.1 International Best Practice

Competition leads to lower prices, more innovation, and greater investment but it depends upon the availability of suitable spectrum as a necessary input in the provision of services. Rules are therefore needed to ensure access to this necessary input for a range of providers. There is a danger that if one operator were able to buy sufficient spectrum via trading then rival service providers or potential new entrants would be unable to expand capacity, suffer higher costs, or be prevented from competing robustly.

In all the benchmark countries which allow Spectrum Trading, administrations may block a trade if they consider the competitive impact would be detrimental to consumer welfare. This is a key principle of Spectrum Trading in the EU[25] and in the USA, the FCC can only approve a trade if it serves the "public interest, convenience, and necessity" - the impact on competition being a key part of this assessment.[26]

Some countries, such as Germany, Poland, Sweden and Mexico assess potential competitive impacts on a case-by-case basis. In the UK a case-by-case competition assessment is made only certain types of licenses, principally those used for mobile cellular services.[27]

In the USA, the FCC has developed objective criteria to decide when a competition investigation is necessary and we discuss these in greater detail as they are particularly relevant to our proposals for KSA. The FCC makes this evaluation by calculating the concentration of "suitable" and "available" spectrum, including long-term de facto transfer leases[28] in a local market that would arise from a proposed transaction.

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[25] See European Commission, Radio Spectrum Policy Programme 2012 (point 15)

[26] See Communications Act of 1934 https://transition.fcc.gov/Reports/1934new.pdf Page 161

[27] See Wireless Telegraphy Mobile Spectrum Trading Regulations 2011 (Point 8e) and Ofcom Spectrum Trading Guidance Notes (2020) (Point 2.8)

[28] See *FCC*, June 2014 https://docs.fcc.gov/public/attachments/FCC-14-63A1.pdf Para 301

Suitable and available spectrum is defined in a "spectrum screen". The bands currently included in the screen are the widely used mobile bands[29], as well as part of the business radio bands[30]. The screen is periodically updated. For example, the FCC decided[31] in March 2021 that it will add the 3450 – 3550 MHz band to the screen once an auction of the band completes, likely in Q4 2021. The screen does not include mmWave spectrum, which are considered together as a separate block with further investigation triggered if a limit is reached.

A high concentration indicates to the FCC that there could be an increased likelihood that rival service providers or potential new entrants would be foreclosed from expanding capacity, deploying mobile broadband, or competing robustly; and rivals' costs could be increased to the extent that they would be less likely to compete robustly.

If a single entity would hold more than approximately one third of the suitable and available spectrum then the agency undertakes a case-by-case analysis to evaluate the likely competitive effects of the transaction. Transactions for the mmWave bands use a 1850 MHz bandwidth threshold for further analysis.

The FCC's analysis aims to weigh whether any potential public interest harms outweigh any potential public interest benefits This analysis takes into account a variety of factors including the coverage by technology type of the firms' respective networks, market shares, and the concentration in a particular band with an important eco-system. The FCC additionally considers concentration of spectrum below 1 GHz as an enhanced factor in its competitive evaluation.

3.6.2 Policy Proposal

Spectrum Trades would require Second Stage Approval if they could harm competition. We explain below how we assess potential competitive harm, but if this was not a danger trades would only require First Stage Approval. This is a series of simple checks which establish whether a proposed trade is lawful by deciding whether it fulfils the required criteria.

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29 600 MHz, 700 MHz, 14 MHz of SMR, Cellular, PCS (1900 MHz), AWS (1700 and 2100 MHz), WCS (2.3 GHz), and 156.5 MHz of the BRS/EBS (2.6 GHz) band

30 14 MHz of the SMR business radio band often referred to as PMR outside the US

31 See *FCC,* March 2021 https://ecfsapi.fcc.gov/file/03180671928494/FCC-21-32A1.pdf para 108

Based on international best practice, particularly the approach taken in the USA, we propose a simple and transparent method to assess whether a proposed trade is likely to adversely affect competition and therefore requires Second Stage Approval.

For IMT licences we propose that Second Stage Approval would certainly be triggered if the proposed trade meant that the transferee would have approximately more than one third of the Suitable and Available Spectrum in the relevant market or band class (sub-GHz, etc) or violated any existing spectrum caps. We call this the Second Stage Trigger.

We propose one third as the trigger point because there are currently three mobile network operators in KSA. If the effect of a trade were to give one of them more than a third of mobile spectrum, we consider that this gives grounds for the possible distortion of competition. This is not to say that the result of a fuller investigation would necessarily be a refusal of the trade, merely that this is a transparent and straightforward way of saying at which point we would wish to make a deeper analysis.

Here we are only measuring the effects of the trade itself, not the pre-existing spectrum holdings. In a hypothetical example, if Company A had 25% of all Suitable and Available Spectrum, Company B had 25% and Company C had 50%, a proposed spectrum trade from A to B which gave B a total of 30% of Suitable and Available Spectrum is below the Second Stage Trigger. This is because the transferee, Company B, has less than a third (33%) of the Suitable and Available Spectrum, even though the pre-existing spectrum holdings mean that Company C has considerably more than a third.

By Suitable and Available Spectrum we mean spectrum which could be used for the relevant service and is either currently available or likely to become available in the "near term". For each service this is defined below but would be reviewed at regular intervals.

However, Second Stage Approval could also be initiated if the CITC considered that there were other relevant factors which could harm competition or damage the national/public interest.

We emphasize that a requirement for Second Stage Approval does not necessarily mean that the trade will be refused. It just means that there are sufficient grounds for further investigation and this could result in approval or rejection, and could lead to CITC setting specific conditions or requirements to provide approval.

We discuss below how this approach would be applied to each license type.

Consultation question 13: *In general, do you think Second Stage Approval, as set out above, is a suitable way to ensure that Spectrum Trades do not distort competition? Please explain your reasoning.*

Consultation question 14: *Please give your views on setting one third of the Suitable and Available spectrum as the level at which competition concerns should be further examined?*

Consultation question 15: *What are your opinions on the definition of Suitable and Available spectrum?*

- **IMT**

In Saudi Arabia, the Suitable and Available Spectrum for IMT services is currently defined as 600 MHz, 700 MHz, 800 MHz, 900 MHz, 1800 MHz, 2.1 GHz, 2.3 GHz, 2.6 GHz, 3.5 GHz and 3.7 GHz.

For IMT services we propose two possible automatic Second Stage Triggers, where either or both could instigate the Second Stage Approval process. The two Triggers are:

Either:

- An operator would acquire more than approximately one third of all the Suitable and Available Spectrum

Or:

- An operator would acquire more than approximately one third of the Suitable and Available Spectrum below 1 GHz.

We propose two Second Stage Triggers because of the importance in sub-1 GHz spectrum in providing coverage in rural areas but also in penetrating buildings. Higher IMT frequencies provide capacity in urban areas but without reasonable access to the sub-1 GHz bands we consider that an operator would be disadvantaged and competition significantly impaired.

Consultation question 16: *What is your opinion of our proposals for instigating the Second Stage Approval process for IMT services?*

- **Business radio (PMR)**

The most likely scenarios for the trading of business radio spectrum would be to exchange frequencies where interference is currently occasionally occurring, or where organizations are merging. Given the large number of organizations and the relatively wide distribution of frequencies, it is likely that the chances of competitive harm are so low that there is no need to instigate the Second Stage Trigger in the case of trades of business radio licenses.

However, we wish to retain the Second Stage Trigger for business radio to guard against extraordinary situations. For example, these licenses tend to be in great demand in localized areas, such as oil processing plants and shipping ports. It is conceivable that a supplier could develop a dominant spectrum position within these small areas, reducing availability of spectrum for other users. Retaining the Second Stage Trigger for business radio guards against this possibility.

Consultation question 17: *Under what circumstances would you foresee business radio (PMR) trades taking place?*

Consultation question 18: *Do you believe that the business radio (PMR) market is sufficiently dispersed that the Second Stage Trigger is unlikely to be necessary?*

3.6.3 First Stage Approval

In the First Stage Approval the CITC will check if proposed trade is lawful by establishing whether it fulfils the criteria. The process is described below:

- An application to trade has been received: basic information about the parties involved and the license is published on the CITC website
- Does this meet the CITC criteria for a tradable license? If yes, move on to the next criteria
- Are there any outstanding fees owed on the license? If no, move on to the next criteria
- Has CITC previously served notice of license revocation? If no, move on to the next criteria
- Has the licensee previously cancelled the license? If no, move on to the next criteria
- Is the recipient permitted to hold a spectrum license? If yes, move on to the next criteria
- Is the current spectrum owner in breach of its license conditions or other legal requirements? If no, move on to the next criteria
- The transferee is able to meet the terms, provisions and limitations of the license which it will be granted as a result of the transfer? If yes move on to the next criteria
- Does the proposed trade activate the Second Stage Trigger(s)? If no, move on to the next criteria

- Does the CITC have any other competitive or broader national interest concerns about the proposed trade? If no, the trade is approved

Regarding the Service Level Agreement (SLA), the CITC will approve or reject the trade, or escalate it to Second Stage Approval within 30 days, giving reasons for any rejection or escalation.

Consultation question 19: *What is your opinion of the criteria proposed for a First Stage Approval of a spectrum trade?*

Consultation question 20: *Is an SLA of 30 days acceptable to you? Please explain any objections*

3.6.4 Second Stage Approval

If the proposed trade activates any of the Second Stage Triggers or if the CITC has other competition concerns it will activate the Second Stage Approval process.

The CITC will first ask the parties to the trade to present arguments explaining what the impact of the trade will be on the market with particular reference to competition. It will also consider representations on the same topic made by other stakeholders. Based on these the CITC will make a preliminary assessment of whether any potential harm to the public interest is likely to outweigh any potential public interest benefits. This process will take up to two months.

If the CITC is satisfied that the benefits to the public interest are likely to outweigh any harm then it can approve the trade. Allowing the CITC to make this initial assessment quickly helps our objective of bolstering market dynamism.

If CITC fears that public interests harms will outweigh the benefits, it will inform the parties to the trade and instigate a full competition investigation, which could take several months and may involve other agencies. CITC may also set specific conditions or requirements to provide approval.

Unlike the Second Stage Trigger, which is a simple quantitative measure, the CITC's assessment of the public interest harms and benefits is a complex piece of analysis which can only be done on a case-by-case basis by studying the specifics of the proposed trade and the prevailing market conditions.

Consultation question 21: *Will the Second Stage Approval process prevent undue distortion of competition while maintaining market dynamism? Please explain your reasoning.*

3.7 Proposal 5: Administrative Processes

3.7.1 International Best Practice

In all the benchmark countries which allow Spectrum Trading, the relevant administration must be notified once a commercial agreement has been reached between the relevant parties. As discussed above this allows administrations to verify that both parties agree to the transfer and then approve or reject the trade.

International best practice is to make this notification online either by completing a downloadable form and emailing it, as exists in the UK, the USA and Australia, or via an online licensing portal, such as in New Zealand.

To create greater transparency of spectrum ownership and so encourage a dynamic trading environment, all the countries above have an online register of spectrum licensees. Applications to trade are also made public via an online process and then entered into the online register of licensees once agreed.

In the UK companies wishing to trade can check that there are no legal barriers to do so. By filling in a Due Diligence form, Ofcom will confirm issues such as the legal owner of the license, whether any fees are outstanding and whether the license has been revoked.[32] This is designed to increase confidence in the trading process and enables companies to check whether to they should embark on the more time-consuming full application process.

3.7.2 Policy Proposals

- **Both parties to a trade must complete an application form**

As CITC needs to carry out checks on both the original owner and the intended recipient of the trade, both must fill in an application form, indicating that they have already reached an agreement in principle. Trades require the CITC's approval and this can only be granted by filling in the form, which can be made available online.

[32] Ofcom Spectrum Trading Guidance Notes (2020) (Section 5)

- **Publication of trades**

We will work towards making any application for a trade publicly available, giving basic details about the license and companies involved in order that any affected stakeholders are given the opportunity to comment on the trade. When the trade is approved or rejected, the publicly available information should be updated, along with the CITC's analysis and conclusions.

Only if the trade is perceived to have potential competition implications, then other stakeholders have the opportunity to make representations to the CITC, having been alerted by the public nature of the process.

Consultation question 22: *What is your view on making any application to trade publicly available?*

3.7.3 Due Diligence Form

Following international best practice, and to increase confidence in trading we suggest that interested parties should be able to access some basic details to help with the due diligence process. This could involve filling in an online form specifying the licensee and the license, and then receiving a confirmation from the CITC covering issues such as whether this is a tradable license, it has not being revoked and the licensee has no outstanding debts. Companies will then be able to assess if there is a legal barrier to the trade going ahead.

Consultation question 23: *Would the availability of a Due Diligence Form be helpful for the development of Spectrum Trading? Please provide an explanation of your view.*

3.7.4 Fee

We propose that CITC charge a fee to cover administrative costs for the assessment of proposed trades which do not require a Second Stage Approval. Should the need for a Second Stage Approval be found, CITC may also charge the potential traders additional fees.

Consultation question 24: *What do you consider will be a fair amount to charge as a fee for Spectrum Trading?*

4. Sandbox for Spectrum Trading

4.1 The Aim of The Sandbox

The Sandbox Forms are designed to show how the range of leasing and trading options might work in practice, allowing market players to become familiar with them without making any commercial commitments. The aim is to build confidence and to highlight any potential improvements to the proposed approach, as well as giving CITC an idea of the level of interest in secondary markets.

CITC encourages potential buyers and sellers of spectrum to engage in negotiations, make a preliminary trading or leasing agreement then fill in the relevant form below. CITC will provide feedback and the process could form the basis of an actual spectrum transfer.

4.2 What the Sandbox Does

The Sandbox Forms enable market players to submit a range of trades and leases to the CITC by filing in the forms in Annex 1. These include Outright Transfers which would be permitted under the First Phase Proposals, using form A, and the other types of trading and leasing by using form B. These transfer types falling outside the current First Phase Proposals are:

- Partial Spectrum Trades.
- Spectrum leases involving the full coverage area and frequency range stipulated in the license.
- Partial spectrum leases involving less than the license's full coverage area and frequency range.

The CITC will respond and inform the stakeholder whether the proposed trade is theoretically possible as an Outright Transfer which is allowed within the First Phase proposals. The CITC will also tell applicants if the proposed transfer is likely to be permitted if the regime is further relaxed to include partial Spectrum Trades and Spectrum Leases.

4.3 Status of The Sandbox

CITC responses to proposed Outright Transfers in the Sandbox Forms do not give authority for the trade to go ahead, nor do they imply a binding refusal. They merely mean that the trade is theoretically possible or not permitted. CITC responses regarding partial Spectrum Trades and Spectrum Leases are intended for discussion purposes to further debate and enhance stakeholders' understanding: they have no status and do not constitute a binding commitment to introduce a particular policy in the future.

Annex 1: Forms for Using the Sandbox

(Form A) using the Sandbox for an Outright Transfer

Please complete this form if you would like to express your interest in making an Outright Transfer. This process demonstrates how the approaches discussed in the Draft Consultation on First Phase Proposals for Spectrum Trading may work in practice.

The CITC will respond telling you whether the proposed trade is theoretically possible under the First Phase Proposals, but this response does not grant authority to carry out a trade, as the proposed framework is currently in draft form. Applications cannot be progressed unless the form is signed by all relevant parties.

Please note that CITC may request further information in order to make a determination.

A: DETAILS OF CURRENT LICENSE/LICENSE HOLDER

Name of existing license holder: ____

Address: ____

Postcode: ____

Telephone: ____

Fax: ____

E-mail address: ____

PERSON TO CONTACT REGARDING APPLICATION:

Address: ____

Postcode: ____

Telephone: ____

Fax: ____

E-mail address: ____

License type: ____

License number: ____

Frequency rage: ____

B: DETAILS OF TRANSFEREE

Applicant type (please circle appropriate category)

- Individual or sole trader
- Limited company
- Partnership
- Public limited company

Other entity (please state)

Applicant name: ____

Address: ____

Fax: ____

E-mail address: ____

Company registration number (if appropriate): ____________

Other registration number (if appropriate): ____________

Person to contact regarding Spectrum Trading Application:

Address: ____

Postcode: ____

Telephone: ____

Fax: ____

E-mail address: ____

C: DECLARATION FROM CURRENT LICENSE HOLDER

Signed for and on behalf of the license holder:

Full name (block capitals): ______________

Date: ______________

D: DECLARATION FROM TRANSFEREE

The transferee hereby gives consent to the transfer.

Signed for and on behalf of the transferee:

Full name (block capitals): _____________

Date: _____________

(Form B) using the Sandbox for other transfer types

Please complete this form if you would like to express interest in making a transfer other than an Outright Transfer. This process will demonstrate how the approaches discussed in the Draft Consultation on First Phase Proposals for Spectrum Trading may work in practice.

Use this form if you would like to test the following transfer types:

- Spectrum leases involving the license's full coverage area and frequency range
- Partial spectrum leases involving a portion of license's coverage area and/or frequency range
- Partial Spectrum Trades involving a portion of license's coverage area and/or frequency range

The CITC will respond telling you whether the proposed transfer is likely to be possible under proposals likely to be adopted in the coming years. This response does not grant authority to carry out the transfer, as the necessary regulatory framework has not been agreed. Applications cannot be progressed unless the form is signed by all relevant parties.

Please note that CITC may request further information in order to make a determination**.**

A: DETAILS OF CURRENT LICENSE/LICENSE HOLDER

Name of existing license holder: ____

Address: ____

Postcode: ____

Telephone: ____

Fax: ____

E-mail address: ____

PERSON TO CONTACT REGARDING APPLICATION:

Address: _______________________________________

Postcode: _______________________________________

Telephone: _______________________________________

Fax: _______________________________________

E-mail address: _______________________________________

License type: _______________________________________

License number: _______________________________________

Frequency rage: _______________________________________

B: DETAILS OF TRANSFEREE

Applicant type (please circle appropriate category)

- Individual or sole trader
- Limited company
- Partnership
- Public limited company
- Other entity (please state)
- Applicant name: _______________________________________
- Address: _______________________________________
- Fax: _______________________________________
- E-mail address: _______________________________________
- Company registration number (if appropriate): ____________
- Other registration number (if appropriate): ____________

Person to contact regarding Spectrum Trading Application:

Address: ____

Postcode: ____

Telephone: ____

Fax: ____

E-mail address: ____

C: TYPE OF TRANSFER

Please circle the type of transfer you wish to complete:

- A Spectrum Lease involving all rights and obligations (Go to section D)
- A Spectrum Lease involving a part of the rights and obligations (Go to section D)
- A Spectrum Trade involving a part of the rights and obligations (Go to section E)

D: TIMINGS FOR LEASE

Date when lease will begin (cannot be backdated):

Date when lease will end (cannot extend beyond license expiry date):

(Those applying for a partial Spectrum Trade do not need to complete this section)

E: DETAILS OF PARTIAL TRANSFER

E1: Please circle the type of partial transfer you wish to complete:

- A partial transfer of frequency (complete E2)
- A partial transfer of a geographical area (complete E3)
- A partial transfer of both frequency and a geographical area (complete E2 & E3)

E2: Please provide details of your partial transfer of frequency (e.g. 1800-1810 MHz):

- Frequency range 1:

- Frequency range 2:
- Frequency range 3:
- Frequency range 4:

(Continue on separate sheet if necessary)

E3: For partial geographical transfers please circle the affected regions below:

- Riyadh Region
- Makkah Region
- Eastern Region
- Madinah Region
- Al Baha Region
- Al Jawf Region
- Northern Borders Region
- Qassim Region
- Ha'il Region
- Tabuk Region
- 'Aseer Region
- Jazan Region
- Najran Region

F: DECLARATION FROM CURRENT LICENCE HOLDER

Signed for and on behalf of the license holder:

Full name (block capitals): ______________

Date: ______________

G: DECLARATION FROM TRANSFEREE

Signed for and on behalf of the transferee:

Full name (block capitals): ______________

Date: ______________

هيئة الاتصالات وتقنية المعلومات
Communications & Information Technology Commission