



## **Answers to the Public Consultation on Secondary Trading of Rights to Use Radio Spectrum**

**Att: RSPG Secretariat**

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Dear Sir,  
Please find NEO-SKY's answer below

Yours sincerely

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### **GENERAL QUESTIONS**

1) Do you consider secondary trading of rights to use radio spectrum to be beneficial to consumers, businesses and radio users? why/why not?

In the particular case of the FWA band, we do believe it is a fair means to promote the efficient use of the public domain radio spectrum, both economically and technically. For instance, in Spain we have a national wide frequency assignment for FWA, and operators must pay the taxes for the allocation of the FWA frequencies over the whole national area. On the other hand, FWA deployment is a spot one, not based on coberture, like the mobile operators. FWA Service is located in very concentrated areas in

Spain, remaining the majority of the territory assignment idle, leading to the above mentioned inefficiencies.

Therefore, we consider that spectrum trading will benefit all the agents along the service value chain as operators will be able to lease/transmit idle spectrum, whereas other niche operators, for instance, will be able to enter the market in new geographical areas.

Regarding this point, NEO-SKY must warn about the transmission/leasing rules to be established by the Administration. These rules must guarantee the return on the investments already accomplished by the operators who operate the frequencies. We refer to the special case where some speculators were assigned with frequencies but never invested nor deployed network, and now try to sell or transmit the frequencies at low prices. Thus, a new entrant who bought these frequencies at low cost could compete more efficiently than the established operators with a minimum investment. These practices could be anticompetitive and would lead to an inefficient use of the spectrum.

As the possible situations are enormous, we understand that on a national basis, every Member State should guarantee:

- 1) each individual spectrum transaction must be non-discriminatory
- 2) competition law must be observed (i.e., not allowing that Significant Market Power Operators collect the majority available bandwidth)
- 3) technological compatibility, absence of interferences and limits to power emissions.

Assuming the previous items are guaranteed on a transaction basis by the NRA, the agreements between the parts should be respected. The procedures must be flexible and efficient and must not delay their implementation.

2) What types of transfer of rights to use radio spectrum (full, leasing, partial etc.) do you consider can be beneficial to consumers, businesses and radio users? why/why not?

Providing the basic items (enumerated above) are met, we think there must be no restriction to the contents of the spectrum trading agreements.

With respect to the types of transfer, we are open to both leasing and ownership transmission. In the latter case, it should imply that the operator who receives the ownership of the spectrum also receives all the associated rights and obligations

On the other hand, the NRAs could be instead tempted to promote the indiscriminated and/or uncontrolled use of COMMON USE bands (WiFi), and not allowing trading. This option should take into account, as it has already been said, the neutral effects on the return of the investments already accomplished in private use bands like FWA. We believe FWA has its own sense, as it provides guaranteed broadband access for the last mile and supports for better quality services than WiFi. Therefore, both bands (WFA and WiFi) have their own natural applications, services and uses, but if the NRAs allowed an uncontrolled growing of WiFi bands, it could cannibalize FWA as WiFi would be costless and available without restrictions.

3) What rights and associated obligations do you consider should be within the scope of secondary trading of rights to use radio spectrum?

We believe that the NRA must always deal with both sides of a transaction. Moreover, we consider that the operator that initially has the frequencies should have authority to approve subsequent transactions, in order to avoid anticompetitive trading. Therefore, the operator who initially trades will find an equilibrium between efficiency and cannibalization of the traded spectrum.

Besides, the NRA should register the transferred spectrum in a public registry accesible to interested parties. This registry will allow the control of the obligations of the parties.

In particular, the receptor of the spectrum will guarantee:

- Use compatibility with previously authorized services in the same are and/or adjacent frequencies, including the frequencies of the operator who leases/transfer the spectrum.
- The receptor will underwrite to the donor and NRA the accomplishment of interference protection. The NRA will be allowed to give instructions to the receptor to observe this requirement.
- The receptor must do all measures, reports and certifications regarding the exposure of persons to electromagnetic fields (EMF) in their facilities and service areas. The donor is exempted of this obligation.

- The NRA could give instructions to the parties at any time to meet the legal requirements.

4) Would you want to see secondary trading of rights to use radio spectrum introduced in your country or in the countries of interest to you?

a) If yes – why, to what extent? when? frequency bands/services?

b) If no – why not, are there other tools that better suit your needs?

Yes.

We are interested in the FWA bands in Spain (3,5 GHz and 26 GHz) for LMDS applications.

The timeline would be as soon as possible, as the broadband access for the Internet demand is about to explode in Spain. Nevertheless, the applicable administrative procedures must be performed on a national basis (i.e. public consultation)

For FWA, we suggest to allow only on level of trading, as we believe that it is enough for the potential market in Spain. That is, the donors will be only the operators who already have frequencies assigned by the NRAs. The receptors could not trade as the potential benefits are less than the threatens to reach **global** efficiency (technical and economical). This limit is also good as it allows for a strict control of antitrust practices and eases enormously the NRA daily workload.

Regarding to the type of trading, we believe that it should be kept open. Nevertheless, it should be noticed once again that promoting common use bands must be limited in order to assure it is always a scarce resource.

5) What information and electronic communication facilities should be made available to facilitate implementation of secondary trading of rights to use radio spectrum?

There should exist a public registry with, at least, the following information for **each traded frequency**:

- price of the transaction

- traded frequencies (lower and upper limits)
- Type of transaction (leasing, change of use)
- Reports and certifications regarding the exposure of persons to EMF
- Reports and certifications regarding the protection against interferences
- deposits underwritten to guarantee absence of interferences

The registry should be accesible online.

### **Scope of trading – change of use, reconfiguration**

6) Is the possibility to reconfigure rights important? If yes, what kinds of reconfiguration do you consider would benefit consumers, businesses and users of spectrum? (geography, frequency, time, other)

We consider that any reconfiguration (whether geography, frequency, time) should not be allowed as it is an arbitrary measure that could easiliy damage previous tradings.

7) Is the possibility to use the spectrum in a flexible way important? If yes, what kinds of flexibility do you consider would benefit consumers, business and users of spectrum (service, technical constrains, other)

As stated before, we believe that the only restrictions should be those regarding to guarantee the correct working of previously established services in adjacent frequencies and/or areas.

We think it is important, at the beginning of the trading experience in the UE, not to limit too much the use of the spectrum. We think the learning curve will dictate how to proceed, and in any case NRAs could adopt ex-post measures.

8) To what extent is the tenure an important issue in assessing secondary trading? (indefinite, rolling, fixed, annual, other)

Regarding the transfer of ownership, we think it should be irreversible to be consistent with its definition. Nevertheless, if the receptor exits the market, the donor must have a preference to opt for the affected frequencies. If the donor is not interested in such frequencies, they

should return to the NRA and switch their state to available for assignment.

In the case of leasing, we think that it should not be limited, free agreements between the parties should prevail.

9) Should the same rules and regulations apply for the whole of the spectrum?

a) Is there a need for different rules and regulations for different frequency bands? geographical areas? services? users?

b) If you see a need for different rules and regulations in question 8a above, please give examples

In the case of FWA, as we mentioned earlier, we have a spot deployment, different from coverage deployment of mobile operators. Therefore, nation-wide frequency assignments are inefficient, so that trading should be enabled on a geographic basis.

We think that regulation should be flexible and that geographic based tradings should not be limited to any extent. That is, it could be possible to trade with spectrum in a local basis, or in a province or multiprovince basis, depending on the particular needs of both parties.

### **Competition aspects**

10) Should there be specific competition rules in relation to implementing secondary trading of rights to use radio spectrum, or is general competition law enough?

We consider antitrust measures should prevail and, moreover, NRAs should be active in controlling all transactions of frequencies. In addition, already mentioned items like EMF exposure and interference protection rules should be developed.

### **The role of the spectrum management authority**

11) What do you see as the main responsibilities for a spectrum management authority in regards to secondary trading of rights to use radio spectrum?

NRAs should watch over the general competition rules are observed, specially in:

1. controlling price of tradings to avoid anticompetitive prices; and
2. control spectrum concentration operations by SMP operators.

12) To what extent is spectrum management authority approval of trades a benefit or an impediment to the development of a market for secondary trading of rights to use radio spectrum? Under what circumstances do you consider it would be necessary for a spectrum management authority to refuse a trade?

As we have exposed, the NRAs should be an active player in this trading scenario to avoid anticompetitive transactions, ensure interference protection and observance of the remaining normative.

However, we believe the procedures should be flexible in order to catalyze the efficiency in the use of the spectrum.

13) What specific measures could a spectrum management authority take to handle the issues if secondary trading is introduced? (ex ante approval procedures, ex post notification, competition aspects, limit change of use, interference aspects, other)

We think there is not an unique formula. We bet, for the current competition rules, ex-post, but with right to give instructions in order to assure a fair trading.

14) To what extent should the national spectrum management authority actively facilitate secondary trading of rights to use radio spectrum?

National normative regarding public radioelectric domain should be changed.

We also encourage the NRAs to make a public consultation with the proposed and definite measures they will pretend to introduce. A vital aspect of the measures should be the necessary approval of each transaction by the NRA.

## Community aspects

15) Do you consider that adoption of individual regimes by EU member states will cause problems for consumers, businesses and radio users? If yes, in what ways and to what extent?

We think there should be no problem for trading on a national basis. We also believe that trans-national trading is almost impossible at least in the FWA band. Anyway, we recommend similar rules for every country to ease, if it is the case, the creation of European markets and to learn from the experience of those countries more advanced in the trading scenario.

16) Do you consider that the EU should take measures to facilitate the implementation of secondary trading of rights to use radio spectrum? If so, in what areas and to what extent?

We think the EU should recommend the trading and the basic requirements mentioned earlier to boost the NRAs activities to implement trading.

17) To what extent is European harmonisation of frequencies an important issue in regards to secondary trading of rights to use radio spectrum?

We consider that harmonization of the FWA band currently has no benefits at EU level. We warn about the serious consequences that harmonization could have in current network deployments. We consider FWA harmonisation window is lost, it's a pity, but the deployments are already done.

## Related experiences and examples of secondary trading

18) What are your experiences with the current spectrum management regimes?

None

19) What are your experiences of secondary trading of rights to use radio spectrum?



None

20) Please describe specific scenarios in which you consider that the introduction of secondary trading of rights to use radio spectrum would be beneficial

FWA in Spain: As mentioned, FWA assignments are done on a nation-wide level, whereas network deployment is in a spot basis. This has no sense and FWA bandwidth use in Spain is inefficient technically and economically.

Trading will allow for the introduction of local niche operators, will bring broadband Internet to rural areas in a quick and flexible way, and, on the other hand, current FWA operators will be more efficient, all of this in benefit of the users.

21) Any other comments

None