



Supplementary Submission to Ofcom

Spectrum Trading Consultation

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1.0 About FuturePace Solutions

Spectrum Management International Pty Limited, trading as FuturePace Solutions, is a private company operating since 1997 and headquartered in Canberra, Australia. Michael Whittaker, a FuturePace Director, was principally responsible for designing the Australian 500MHz, 800MHz, 1.8GHz, 3.4GHz and 28/31 GHz spectrum licensing technical frameworks.

FuturePace is, consistent with the stated Australian government objectives for industry self-management of spectrum, developing innovative on-line business practices for spectrum management including the on-line integration of licensing with EMR human exposure risk management at radiocommunications sites in a commercial alliance (Site Management Alliance) with EMC Technologies, Australia and Bailey Dixon Lawyers and Consultants (see www.sitemanager.net.au).

FuturePace thanks Ofcom for referring the consultation paper to us and we appreciate the opportunity to comment.

2.0 An Industry View of Ofcom's Exhibit 19

The success painted of the substantial economic benefits being unlocked by the transfer of 2.4 GHz licences from TARBS to AUSTAR in Australia in Exhibit 19 of the Ofcom consultation document may be an exaggeration and in particular the fact that a change of use was allowed does not necessarily constitute a successful economic outcome.

The Ofcom consultation paper expresses the view that the spectrum was more valuable to AUSTAR for delivering high speed data services than to

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TARBS in its initial use of broadcasting, and the conclusion is that economic efficiency was increased.

Ofcom's view is presumably based on advice from the Australian Regulator, the Australian Communication Authority (ACA). However, from the point of view of the Australian industry the situation is less positive.

3.0 Important Background

The spectrum had been purchased in 1996 under an outcry auction system prior to the design of a technical framework for spectrum licensing. This means that the spectrum had not been fully defined in terms of its utility but had been sold as apparatus licences of limited utility and at a value determined by that level of utility.

In reaching a decision not to resume the spectrum at the end of its licence period but to allow a trade as described in Exhibit 19 of the consultation document, the ACA, decided in the face of considerable opposition from Australian industry, that it would allow the trade to proceed as a 15 year spectrum licence, but would not go to auction because of their view, and consequent advice to Government, that the price had been predetermined by the 1996 auction. Given the prices which were being paid for equivalent spectrum in 2001 this was perhaps a valiant judgement. It should be noted that the ACA had also just auctioned spectrum at 3.4 GHz and industry participants who had paid for this spectrum were not pleased with the ACA decision to provide in effect a windfall to both AUSTAR and TARBS given they were their competitors and could also have used this valuable spectrum. The transaction was also accompanied by a degree of indecent haste such that the spectrum licence conditions were fairly tightly based on the original apparatus licence conditions which failed to unlock the considerable potential of this spectrum.

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4.0 Economic Disbenefit

An alternate decision to auction the spectrum with fully defined licence conditions was recommended to the ACA by industry but was met with the response that “there had already been an auction”. The argument as to the economic benefit of this trade is specious.

The spectrum was sold “as is” and was thus not accompanied by a fully defined spectrum licensing technical framework. The upshot of this is that instead of a significant input into the revenue and the possibility of actual competition into the market, the spectrum was duckshoved to an existing interest, and while the windfall benefit to TARBS was significant, the disbenefit to the rest of the industry was possibly more so. The minimum disbenefit to the revenue is the extent of the TARBS windfall of over \$100 million, but with competition from possibly 4 other companies the likelihood is that the price which could have been reached at auction, especially if the spectrum had been fully defined, would have exceeded that level. Certainly the 3.4 GHz spectrum had sold for a relatively high price.

The fact that the spectrum was sold “as is” must also be taken into account.

5.0 What Happens in Practice when a Licensee Makes Application to the Regulator for Change of Use/Configuration

Essentially, the AUSTAR licence conditions only supported the operation of “one-way “ services, being designed for one way point to multipoint services. Generally speaking high speed internet services require a technical framework that will support a two way service.

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The current public online licence register of the ACA lists a number of registrations for each capital city. This record tells the public two important facts:

- The spectrum currently appears to an adjacent spectrum licensee as being used for a one-way pay TV service, with no definition of the radiated power that must be taken into account in planning or the protection that should be provided for any other transmitters or receivers that may in fact be in operation. This limits the flexibility and capacity for efficient use of adjacent spectrum;
- There is no certification of these registrations, we assume this to mean that the licensee's ACA accredited person would not take liability for certifying that the devices complied with the licence conditions, and given the licence conditions were not fully defined, this is not necessarily unreasonable, the ACA therefore decided at some point to register without certification. This is usually a position of last resort and we are not privy to the conditions or any technical concessions which the ACA is likely to have applied in order to protect itself in this matter,

AUSTAR was required to come back to the ACA with its own set of rules for the use of the spectrum, curiously this is much like the process being proposed by Ofcom.

To our knowledge there has been no revised technical framework for this spectrum provided by AUSTAR, if it has we are unable to find any public record of the conditions on the ACA website such as are required for all other spectrum licences, and the only registrations in the spectrum licences suggest to us, and probably to anyone else who cares to look at the online public register, that the spectrum is not being used to its optimum utility.

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6.0 Actual Results of the Trade

So the results of this trade are in fact:

- Industry uncertainty
- Spectrum inefficiency
- Loss of revenue
- Dubious spectrum pricing
- Inefficiencies in spectrum definition
- Inefficient long term use of the spectrum

One of the other companies which also sought access to the spectrum has since left the Australian market, though the reasons may not relate directly to this issue, but it is clear that the ACA decision was seen as partial and not reflective of the creation of a level playing field.

7.0 A Captured Regulator Creating Competition

For this reason FuturePace does not support administrative discretion as a means of dealing with the release of spectrum assets for sale. It can be dangerous when the Regulator feels it has to create competition rather than to broker the development of a technical and regulatory framework in which industry-led competition can flourish, and even the best regulator, and we are on record as generally supporting the Australian Communications Authority, can appear to be victim to client capture if there is not both the appearance and actuality of due process.

Our experience is that there are some tasks which are for good reason outside the purview of spectrum Regulators and these would include not only creating actual competition by market place intervention, such as the AUSTAR license issue, but also picking winning technologies. For this reason we have opposed technology choice, in all its forms, as an appropriate task

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for Government, (see our website comments of the biased Australian 2GHz spectrum licensing framework).

8.0 Conclusion

The Australian Productivity Commission in its recent inquiry into spectrum management in Australia, has recommended to Government that all spectrum should be auctioned, that it should all be fully defined from the outset and as near as possible technology neutral, thus allowing open competition for all elements of industry and ensuring the best return possible to the community. As a logical next step the Productivity Commission has also recommended the introduction of private spectrum managers and perpetual spectrum licenses, both concepts which are predicated on the full complete definition of license conditions prior to sale or issue of the license, and both of which do not involve government in decisions within the marketplace.