

GSMA Public Policy position on spectrum trading

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Position

All countries should have a regulatory framework that enables operators to engage in voluntary spectrum trading.

All types of spectrum trading, including trading of a spectrum usage right, trading of parts of a spectrum usage right and trades in terms of hiring contract arrangements and in terms of private coordination agreements should be allowed.

Governments should remove restrictions on, and obstacles to, operators negotiating and concluding agreements on trading of spectrum.

Spectrum trading agreements negotiated and concluded on commercial terms are agreements governed by commercial law, subject to rules applicable to such agreements. Spectrum trading arrangements may be subject to assessment under general competition law and/or sector specific telecommunication law. Governments must implement appropriate and effective procedures for handling notification requests of spectrum trading agreements.

Background

As a general rule, individuals and organisations should be able to trade assets. The trading of assets should only be restricted for a compelling reason. This general principle should, of course, apply to the trading of spectrum usage rights too. So, if there is no compelling reason to restrict trading of spectrum usage rights, it should be facilitated in a regulatory framework.

Trading agreements are commercially negotiated agreements governed by private law, but in most cases, it makes sense for governments to be notified and grant approval. Notification requirements preserve transparency in who holds a spectrum usage right. Transparency of who is the licensee holder facilitates and simplifies trading transactions and helps keeps track of trading arrangements. Notification requirements help to ensure that trading arrangements are not anti-competitive.

One legitimate reason for governments to examine the voluntary trading of spectrum arrangement is to ensure competition in relevant downstream markets. The GSMA recognises that spectrum trading arrangements may lead to operators increasing the bandwidth of their mobile band spectrum portfolio. Furthermore, the GSMA recognises that spectrum should be distributed in a way that ensures competition in downstream markets. Governments may wish to balance the interests of operators engaging in voluntary spectrum trading arrangements with the objective of ensuring distribution of spectrum for the promotion of competitive markets.

In addition to ensuring competition, it is also vitally important that governments recognise market dynamics and commercial agreements with respect to spectrum trading arrangements. As a general rule, notifications of a trading transaction should be approved within two to three weeks following receipt of the notification, unless the trade is highly likely to have an impact on competition and governments in such cases need more time to consider the case.

Governments should also be very aware of their role in designing appropriate award procedures and well-defined spectrum usage rights will continue to be very important in a situation where a fully flexible trading regime is implemented. Trading cannot be relied upon as a tool to repair damage done by poor award design and/or poor license design.

In fact, the trading of mobile bands in high demand instances is unlikely to result in better distribution of spectrum between operators than a well-designed award. Well-designed spectrum usage rights facilitate trading by providing a robust starting point from which operators can engage in negotiations on any trading arrangement.