



TELUS COMMUNICATIONS COMPANY

Comments for

CONSULTATION ON CONSIDERATIONS RELATING TO TRANSFERS, DIVISIONS AND SUBORDINATE LICENSING OF SPECTRUM LICENCES

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Executive Summary

1. TELUS appreciates the opportunity to provide its comments in the Department's *Consultation on Considerations Relating to Transfers, Divisions and Subordinate Licensing of Spectrum Licences*, DGSO-002-13 (the "Consultation"). TELUS applauds the Department's efforts as part of this Consultation to propose a framework as to the approval process for spectrum licence transfers and to solicit views on its proposal.
2. As noted in the Consultation, the Department is responsible for radio frequency spectrum management in Canada and its approval is required for all spectrum licence transfers. Because spectrum is the foundation upon which wireless networks are built and there is a continued explosion of wireless services use among Canadians, spectrum management is of utmost importance so that all Canadians can obtain maximum benefits from this valuable and limited resource.
3. The spectrum licence transfer process is an important part of overall spectrum management. As much as possible, spectrum licences should be put in the hands of parties that can put the spectrum to use in the most efficient and effective manner. Spectrum is a scarce resource and unused or inefficiently utilized spectrum limits the availability of mobile broadband services to Canadians. Therefore, transfer of spectrum licences to parties that are willing to bear the risks of wireless network investments should be approved so that networks can be deployed and innovative services delivered to serve as many people in as many places as possible.
4. TELUS also fully supports the objective of a vibrantly competitive wireless marketplace. Regulatory frameworks that support and encourage facilities-based competition have always been advocated by the Company in its regulatory positions because such competition is the best means to provide the most innovative services at the lowest prices to the most customers. Therefore, TELUS understands that the desire for robust facilities-based competition means that the Department must scrutinize proposed spectrum licence transfers to avoid transfers that could cause excess concentration of spectrum assets. As such, the approval process is not automatic and, in some cases, will require a comprehensive review.

5. Given the fact that a review process for a proposed spectrum licence transfer might be complex, TELUS strongly supports the objective of providing clarity for all current and prospective licensees as to the process, timelines and general criteria for spectrum licence transfer approval. The Department's proposals are a means to provide a framework such that proposed licence transfers can be assessed as to whether a "detailed review" is necessary to compare the benefits of spectrum utilization and network development versus the potential impact on the competitive marketplace.
6. In general, TELUS supports the proposed framework because the Department recognizes that while all transfers require Departmental approval, only some will require a detailed review. This allows for rapid approval of transfer of spectrum licences that have will have little, if any, anti-competitive effects, meaning the benefits of efficient and effective spectrum utilization can be brought to the marketplace quicker.
7. In the remainder of these Comments, TELUS will answer each of the questions raised by the Department in the Consultation. In summary below, TELUS' positions are as follows.
 - TELUS agrees with the criteria and considerations listed in section 6-1 that the Department has proposed when assessing a potential spectrum licence transfer;
 - TELUS agrees with the use of well-designed thresholds that the Department could apply as a screen to decide whether a detailed review of a proposed spectrum transfer should be conducted;
 - TELUS agrees that deemed spectrum transfers be treated as actual transfers, divisions or subordinate licensing arrangements;
 - TELUS submits that the review of proposed licence transfers should remain confidential;
 - TELUS agrees with a four-week timeframe for a determination of either an approval or the need for a detailed review of a licence transfer, but requests that a shorter timeframe of four weeks from receipt of required information be used for completion of a detailed review of a proposed spectrum transfer;

- TELUS requests that there be no requirement for notification to the Department of a prospective licence transfer but that parties should be encouraged to voluntarily notify the Department in advance of proposed transactions that might necessitate a detailed review.

TELUS' Reply to Specific Questions Posed by Industry Canada

6. Review of Spectrum Licence Transfer Requests

Industry Canada is seeking comments on:

6-1 The criteria and considerations set out above.

8. In section 6 of the Consultation, the Department has proposed a revision to CPC-2-1-23¹ that sets out the procedures related to requests involving the transfer, division or subordinate licensing of all spectrum licences. The current procedure is a review of information by the Department of the conditions and guidelines set out in CPC-2-1-23, including assessments relating to eligibility, and compliance with licence conditions and applicable policies.² A proposed transfer of a spectrum licence is subject to written notification to the Department along with a declaration of the parties that the conditions and guidelines are satisfied. Based on this documentation, the Department approves or denies a spectrum transfer request.
9. In the Consultation, the Department has proposed that upon receipt of any spectrum licence transfer request, including a notification of spectrum transfer or division or application for a subordinate licence, it will first make a determination whether a “detailed review” is required. At the outset, TELUS notes its agreement with the Department’s

¹ Industry Canada Client Procedures Circular 2-1-23, *Licensing Procedure for Spectrum Licences for Terrestrial Services*, September 2007 (“CPC-2-1-23”).

² From CPC-2-1-23, section 5.6, the six conditions and guidelines for review of a spectrum transfer are as follows.

1. All eligibility criteria and other conditions that apply to a licence (including those related to interference management) will continue, as applicable, when the licence is transferred.
2. The party to whom the licence will be transferred (the transferee) must meet the applicable eligibility criteria outlined in the Radiocommunication Regulations.
3. The transferee will only receive a licence term equal to that remaining on the original licence but will be eligible for the same licence renewal provisions granted to the original licensee.
4. All proposed licence transfers must comply with existing policies.
5. Licences will be divisible in the geographic dimension; however, the minimum geographic size of the new divisions may be one spectrum grid cell or a portion of a census dissemination area.
6. The Department will under certain circumstances allow for the disaggregation and divisibility of spectrum licences. Where disaggregation of a spectrum licence is being considered, a portion of the specified radio frequency block may only be transferred/returned and disaggregated when the discrete spectrum portions may be divided, such that the resulting portions remain as assignable blocks of spectrum. Disaggregation must be concluded in a manner which allows for the portion(s) of spectrum transferred/returned and remaining to respect the spectrum assignment plan as defined in the applicable policy or Standard Radio System Plan (SRSP).

view that some transfers do not have a material impact, and should not be subject to a detailed review. TELUS provides its comments on proposed thresholds that would trigger a detailed review under question 6-2 below.

10. In addition, irrespective of whether a detailed review of a proposed spectrum transfer is necessary, TELUS understands that the current six conditions and guidelines of spectrum transfers listed in CPC-2-1-23 remain applicable and pertinent for any spectrum transfer review. As a result, the current process will still need to be undertaken by the Department to ensure that all spectrum transfers satisfy these minimum standards.
11. When conducting a detailed review of the licence transfer, the Department has proposed that it will examine whether approval of the spectrum licence transfer will impact
 - (a) the efficiency and competitiveness of Canadian telecommunications market;
 - (b) the availability, quality or affordability of services available to consumers; and/or
 - (c) the economic and social benefits that Canadians derive from the use of the radio frequency spectrum resource.
12. TELUS agrees with the criteria listed above for the Department to consider when undertaking a detailed review of a proposed spectrum transfer. Consideration of the items listed above would put front and centre the benefits that a transaction would have on competition, consumer welfare and efficient spectrum usage, by far the most vital and important factors that the Department could examine. These considerations are also consistent with the Canadian telecommunications policy objectives set out in the *Telecommunications Act*³ and Minister's powers under the *Radiocommunication Act*.⁴ Most notably, the Department's proposed considerations are directly aligned with these specific Canadian telecommunications policy objectives.

³ See the Canadian telecommunications policy objectives under section 7 of the Act.

⁴ Section 5(1) of the *Radiocommunication Act* allows the Minister, prior to the issuance of any spectrum licence, to take into account all matters for the "orderly development and efficient operation of radiocommunication in Canada." In addition, section 5(1.1) of the *Radiocommunication Act* allows the Minister to have regard to the Canadian telecommunications policy objectives from section 7 of the *Telecommunications Act*.

- to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;⁵
 - to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;⁶
 - to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;⁷
 - to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;⁸ and
 - to respond to the economic and social requirements of users of telecommunications services.⁹
13. In addition, the Department has proposed to examine the following factors when making its approval/disapproval determination as part of a detailed review:
- (a) current licence holdings of the proposed licensee or subordinate licensee in the subject spectrum band and region;
 - (b) overall distribution of licences in the subject spectrum band and/or related bands in the region;
 - (c) the current and/or prospective services provided using the subject spectrum; and/or
 - (d) the existence and availability of alternative spectrum with similar properties as that subject to the transaction.
14. These criteria imply a competitive market comparison before and after the spectrum transfer. Of particular interest will be the current market concentration of the particular spectrum band in the licensed area and the impact that the proposed transfer would have. These criteria are thereby relevant to the question of whether the spectrum licences being transferred will result in a dramatic change in marketplace circumstances. Parties to the proposed transfer would be free to provide evidence to demonstrate that the transfer will increase competition or would not have anti-competitive effects in the licensed area.
15. Having said that, it is important to recognize that these objective criteria are not viewed as hard and fast rules, or goalposts that will automatically deny or approve a particular transaction. The Minister's discretion to issue spectrum licences under section 5 of the

⁵ Canadian telecommunications policy objective (a).

⁶ Canadian telecommunications policy objective (b).

⁷ Canadian telecommunications policy objective (c).

⁸ Canadian telecommunications policy objective (f).

⁹ Canadian telecommunications policy objective (h).

Radiocommunication Act cannot be fettered by merely applying rules in every case. Therefore, even though TELUS recognizes the value in objective criteria for evaluating spectrum transfers, these objective criteria should only be used to determine the need for closer inspection and not as steadfast requirements that will always be the benchmark to determine if a transfer is approved or denied.

16. TELUS also agrees with the Department's proposal that licensees be entitled to informally approach the Department on a confidential basis to find out how criteria and considerations might be applied to a particular request. This proposal increases transparency and clarity, and encourages parties to engage with the Department at earlier stages of possible transactions. This engagement would be useful because it could reduce the time necessary to complete the threshold review process and the detailed review process, if such a detailed review were to be required.

Industry Canada is seeking comments on:

6-2 Whether there is a threshold in the form of concentration or a measure of MHz-pop that Industry Canada should apply in deciding whether to conduct a detailed review, or some other type of threshold, screen, or cap that should be used to decide if a detailed review is required.

17. TELUS agrees with a threshold approach as suggested by the Department. There should be some transactions that do not warrant a detailed review because they do not have material impacts in terms of the telecommunications policy objectives. The Department has noted some examples of such transactions, including transfers made as part of an internal reorganization, transfers that will serve to fill gaps in network coverage for the proposed licensee or subordinate licensee that does not already hold licences for similar spectrum in the region, or transfers involving only small amounts of spectrum. TELUS agrees with these examples as ones that should not generally require a detailed review.
18. Having said that, it is important to remember the goal of a threshold. The threshold should be set in a manner that minimizes the number of spectrum transfers that are subject to a detailed review. Detailed reviews encompass regulatory and administrative burden for the Department, burden that should only be undertaken in the clearest of cases. If the threshold is set too low, then non-controversial deals would be subject to detailed reviews,

delaying the transaction needlessly and imposing administrative work on both the Department and the parties to the transaction that is unnecessary.

19. Some respondents might raise arguments that thresholds that are too high would allow too many proposed spectrum transfers to pass through without adequate scrutiny. Arguments such as these are unjustified. The thresholds would be meaningful signposts to guide parties as to how possible transactions might be treated by the Department. As such, they should be regarded as objective measures that provide indicia as to the type of review process that particular transactions would typically require.
20. Furthermore, the Minister still retains full discretion prior issuing a spectrum licence to any party. As a result, any proposed transaction, irrespective of scope in relation to stipulated thresholds, is always subject to Departmental review and, potentially, a detailed review. The thresholds, important as they may be, are to be used as guidelines only. This also means that the Department is open to conduct a detailed review of a proposed transaction if it suspects that parties might be designing an agreement with the primary intent of remaining below any prescribed thresholds for what would otherwise be a significant spectrum transaction that has major competitive ramifications.
21. In addition, it must be acknowledged that any thresholds set in advance must be re-examined to ensure their relevancy. Objective thresholds based on spectrum holdings statistics are, by definition, static measures. However, spectrum statistics are dynamic. Notably, total spectrum allocated in the marketplace is scheduled by the Department to grow significantly for the next ten years, at least, as a result of band re-farming to meet the growing demand for mobile broadband. As a result, thresholds are a moving target that will need to be revisited to ensure that they remain relevant and effective in imposing detailed reviews only where warranted. Revision on a regular basis is an important component so that the thresholds are regarded as meaningful. Thresholds based on spectrum holdings industry percentage or position, or stated in ratio form, are more robust, but still need to be reviewed routinely as well.
22. There are several relevant statistics to consider as possible threshold measures for a detailed spectrum transfer review. The first is spectrum depth, or *quantity of MHz per*

licensee in the relevant region where the transfer is being considered. The Department could consider the spectrum depth of a licence transfer recipient before and after the proposed transfer in terms of in-band MHz, low band MHz, high band MHz, or total MHz. These metrics could be considered in absolute terms or in terms of percent of total spectrum allocated.

23. Regarding a specific MHz-based screen, it is important to set the threshold figure after considering current respective spectrum depth positions of all current licensees and the rank ordering of licensees' spectrum holdings. This will allow the Department to set a threshold amount that would force a detailed review of transactions that would result in a significant change to the respective spectrum holdings of a licensee relative to other licensees, but would not impose a detailed review on less significant transactions. As an example, the Department might be less concerned with transactions where the acquiring party would still be below the spectrum depth in the subject region that the leading holder held on average nationally. Threshold amounts could be set based on factors such as these.
24. As noted above, if absolute MHz levels are to be used as a threshold statistic, the measure must be re-examined for possible updating as the Department executes on commercial mobile spectrum release plans. The Department might wish to consider using a percentage share of MHz compared across all licensees rather than an absolute MHz level if the Department chose to implement a MHz threshold.
25. The Department has also identified *MHz-pops* as a potential statistic for a threshold. MHz-pops is the product of MHz and the population covered by the licence in question, and is the industry standard metric for spectrum volume. As a result, it differs from spectrum depth because total MHz is a measure of bandwidth but conveys no information about the geography over which a licence is effective.
26. MHz-pops measures are most valuable when comparing spectrum in different geographies, because it includes population coverage as a variable. However, for the purposes of a threshold screen, MHz-pops has little advantage over spectrum depth. This

is because the examination is based on the particular region where the licences are being transferred, meaning that the population is being held constant.

27. In TELUS' view, *subscribers per MHz-pop* would be far more valuable than MHz (or MHz-pops), because it assesses the relative spectrum need of parties requesting licence transfers.¹⁰ The simplest way to view of this metric is a ratio of a licensee's market share to its spectrum share. The higher the ratio, the harder the spectrum is working and the higher the need for more spectrum to support growth to satisfy customer demand. Subscribers per MHz-pop is the most valid way to compare the relative spectrum needs of operators of all sizes in any geography.¹¹
28. There are simpler measures that can be employed. For example, the Department can examine the rank-order of licensees in terms of spectrum depth in the subject area where the licences are being transferred. The Department could then simply compare the rank-order of the various licensees in the licensed area before and after the proposed transaction. Using this rank-order method, the Department could impose a threshold that, for example, states for any transaction that results in the acquiring party to become first in spectrum depth in the licensed area, a detailed review is required. The value in using a rank-order method is that it is less subject to change over time.
29. TELUS raises a final caution about applying statistical thresholds. It is important for the Department to also take into account any differences in specific marketplaces when applying such thresholds. As an example, a transaction that exceeds prescribed thresholds might indicate that the agreement would result in a high level of spectrum concentration in a particular area. However, that transaction should also be judged against whether the geography is urban or rural, as an example. A measure of high concentration might be a greater concern in a large urban area, where more competitors would be expected, as opposed to a smaller community or a rural area. This goes back to TELUS' initial point

¹⁰ TELUS notes that before implementing a threshold such as this, it must be first determined whether licensees are able to report subscribers to the various spectrum tier levels. Subscriber counts for tier 3 or tier 4 areas might be difficult to provide.

¹¹ TELUS notes that differences in serving urban versus suburban populations should also be taken into account. Spectrum can be made to yield the highest efficiency when the subscribers are, relatively speaking, more evenly spaced about the service area as opposed to packed into dense urban pockets.

that thresholds are not a replacement for the Department's discretion. Application of thresholds must also be accompanied by sound judgement so that the Department can always be assured that the detailed review process is used in the most optimum circumstances.

Industry Canada is seeking comments on:

6-3 The treatment of deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements.

30. The Department is proposing to treat deemed spectrum licence transfers as actual transfers, divisions or subordinate licensing arrangements, meaning that it would be subject to the same approval process. In addition, the Department has proposed that a licensee would be in breach of its conditions of licence if it finalizes the agreement for a deemed licence transfer after the Department has indicated it would refuse approval.
31. TELUS agrees with the proposal. A deemed spectrum licence transfer should be treated in the same manner as an actual transfer, division or subordinate licensing arrangement, as the case may be. This means, of course, that a deemed spectrum licence transfer would be subject to a detailed review provided that it satisfied the threshold for such a review.

Industry Canada is seeking comments on:

6-4 The current review model, which is confidential, and whether it should be modified such that Industry Canada would publicize a spectrum licence transfer request and provide an opportunity for third party input.

32. The current confidential review model must be retained. Proposed spectrum transfers are commercially-sensitive matters between parties, meaning that utmost confidentiality is required. The Department is more than equipped to conduct its review of any transfer based on the data filed by the respective parties without third party input, and has been doing so for many years without any issue. As a result, TELUS does not believe that there is any basis for amending this current policy.

33. TELUS adds that spectrum transfer requests generally arise as part of merger and acquisition activities. As a result, the spectrum transfer would be part of a larger merger or acquisition transaction. Reviews of such transactions are conducted by the Competition Bureau, whose processes are confidential.¹² As a result, it would be contradictory for the Department to have spectrum licence transfer review process that was not confidential because it would expose a proposed transaction that would otherwise be fully confidential under Competition Bureau review processes. As such, the Department spectrum review processes must be confidential or else it would conflict with the Competition Bureau's confidential review processes for mergers and acquisitions.

Industry Canada is seeking comments on:

6-5 In addition, Industry Canada welcomes comments on any other suggested changes to the applicable conditions of licence related to licence transfers, and to section 5.6 of CPC 2-1-23 and to the relevant application forms or other requirements.

34. TELUS does not have any further comments at this time.

¹² See section 29 of the *Competition Act*.

7. Timelines

7-1 Industry Canada is seeking comments regarding the proposed timelines.

35. The proposed timelines for spectrum transfer reviews are as follows.
- (1) Under normal circumstances, within four weeks of receipt of a spectrum licence request, the Department will
 - Approve the issuance of a new licence, provided that the request meets the applicable requirements set out in CPC2-1-23; or
 - Advise the parties to the spectrum licence transfer that a detailed review will be required.
 - (2) In the case of a detailed review,
 - the Department may seek additional information and documentation from the parties.
 - Based on the information provided, the Department will review the transaction as set out above, and within sixteen weeks of receipt of all required information, will:
 - approve the issuance of a new licence or subordinate licence, as applicable, provided that the request meets the applicable requirements set out in CPC-2-1-23; or
 - communicate the factors leading to a refusal to approve the spectrum licence transfer request, and the reasons for same.
 - (3) In some circumstances, timelines for decisions may vary from those proposed in this paper. For example, these timelines may be impacted by:
 - requests from the Department for further information from the parties; or
 - time required by the parties to respond to specific concerns raised by the Department in its review;
36. TELUS appreciates the Department's proposals to stipulate clear timelines for a spectrum transfer review process. At present, the process does not have defined timelines, leading to considerable uncertainty of the parties to a proposed licence transfer request. Spectrum transfers are often an element of broader merger or acquisition transactions where time can be very much of the essence, so it is reasonable that parties want their proposed transfers to obtain approval as quickly as possible. Stated timelines give the parties at least approximate timeframes as to when decisions will be rendered.

37. Four weeks for the first stage of a review appears reasonable. TELUS notes that stage of the process, determining whether a transfer should be approved or require a detailed review, might not require four weeks in many cases. For example, simple transactions resulting from corporate reorganizations or ones that are well-below any detailed review threshold should not require four weeks for approval. As a result, TELUS does expect that decisions could be issued well before the four-week timeline. TELUS recognizes that four weeks would be required in other cases, but underscores that the timelines should be approximate and knows that the Department will be working to get decisions out as quickly as possible, irrespective of the stipulated timelines.
38. Sixteen weeks for completion of a detailed review after the receipt of requested information does seem to be lengthy. As a comparison, TELUS understands that the Competition Bureau has statutory waiting periods¹³ during which proposed transactions are not permitted to close after they are submitted to the Competition Bureau for review and approval. The first statutory waiting period is 30 days, which is similar in timeframe as to the initial stage for the Department as to whether it will need to conduct a detailed review.
39. The second statutory waiting period under the Competition Bureau's processes for merger review is for mergers that could result in substantial lessening of competition, meaning that a more complex review and approval period is necessary. This second waiting period is allotted for 30 days and commences after parties have provided complete responses to supplementary information requests. In TELUS' view, if the Competition Bureau is given 30 days for this process, TELUS is uncertain why the Department would require 16 weeks to complete a detailed review following the receipt of information requested from the parties. In addition, in order to support efficient commercial market transactions, as much as possible, the Department should strive to align its proposed timelines with those of other approval bodies. As such, TELUS urges the Department set a timeframe for a detailed review to be conducted within four weeks from receipt of required information.

¹³ See the Competition Bureau's *Merger Review Process Guidelines*, January 11, 2012, available at [http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger-review-process-2012-e.pdf/\\$FILE/merger-review-process-2012-e.pdf](http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/vwapj/merger-review-process-2012-e.pdf/$FILE/merger-review-process-2012-e.pdf).

8. Prospective Transfers

8-1 Industry Canada is seeking comments on the proposed Condition of Licence concerning prospective transfers, including the criteria, considerations and timelines set out above.

40. The proposed condition of licence concerning prospective transfers is set out below.

Prior to entering into any binding agreement, including an option or similar agreement, which provides for a transfer or division of a spectrum licence or a subordinate licensing arrangement to be made at a later date, licensees will notify Industry Canada in writing and provide the relevant details of the agreement. Licensees must also notify Industry Canada in writing of any such agreement already in place as of the effective date of this condition of licence.

41. The Department also proposes that upon receipt of a notification of a prospective transfer, it will conduct a preliminary assessment of the transaction, which would represent the Department's opinion of the transaction at that time. This preliminary assessment would not be a binding statement of approval or denial of an eventual licence transfer request.
42. TELUS views these proposals as unnecessary. Based on the *Radiocommunication Act*, the Minister has complete ministerial discretion when issuing a spectrum licence to a prospective licensee. Therefore, every spectrum transfer is subject to Department approval. If the intent of this condition of licence is to ensure that Departmental approval of a spectrum transfer is obtained, then this condition of licence is not required because the relevant statutes already require such approval. Besides, the Department's formal review procedures of the final agreement between parties would supersede any preliminary assessment in any event.
43. In addition, the proposed condition of licence and the preliminary assessment process are impractical for a number of reasons. First, it is not clear at what point discussions between two parties would lead to a situation where notification to the Department is required, even though no binding agreement exists for the transfer of spectrum. Even where parties that have signed a letter of intent regarding possible transfer of spectrum, meaning that discussions have progressed a substantial degree, these cases often fail to

reach a binding agreement between the parties.¹⁴ As a result, if the proposed condition of licence were to be imposed on licensees, the Department might find itself conducting preliminary assessments of possible deals that never materialize. This would waste valuable Department resources and potentially divert and frustrate Department efforts from reviewing actual deals.

44. Moreover, the utility of the preliminary assessment for the parties is marginal. Notably, if the preliminary assessment is based on a framework of a possible deal, rather than the final agreement itself, the preliminary assessment could be meaningless. It is easy to envision a situation where parties decide to renegotiate and agree upon different terms, such as the volume of spectrum being transferred. This means that a preliminary assessment could be based on a deal structure that did not reflect the actual deal. Furthermore, a positive preliminary assessment would give the parties no comfort because the Department has stated that it would not be binding. This means that the procedural review components that have been proposed under section 6 of the Consultation, such as the threshold review and a possible detailed review, would still have to be conducted.
45. The preliminary assessment also creates procedural concerns for the parties. As the Department is well aware, time is normally of the essence to parties when transferring spectrum. If the procedures noted in the Consultation under section 6 are put in place, parties have potentially a 20-week period¹⁵ to wait until final Department approval of a spectrum transfer is officially granted, more if additional information is required at the review stages. It would be counterproductive to force parties, even before a binding agreement is in place, to wait for a preliminary assessment from the Department that is both non-binding and potentially immaterial, if the final deal happens to vary from the deal submitted for preliminary assessment. In addition, unlike the proposed procedures

¹⁴ TELUS notes that the Competition Bureau does not require parties to a proposed merger for notification of a proposed transaction in advance of the completion of an agreement. It states that for mergers where pre-notification is required, that “parties are encouraged to contact the Bureau at the earliest stage reasonably possible, and certainly as soon as they have an agreement or, in the case of a hostile takeover, definite plans.” See section 2.7 of the Competition Bureau’s *Procedures Guide for Notifiable Transactions and Advance Ruling Certificates Under the Competition Act*, October 2010.

¹⁵ TELUS has requested that the detailed review stage be completed in 4-6 weeks, rather than the 16 weeks proposed by the Department.

for the formal review process, there is no timeframe prescribed for this preliminary assessment to be conducted.

46. Based on the above, TELUS requests that the Department not impose the proposed condition of licence regarding notification of prospective transfers. Of course, parties would be free to provide notification to the Department of a proposed spectrum transaction, even in advance of a completed agreement, as a courtesy should they wish. This notification would be voluntary, but not required.
47. TELUS notes that prescribing thresholds for detailed reviews would be a strong signal to parties to send a pre-notification to the Department of a potential spectrum licence transfer. If parties are contemplating an arrangement that exceeds the stated thresholds, they would see potential benefit in pre-notification to the Department because they would recognize that a detailed review was likely forthcoming and that the Department would appreciate knowledge ahead of time to plan for resource requirements.

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