



Comments from ARD
to the
Consultation on Wireless Access Platforms
for Electronic Communications Services
of the
Radio Spectrum Policy Group

As a public service broadcaster, ARD is a prominent user of radio spectrum and therefore welcomes the opportunity to comment on the Consultation on Wireless Access Platforms for Electronic Communications Services of the Radio Spectrum Policy Group.

Consultation question 1:

Do you agree with this operating definition of WAPECS?

Do you consider that the WAPECS concept should include spectrum intended for private, as well as public, applications?

From our point of view, there is insufficient evidence that there is a pressing need for the suggested concept of WAPECS, as the existing definitions and allocation rules already provide a stable framework. It has been our consistent experience that the introduction of new services based on new platforms (i. e. GSM, datacasting, digital interactive broadcasting) has never met with any serious obstacles. ARD holds the view that there is a development towards distributing contents via different platforms and networks simultaneously. However, the kind of technical conversion described in the operating definition is not likely to occur in the foreseeable future.

The definition of WAPECS proposed in the consultation document differs considerably from what has been widely accepted as WAPECS. This original concept referred to wireless services as services intended for densely populated areas (hot spots). Due to the limited service area, this meant that WAPECS only required frequency bands in the 2 to 10 GHz range. The extension of the WAPECS concept to “services” such as “IP access, multimedia, multicasting, interactive broadcasting, datacasting” and the frequency allocations as “mobile, broadcasting and fixed” makes the new definition of WAPECS rather diffuse and vague, thus risking more confusion than discernable benefits. Any definitional change thus needs to be based on sound and carefully weighed considerations, which are lacking from the present document.

ARD welcomes the principle of using radio spectrum in a more flexible and efficient way. Yet the efficiency principle needs to be balanced with the principle of safeguarding the quality of frequency usage due to interference. We are genuinely concerned that the limitations and implications stemming from the physical facts of radio wave propagation could be underestimated. The interference problems posed by the introduction of PLC systems are a prominent example.

Laying down “technical coexistence rules which are tailored to the specific band” will not suffice, as this will be difficult to realise in an area like Central Europe. Unlike in countries such as the USA or Australia, radio spectrum in Europe is extensively used, with due regard to the spectrum needs of neighbouring countries. We can look back on a successful history of meeting those differing needs by way of bi- or multilateral agreements and international conferences. The existing system is well approved and takes into account the differing cultural, political and geographical situations in Europe.

While acknowledging the need for a more flexible and efficient usage of frequencies as a general principle, ARD would like to call to mind the reasons why spectrum allocation should not be based on purely economic considerations. Public interest objectives, such as the need for public service broadcasters to fulfil their public service remit for nationwide or regional coverage need to be taken into account through adequate access to the frequency spectrum. Without sufficient allocation of spectrum, public service broadcasters would risk to fall short of their mission to serve such fundamental freedoms as freedom of expression, freedom to receive and disseminate information and ideas, media pluralism and cultural diversity.

Consultation question 2:

Do you consider that the term “platform” should be more closely defined? If so, what definition do you propose?

As pointed out above, ARD sees no necessity to extend the definition of WAPECS as we have not yet heard convincing arguments in favour of expanding the WAPECS definition to include services available at “any location”, meaning services with full area coverage instead of services only directed at densely populated areas with a perceived demand.

Consultation Question 3:

What, if any, constraints should there be on the provision of services using spectrum primarily in the broadcast domain?

As frequencies need to be considered as a public instead of a private good, any spectrum regulation must take due account of the legitimate interests of services of general economic interest. Free-to-air terrestrial broadcasting is one of the major policy pillars in Europe to ensure access for all citizens to a wide range of quality content services. As far as the special role of public service broadcasting for society is concerned, its mission is expressly acknowledged in the Amsterdam Protocol to the EC Treaty. This mission is directly linked with the use of radio spectrum as it serves to meet the public interest goals such as maintaining and promoting democratic, social and cultural needs and safeguarding pluralism and the diversity of opinions. The terrestrial broadcasting spectrum thus helps to avoid a digital divide in society by safeguarding public access to high-quality, diversity-oriented broadcasting services, an aim which also was pursued by the Community as a result of the Lisbon process with eEurope 2005 and now is pursued with the Commission’s i2010 initiative.

The use of terrestrial frequencies also prevents broadcasters from being dependent on a single delivery platform. While cable and satellite play an important role for the distribution of broadcasting signals in a number of European Member States – albeit by far not in all Member States - these delivery platforms are characterized by monopoly situations on the part of the platform operators. Terrestrial broadcasting platforms thus ensure that (a) citizens enjoy universal and affordable access to high quality content and (b) that competition of different delivery platforms is not curtailed.

One of the major reasons for the horizontal regulatory approach of the “telecom package” was the expectation that in future different delivery platforms for content would compete with each other. The suggestion, sometimes heard from within the Commission, that the use of terrestrial spectrum for broadcasting purposes is no longer justified defies these very goals of the reforms. Moreover, from the point of view of consumers terrestrial reception of broadcasting programmes is the cheapest and easiest way of access. In fact, DVB-T holds the promise of increasing these consumer benefits as this technology enables viewers to also access broadcasting signals via portable as well as mobile devices. Consequently, European frequency policy needs to aim at facilitating and fostering the use of terrestrial frequencies for broadcasting purposes instead of contemplating ways to constrain its use.

The need to safeguard the aforementioned objectives is incompatible with a purely market-driven management of frequency assignment and distribution. Making frequencies freely negotiable on the market would jeopardise the continued provision of broadcast services in the public interest. These considerations would also apply, if opportunity costs were determined for the use of frequencies for public service broadcasting as a sort of replacement costs. If spectrum trading or radio spectrum pricing were to be admitted in future, at a bare minimum spectrum trading or pricing would need to be limited to a few clearly defined cases, for example where frequencies were assigned by means of auctions, as an auction already entails an assignment in accordance with economic criteria.

In any case, frequencies that are earmarked for utilisation by broadcasting services would need to be excluded from spectrum trading from the outset, in the same way as frequencies used by security services or for military purposes. In this area, any auctioning or other frequency assignment based on commercial principles would run counter to the goals quoted in recital 3 of the Decision No. 676/2002/EC of the European Parliament and of the Council of 07 March 2002 on a regulatory framework for radio spectrum policy in the European Community. This policy approach is further supported by the position of RSPG in its opinion on secondary trading of rights to use radio spectrum (RSPG-54 Rev.(final)) published in November 19, 2004, where frequency trading was excluded for military-, security- and broadcasting services.

Finally, ARD would also like to recall that the audiovisual sector directly employs over one million people in the EU. But the audiovisual sector is not only an important economic player. Television is the most important source of information and entertainment in European societies, with 98% of homes owning a television-set, and the average European watching more than 200 minutes of television per day.

Consultation Question 4:

What specific rules should be introduced or maintained to safeguard the delivery of Services of General Economic Interest in the future?

Is it most appropriate to deal with these issues through the regulation of spectrum, or through other instruments such as competition law or state aid policy?

As has been argued above, the use of frequency spectrum for broadcasting and broadcasting services is a matter of “general interest” on the Member State level and should not be questioned after the digital switch-over will have been completed. The competency to decide about the the range of programmes and services of “general interest” to be delivered terrestrially rests solely with the individual Member States who expressly recognized this fact in the Amsterdam Protocol. This primary law has to be acknowledged in the application of state aid law which also recognises the general legal principle that the definition of services of general economic interest is one of the prominent prerogatives of the Member States.

According to Recital 3 of the Radio Spectrum Decision cited above, radio spectrum policy in the Community should contribute to freedom of expression, including freedom of opinion and freedom to receive and disseminate information and ideas, irrespective of borders, as well as freedom and plurality of the media. Since this aspect mainly concerns the use of spectrum by broadcasting services, it is imperative for any assessment of spectrum trading with regard to broadcasting services that this provision of the decision be respected. Because of its economic focus, general competition law alone is not able to meet these specific public interest objectives.

Consultation Question 5:

How do you think changes in spectrum policy will impact on the requirement for standardisation? What policy will best ensure the timely availability of standards?

The introduction of WAPECS will generate a need for new standards. But according to the experience gained from the standardisation of the PLC services, there will be no fast and easy solution for standardisation, as long as the demands of the different services are incompatible. Since standards are voluntary and mainly driven by industry, the interests of non-commercial broadcasters are difficult to protect, even if reasonable protection of broadcast services is requested in the scope of a standard.

For example, CDMA systems can use the same channel because of their orthogonal spectrum spreading codes. However, for DVB-T there is no possibility to cancel or to limit the interference (except increasing the FEC and reducing the payload data rate). In UWB-Systems, carriers can be selected according to their usage, because these systems can be used with return channels. Since DVB-T is a broadcast system, no return channel necessarily exists which could give a feedback on the quality of the radio link. Theses two examples show that it is much more complicated for broadcast systems like DVB-T to operate in the presence of interferers than for other systems using return channels.

Consultation question 6:
Are there any other challenges that the RSPG should consider?

See answers to question 1 and question 3.

Consultation question 7:
What is your view on the above-mentioned issues and more specifically on how to achieve the right balance between “minimising and harmonising constraints” presented above?

As described in the answer to question 3 the spectrum assigned and allocated to broadcasting services as services of general economic interest, and in particular frequencies assigned to public service broadcasters should be excluded from purely market driven instruments.

In this respect, we would like to underline that the Commission’s competencies are limited to the area of frequency management where cross-border frequency co-ordination and technical implementing measures are concerned. The Radio Spectrum Decision contains such a restriction which balances the competencies of the Member States and the Commission. Moreover, an effective spectrum harmonisation takes place in international bodies like CEPT and ITU.

Interference problems may be shown using Ultra Wideband communication devices as an example. These devices operate in the frequency range from 3 to 10 GHz, but the out-of band emissions have the potential to interfere with broadcast services in the range below 1 GHz. The limits proposed by the FCC (USA) do not sufficiently protect the broadcast services. Intervention by broadcasters in study groups of CEPT and ITU lead to a spectrum mask acceptable for the operation of broadcast services, provided that these masks will be accepted by the international standardisation organisations.

Consultation question 8:
Are there any other long term policy goals that the RSPG should consider?

In the information age, where universal coverage of objective and independent information for all is essential to bridging the digital divide, the fact that spectrum is a public good becomes more relevant than ever. Special spectrum needs which originate in the public interest to maintain a broad range of high quality diverse terrestrial broadcasting as well as the public service mission of public service broadcasters in a digital environment need to be adequately reflected in spectrum policy and allocation during and after digital switchover.

There will undoubtedly be some kind of „digital dividend“, but this may vary according to a range of parameters and framework conditions.

The spectrum needs after the transition to DVB-T will ultimately depend on a number of framework conditions, such as the DVB-T variant, the reception mode (stationary or portable), and the number of coverages considered necessary in the public interest.

Those convinced that digital switchover will necessarily free up a lot of frequency spectrum for alternative services may want to contemplate the consequences for spectrum use if Europe were to opt for HDTV. The Commission has already launched a public consultation process on HDTV and has pointed out the consumer benefits and industrial policy advantages that such a choice would mean for Europe given its competition in the IT sector with the United States and Japan.

In summary, while digital switchover will bring a different “digital dividend” in each Member State, European frequency policy must continue to recognise that regulatory authorities in the Member States need to ensure an information society for all which will require broadcasters to offer additional digital terrestrial television programmes and enhanced services as well as the need for a higher bit rate for flat screen TV-sets. It has to be ensured that such spectrum needs in the public interest can be met and that Member States retain the flexibility necessary to respond adequately to new technologies, such as HDTV, if deemed necessary.

Consultation Question 9:

Do you think that these steps form an adequate basis for achievement of the European objectives in this area? Are there any other steps that are required?

In accordance with the remarks in the answer to question 1. where the necessity of the redefinition of WAPECS is put into question, ARD does not regard any of the steps suggested in the Commission document as an adequate basis for achieving the European policy objectives in this area.

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