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Response of the Association of Commercial Television in Europe to the Public consultation on the draft RSPG Opinion on the Digital Dividend

The Association of Commercial Television in Europe (ACT) represents the interests of the commercial broadcasting sector in Europe with 28 member companies active in 34 European countries operating over 400 free-to-air and pay-tv channels and distributing several hundreds channels and new services.

Introduction

Before engaging in any legal, economical or technical argumentation, it is important to underline the wider role that commercial broadcasters can play. Not only do commercial broadcasters contribute to create a pluralistic media landscape by offering a variety of quality news, educational, entertainment and niche programming but we also drive and encourage the uptake of new technologies through the roll-out of new services, platforms and standards. From this perspective, the need to avoid prejudicing the current and future investments of broadcasters, following the pace of technological innovation, is very clear.

The current Draft Radio Spectrum Policy Group Opinion on the Digital Dividend makes a number of useful recommendations for future actions of the European Commission in the way the various aspects of digital dividend should be approached. The ACT would like to welcome and express support in relation to the following safeguards:

1. Recognising the principle of subsidiarity applicable to spectrum management policies in Europe

Media markets in Europe are characterised by a high degree of heterogeneity and consequently the needs in relation to spectrum vary to a great extent. Member States' digital dividend plans have different timelines and, not least, different objectives. The demand for spectrum will vary depending on factors such as the size of the population, the geographical characteristics, the penetration and requirements of various distribution platforms (cable, terrestrial, satellite, IPTV),

etc. It should also be borne in mind that in some Member States, certain private broadcasters have programming obligations written into their broadcasting licences. Given all these aspects, it is only at the national level that all the economic, social and technological differences can be adequately taken into account in terms of deciding what to do with the spectrum released by digital switchover.

This, we understand, is the position of the Council of Ministers and European Parliament, as expressed in the recent negotiations regarding the New Regulatory Framework.

Spectrum is likely to be used, in some markets, for developing new broadcast services such as HDTV or “one-to many” mobile TV (different from “one-to-one” 3G/IMT mobile transmission) and/or to organise a smooth transition between existing and enhanced broadcast technologies (such as between MPEG-2 and MPEG-4).

Accordingly, Member States should be able to decide for themselves how to manage the 800 MHz band, taking into account the realities and needs in their markets. Also, where licences to provide analogue and/or digital broadcasting services have already been awarded, these licences should be respected.

2. Protection from risk of harmful interference

Adequate safeguards in relation to protection from risk of harmful interference must be provided for, before considering whether the bands used by broadcasters within the EU may become available for use under general authorisations. In particular, within the UHF band, further technical studies will be needed to provide reliable options to counter potential interference between various services, notably cross-border.

3. Costs of spectrum re-planning

As noted in point 13 of Annex A of the current opinion, re-planning of spectrum used by broadcasting networks “could cause significant cost or disruption to the provision of broadcasting services”. The RSPG re-confirms the validity of its conclusion in the RSPG07 Opinion -161¹ that costs arising from such modifications should be borne by those who benefit from those modifications. The ACT proposes that this is transposed as a conclusion of the current opinion as follows:

“9. The RSPG recommends that the Member States wishing to implement mobile services in the 800 MHz band set up mechanisms which would ensure that the costs of the measures necessary to overcome such effects are integrally borne by those who will benefit from those frequencies.”

4. Any new proposals at EU level to coordinate or harmonise the 800 MHz band should not be binding on Member States

As a logical consequence of respecting the subsidiarity principle in the light of the arguments listed above, the EU should avoid adopting binding regulation in

¹ RSPG OPINION ON EU SPECTRUM POLICY IMPLICATIONS OF THE DIGITAL DIVIDEND, 14 February 2007

relation to spectrum issues which has a considerable impact on media policies which are also more appropriately dealt with at national level. This principle has also been recognised in the RSPG Opinion on EU Spectrum Policy implications of the digital dividend adopted in February 2007.

However, this does not mean that there should be no European discussion and co-ordination on spectrum issues. Voluntary, case-by-case exchanges among groups of Member States may identify areas where further co-operation is possible, and we note that a number of such exchanges are ongoing with regards to the 800 MHz band. Clearly there can be no objection to such work if it becomes manifestly evident, with the help of market impact assessments, that it leads to a more efficient use of spectrum which does not damage the interests of private broadcasters, namely in terms of increasing the risk of harmful interference.

Cooperation in the field of spectrum should continue in the Communications Committee, the Radio Spectrum Committee and the Radio Policy Spectrum Group.

5. Respect existing mandates and agreements at EU and international level

The frequency assignment and frequency allotment of the broadcasting bands, as agreed in Geneva 2006 (RRC-06) should be preserved in order to ensure the certainty industry needs for its investments. At European level, the provisions and framework set in the 2002 Radio Spectrum Decision should be respected in relation to spectrum management approaches by the European Commission whose mandate is formulated in terms of “encouragement” and “co-ordination” and is limited to adopting decisions on technical issues.

6. Any changes in spectrum management should be based on solid impact assessments

The ACT members support a cautious approach to spectrum policy making which should be based on solid impact assessments and studies demonstrating whether and to what extent such changes could maximise the social, technological, cultural and economic benefits arising from the proposed use of spectrum. Along these lines, private broadcasters have strong arguments for their spectrum needs as they have been long committed to developing new services (e.g. mobile TV) with enhanced quality (HDTV) and new services or applications (e.g. e-accessibility services) which call for more intensive spectrum allocation.

Yours sincerely,



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