

GRUPO AUNA'S RESPONSE TO EUROPEAN COMMISSION INQUIRY CONCERNING
TRANSFER OF RIGHTS TO USE RADIO SPECTRUM

Madrid, April 2, 2004

1. INTRODUCTION

Firstly, regarding the inquiry, Grupo AUNA wishes to state its support of this initiative to review the industry, given the current and future importance of the issues involved. Secondly, we would like to point out that our opinions have been compiled in a single overview that no doubt will address all the specific questions and concerns put forth by the inquiry. We believe that this is the most appropriate way to respond, given the lack of definition that this topic still presents, and the practical need to raise implementation to a global level.

2. COMMENTS FROM THE AUNA GROUP

Firstly, Grupo AUNA wishes to emphasize the importance of carrying out an unhurried and complete analysis of the ramifications and effects of introducing into the market such a mechanism as novel to the European Union as secondary trading to manage limited resources. Though in some instances this tool has presented itself as a possible way to increase efficiency in spectrum management, there are still numerous concerns about whether this is really true. On the other hand, in our opinion it is also evident that if precise protections and guidelines are not established for this tool, the spectrum market could end up being controlled by parties with the largest spectrum share and the most financial clout.

If this were to be the end result of the process, it is reasonable to assume that it could spark behaviour going against fair competition and the best interest of consumers and smaller operators. In light of these circumstances, Grupo AUNA believes that this inquiry is but the first needed step in a process of analysis which must definitely proceed in a careful and exhaustive manner, given the risks in the process.

In any case, the possible opening of the market for transferring radio frequency usage rights among various companies must respect the conditions established by the Framework Directive, which establishes under Article 9 that the Member States “shall monitor efficient management of radio frequencies in telecommunications services within their territory.” Additionally, if this market is established, the “national regulatory authorities (ANRs) must ensure that competition is fair and genuine after these transfers take place” and “these transfers would not imply modifications to the use of said radio frequencies.”

We state our complete agreement with such provisions of the Directive, and believe that the opening of secondary trading must be carried out with caution and adherence to the guidelines previously established by the ANRs, like the ones that sparked the creation of the Agencia Estatal del Espectro Radioeléctrico (AER) in Spain.

To Grupo AUNA, the regulator’s main objective must be to ensure more efficient spectrum management among users and avoid speculation-based movements, which do not benefit either the agents or the end users and which could end up leaving rights in the hands of the most powerful agents, in particular those of a transnational nature. We also believe that another of the regulator’s objectives must be to ensure that changes to the tools of spectrum management do not result in lower quality of services or greater uncertainty regarding frequency use, in particular via a more relaxed control of uses that interfere with use by third parties.

Grupo AUNA concludes that there is no certainty that the secondary trading tool is the way to fulfil these objectives. As we have pointed out, we believe there is a strong possibility that the agents which have traditionally had the biggest slice of the spectrum may be the ones who could introduce licensees with excess spectrum into the market at a time that serves their needs. On the other hand, spectrum which could be most attractive from the point of view of providing service could be put on the market within the reach of third party competitors that would benefit, meaning that control and management of this limited resource would pass from public agencies to incumbent operators.

We also believe that harmonisation of frequency use has been the key to success in Europe with telecommunications services like automatic mobile telephony, precisely because all Member States use the same frequencies, allowing services like roaming international. Though there is a

need for greater flexibility and agility in managing such a process, we do not see that secondary trading would be a more efficient solution than other equally manageable alternatives, like government administration of the spectrum through independent agencies with processes and procedures that are more flexible than traditional ones (an option chosen by Spanish legislators through the creation of the Agencia Estatal de Radiofrecuencias).

Second, with regard to general questions about **which types of radio spectrum rights transfers would be most reasonable**, Grupo AUNA believes that in assigning and granting licenses, we must make a distinction between:

- Telecommunications Services, the implementation of which requires assigning a pre-determined portion of the spectrum, and
- Telecommunications Networks, which may be established through radio communications links and which are part of the services that particular telecommunications operators can provide.

In the first instance, we believe that licenses obtained for providing these services are indissociable from the provided services themselves. Such is the case with radio broadcasting services (radio and television) as well as mobile services, the licensing for which has been subject to competitive selection procedures. In consideration of this possibility, transfers must be authorised only among operators whose licenses are in use, and only when such a transfer, whether temporary or permanent, does not jeopardize use of the service.

In Spain, regarding these possible uses of public services (Radio and TV) in indirect management under concession, the conceded license carries a property-related concession of the spectrum tied to it and reserved for the operation of the services. The law has already provided for the transferability of sound broadcasting (LOT 87/Addit. Prov. 6 2.b) and Private Television (LTVP Art. 21.1.) conditioned upon administrative authorisation from the ANR.

Third, regarding the **rights and obligations in rights transfer**, and in accordance with the points set forth in the previous paragraph, we believe it is necessary to uphold the obligations the cessor would have when obtaining the authorising license, in particular all those intended to guarantee sufficient use of the service, non-interference and correct spectrum management. Therefore, to avoid speculative operations of frequency concentration, the ANR must authorise transfer only

after confirming that the cessor can maintain the service it has transferred, and the purchaser can provide for quick implementation of effective frequency use in a minimal amount of time.

Fourth, with regard to Grupo AUNA's **desirable conditions for eventual implementation of a usage rights transfer system**, we state our agreement with the principles and scope provided by Spanish legislation on these matters. In accordance with the Framework Directive, Art. 45.2 of the new General Telecommunications Law of Spain (LGT 32/20003) opens the possibility of cession of spectrum rights usage, under certain conditions. Thus, the cessor is not exempt from the obligations of its license, and authorisations are granted only when prescribed use is carried out under not only the Cuadro Nacional de Atribución de Frecuencias (National Table of Frequency Allocations) but also under the tables for frequencies harmonised by the European Union, in accordance with the provisions of the Community Decision on the Radio spectrum (676/2002/EC of March 7).

Additionally, a specialised organization called the Agencia Estatal de Radiocomunicaciones (AER) has been created to carry out efficient management of the spectrum and open up the possibility of a secondary market.

In any event, and in accordance with the points set forth previously as a preliminary general assessment, Grupo AUNA states that this assessment does not imply support of application and development of such possibilities opened by legislation when their necessity and usefulness in guaranteeing better management of the spectrum without infringing upon the rights of consumers or diminishing free competition remains uncertain.

Fifth, with regard to Group AUNA's opinion on the **information that must be provided if such a market to transfer rights is implemented**, we believe that a centralised registration system would be indispensable, like the one created in LGT 32/2003, Art. 47.6.d), in accordance with the provisions of Art. 5 of Decision 676/2002/EC, which set forth the following requirements:

- Establishment of a public registry that is kept current, transparent, and accessible, without discrimination by or toward users.
- Justification of needs presented by the purchasing operator.
- Guarantee of maintenance of effective use by the original cessor of the frequency.

Sixth, with regard to the **role and responsibilities of the regulatory agencies of the spectrum (SMAs)**, we believe these organizations are first and foremost responsible for guaranteeing efficient use of the spectrum as a limited resource and avoiding stimulation of usage rights transfers which could produce a speculative price increase. Establishing secondary markets can be a way to increase efficiency, but it should never be an end in itself. As we have mentioned earlier, we understand that such an efficiency-increasing mechanism has alternatives, like greater control by an ad-hoc agency (for example, the Agencia Estatal de Radiocomunicaciones).

On the other hand, given the unique circumstances of each Member State and its tradition of managing the public domain, etc., we believe it to be more advisable to make each State and each ANR responsible for guaranteeing the rights of consumers and market agents in an optimal fashion without diminishing the Member States' responsibilities to encourage harmonisation of radio frequency use throughout the Community, always considering the need to guarantee effective and efficient use pursuant to Decision No. 676/2002/EC (Decision on the Radio spectrum), as set forth by Art. 9.2. of the Framework Directive.

Sender's contact information:

Name: Jose Joaquín Mollinedo Chocano

Sector: Operator

Company: Grupo AUNA

E-mail: jjoaquín.mollinedo@auna.es