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Telecom Italia Group's responses to the public consultation on secondary trading of rights to use radio spectrum

Telecom Italia Group welcomes the RSPG public consultation on secondary trading rights to use spectrum and therefore TIG is pleased to submit its initial comments on the consultation itself.

TIG believes that while spectrum trading should be introduced in an open and transparent manner with the aim to facilitate spectrum efficiency; change of use of spectrum could create in the short term significant harmful interference between users and unfair competition for operators that have paid a very high price for frequencies and it could determine an unacceptable increase of frequency prices for operators to whom frequencies have been assigned at low prices.

The change of use of spectrum also could cause possible loss of harmonisation of frequency bands which was the result of a long regulatory process within ITU and CEPT.

Generic questions

1) Do you consider secondary trading of rights to use radio spectrum to be beneficial to consumers, businesses and radio users? why/why not?

TIG considers that spectrum trading could be beneficial to operators because it could facilitate the availability of spectrum resources by improving flexibility in spectrum management.

Trading could allow users to get added value from spectrum currently not used, but the National Regulation Authorities have to guarantee the efficient use of spectrum avoiding possible competition problems such as spectrum hoarding.

Trading could allow consumers to have a better service quality due to a more efficient spectrum use.

2) What types of transfer of rights to use radio spectrum (full, leasing, partial etc.) do you consider can be beneficial to consumers, businesses and radio users? why/why not?

TIG believes that full transfer of spectrum between authorised/licensed operators of the same service should be allowed to achieve increased flexibility in business and network planning and therefore a more efficient spectrum use. For TIG the full

transfer may be applicable on a time limited basis (within time bands or for a specific duration) or on a specific geographic basis.

3) What rights and associated obligations do you consider should be within the scope of secondary trading of rights to use radio spectrum?

TIG believes that rights and associated obligations must be maintained when an effective spectrum trading regime is implemented in order to guarantee users rights and service delivery. In particular, the same technical and operational conditions pertaining to the original authorisation/licence should be maintained after trade, while the authorisation/licence obligation of the destination operator will be applicable after trade. Moreover it should be evaluated the obligation in term of effective and lasting usage of frequencies on the destination operator.

4) Would you want to see secondary trading of rights to use radio spectrum introduced in your country or in the countries of interest to you?

In Italy spectrum trading is allowed only between licenced operators utilising the same technology.

Radio spectrum trading in broadcasting is possible under Law 66/01 where frequency trading is allowed under specific circumstances, i.e. if the operator has a coverage in term of territory under 75% or if the frequency is destined to digital terrestrial broadcasting test.

a) If yes – why, to what extent? when? frequency bands/services?

To ensure that trading is beneficial to users, TIG believes that the introduction of trading might be favoured provided that market risks are identified and mechanisms are introduced in order to not create distortion of competition. Therefore, it is necessary to take care of some aspects such as spectrum hoarding in order to have equal and not discriminatory market conditions.

TIG believes that operators offering similar services should be subject to the same obligations.

Only in the case of improvement in the efficiency of use of spectrum, asymmetrical conditions should be applied to SMP operators.

b) If no – why not, are there other tools that better suit your needs?

5) What information and electronic communication facilities should be made available to facilitate implementation of secondary trading of rights to use radio spectrum?

It must be possible to gather information on the actual use of spectrum and the relevant rights and obligations in order to facilitate the establishment of a radio

spectrum market and to evaluate the possible cases of harmful interferences to the existing assignments on a national and international basis. The work presently been done in CEPT, or through bilateral or multilateral agreements, for the development and coordination of data bases on the use of frequencies is a necessary precondition for effective frequency trading especially for border zones.

Scope of trading – change of use, reconfiguration

6) Is the possibility to reconfigure rights important? If yes, what kinds of reconfiguration do you consider would benefit consumers, businesses and users of spectrum? (geography, frequency, time, other).

The main objective of spectrum trading is to facilitate the availability of radio spectrum according to users needs without considering change of use or reconfiguration.

In parallel to trading, to favour the efficient use of spectrum, change of assignation should be facilitated obviously taking into account the procedures - present or improved - to manage technical issues such as interferences.

7) Is the possibility to use the spectrum in a flexible way important? If yes, what kinds of flexibility do you consider would benefit consumers, business and users of spectrum (service, technical constraints, other).

The possibility to use the spectrum in a flexible way is important. The possibility to change the technology inside a specific frequency band (e.g. 2G/3G transition) would benefit users and therefore consumers but some aspects as harmful interference effects and distortion of competition should be clearly evaluated.

Spectrum trading after the aforementioned transition could only be allowed to operators having similar obligations for the provisioning of the service.

Therefore, we wish the respect of the technological neutrality principle according to which it must be possible to allow the transition from one technology to another (TACS/GSM/UMTS) within the same service (e.g. Mobile Service).

8) To what extent is the tenure an important issue in assessing secondary trading? (indefinite, rolling, fixed, annual, other).

Licences should have a fixed expiry date and this date should be harmonised for each categories of services to avoid market distortions and favour the efficient use of spectrum.

9) Should the same rules and regulations apply for the whole of the spectrum?

Similar rules for trading should apply to the whole of the spectrum, and to all categories of service in the medium to long term.

a) Is there a need for different rules and regulations for different frequency bands?

geographical areas? services? users?

TIG believes that in the long term a harmonised approach could be applied on all services, but in the short term different rules on spectrum trading could be applied depending on service category (mobile, fixed, TV/radio broadcasting, etc.), considering its own specific characteristics and issues, rather than depending on frequency bands.

According to this approach also the management of emerging service convergences (e.g. TV / fixed / mobile) is to be considered in the definition of rules.

b) If you see a need for different rules and regulations in question 9a above, please give examples.

Competition aspects

10) Should there be specific competition rules in relation to implementing secondary trading of rights to use radio spectrum, or is general competition law enough?

TIG believes that there is no need to create sector specific regulation and that existing competition law should be used to manage disputes.

The competition aspects would gain from being discussed at European level, to ensure commonality of rules of application. European Guidelines, to avoid distortions between national markets, could be an effective tool to ensure uniform interpretation in the Union.

Accounting rules for the booking of the right to use frequencies should be harmonised to avoid distortions in the financial capacity of acquirers.

The role of the spectrum management authority

11) What do you see as the main responsibilities for a spectrum management authority in regards to secondary trading of rights to use radio spectrum?

TIG believes that the principle of subsidiarity should apply on the matter regarding spectrum trading; however, certain technical aspects would gain from been harmonised at the EU level :

- spectrum harmonisation on an international basis;
- monitoring and control of the spectrum use in order to ensure interference-free and efficient use of spectrum itself;
- maintenance of an assignment table of spectrum use before and after any trade.

12) To what extent is spectrum management authority approval of trades a benefit or an impediment to the development of a market for secondary trading of rights to use

radio spectrum? Under what circumstances do you consider it would be necessary for a spectrum management authority to refuse a trade?

The national spectrum management authority will need to be flexible during and after the transition phase to facilitate the implementation of spectrum trading.

13) What specific measures could a spectrum management authority take to handle the issues if secondary trading is introduced? (ex ante approval procedures, ex post notification, competition aspects, limit change of use, interference aspects, other)

TIG believes that the authority has to handle the following issue:

- ex post notification;
- interference aspects.

14) To what extent should the national spectrum management authority actively facilitate secondary trading of rights to use radio spectrum?

TIG believes that the spectrum trading management is primarily a responsibility of the national regulatory authority.

Therefore, TIG expects the national authority to facilitate trading by implementing appropriate mechanisms (such as simplifying change of assignment) and to give approval for trades to take place taking all relevant information into account to avoid distortion of the relevant market.

Community aspects

15) Do you consider that adoption of individual regimes by EU member states will cause problems for consumers, businesses and radio users? If yes, in what ways and to what extent?

The implementation of spectrum trading is under the responsibility of Member States but a harmonised approach to spectrum trading is advisable considering Europe as a single market (economies of scale, common service/product diffusion, etc.), in order to maximise benefit for spectrum users and consequently consumers.

16) Do you consider that the EU should take measures to facilitate the implementation of secondary trading of rights to use radio spectrum? If so, in what areas and to what extent?

TIG believes that the EU can assist in the implementation of spectrum trading by stimulating a debate at European and Member State level which will help to create certainty for operators and manufacturers and ensure a level playing field continues to be developed for all spectrum users.

See previous answers n.5, 10 and 11.

17) To what extent is European harmonisation of frequencies an important issue in regards to secondary trading of rights to use radio spectrum?

TIG believes that the international bodies (ITU, CEPT, CE) can cooperate in ensuring that spectrum continues to be harmonised at a global level and to ensure economies of scale and benefits to users and consumers (services and roaming).

Related experiences and examples of secondary trading

18) What are your experiences with the current spectrum management regimes?

The current spectrum management regime allows limited flexibility in the use of radio spectrum. However, the following experiences have been made possible in Italy:

- implementation of GSM in the 1800 MHz frequency band occupied by Ministry of Defence;
- after Blu (fourth 2G mobile operator) collapse, reassignment of 3x5 MHz to each of the other 2G mobile operators;
- change of technology from TACS to GSM;
- implementation of GSM in the 900 MHz frequency band occupied by other service (e.g. CT1);
- Phasing out of fixed service below 3 GHz in favour of mobile service;
- Channel and users re-arrangements in the fixed service in the 4 GHz band;

19) What are your experiences of secondary trading of rights to use radio spectrum?

Under Law 66/01 national broadcasters have acquired TV systems and related frequencies from some local broadcasters, in order to improve their analogue and digital coverage.

The problem of the spectrum hoarding is a sensitive matter in Italy, considering that frequencies are not equally shared between broadcast operators.

In fact frequency trade in broadcasting is influenced by the dominant position of some operators.

20) Please describe specific scenarios in which you consider that the introduction of secondary trading of rights to use radio spectrum would be beneficial.

A specific scenario is the following:

- between two or more operators in the same service with the same technology who decide to trade the spectrum to optimise the resources.

21) Any other comments

Full spectrum trading between different services and different frequency bands (i.e. with change of assignation) shall not be possible when frequencies have been assigned on the basis of different procedures and different prices.

A classic instance of this is where mobile operators have paid frequencies much more than broadcasters. This unbalanced situation is damaging both to mobile operators – they would suffer an unfair competition from operators that have paid the frequencies less - and to broadcast operators – they would suffer an unexpected increase of their frequency prices.

TIG recommends not to introduce full frequency trading during the duration of the current authorisations/licences. Frequency trading should be limited to the same kind of services until the alignment of the end dates for all authorisations/licences in all frequency bands.

Still the aim of full trading should be envisaged in the long term, in order to guarantee better market mechanisms and the maximum level of efficiency in the allocation of scarce resources. Different allotment prices are unfair and not efficient.

A possible road map to reach this end could be:

- 1) alignment of the end dates on the most distant one (time T0) for the different authorisations/licences: during this period, only same service secondary trading is allowed.
- 2) Allotment, for a new duration, at time T0 of frequencies for all services, but still on a service basis. The authorisations/licences duration should be harmonised (same duration) between services and bands. Frequency prices for services in the allotment procedures should be based on market prices.
- 3) Full trading opens after the first half of the harmonized allotment duration.
- 4) The successive allotment procedure should be service independent, and full trading should be allowed immediately after allotment.

This is a very long lasting process, that is impossible to shorten.

An official communication announcing this type of process or this objective will be beneficial to the entire communication sector. Frequency value related to market conditions will improve prices alignments between services even in the time span where allotment procedures are different, and trading remains limited to same service operators.