



## **BITKOM Comments**

**to the**

### **“Public consultation on secondary trading of rights to use radio spectrum”**

**Sector:** *Industry Association*  
**Organisation:** *BITKOM - German Association for Information Technology, Telecommunications and New Media e.V.*  
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*BITKOM is the German Association for Information Technology, Telecommunications and New Media and represents a total of 1,300 companies. Its roughly 700 regular members employ some 700,000 people and generate revenues of 120 billion euros. These companies include manufacturers of data terminal equipment and infrastructure, new media agencies, as well as content, service and software providers. More than 500 of the association's members are small and medium sized enterprises. BITKOM is working to improve the regulatory framework in Germany, modernize the education system and promote innovation.*

## **General 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?**

*[BITKOM] Yes, we do believe that Spectrum Trading could be beneficial to consumers, businesses and radio users, providing that it is implemented carefully and effectively. It will allow economical actors increased flexibility in acquiring spectrum resources to satisfy market and consumer needs. It will also stimulate technological evolution by offering new opportunities to market players, with a potential benefit for the competitiveness of the industry and for the consumers. But we would also like to stress that some spectrum has been internationally harmonised in order to allow for global markets and for some other reasons (e.g. radio astronomy). We do believe, that in the future the internationally*

*harmonization will become more and more important. Therefore spectrum trading must not alter or hamper this international harmonization. In addition, clear measures should be introduced to prevent any speculation with rights to use radio spectrum. Otherwise this will increase the costs not only for potential spectrum users, but also for consumers and business users and will have a negative impact on the efficient use of radio spectrum.*

**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?**

*[BITKOM] We believe that rights to use radio spectrum should be granted by the regulatory authority for a limited period in general, even if prolongation is possible. Having this in mind (i.e. the duration of the original license won't be changed), the obligations for the transfer should be limited to efficient use of spectrum, international harmonization and should prevent radio interference and any speculation with spectrum.*

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

*[BITKOM] The regulatory authority will normally define the rights and obligations in the original license. The details can differ from one application or band to another. Apart from any roll-out obligations or ones associated with duration of license tenure, the main obligations relate to limitations on transmitted power or equivalent isotropically radiated power and a spectrum mask. Clearly, all obligations stand to be passed on and the purchaser is responsible for managing interference issues and for adhering to such obligations. The utilization of the spectrum should be changed only after a public consultation. If the utilization is international harmonised (e.g. EU, CEPT) this should be discussed in the relevant body.*

**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?**

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

*[BITKOM] Yes, we would like to see secondary trading introduced into the EU. The timetable for its introduction and the regulatory measures controlling it should however be subject to common principles. The use of basic guidelines would have the additional beneficial effect to ensure a faster and more successful adoption of the new principles, also in the light of the upcoming enlargement of the European Union.*

*However, rights to use radio spectrum that have been granted before the liberalization of the telecommunication market in a country needs special consideration. On one hand it could be very beneficial to introduce secondary trading of rights to use radio spectrum in this frequency bands, because it might free up parts of the spectrum which are currently not used efficiently, on the other hand this might result in speculation and might give the traditional "owner" an unjustified profit. (see also 9.b)*

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

*[BITKOM] Not applicable*

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

*[BITKOM] In order to achieve transparency, we would welcome a data base with ownership details, regulatory obligations (such as international harmonisation, duration, roll out, ...) and technical informations. This data base should be available to all parties with an interest in spectrum engineering or trading and should be accurately maintained with updates on a regular basis.*

**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)**

*[BITKOM] Aggregating and disaggregating licenses or parts thereof could be an important tool for market actors to optimise their spectrum resource to better serve the consumer needs of their markets. Such reconfiguration should be permitted when the resulting spectrum configuration is consistent with international harmonization, efficient use of spectrum and doesn't create harmful interference to other users.*

**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)**

*[BITKOM] Yes, see 6.*

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

*[BITKOM] As stated in 2, we believe that the original license should be granted for a limited period in general, even if prolongation is possible. Investments in infrastructure or the development of new equipment are always on a long-term basis. Potential users and manufacturers must have the confidence, that they are able to obtain a sufficient amount of spectrum for a longer period. Therefore it is vital to take into account the lifetime/amortisation period of the affected equipment.*

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

**a) Is there a need for different rules and regulations for different frequency bands? geographical areas? services? users?**

*[BITKOM] The basic principles that underlie the rules and regulations should be the same for the whole of the spectrum and should be harmonized throughout Europe. It is likely that the actual rules and regulations will need to be somewhat different for certain frequency bands.*

*In the case of secondary trading in a harmonised band and without change of the utilization, duration and all technical aspects, a simplified process might be introduced. However transparency must be guaranteed in any case.*

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

*[BITKOM] In case of rights to use radio spectrum have been granted before the liberalization of the telecommunication market, special consideration is needed. On one hand it could be very beneficial to introduce secondary trading in this frequency bands, because it might free up parts of the spectrum which are currently not used efficiently, on the other hand this might result in speculation and might give the “traditional owner” an unjustified profit. Therefore we would like to have a review of these “traditional” allocations before trading is introduced in these bands. This includes broadcast and military bands, where after the switchover from analogue to digital, parts of the spectrum should be available for the introduction of new services.*

*License exempt bands should not be part of spectrum trading and open to all users without any costs. However, if an industry is interested to get a new allocation for a license exempt frequency band for a special application, it should be possible “to buy out” existing licensees in order to speed up the migration process (e.g. Short Range Radar vs. Fixed Radio Links).*

*Licenses with a limited geographical area (e.g. Fixed Radio Links, PMR) could be a good starting point for secondary trading, if neither the utilization is changed nor harmonization or interference aspects are against it.*

## **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?**

*[BITKOM] We believe that the general competition law will be sufficient. However, with the convergence of services and technologies, a level playing field must be assured between sectors that have paid for its spectrum at auction and sectors that have been provided with spectrum without payment. Speculation with spectrum must not be allowed. Therefore obligations on roll-out and efficient use should be part of any original license of the regulatory authority and must be passed on to every secondary buyer.*

## **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?**

*[BITKOM] The regulatory authority has to ensure that the use of spectrum provides the greatest benefit to the society and the economy. Therefore all measures need to be towards maximising the quantity of users and services and the efficient use of spectrum. The main responsibilities implied for the Spectrum Management Authorities by these objectives are:*

- *Maintaining the database with the spectrum utilization and owners*
- *Publicize the availability of tradable spectrum and guarantee the transparency of the trading process*
- *Realization of dispute-resolution so that the tradable spectrum won't be blocked*
- *Detecting and then applying controls against inadmissible use of frequency rights*

- *Securing the efficient use of spectrum and*
- *Protection against interference*

**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?**

*[BITKOM] The regulatory authority should be moderator of the process and should maintain the relevant data base to the benefit of all actors.*

*Refusal of trade should be possible only in case of:*

- *Contradiction to competition law*
- *Conflict with international harmonisation*
- *In case of interference*
- *Efficient use of spectrum is violated*
- *Speculation with spectrum*

**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)**

*[BITKOM] We believe that similar rules as with competition law should be applied. If there is no change in the spectrum utilization an ex-post permission should be sufficient.*

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

*[BITKOM] The regulatory authority should moderate the process and maintain the relevant data base to the benefit of all actors. In order to have sufficient amount of spectrum for secondary trading, "traditional" allocations should be reviewed.*

## **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?**

*[BITKOM] Yes. The timetable for the introduction of secondary trading and the regulatory measures controlling it, should be subject to common principles to the greatest extent possible. The worst case scenario would be a situation similar to the UMTS licensing process.*

**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?**

*[BITKOM] The use of basic guidelines would have the beneficial effect to ensure a faster and more successful adoption of the new principles, also in the light of the upcoming enlargement of the European Union.*

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

*[BITKOM] This will be very important, because it might be easier to introduce secondary trading in the harmonised bands.*

## **Related experiences and examples of secondary trading**

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

*[BITKOM] Depending on the rules and the overall situation, spectrum trading might result in artificial prices for spectrum and may hamper market development. Although we have no direct experience with spectrum trading, the UMTS / IMT 2000 auctions have proven the possibility of detrimental effects. Therefore special attention must be given to the rules and procedures. The goal of spectrum trading should be more flexibility and not a higher price level.*

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

*[BITKOM] None.*

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

*[BITKOM] We believe in particular that 'new sources' of useful spectrum will emerge quite rapidly, some of which could be highly beneficial to the deployment of newly emerging radio communications technologies and new services.*

**21) Any other comments**

*[BITKOM] None*