

RSPG:

Public consultation on secondary trading of rights to use radio spectrum

Background

The use of spectrum has increased very rapidly in recent years. Radio-based equipment is in everyone's pocket, new applications are introduced by the minute and more and more information is transported over the airwaves, be that between your laptop and your mobile phone or from a satellite to your navigator. Vertical applications are being digitised throughout the radio spectrum. It is envisioned that the use of spectrum will continue to increase rapidly over the coming decade.

It has been suggested by some commentators that traditional methods of spectrum management are inadequate. According to them, the current regimes do not address the problem of shortage of spectrum, impede innovation, and are not agile enough to fully service the needs of current and future users of spectrum.

Some believe that one of the possible tools to achieve more flexible spectrum management is secondary trading of rights to use radio spectrum. Secondary trading may include: transfer of licences, leasing of licenses, transfer or lease of part of licenses, reconfiguration, change of use etc.

In the electronic communication framework directive ([2002/21/EC](#)) it is stated regarding secondary trading of rights to use radio spectrum that:

...

3. Member States may make provision for undertakings to transfer rights to use radio frequencies with other undertakings.

4. Member States shall ensure that an undertaking's intention to transfer rights to use radio frequencies is notified to the national regulatory authority responsible for spectrum assignment and that any transfer takes place in accordance with procedures laid down by the national regulatory authority and is made public. National regulatory authorities shall ensure that competition is not distorted as a result of any such transaction. Where radio frequency use has been harmonised through the application of Decision No 676/2002/EC (Radio Spectrum Decision) or other Community measures, any such transfer shall not result in change of use of that radio frequency.

Quote from the framework directive article 9 English version

Currently initiatives are underway in a number of EU member states to implement article 9 of the framework directive. Implementation of license transfers as described in article 9 is however optional, and the directive does not specify in detail the regulatory framework to be used in implementing license transfers. This could lead to an uncoordinated implementation of the directive throughout the EU. As has been described by Analysys (see footnote 1) in their current work for the commission the implementation of the article ranges from no trading to full trading throughout the EU member states.

To investigate the level of interest in secondary trading of rights to use radio spectrum as a tool for more flexible spectrum management, the European Commission has issued a request for opinion to the Radio Spectrum Policy Group (RSPG). The main objective of the request is

“...to ensure that the introduction of secondary trading in some or all Member States has a positive effect in the European Community, in particular for the EU internal market and for European competitiveness.”

In response to this, the RSPG has set up a working group on secondary trading to draft an RSPG opinion. One part of the work in formulating the RSPG opinion is to carry out this public consultation.

This questionnaire takes an overall EU wide perspective, thus the responses will be analysed and presented mainly from an EU perspective.

All responses to this questionnaire will be made publicly available on the RSPG website.

(1) Study commissioned by the European Commission entitled "Study on conditions and options in introducing secondary trading of radio spectrum in the European Community" (<http://www.analysys.com>)

Detailed issues submitted to consultation

Your details

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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?

ESOA understands that secondary trading can cover a wide range of tools to manage the spectrum in order to achieve more flexible usage of this resource. In practice these tools include transfer of licences, leasing of licenses, transfer or lease of part of licenses, reconfiguration, change of use etc. Hence that it can constitute a relatively easy mechanism for market players to acquire additional spectrum, introduce innovative services, cater for change of ownership or the combination of wholesale and retail business. It is particularly useful to overcome the constraints imposed by individual licences regarding the legal entity allowed to offer commercial services, technical parameters and applications.

On the other hand, it is not necessary to regulate or re-introduce forms of secondary trading such as leasing or transfer for those services which already enjoy a high degree of liberalisation regarding the type of commercial service and terminals using spectrum through a light regulatory regime (licence exempt or general authorisation). The benefits associate which flexible usage of spectrum brings for consumers, businesses and radio users should be realised as much as possible in accordance with article 5 and whereas (7) of the Authorisation Directive. This means applying the lightest regulatory regime, limiting the use of individual licences to spectrum usage to cases where there is substantial risk of creating harmful interference. ESOA sees secondary spectrum trading therefore not as the primary, lightest or favoured way to achieve benefits for all stakeholders but rather as an alleviation for a limited number of services where licences with constraints and individual rights remained appropriate.

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?

The ability to lease capacity is essential to the European Satellite Operators since their business model is based on wholesale . In other words, Satellite Operators make capacity available on a non-discriminatory basis to a wide range of applications and terminals via a diversified network of distributors (some of whom operate also gateways). These distributors are not agents or subsidiaries of the operator but independent entities which can shop around to find available capacity at the best terms. A whole scale of entrepreneurial service providers exist in this environment which operate as a solution provider for end users. ESOA believes that the business model used by satellite operators has created a market with vivid competition and the growth of a wide range of innovative applications which are often tailor made for the customer.

This success is mainly due to the fact that services are offered under general authorisations which are not prescriptive regarding the services, line of business, applications and technologies to be used. Satellite operators should be allowed to continue to provide or lease capacity on commercial terms under the terms of general authorisation. Formalisation or intervention of administrations in what is the normal line of business risks to jeopardise the existing situation which works to the satisfaction of consumers, users, distributors, application developers, system integrators, manufacturers, etc.

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

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?

For the particular case of satellite services, it should be recognised that they have an international focus. This means in practice that beams typically are not neatly confined to national borders and in general cover multiple countries, even including countries outside of the EU or European continent. There would therefore be a negative impact reaching far beyond the national territory of a certain particular country that would decide to implement secondary trading in a way that it leads to loss of rights to use or increased interference of a satellite service.

Furthermore, satellite business cases are to a high degree based on transborder or multinational traffic. For a satellite operator to be successful, a large number of contiguous countries need to be covered and accessible to provide service. Availability of harmonised bands is therefore of essence. No satellite service can reap benefit from spectrum trading organised on a national level since it is not a feasible way to obtain an internationally harmonised band. In fact members are seriously concerned about possible fragmentation of existing harmonised satellite bands to the benefit of terrestrial operators which would share these bands. Since loss of internationally harmonised bands is irreparable, RSPG should explicitly exclude these bands from secondary trading.

While this questionnaire requests to focus on an EU perspective, it is appropriate for satellite services to take into account also the ITU perspective.

In fact, the frequency bands allocated to the different services and managed under an international co-ordination process are not allocated by the ITU as a tradable resource to the different nations. Trading of such spectrum on a national basis could elicit serious negative repercussions which could damage the interest of the whole European satellite industry. Indeed, the ITU procedures create a co-operative environment in the sense that no country is seen to be the sole beneficiary of the resource and that all satellite and spectrum co-ordination reverts to the ITU. Appropriation of rights to create economic benefit on a national level risks initiating a competition between countries to obtain an equal share. One can image this expresses itself through increased pressure for a priori planning of satellite spectrum, high fees for international notification/co-ordination/registration or claiming slots for paper systems. The European satellite industry, being one of the most developed in the world, risks an adverse impact not only at corporate level, but this same impact will also be felt by the consumers

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

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)

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)

see question 2. Furthermore, for satellite systems, secondary trading should not lead to a change of use compared to what the spectrum is co-ordinated for.

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

Satellite systems differ from terrestrial systems in so far that satellites are designed and built to last more than a decade without the possibility to change or modify their characteristics or technology once launched. Furthermore, the full capital investment is made up front. It is therefore of essence that long-term availability of spectrum is ensured throughout the full footprint at the moment when the capital investment decision is made.

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

Secondary trading is a mechanism to manage spectrum. Spectrum management should always take into account the technological differences inherent to the different systems.

It should furthermore be recognised that for some services - such as international satellite services - national secondary trading is not suitable. RSPG should emphasise the use of the “lightest possible regime” as a benchmark. It is not appropriate to implement a set of uniform rules and regulations which increase the administrative burden or intervention for certain services, particularly subject to general authorisation.

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?

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?

There should be only very minimal intervention from the spectrum management authority beyond detailed and careful study of interference issues as well as prompt resolution of any increase in interference risk.

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?

Taking into account the responses to the previous questions, competition issues are the main reason to refuse a trade. Where spectrum management has a major international dimension and where current arrangements have already ensured a very high degree of flexibility, authorities have a role to ensure that these continue to be respected.

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)

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

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?

In line with the reply to question 4, ESOA strongly believes that that since satellite services rely on the availability of internationally harmonised bands and there is no benefit in trading spectrum on a national level - mainly the threat for fragmentation of

scarce internationally harmonised spectrum, EU should ensure that these bands are not subject to national secondary trading mechanisms.

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?

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

The need to use harmonised bands reaches beyond the European level. European operators conduct their business on a wider regional or even global basis.

Related experiences and examples of secondary trading

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

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

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

21) Any other comments

Consultation modalities

Contact: responses to the above mentioned questions should be sent exclusively to info-rspg@cec.eu.int for the attention of the RSPG Secretariat. Only electronic contributions will be taken into consideration.

Date of launch of the public consultation: 10 February 2004

Deadline for submission of comments: 2 April 2004