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**ARD Submission to the  
RSPG Public Consultation on secondary trading of rights  
to use radio spectrum**

## **I. Introduction**

As a public service broadcaster, ARD is a prominent user of radio spectrum and therefore welcomes the opportunity to take part in a European discussion of implications of secondary trading of rights to use radio spectrum. But in this aspect we prefer not to answer the individual questions but to express our views to the general scope of issues the questions are related to. This is mainly due to the fact that the questions don't cover all implications at stake.

From our point of view, any such discussion must start from the premise that frequencies are a public good. As a general principle, its allocation must not be submitted to purely economic considerations. This principle is all the more relevant with respect

to public service broadcasting, since a broadcaster like ARD could not fulfil its public service remit without adequate access to the frequency spectrum.

While we recognise that the use of such a scarce resource needs to be optimised, it is necessary also to acknowledge the unique value to society that spectrum use by certain public interest services generates. Sufficient allocation of spectrum to public service broadcasting allows it to serve such fundamental freedoms as freedom of expression, freedom to receive and disseminate information and ideas, media pluralism and cultural diversity.

In the information age, where universal coverage of objective and independent information for all is essential to bridging the digital divide, the public good aspect of frequency spectrum is enhanced. Special spectrum requirements which originate in the public service mission of public service broadcasters in a digital environment, therefore, need to be adequately reflected in spectrum policy and allocation in general.

## **II. Specific Comments**

### **General Questions** (questions 1-5 )

According to your publication in the Internet there is to be a europewide debate on various framework conditions of spectrum policy in the Member States. To our knowledge working groups of the Radio Spectrum Policy Group are now discussing issues of the transition from analogue to digital broadcasting and spectrum trading.

As users of terrestrial frequencies, public service broadcasters in Germany are interested in the transmission of their broadcasting programmes and, as broadcasting network operators, they would

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like to participate in the discussion process on a European level. To fulfil their public service remit of meeting the population's broadcasting needs, public service broadcasters need an adequate radio spectrum to transmit their programmes both now and in future.

On behalf of the ARD's regional broadcasters, we would voice our objections to the introduction of spectrum trading. We would be grateful if our opinion were considered in the forthcoming debates of the Radio Spectrum Policy Group and the working groups. We would also be glad to explain our position personally at any time.

#### **Scope of trading-change of use, reconfiguration** (questions 6-9)

From the viewpoint of public service broadcasters the introduction of spectrum trading is to be rejected as frequencies are a public good and not subject to economic categories alone, especially in view of the use of public-interest services. Such a protection of public interests could no longer be ensured in the case of a purely market-driven management of frequency assignment and distribution, as the frequencies would then be freely negotiable on the market and one could no longer ensure that certain services of a public interest remained available.

These aspects would also apply, if opportunity costs were determined for the use of frequencies for public service broadcasting as a sort of replacement costs. The Communication of the Commission on analogue-to-digital transition encompasses such an approach.

Another reason against the introduction of spectrum trading, in our opinion, is the probability that this will lead to an increase in consumer prices and could hence impede or hinder the introduction of new services. The European Parliament also voiced

this concern in clause 11 of its resolution on the Communication of the Commission on Communication Report 99.

Nevertheless, if spectrum trading or a radio spectrum pricing should be admitted in the future despite the reasons to the contrary listed above, public service broadcasters would alternately advocate restricting spectrum trading or pricing to a very small number of cases, for example to frequencies that would be assigned by means of auctions, as an auction is already an assignment according to economic criteria.

In any case frequencies that are earmarked for utilisation by broadcasting services should be excluded from spectrum trading from the outset, in the same way as frequencies used by security services or for military purposes. This is because the goals quoted in recital 3 of the spectrum decision would above all be endangered for the use of radio frequencies if spectrum were assigned according to commercial principles, for example by an auction. Hence, public service broadcasters in particular rely on the terrestrial frequencies necessary for radio broadcasting in order to ensure a nationwide broadcasting service according to their public service mission.

Due to the public service function of the public service broadcasting system, which is also expressly acknowledged by the EC Treaty in the Amsterdam Protocol, the use of radio spectrum serves to meet goals that are in the public interest such as to maintain and promote democratic, social and cultural needs and the need to safeguard pluralism and diversity of opinions. It also ensures that each individual citizen has open and non-discriminatory access to the respective offerings.

However, in future this can only be ensured, if public service broadcasters are able to maintain the radio spectrum assigned to

them and trading is ruled out from the outset. Hence, the main issue in spectrum co-ordination is not about purely economical or technical aspects, but also about preserving information offerings and ensuring access to information offerings that are indispensable for a democratic society, for cultural and linguistic diversity.

In addition to the mentioned aspects, the broadcasting sector also relies on the maintenance of the existing radio spectrum in order to realise the transition from analogue to digital broadcasting in the terrestrial field. One of the aims should be to avoid a digital divide in society by preserving public access to high-quality, diversity-oriented broadcasting services, an aim which is also pursued by the Community as a result of the Lisbon process with eEurope.

### **Competition aspects** (question 10)

In case that secondary trading of rights to use radio spectrum is implemented on a member state level it should be a part of sector specific regulation and not implemented on a general competition law basis. According to Recital 3 of Radio Spectrum Directive of 7 March 2002 radio spectrum policy in the Community should contribute to freedom of expression, including freedom of opinion and freedom to receive and disseminate information and ideas, in respect of borders, as well as freedom and plurality of the media. This aspect mainly concerns the use of spectrum by broadcasting services, so that the provisions of the Decision must be imperatively observed in an assessment of spectrum trading with regard to broadcasting services. Because of its economic focus general competition law is not able to meet these provisions. As a consequence the draft of the German Telecommunications Act, a sector specific regulation, stipulates the option of secondary trading under certain legal provisions.

### **The role of the spectrum management authority** (questions 11-14)

At present, the ITU Radio Regulations include frequency tables which allocate frequency bands to specific services, such as aeronautical mobile, broadcasting, fixed-satellite, radio-navigation, radio-astronomy, etc. The regulatory regime has remained essentially the same since the beginning of the ITU. The guiding principle in general has been 'first-come first-served', but for broadcasting planning conferences, the 'equitable access' concept has been the guiding principle. Although it is difficult to give an exact definition of the concept, the main idea has been to give an equal spectrum share to all countries participating in ITU conferences.

When countries build up their own independent spectrum policies, they are obliged to coordinate national frequency assignments with the neighbouring countries concerned. Harmonisation, careful planning, careful coordination and minimizing interference together, is the best way to reach spectrum efficiency. Nevertheless each country is sovereign and should make its own plans, as long as coordination on an international or european level is feasible.

As a consequence, German public service broadcasters reject any suggestions that could lead to a change in competence in favour of the Commission. In general, the Member State system of spectrum assignment and distribution but also of spectrum coordination on a European level by the CEPT and on an international level by the ITU has proven successful. This has also been recognised by the Commission. Hence, it is completely sufficient that - as provided in the framework directive of the EU regulatory framework for electronic communication - the Member States are given the option of spectrum trading. However, they should be able to determine its scope and modalities

independently, taking account of the existing situation on a national level.

### **Community aspects** (questions 15-17)

Consequently, it should be up to the Member States to decide on the introduction of spectrum trading or frequency spectrum pricing both now and in future. Hence the Commission only has competencies in the area of frequency management where cross-border frequency co-ordination and technical implementing measures are concerned. Decision No. 676/2002/EC of the European Parliament and of the Council of 07 March 2002 on a regulatory framework for radio spectrum policy in the European Community (radio spectrum decision) contains such a restriction.

### **Related experiences and examples of secondary trading** (questions 18-21)

The necessity to break new ground effectively started with the worldwide discussion on how to find additional spectrum for the mobile service. Before and during the World Radio Conference 2000 (WRC 2000) it was clear that the demands forecast by the UMTS forum were difficult to meet within the available spectrum.

Around the same time, the first auction of UMTS licenses was held in UK. It was initially thought that this auction would generate 8 billion Euro, but there was so much competition for the spectrum that five successful bidders agreed to pay a total of almost five times that sum.

The second auction held in Germany generated even more money. Some governments began to think that a new method of generating huge revenues was available.

The motivation for the mobile phone operators to pay such large amounts of money was on the one hand that they believed that no further spectrum would become available in the foreseeable future and on the other hand that they would make a successful business with UMTS services.

However, later auctions - e.g. in Austria - did not show the same pattern of large revenue earning.

Other governments came to the conclusion that 'beauty contests' would be a better way of issuing UMTS licenses.

Organisations who had paid substantial sums for spectrum found themselves with severe financial problems. Some UMTS-groups have in the meantime even given back their licences.

Thus, what a first sight appeared to be an accurate mechanism to determine the value of spectrum - auctioning - is no longer seen by various market-players as the way to establish its value.

It is also important to take into account that the use of radio spectrum is often subject to severe constraints due to different use in neighbouring countries, and this may change the usefulness of the spectrum.

The broadcasters do not own the millions of receivers which form the most expensive part of the total network, and most broadcasters are obliged to operate their analogue and digital transmitter networks in parallel until their government decides to switch off the analogue services.



Most public service broadcasters would welcome a rapid transition but the speed of the transition process will be set by others, namely by the public and by governments. The exchange of millions of analogue receivers used for radio and television will take many years.