

## PUBLIC CONSULTATION ON SECONDARY TRADING OF RIGHTS TO USE RADIO SPECTRUM

### JOINT RESPONSE OF RETEVISION AND TRADIA

RETEVISION and TRADIA consider that it is essential to harmonise frequencies bands in Europe and prohibit the change of use of these frequencies as a result of rights transfers, as stated in Article 9.4 of Directive 2002/21/EC (Framework Directive). Once concrete uses for frequencies bands are defined by the ITU and adopted uniformly by the EU Member States, the use of these frequencies should be considered as being harmonised within the European Union.

#### 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?*

In the electronic communications sector there is a need for a market with a European dimension and without fragmentation, allowing the achievement of critical mass in manufacturing network elements and terminals for final users. If frequencies bands are harmonised and the change of use<sup>1</sup> is prohibited, then the introduction of a certain flexibility through a secondary trading may be beneficial, under certain conditions. As long as interferences are avoided and general interest services are protected, a secondary trading of rights to use the spectrum may promote a better use of spectrum in allowing to match the offers of rights owners with the needs of potential purchasers.

*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 parties to a deal should be free to choose the type of rights transfer which better suits them, provided that the frequencies use as well as the technical characteristics set up in the original spectrum license are maintained.

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

---

<sup>1</sup> In this document, the expression “change of use” has the meaning of “change of service” (i.e. fixed service, mobile service, broadcast...)

Assuming that it is prohibited to change the use of frequencies, the following obligations should be imposed:

- to fulfil the technical parameters set up in the original license;
- to carry out adequate interference analysis;
- to make a real use of the frequencies which have been traded, in order to avoid speculation.

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?*

Yes, provided it is regulated and as long as the use and the technical characteristics of the frequencies bands remain unchanged.

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?*

A register should be set up with the purpose of ensuring the transparency of the secondary trading and enabling to keep track of the deals from their origin.

#### **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)*

As long as the use of the frequencies remain unchanged and the original technical characteristics are fulfilled, there may be some flexibility to reconfigure the rights so that they can fit the needs of both parties and allow an optimal use of the spectrum.

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)*

No. On the contrary, a flexible use of the spectrum should not be authorised.

Any change in the use of the spectrum can jeopardise general interest or public services. In Spain, broadcasting is a public service, whether it is managed by a public sector company or a limited liability company. The fundamental role played by this public service for the society has been recognised at European level in numerous documents, among which the Amsterdam Protocol or the Communication of the European Commission on the World Radiocommunications Conference (WRC 03), in which the Commission states that access to radio spectrum should remain available to broadcast services.

If the change of use of bands is permitted, this may lead to a situation where, in order to achieve a yield in the short term, the bands are used for more profitable services with the risk

that the public service obligations remain unfulfilled. Interference problems may also arise and seriously affect the quality of the neighbouring public services.

In addition, a change of use may lead to a fragmented market both on the seller's and the buyer's side.

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

The inherent cost of a network rolling out and the need to recoup the investment require that the network be exploited over a long period. Accordingly, the rights to use the spectrum should be acquired for fixed and long periods of time.

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

No.

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

Yes, it is necessary to apply differentiated rules according to the type of services linked to the frequencies bands.

*b) If you see a need for different rules and regulations in question 8a above, please give examples*

One could allow transfers of rights, for example, from the GSM technology to the UMTS one, in the bands used for mobile communications, or from the analogue technology to the digital one in the bands dedicated to broadcasting. These transfers of rights would be subject to specific rules.

But those deals which would lead to the transfer of rights from one service such as broadcasting to another one, such as mobile communications, should never be authorised, since they amount to a change of the use of the spectrum. As it has already been stressed, to permit this kind of changes would have a negative impact on the quality of public services which would be faced with serious interference problems or could be prevented from fulfilling their obligations following a loss of spectrum.

## **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?*

Yes, specific ex ante competition rules, similar to merger regulation, should apply. Trades should be given a prior approval following a scrutiny by the national authority in order to avoid

situations where the purchaser would obtain or strengthen a dominant position. This would not preclude the application of ordinary competition rules at any time in order to ensure that competition is not distorted.

## **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?*

The national Authority should:

- deliver the approval of transfers of rights and control them, preventing dominant positions;
- ensure that the use of frequencies bands remain unchanged - especially when public services are at stake – as well as the obligations set up in the original license;
- guarantee an efficient use of the spectrum ensuring that the bands are effectively used (avoiding hoarding);
- resolve interference problems and disputes;
- run the register mentioned under 5) above.

*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*

According to point 11), the national Authority should approve the transfers of rights between companies and carry out a control of the trades in order to avoid interference problems, misuse of the spectrum etc...

A deal will not be approved when it involves the risk of creating or strengthening a dominant position, its amounts to a change of use or when it would lead to sudden technological changes which may jeopardise the investments made in order to provide TV sets or terminals. In addition, the national Authority will refuse a trade when it may cause interference problems or lead to a misuse of the 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)*

The national Authority should apply ex ante approval procedures in order to avoid problems. As has already been stated under point 10), this does not impede the application of ordinary competition rules at any time in order to ensure that market operates fairly. The Authority should also make sure that the transfers of rights do not entail interference problems and that the use of the frequencies bands is respected.

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

The national Authority should actively facilitate secondary trading of rights to use radio spectrum only when the assigned frequencies are not really being used.

### **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?*

We consider that it will be possible to develop a secondary trading of rights to use radio spectrum only once frequencies bands have been harmonised at European level.

*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?*

The EU should be proactive in fostering frequencies harmonisation, using the mechanisms which have been set up in Decision 676/2002/EC ("Radio Spectrum Decision"), following the works of the competent international organisations and drawing up common proposals and positions.

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

Harmonisation of all bands is an important issue as such and not only with regard to secondary trading of rights. Harmonisation of frequencies should be an objective for the EU in order to allow the development of mass markets at European level.

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

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

The regulated use of the frequencies bands has enabled so far a good quality of services from a technical point of view.

However, spectrum management in Spain is currently presenting a failure: almost two years after the winding-up of the company which owned them, the frequencies associated to Digital Terrestrial Broadcasting have still not been reassigned, a situation which leads to an inefficient management of the radio spectrum.

*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*