

### RSPG Secretariat

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### **SIEMENS response to the RSPG's public consultation on secondary trading of rights to use radio spectrum**

When considering the benefits of spectrum trading it should be recognized that spectrum allocations and licensing for commercial mobile applications is still in an early implementation phase whereby the conditions and the framework have changed considerably during the last few years (e.g. spectrum for IMT-2000).

Regulators have learned from the experience and means to improve the efficient use of spectrum have been developed and implemented.

The potential of market oriented, supporting allocation and licensing rules and conditions will be further exploited.

In this dynamic environment spectrum trading could be one option to improve flexibility. Nevertheless its impact on other elements in the allocation and licensing process needs careful evaluation and considerations in any single case.

#### **General questions**

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

Rights transfer can bring more flexibility if the conditions using spectrum are selected carefully. Higher costs for using spectrum – because of the transfer procedures – would not be beneficial. In such case, spectrum buyers will transfer the burden of their spectrum payments onto end user prices. Furthermore new spectrum users may have to buy/overtake existing infrastructure in the given frequency band and/or substitute it by new infrastructure. This may unnecessarily increase the general costs and may also add to increased prices for consumers, businesses and radio users.

We do not consider secondary trading of spectrum as the only suitable way to reallocate spectrum resources. It may be worth to think about alternative administrative mechanisms for enhanced spectrum management.

#### **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?**

Transferring rights to use radio spectrum can only be beneficial to consumers, businesses and radio users if legal certainty and planning reliability are granted. As

spectrum is a scarce resource, allocation and re-allocation via transferring rights has to be closely monitored and adjusted by the competent authorities. Furthermore a European harmonised approach would be beneficial. Processes for the transfer of rights shall be public, open and transparent. We further believe, that “full” transfer, which has no end in time, would transfer all obligations to the new holder. As the practical development shows, usually some obligations disappear, new ones occur. Thus – only partial transfer or leasing would make sense.

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

Regarding the rights and obligations it is not easy to say, what shall be kept or excluded. Obligations are related to the use of spectrum e.g. coverage conditions, timing, international obligations etc. Their parameters will change over time. Only under carefully defined and closely monitored circumstances, secondary trading of spectrum may stimulate the market.

In most of the countries spectrum is assigned to undertakings for a specific time period (timely restricted usage rights) whereby rights and obligations can concern the standards or technology used, the geographic area served, a time schedule for the deployment of services and similar. If spectrum usage is granted by a specific license, secondary trading also affects this license.

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

Siemens has to think globally and therefore welcomes well planned, transparent and harmonised legal and regulatory approaches. The availability of radio spectrum is a key component for new developments in the communications sector. Quality and continuity depends on stable rules and regulations.

The introduction of secondary trading of spectrum is basically a political decision. With regards to the European Union and its common regulatory framework it would be more than desirable for the industry to see a harmonised approach for Europe at large.

In our opinion, spectrum trading should lead to spectrum consolidation, not to further spectrum fragmentation. Therefore if secondary trading of spectrum is to be introduced, the involvement of a neutral body such as the Regulatory Authority in charge is crucial. Regarding license exempt spectrum, we support the RSPG view to exclude it from trading.

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

Secondary trading of rights to use radio spectrum should be an open and transparent process, with equal access for all interested parties.

Based on the country specific frequency table it would be useful to publish a country specific frequency assignment table accordingly in order to see who has licenses of which frequencies. Such instrument should be provided in order to enable ERO to extend its database. Furthermore national administrations should think about installing a trade register and a price database that would make clear who paid what for which frequencies.

The scope of the trade would be important information as well as if a change of use or a reconfiguration is in the scope of the trade.

Furthermore a list of interested participants, in other words licensees who are interested in doing a trade, as well as information about measurements of efficient use of spectrum should be made available.

**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)**

Frequency assignment and adequate service allocation are critical legal issues. When thinking of a reconfiguration of rights, further analysis and legal studies are needed.

In our opinion secondary trading of spectrum should not change the standard and service allocation. Service allocation should be in line with the well-proven ITU process and with WRC as usual. This is necessary for international harmonization and the appropriate protection of research and developing efforts provided by the industry.

**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)**

Given the scarcity of spectrum resources, "efficient use of spectrum" has to be the overall target for national spectrum management bodies. Efficient use of spectrum grants appropriate resources for existing services and leaves a considerable amount of spectrum available for new applications. Although technological neutrality would mean a flexible allocation approach for new applications, huge guard band losses cannot be avoided, if radio standards are ignored. International standards as of ETSI or ITU will help to achieve better spectral efficiency and also allow technology innovations. Taking this into consideration, in the long run consumers could benefit from flexibility in spectrum availability.

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

The tenure is insofar important as tenure has been key in allocating spectrum in the original allocation process. Where undertakings with timely restricted spectrum usage rights are given the possibility of secondary trading, they should have the right and obligation to fully transfer their usage rights. Where tenure formed an integral part of the basic frequency allocation, it should also be part of the secondary trading process. Insofar tenure is an inherently important issue for secondary trading.

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

We see the need of a harmonised approach for Europe regarding secondary spectrum trading. That does not necessarily mean that the same rules and regulations must apply for the whole spectrum. It is more important that the overall system is fair, comprehensible and transparent and grants that equal cases have to be treated equally.

### **Competition aspects**

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### **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?**

We think that general competition law might be enough in relating to implementing secondary trading of rights to use spectrum. Where secondary spectrum trading is likely to create undue market dominance, ex-ante regulatory measurements based on the concept of significant market power could be taken into consideration.

### **The role of the spectrum management authority**

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### **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?**

Spectrum management authorities are in charge of granting fair, transparent and non-discriminatory access to spectrum resources. Furthermore they are monitoring the efficient use of the available spectrum. With regards to efficiency, spectrum management authorities are responsible for the re-allocation of spectrum resources. This is also valid for secondary spectrum trading. Where spectrum consolidation is a target, fragmentation in frequency assignment tables are to be avoided. We see spectrum management authorities in charge of granting and ensuring adequate terms and conditions for spectrum re-allocation. The responsibility of a neutral body such as the spectrum management authority is crucial.

### **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?**

As stated above, ex-ante regulatory measurements can be justified in cases where the creation of undue market dominance is likely.

If the outcome of a secondary trading of rights to use radio spectrum would lead to undue dominance of one or more market players (joint dominance) and abusive anti-competitive behaviour, it would be necessary for a spectrum management to refuse a trade.

**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)**

We generally recommend that NRAs should start with selected bands most suitable and promising for spectrum trading relatively constraining rules and move gradually to a more relaxed policy.

Otherwise see answer to question 12.

With regards to a trade register, ex post notification is a necessary means to have accurate and up-to-date database.

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

We think that national spectrum management authorities should not proactively promote secondary trading of spectrum. Where the national spectrum management authority sees secondary trading of spectrum as a driver for achieving spectrum consolidation or spectrum efficiency, it should consider facilitating those proceedings when approached by the industry.

### **Community aspects**

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**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?**

Yes, we think that an adoption of individual regimes by EU member states can cause problems for consumers, businesses and radio users.

Secondary spectrum trading on individual regimes by EU Member States could probably lead to spectrum fragmentation and in the worst case to country specific infrastructure followed by reduced interoperability, reduced economies of scale in equipment production, decreased international equipment roaming and access to export markets, increased risks of harmful interference and a greater difficulty with international coordination. The IMT-2000 process has shown how important harmonised licensing is. An imbalance of obligations in the Member States can lead to substantial shifts and excessive concentration.

**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?**

We think that secondary spectrum trading is one possibility for achieving the flexibility in spectrum re-allocation which is needed. The Framework Directive leaves the decision open and talks about "transfer of rights of use" (Article 9.3 and Recital 19) rather than about "secondary spectrum trading". Secondary spectrum trading refers to a mechanism of finding a market price or in other words a commercial agreement for transferring rights which is per se not indicated in the Directive's expression "transfer of the rights of use".

We believe it would be advantageous first to create a framework for flexible spectrum allocation and re-allocation, foreseeing spectrum trading only for cases where traditional methods of transferring rights have failed. Here the EU (Commission) could play a major role.

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

Harmonisation and the impact of secondary trading on harmonization have to be considered separately. European harmonization of frequencies is unquestionably beneficial for consumers, businesses and radio users whereas we already pointed out in our answer to Question 1 that secondary trading of rights to use radio spectrum might not be beneficial.

Apart from the basic and underlying question of an overall benefit of secondary spectrum trading the aim should be spectrum consolidation based on common standards regarding services and technologies.. Further spectrum fragmentation can be avoided when harmonisation of frequencies is a priority goal in Europe. Therefore we support frequency harmonisation.

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

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

Our experiences with the current spectrum management regimes are those of a supplier. In other words Siemens has been indirectly affected by spectrum management decisions with regards to network and equipment development and access to the market.

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

We do not have experiences with secondary trading of rights to use radio spectrum, yet.

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

No comment.

**21) Any other comments**

As mentioned above, it may be worth to think about alternative mechanisms for achieving higher spectrum efficiency e.g. procedures to allow spectrum pooling for existing licenses in case of infrastructure sharing, which would lead to higher spectrum efficiency and would also have societal benefits.

Secondary trading of rights to use radio spectrum is only another step for achieving flexibility and this can solely be achieved with care and under the scope of harmonisation and standards.

As stated above we believe it would be advantageous first to create a framework for flexible spectrum allocation and re-allocation, foreseeing trading of spectrum rights only for cases where traditional methods of transferring rights have failed.