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COMMISSION ACTIVITIES RELATED TO RADIO SPECTRUM POLICY

1. PURPOSE OF THIS PAPER

This paper is to report on Commission activities related to radio spectrum policy since the 9th meeting of RSPG on 22 February 2006. The paper includes only activities which have a relevance to RSPG's scope of responsibilities, in particular activities which may influence priorities in the RSPG work programme.

2. RSC-RELATED ACTIVITIES

The 15th meeting of the Radio Spectrum Committee was held on 8-9 March 2006. Since the last RSPG meeting the following initiatives should be noted:

- **Short Range Devices.** Following the endorsement at RSC#15 of the proposed draft EC Decision on harmonisation of spectrum for short range devices in the Community, the Commission organised an experts meeting to finalise the last details of the proposed technical annex to the Decision. The finalised draft Decision is now in interservice consultation internally in the Commission and should be submitted for final adoption at RSC#16. It is planned to update the list of SRDs and the corresponding technical annex at least once a year. The decision should provide better legal certainty to Class 1 devices as per the R&TTE Directive.
- **UHF RFID.** At RSC#15, the Commission presented a first draft proposal for a specific EC Decision on UHF spectrum for RFIDs. The principle of introducing an EC Decision to harmonise access to UHF spectrum was welcomed by the RSC, and should ensure the timely implementation in all Member States of the related ETSI standard and conditions of spectrum use as defined in Annex 11 of the ECC Recommendation 70-03. The draft Decision is now being reviewed by the Commission services to address the concerns of the three Member States which have indicated difficulties to fully implement the proposed decision (France, Italy and Spain). The Commission intends to present a final proposal at RSC#16.

- **Ultra-Wide Band (UWB).** A second draft Commission Decision was presented at RSC 15 and was subject to further discussion. The intention is to propose a final draft Commission Decision for vote at the next RSC.
- **WAPECS:** The Commission has initiated a discussion in both the Radio Spectrum Committee and the Communications Committee aimed at putting the WAPECS concept into practice. First results concerning the frequency bands as well as common and minimal authorisation conditions are expected by the end of this year. The Commission also intends to make a policy statement through issuing a Communication aimed at addressing practical steps necessary from now until 2010 in order to pave the way to a more flexible spectrum management approach for which the review of the electronic communications framework will ultimately offer the regulatory basis. At the same time, the actions proposed in this Communication will address, on the basis of the present regulatory framework, current problematic cases where a more flexible approach to spectrum usage is urgently required before the new framework enters into force. In particular, current issue surrounding the 900 MHz and 2.6 GHz bands call for coherent action. The Communication is planned for publication in July 2006.
- **MSS at 2 GHz.** This matter has been addressed at the recent RSC and COCOM meetings, which took note of the work in progress, including in CEPT, and which agreed that it should be discussed further amongst experts. A second ad-hoc meeting of experts from RSC, COCOM, CEPT and ETSI will take place on 24 May 2006. This should in particular examine the exclusivity issue as well as the appropriate authorisation and selection processes.
- **Spectrum Information.** Following the adoption of a Mandate, the CEPT is scheduled to submit a final report on the conditions required to develop the EFIS database into an effective EU portal for publication and access to spectrum information by 15 July 2006.
- **Broadband wireless access.** A Mandate to CEPT to identify the most suitable harmonised frequency bands for BWA and to work out harmonised usage conditions was issued at RSC 14 on Dec 14. CEPT will submit an interim report by July 15 and its final report on December 15, 2006.
- **Implementation of Harmonisation Decisions.** The information about implementation of harmonisation measures is now available and has been posted on the Commission's Radio Spectrum Policy website.
- **Impact assessments.** Following input from Member States and discussion at RSC 15, the Commission concluded that a general application of impact assessments to all technical implementation measures would be difficult. The instrument is however so useful that the Commission is considering where it can nevertheless be used fruitfully.

3. STUDY ACTIVITIES

The initial findings in the study on **Legal, Economic & Technical Aspects of "Collective Use" of Spectrum in the European Community**, i.e. the "Commons", was presented at a public workshop on April 27 and a brief verbal report will be given during the RSPG meeting.

In addition to the above study, and following the suspension of the previous call in 2005

(due to the lack of suitable tenders), a renewed call for tender for the study on **Radio Interference Regulatory Models in the European Community will be published in the Official Journal within the next few days.**

4. OTHER COMMISSION ACTIVITIES

Report from the Spectrum Trading Discussion Group

The Commission Spectrum trading discussion group met on April 25 to look at the issues of the format of spectrum rights and the level of information needed to support spectrum markets in Europe. As described in the terms of reference, the Commission reports the content of these discussions to the RSPG for information and comments. It should be recalled that the discussion takes place under the Chatham House rule and that in consequence no statements made in the discussion will be attributed to a source.

To help structure the discussion a “dummy spectrum right” paper (attached) was tabled and the subsequent exchange of views referred to the structure and items in that paper. To assist in understanding the concept, the idea is that any parameter that must be present in all spectrum rights belong in Part A and that Part B should contain all additional requirements.

Framing discussion

There was general agreement that the term “Spectrum Usage Right” should be used, rather than “Spectrum Right”. Participants pointed out that the number of outstanding apparatus licences would make it difficult to reconfigure those into a format with the technical parameters as sketched. Not only were there different specific licence types (apparatus/block) but also some licences in-between. It was also clarified that spectrum trading is not just trade of “ownership” but also incorporates concepts as “leasing” and “rent”. Typically, these concepts relate to the expectation of renewal that the holder had, ranging from an indeterminate term (with a set time to give notice), to fixed terms.

Another question was what kind of markets we expect? Would it be a “Stock Market” with high turnover, public data and many actors, or would it more resemble a “Real Estate” market, with low turnover, only some data available, and characterised by match-making by specialist intermediates. The discussion group felt that the similarities to the latter were clear, but there were also differences.

It was pointed out that it was important to clarify the status of a common format? Is it the legal representation of the right or is it a report/summary of it? Could the text of the format be used in a legal context as a binding document?

Format discussion

It was firstly acknowledged that it would be vital to have rights clearly defined in whatever format used. There was also general agreement of the usefulness of a common format, but a clear realisation of the difficulties involved. With reference to the “dummy spectrum (usage) right” Items 1-4 (applicable law, NRA, number of right, name of holder) and 8-9 (duration and right of renewal, signature of NRA) are uncontroversial and could easily be agreed, while Items 5-7 (spectrum parameters, geographical parameters, time parameters) constitute the unavoidable technical parameters in a spectrum usage right and should be discussed as a package. A number of other parameters were suggested to be missing (see further down)

As far as Items 5-7 are concerned, there was a concept that block licences could be presented in terms similar to those in the document, but that apparatus licences such as used for many PMR licences would be complicated to transform according to this pattern, both for technical reasons and due to the sheer numbers. Such licences would on the other hand be among the easiest ones to trade, so a common format would be most useful here.

The view was put forward that the technical parameters suitable for Part A could be grouped in 3-4 generic templates and that it would be worthwhile to consider them.

An interesting discussion took place on fixed links, where sometimes block licences were awarded and sometimes each individual link required a combination of apparatus licences.

The question of how to reconfigure spectrum usage rights between generic templates, such as for spectrum awarded on the basis of apparatus licences and subsequently combined and traded as a package, was raised but clearly needs more consideration.

Additional technical parameters under Part A should also include obligations to respect international agreements, such as those raised by a reuse of the digital dividend.

As mentioned, it was agreed that there were some necessary items missing from Part A, in particular an Item 10 indicating whether the right was tradable or not, and Item 11, indicating the conditions under which the NRA could vary or revoke the right. There was also considerable interest in an Item 12, which would indicate whether the right was associated with a fee, and if so, where to find the fee schedule.

The relationship between Part A and Part B was also subject to discussion. Even if they would be integral parts of a single right, the view was put forward that it would place Part B in a lesser position or that there would be an assumption that using Part B would be seen as creating difficulties for the rights holder. Another view was more sympathetic to a division into “always required parameters” and “other parameters” noting that clarifications and additions to part A can be inserted in part B.

Associated issues

The relationship between bilateral agreements between users and the spectrum usage right raised some interesting questions:

Should such agreements be incorporated in the right? This would increase the visibility and enshrine the agreement, but could also lead to a fragmentation of conditions. There was the concept that such an agreement could, in specific cases, be incorporated in a similar way as an easement/servitut, but that in most cases it would be better to let the transfer of bilateral undertaking be a matter for the contract between the buyer and seller of a usage right and not to be included in the usage right itself.

The question of what level of interference from others a usage rights holder must expect was also introduced, the view was put forward that a regulator would not be in a position to guarantee any such level and that it would be misleading to include it in a right. This would however require the regulator to provide guidance about the level of interference to be expected within a right.

There was also an interesting discussion on the models of managing neighbouring rights. It was clear the zero interference would require sizeable buffer zones/guard bands, but such zones would be wasteful. One possibility would be to establish the buffer zone with

“unusable areas” and let the rights holders agree on a mutually beneficial solution to divide it up. Another would be to establish the rights with touching borders but have the fallback position of setting specific rules if the rights holders did not arrange conditions of use themselves. Although from a view of achieving clarity in the right, the first concept had merit, it would pose difficulties in countries where any transmission not clearly defined within a right would be illegal.

Subleases of rights were raised. These were not at present legal in all Member States, but were considered a useful tool to increase efficiency and add value. It was suggested to include the concept in European legislation under the forthcoming review.

A very short discussion also noted the question of divisibility of rights. Should these be specified in terms of minimum size blocks and/or geographical coverage? Time constraints unfortunately limited this discussion.

Information Discussion

The relationship between the format discussion and the need for comparable information was quickly noted. As was identified in the previous EFIS meeting, the minimal required data, if a central access point were established would correspond to Items 4, 6, and 8 (name of holder, geographical parameters, duration of right) in the format paper and the applicable frequency band as indicated in Item 5.

There was however a more fundamental question raised on the value added of the European access point. It was pointed out that searching for licences in a band generally used for PMR would generate an unmanageable number of hits while the equivalent GSM search would anyway be easy to perform outside such a database. This was considered a valid point but it was also pointed out that limiting the searches to block licenses would be too limiting to assume a static division into discrete services, given the WAPECS process and that it would be better not to limit the structure unnecessarily. Some participants felt that a much more gradual approach to the central access point would be preferable, but this was contrasted with the need to maintain the single market in services.

Another point was the question of whether it would be the regulators role to present already processed data or whether this would be to assume a role the private sector could fill. Maybe all that was needed was provision of raw data? Many regulators had already been approached by one prospective provider.

The security issue was also raised. The general feeling was data as indicated above would not raise issues of business confidentiality, but that there could be national security concerns such as locations of fixed links.

It was also pointed out that this type of registry would miss some of the most vital pieces of information, namely general conditions for accessing spectrum, listings of unused spectrum and values of traded spectrum. There were various approaches to this last issue, ranging from “we don’t want to know” to “we require the data, but would not release it”. This last value assessment was perhaps a task for the private sector to provide?

Next Steps

The group discussion continues in an electronic format for a few more weeks. Participants were requested to suggest technical parameters for the “3-4 generic cases” and to circulate any national or other documents that in the light of the discussion would be useful for

further work on a prospective common format or defining the information needed to support spectrum markets. Participants were also requested to indicate where information about concluded trades could be found.

The Commission will at the conclusion of the discussion consider suitable further steps and may later propose a Spectrum Usage Right format to the RSPG for validation and suggested use at the national level. The next meeting of the discussion group will take place on 20 September on the subject of suitable bands for trading. A further meeting is planned for January on the subject of competition issues in spectrum.

Spectrum right

Part A

- (1) Reference to the law that gives the public authority competence to assign the spectrum right
- (2) Name of the public authority that assigns the right
- (3) Official number of the right (for the public records)
- (4) Name of holder of the right
- (5) Spectrum bandwidth that can be used, as well as
 - (a) Maximum in-band power allowed
 - (b) Maximum out of band power allowedor alternatively
 - (c) Reference to usage of spectrum as defined in a spectrum mask described by a technical standard
- (6) Geographic area in which the spectrum can be used, as well as
 - (a) Maximum in-band power allowed beyond geographical limits (including to other states)
- (7) Spectrum use – permitted hours of operation
- (8) Duration and right of renewal
- (9) Date, place and signature of representative who has legal competence to assign the spectrum right on behalf of the public authority

Part B

The public authority is urged to include in part B all regulatory restrictions and constraints that are directly relevant for practical and legal dispositions concerning this spectrum right, even if these restrictions and constraints also are part of general regulations.