

SPECTRUM REGULATION, LIBERALISATION AND TRADING

Telecommunication and Energy Commission
Working Session 24 August 2006



Content: Part A

- Spectrum Regulation, Liberalisation and Trading in various countries world-wide:
 - ↳ Introduction
 - ↳ Summary of General Report and Conclusions
 - ↳ Panel Discussion with National Reporters from Finland, France, Germany, Lithuania, Netherlands, Spain, Sweden and Switzerland



Content Part B

- Reflections on Spectrum Regulation, Liberalisation and Trading:
 - ↳ Moving from centralised planning to market-driven usage of spectrum?
Philippe Horisberger, OFCOM
 - ↳ Reflections on Spectrum Trading – Opportunities for Network Operators
Dr. Stefan Mangold, Swisscom
 - ↳ Spectrum: Liberalise or regulate?
Prof. Christian Bovet
 - ↳ Spectrum Management and Competition
Stefan Renfer



General Remarks

- Survey was executed in autumn/spring 2005/2006
- The following countries were involved: Austria, Brazil, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Mexico, Netherlands, Portugal, Spain, Sweden, Switzerland and United Kingdom
- Due to the dynamics of the market some data in the General Report and the National Reports may no longer be accurate



Terms

- **Spectrum Regulation**
 - ↳ Provisions for the allocation and use of spectrum (frequency bandwidth)
- **Spectrum Liberalisation**
 - ↳ Freedom how to use spectrum, reduction or removal of restrictions regarding use of spectrum
- **Spectrum Trading**
 - ↳ Licensing, sale or transfer of all or part of rights/obligations under a license.



Spectrum Regulation I

- Legislation regarding allocation and use of spectrum?
 - ↳ In all countries for both the telecommunication and TV/radio sector at least two applicable acts
- How are licenses allocated?
 - ↳ Differentiation between licenses in telecommunication and radio/TV sector



Spectrum Regulation II

↳ Telecommunication sector:

- In many of the countries allocation is based on a frequency usage plan or on a first-come-first-served basis
- If frequencies are scarce then allocation often occurs by auction, public tender, beauty contest or draw
- Some countries have a notification procedure (e.g. France, Germany, Ireland and Italy)



Spectrum Regulation III

↳ Radio/TV sector:

- In most countries the allocation takes place based on a beauty contest or in auction procedures
- In some countries a notification procedure applies (e.g. Italy)
- In Mexico licenses can be granted upon request



Spectrum Liberalisation I

- **Authorities expressed their views?**
 - ↳ In many countries the authorities have expressed their views (e.g. Austria, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Netherlands, Spain and UK)
 - ↳ In some countries specific reports have been published (e.g. Denmark, Ireland, Netherlands, Spain and UK)
 - ↳ The Finnish authorities are very sceptical and are concerned that competition might be impaired



Spectrum Liberalisation II

- New Law to be enacted?
 - ↳ Only in France, Ireland, Portugal, Lithuania and UK new law to provide for spectrum liberalisation shall be enacted
 - ↳ In particular in:
 - France a new Decree is planned for 2006 setting out the terms for the selling off of frequency licenses
 - In Lithuania spectrum will be liberalised and trading allowed as of 2010
 - In the UK legislation regarding license changes enacted in 2005



Spectrum Liberalisation III

- Measures planned to relax restrictions?
 - ↳ Only in France, Ireland, Lithuania and UK measures are planned
 - ↳ In Spain some operators have expressed their unofficial opinions on spectrum liberalisation
- Case Law?
 - ↳ Austria (Centrowave), Switzerland (WLL-license transfer) and Denmark (Sky Radio/Talpa Radio vs. Danish Government)



Spectrum Trading I

→ Spectrum trading allowed?

- ↳ In most countries spectrum trading is allowed, in some countries with certain restrictions (Austria, Brazil, Denmark, Germany, Italy, Mexico, Portugal, Spain, Sweden and UK)
- ↳ In Finland and Lithuania (however with exceptions) and France (but implementation in a decree planned) spectrum trading not allowed
- ↳ In Ireland and Switzerland spectrum trading is neither allowed nor prohibited



Spectrum Trading II

- Full or partial transfer possible?
 - ↳ In most countries it seems that only the full transfer is possible and this in some cases only under certain circumstances (e.g. Germany, Mexico, Netherlands, Portugal and Spain)
 - ↳ In some countries both a full and partial transfer seems to be possible (e.g. Brazil, Sweden and Switzerland)
 - ↳ Often however the law does not explicitly stipulate whether full and/or partial transfer is possible, but just alludes to the fact (e.g. Netherlands)



Spectrum Trading III

- **Sublicensing and/or sale of part or entire license?**
 - ↳ The sale possible in several countries (Brazil, Denmark, Germany, Ireland, Lithuania and Finland (with restrictions) and Mexico)
 - ↳ Only in Austria, Netherlands and UK both sublicensing and sale are possible
 - ↳ In France and Spain neither sublicensing nor sale are possible
 - ↳ In Sweden and Switzerland the law does not answer the question regarding sublicensing, but in practice common in Sweden



Spectrum Trading IV

→ Prerequisites of trading:

- ↳ In most countries an approval by competent authority is necessary (e.g. Austria, Brazil, Denmark, Ireland, Netherlands, Sweden)
- ↳ In some countries a request must be filed (e.g. Germany, Brazil)
- ↳ In other countries there are no specific prerequisites or regulation (e.g. Portugal, Spain)
- ↳ In many countries various conditions need to be met, e.g. fulfilment of same requirements as original licensee, technical requirements, etc.



Spectrum Trading V

- What happens to digital dividend?
 - ↳ "Digital dividend" meaning analogue spectrum becoming available when going digital
 - ↳ Save for Spain, in none of the countries rules exist
 - ↳ In Austria, Brazil, France, Ireland, Italy, Mexico, Portugal and Switzerland "digital dividend" is no topic at all
 - ↳ In Lithuania use of digital dividend is unclear
 - ↳ In Germany, Finland, Netherlands, Sweden and UK the topic is under discussion



Competition Law I

- Spectrum Trading raised competition issues?
 - ↳ In most countries spectrum trading has not raised any issues (Brazil, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Mexico, Portugal, Spain and Switzerland)
 - ↳ Only in Austria (3G case), Italy (Mediaset Group case), Netherlands (Cooperation UMTS licensees), Sweden and UK (Consultations of 2004) it has raised issues



Competition Law II

→ What is prohibited?

- ↳ In most countries the spectrum trading per se is not forbidden
- ↳ However distortion of market or restriction of competition in market is prohibited
- ↳ The general worry is that the purchase of more spectrum could lead to a unilateral market power
- ↳ When trading general provision of competition law must be complied with



Competition Law III

→ Case Law?

- ↳ In most countries there is no case law
- ↳ **Austria**: transfer of 100% shares from Telefonica Moviles Espana to Mobilkom Austria
- ↳ **Finland**: transfer of license from Digita Oy to Télédiffusion de France S.A.
- ↳ **Netherlands**: find on broadcasting corporation of more than € 1 million for conclusion of agreements for bonds for commercial FM radio frequencies auctioned by government



Conclusions

- In most countries practically no legislation regarding spectrum trading exists
- Only in some countries new law shall be enacted in the near future
- Only in some countries relaxation of current restrictions planned
- Spectrum trading generally seems to be allowed either explicitly or implicitly
- In most countries no competition issues yet raised in this context