

CHECK AGAINST DELIVERY

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- *On the digital dividend*

Broadcasters are sometimes accused of defending the broadcasting spectrum against other potential users with a view to keeping it entirely for themselves. This is certainly a misinterpretation. Broadcasters should not be seen as an obstacle to the use of the digital dividend for innovative services. In reality, broadcasters are the prime movers for a rapid digital switch-over, and it is due to their efforts and investment that the digital dividend will become available. In parallel, broadcasters are promoting new services such as mobile and high-definition television.

We see a danger that the European Commission, further to its Communication on the digital dividend, might push for early decisions on the use of the digital dividend before this dividend has actually been gained. This would be like counting one's chickens before they are hatched.

There is still much uncertainty about the size of the digital dividend, and the situation varies greatly from one Member State to another. It is too simplistic to calculate the digital dividend by merely arguing that it is possible to squeeze five, six or even more digital standard TV channels into the frequency currently used by one analogue channel. Viewers will not invest in digital TV receivers if they are not offered more programmes, better quality, mobile reception and so forth. Why should viewers invest in new digital technology, which is more expensive, more complex, and more difficult to handle, if they are not offered a better service? To provide spectrum for such improved digital services will help ensure a rapid switch-over and should not be regarded as a redistribution of the digital dividend to broadcasters. On the contrary, it should be seen as a necessary investment to free up analogue frequencies and to *earn* the digital dividend!

Digitization does indeed offer new opportunities, and broadcasters recognize these.

The European Commission has quoted very promising forecasts for mobile television and is hoping for a new GSM-like economic miracle in Europe. We would, of course, be very pleased with such a development but we also see some uncertainties as regards the business case for mobile TV and consumer expectations.

On the other hand, what in our view is much more certain today is that viewers expect a migration to high-definition TV sooner rather than later. As Christmas approaches, shops across Europe are full of wide-screen, HD-ready TV sets, and they seem to be very popular with consumers. But standard television does not look particularly good on those TV sets, and consumers will expect better picture quality. Ignoring these expectations, and making no provision for the future migration of DTT to HDTV, would be extremely short-sighted and would ultimately mean that digital terrestrial television would be doomed.

Our message therefore is: do not overestimate the digital dividend, do allow for the future migration to high-definition television, and do allow space for mobile television. And, on the other hand: do not underestimate interference problems which arise when broadcasting services and two-way (mobile or IMT) services use the same or adjacent bands. It is necessary to solve the interference problems before broadcasting bands are opened up. Viewers and listeners who have invested in digital equipment must be guaranteed stable reception.

- *On the new market-based approach to spectrum*

One of the key points in the Commission's Reform Proposals is the introduction of a more flexible, market-based system for spectrum management.

It is no secret that broadcasters would be greatly concerned about any radically market-based approach to spectrum in the broadcasting bands. Such an approach would threaten Europe's broadcasting systems and harm media pluralism and cultural diversity.

It must remain possible for Member States to set aside a sufficient amount of frequency spectrum to ensure that the public has access to a broad range of radio and television programmes and, in particular, free-to-air and public service channels. These services provide a public value for society which must not be left out of the equation. This public value has to be distinguished from the economic value of the spectrum for individual commercial operators, which is the overriding criterion for any market-based spectrum management.

The EBU and a number of public service and commercial broadcasters have commissioned an economic study to examine in more detail the impact of market-based spectrum management on broadcasting in Europe. The preliminary findings show the shortcomings of such a system. The initial results of the study are being presented today (27 November 2007) to the European Parliament. More detail will be added over the coming weeks and months, and the final study should be ready in February 2008.

When we saw the widely-circulated inter-service drafts of the Commission's Reform Proposals, we were alarmed about certain points regarding spectrum management. We immediately drew the Commission's attention to what we saw as their shortcomings. This has obviously led to a rethinking of certain parts of the Proposals by the Commission, and the texts finally approved on 13 November 2007 are much better in our view.

- *On the need for exceptions to promote cultural and linguistic diversity and media pluralism*

We especially appreciate the fact that the European Commission has, in its final Reform Proposals, granted broad discretion to Member States to provide for the necessary exceptions in pursuing their cultural and media policy objectives. This applies, in particular, to exceptions from the principles of service neutrality and technological neutrality.

For broadcasters, this is probably an acceptable approach, although it must be said that it makes broadcasters dependent on an exceptional regime. It is clear that having to rely on exceptional provisions makes broadcasters more vulnerable to legal challenges and subject to bureaucratic hurdles. Consequently, it is not an ideal solution for us, but we can probably live with it. In other areas of the Community framework (or the "acquis communautaire") we have also had to become used to exceptional rules. The most striking example concerns the public funding of public service broadcasting, relying on an exception from the general European prohibition of State aid.

The approach finally chosen by the European Commission recognizes the competences of the Member States for cultural and audiovisual policy and generally leaves them the necessary scope for action. This is the point that counts most, and we appreciate it.

- *On remaining problems related to spectrum management*

However, there are a few remaining problems with the Reform Proposals, which in our view still need to be solved.

Spectrum trading: Despite the last-minute adjustments, the revised Framework Directive still seems to give the European Commission the power to enforce spectrum trading in the broadcasting bands, if only limited to broadcasting use. We do not believe that it is for the European Commission to take such a decision, as this could have far-reaching consequences for national media systems. For example, it could lead to scarce terrestrial frequencies being used for teleshopping channels rather than for news and information channels, simply because teleshopping channels are making more money and can thus outbid other operators. Any such transfer of frequencies should therefore be subject to the prior consent of the independent national authority in charge of broadcasting.

Spectrum pricing: We are also worried about new powers for the Commission, under the Authorisation Directive, to harmonize "usage fees" for the right of use of radio frequencies, in cooperation with the new European Authority. This is to be seen in connection with a clause saying that no spectrum users should be exempted from the obligation to pay such fees. Here it seems to us that the specificity of the audiovisual sector has been overlooked. Broadcasting frequencies are often granted to those operators who provide the best public value with their programmes, in terms of content, quality and diversity. Thus broadcasters "pay" for the frequencies by taking on programming commitments, and not by paying fees to the authorities. Any money that will need to be paid for the use of frequencies will no longer be available for investment in new original programming.

European selection procedures: Similarly, we are concerned about new powers for the Commission, also under the Authorisation Directive, to lay down procedures for the selection of undertakings, in cooperation with the new European Authority, and even to carry out such a selection at the European level. According to a Recital, this should apply "in particular to electronic communications services that by their nature have an internal market dimension or cross-border potential". However, this could potentially cover all kinds of frequencies and services, including those used for broadcasting. Here again, there is no recognition of the need to take into account cultural and media policy implications, which are a matter for the Member States.

- *On must-carry rules*

On a completely separate matter, we are worried about the Commission's proposal to introduce further restrictions, in the new Universal Service Directive, on the must-carry rules foreseen by individual Member States, mainly for cable television networks.

Such rules are essential to ensure that viewers in cable TV households have access to a wide choice of programmes and services, including public service programmes, on their preferred platform. The Commission does not call into question must-carry rules as such (and thus resists pressure from cable network operators, which would like to obtain more commercial freedom), but it is making proposals which have the effect of restricting or "trimming" must-carry rules "on the edges", without making this a declared objective.

Currently, certain specified television and radio channels and (complementary) services can benefit from must-carry status. Complementary services include, for example, digital teletext, programme information and electronic programme guides. In the future, only "accessibility services", i.e. services for people with disabilities (impaired hearing or sight) would benefit from must-carry status. Other complementary services, such as subtitling for linguistic minorities or teletext for the general public, would be excluded. This would clearly go against the interests of consumers, and it needs to be corrected urgently.

We also believe that it is worth considering an extension of the must-carry rules to non-linear services, as broadcasting and broadband are now coming together. This would make these rules future-proof and bring them into line with the new Audiovisual Media Services Directive.
