
**REGULATING AND RESTRUCTURING TELECOMMUNICATIONS FOR THE NEXT
MILLENNIUM ***

**Comments on the joint position of German public service broadcasters on the
European Commission's Green Paper on Radio Spectrum Policy**

by

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The joint position of ARD and ZDF, both nationwide broadcasters in Germany, on the draft of a "Green Paper on Radio Spectrum Policy in the context of European Community Policies such as telecommunications, broadcasting, transport and research and development" is due to the fact that besides via cable and satellite we are broadcasting our programmes via terrestrial networks, which some of the public broadcasters - like us - are operating by themselves. And we don't intend to sell them as the BBC did. This "Green Paper", presented in December 1998, refers to an issue that is of major importance for broadcasters both as providers of content and as operators of terrestrial broadcasting transmitting networks. Covering these two functions we have so far been able to represent our interests in the international bodies based on political and legal principles by way of active cooperation. Worldwide determination of frequency ranges, planning of frequency distributions as well as the definition of international frequency coordination processes is done by the International Telecommunications Union (ITU). National governments join these international frequency agreements and turn them into national law. Europe-wide frequency plannings are also done by CEPT, the European Conference for Postal Services and Telecommunications. CEPT coordinates its position on frequency use in the form of ECP's (European Common Proposals) especially for World Radio Conferences and the European Radio Committee (ERC) which harmonizes frequency-use in Europe. A need for frequency planning on an EU-level is therefore only feasible in such cases not covered by these two bodies.

The radio spectrum policy pursued by the European Commission has to be integrated into this framework in view of strategic planning, availability, harmonisation and standardisation. To make it clear: The flamboyant development of innovative technologies as well as a growing demand of commercial providers or users respectively in the areas mentioned, should not be disregarded. But, in view of these activities, the terrestrial broadcasters are faced with the question whether there is indeed a topical need for action in terms of an EC-frequency policy

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apart from the hitherto existing and proven coordination tools as assumed by the Green Paper. From our point of view this is *not* the case.

Although the Commission correctly assumes that – opposite to its Green Paper on *Convergence* submitted one year ago – the problem of scarcity of frequencies will not disappear by digitalization and compression technology alone; frequency resources will remain to be a scarce commodity at short and intermediate notice for a number of reasons.

Especially in view of new demanders and service providers urging to enter the market, it becomes evident that this struggle is ultimately a *distribution struggle*. Thus, the Commission undertakes to point at present allocation and distribution deficits in planning, assignment and use of frequencies. It calls for an optimization of information and coordination mechanisms up to far-reaching harmo-nization measures. In this respect, the Green Paper, like a red thread, is woven through the attempt to fully exploit the *economic* potential of frequencies. The so-called greater *efficiency* already mentioned in the *Convergence* Green Paper and to be achieved during frequency utilisation, is nothing more than an attempted far-reaching commercial orientation of the radio spectrum.

In the Green Paper the Commission emphasizes on various occasions that commercial interests and public welfare have to be brought "into balance" when decisions are taken about planning, allocation and utilization of exploitable frequencies. Naturally, as also mentioned by the Commission, compromises need to be found. But we should, however, not disregard that certain matters must be given *preference*. Just as it is the case for example with military and emergency call services, it is part of the *acquis communautaires* that it also applies for broadcasting services depending on *national* provisions. The fact that it is the *member states'* responsibility to determine respective priorities and criteria, was one more time made obvious in the *Amsterdam Protocol* to the European Treaties. For example, according to German constitutional law telecommunication has a *servicing* function relationship towards broadcasting as long as broadcasting matters are concerned. This understanding has derived from the fact that processes relating to telecommunications law come with a subordinate role compared to broadcasting due to its outstanding cultural and political significance and its role for pluralism. The technical distribution - including multiplexing as well as transmitter network operation - therefore represents a *broadcasting relevant* process; to guarantee optimum distribution platforms - and this includes sufficient frequency provision - is a *sine qua non* in fulfilling the public mission as assigned to the public broadcasters by constitution.

This is also recognised by other European institutions like the European Council. In its Recommendation No. R (99) 1 Of The Committee Of Ministers To Member States On Measures To Promote Media Pluralism dated 19 January 1999 it holds the following view:

In view of the expansion of the telecommunications sector, Member States should take sufficient account of the interests of the broadcasting sector, given its contribution to political and cultural plu-

ralism, when redistributing the frequency spectrum or allocating other communication resources as a result of digitisation.¹

In view of the furthermore existing scarcity on the one hand and the strong demand on the other that turns the radio spectrum into a precious commodity, the Explanatory Memorandum of Recommendation No. R (99) 1 of the European Council reads:

In this respect, the Recommendation underlines that governments should take into consideration the needs of the broadcasting sector when allocating spectrum. It is in particular stressed that, because of the rapidly expanding mobile-communications industry, adequate space should be saved for the television industry given its contribution to political and cultural pluralism.²

The fact that against this background a certain referral in the Green Paper, for example reduction of broadcasting to cable-line and satellite distribution, is excluded, is therefore obvious. Apart from the fact that broadcasting needs to have access to all available technical platforms, it is especially terrestrial distribution that still plays an extraordinarily important role in a number of member states. In Spain, for example, only 6 % of TV-households are provided via cable or satellite against 94 % that are provided terrestrially. In France and Great Britain there is a similar situation. In the former case 18 % of TV-households are provided via cable or satellite, 82 % terrestrially; in the latter case the ratio is 25 % against 75 %. But even in the Federal Republic of Germany, known to possess a well-developed cable network, a substitution of individual distribution platforms *is not* possible. In this sense the clearance of the terrestrial frequency spectrum would *de facto* lead to a far-reaching dependency of users from satellite systems in areas of poor cable coverage. This, however, would distort competition between various forms of distribution. As a consequence, satellite providers would rule the market and consumers would hardly have any alternatives. Moreover, this form of broadcasting use would come with higher costs than the hitherto existing terrestrial reception.

Besides that, some other aspects being significant for radio broadcasting are here to be regarded, for example local or regional radio programmes, which cannot - or only to some extent - be represented by satellite systems. With a poor coverage by cable terrestrial frequencies are automatically necessary. Apart from additional financial burdens, rental and construction law specificities that follow in the wake of cable and satellite reception, terrestrial distribution offers benefits like mobile reception without sophisticated technical effort, which are not offered by the two other distribution platforms. Just let me only point out that for *users*, too, this would correspond to an unreasonable forced substitution.

Especially the variety of terrestrial broadcasting in view of service provision targets, the possibility of providings - the providings of national, regional and local structures: stationary, portable and mobile reception - as well as the further development of a digital dual broadcasting system will lead to an increased need for transmission capacity.

¹ Annex of Recommendation R (99) 1, II., 2., subparagraph 1).

² Number 26 of the Explanatory Memorandum.

I have to admit, that efficient procedures to reduce data in the audio and video area facilitate a much more efficient utilisation of the scarce asset of radio spectrum. In radio broadcasting the tracks were set for T-DAB at the CEPT Planning Conference 1995 in Wiesbaden and along with it for a digital future in radio broadcasting. This conference was for the first time organized by a European body and not by the International Telecommunication Union as it was the case before.

A core problem during the transition from analogue to digital transmission technology is the huge number of existing analogue receivers used worldwide, whose life-span ranges between 10-15 years. Until a certain market penetration of receivers is reached, a parallel transmission must therefore exist. As a rule, for example, existing programmes must be receivable by both the analogue and the digital distribution platforms. If the frequency base is too small, market penetration will be delayed or prevented altogether. For this reason, CEPT plans to make another 7 blocks in the 1.5 GHz range available for T-DAB. This situation, which is typical for broadcastings and underlines the necessity of simulcasting, is in sharp contradiction to mobile communication, where short-term exchange of systems and apparel technology is also tolerated by participants.

During the transition from analogue to terrestrial digital TV (DVB-T) we encounter profoundly different conditions compared to radio broadcasting. Planning of analogue television rests on a fixed reception antenna at the height of 10 m. A portable reception is only feasible under particularly favourable conditions. Because of the limitation of the spectrum and the resulting lower programme offer, acceptance of terrestrial reception has gone down compared to cable and satellite. Still about 30 % of German households at present receive TV-programmes via terrestrial channels either exclusively or in parallel with satellite services. A new digital terrestrial TV-service must therefore come with a programme offer similar to the present analogue cable technology (that means 20-30 channels) to reach market acceptance. Moreover, for reasons of attractiveness and acceptance, portable or mobile digital broadcasting services have to be offered in Germany and other countries alike. This demand is at the expense of the necessary frequency spectrum.

But, and this is the difference to DAB-T, a new frequency range is not available for DVB-T. With the Chester Multilateral Agreement (1997) CEPT created the preconditions for a coordination of digital TV stations. As simulcast operation incurs high additional cost, a hard transition from analogue to digital technology by regions would rather be favoured (big-bang-solution). For reasons of consumer protection, however, it would be necessary to provide for a sufficient number of receivers (or settop-boxes) at low cost right from the start as it is the case in the UK. If this is not the case, a soft transition with a long simulcast phase would have to be chosen in order to facilitate migration for participants (island-solution). But to realise transition then, additional spectrum is required. We expect that in Germany for example at least three additional high-performance channels (for around 12 programmes) in the 790-862 MHz range must be made available for a timely restricted simulcast in the regions to be changed.

So, the already mentioned early determination in the Green Paper regarding a possible provision of frequency spectrum in the 806-862 MHz range for other services like UMTS for

example does therefore not only question the transitional scenarios envisaged for broadcasting in some countries, but even long-term planning certainty.

Due to the special role played by broadcasting, the model considered in the *Convergence* Green Paper, i.e. to sell frequencies *by auction*, is completely unacceptable. In this sense nothing needs to be added to the recommendation made by the European Parliament during the consultation process for that paper, which was held at that time: Terrestrial frequencies are to be granted a special role, irrespective of other possible horizontal regulation approaches. So, as a consequence, deriving from that frequency management should therefore *not* become the object of an auction. And even the Commission does not disregard that *economic* aspects, namely in view of experiences resulting from auctions held in the US and Great Britain, are against such an approach. But also the so-called 'spectrum pricing concept' nowadays promoted in the Green Paper on Radio Spectrum Policy should be refused. Even though it remains behind the auction model, they are both characterized by the same principle: the exclusively or at least primarily *economically* dominated assessment of a *public* commodity. This, however, does not counteract the fact that commercial users, who intend to exploit this public commodity for their private realisation of profits, could be charged with a certain fee.

The specification of individual sectors, namely broadcasting, however, need to be taken into consideration on the occasion of frequency use just the same: It should not be doubted that the technology developed for the services of wireless and mobile communication (like UMTS) is – especially in the economic region of Europe – a sensible invention. Still, this technology is not really suited for distributing broadcasting services - so there will be no substitution. Instead, *Digital Audio Broadcasting* (DAB) and *Digital Video Broadcasting-Terrestrial* (DVB-T) are broadcasting-specific technologies that not only integrate specifications in broadcasting technology, but are indeed of utmost significance for the technical progress and industrial policy as they make use of European standards and technologies. Preventing them from development by reducing the frequency spectrum for such services would cause a lot of lost-opportunity costs.

To take the specific requirements of broadcasting into account, preserving the spectrum for digital terrestrial broadcasting services does not lead us into a technological and economic dead-end street, but - because of its innovative potential - contributes to promoting European competitiveness in the progressive sector of information technologies. And with it, there are the other prominent and essential public welfare interests inherent to broadcasting that need to be taken into account within the framework of frequency policy: The democratic, societal, social and cultural contribution to the identity of European peoples. And this contribution depends - to stress that point at the end - on safe and technically sufficient frequencies.