



Brussels October 14th 2002,

Geoff Chapman, Floor 11
Radiocommunications Agency
Wyndham House
189 Marsh Wall
London
E14 9SX

RE: Implementing Spectrum Trading - Comments on the Consultation Document issued July 2002 - Satellite Issues

Dear Mr.Chapman,

The European Satellite Operators Association (ESOA) is pleased to submit its comments in response to the consultation process conducted by the UK Radiocommunications Agency on Spectrum Trading.

ESOA, a non-profit organisation based in Brussels, Belgium, represents the views of European satellite operators. ESOA aims at ensuring that satellite services are a key component of the European Space Policy and represents the operators' interests in key political, regulatory and commercial forums both within Europe and internationally. The members of ESOA are: EurasiaSat SAM, Europe*Star Ltd., Eutelsat S.A., Hispasat S.A., Inmarsat Ventures plc., New Skies Satellites N.V., Nordic Satellites AB, SES GLOBAL S.A., Telenor Plus Holdings A.S. and Telespazio S.p.A.

In early August 2002, ESOA, together with the Satellite Action Plan Regulatory Group (SAP REG), submitted extensive comments on the Draft Communications Bill to the DTI/DCMS Joint Communications Bill Team. Furthermore, ESOA has recently submitted comments regarding the possible introduction of a Recognised Spectrum Access scheme in response to the consultation process relating thereto. Both submissions are pertinent to the consultation on Spectrum Trading and we would like here to address several additional points of principle in relation to Spectrum Trading which implicitly address a number of questions raised in the consultation.

ESOA has noted that satellite spectrum is not specifically mentioned as being introduced for trading in the first or second waves of trading (Sections 8.3 and 8.7 of the consultation document refer) but notes that references to tradability of licenses are made in Section 8.11 of the consultation document. Further, as stated in Section 8.11, in the RSA consultation it is clearly proposed that RSA and licences be interchangeable and tradable. ESOA has fundamental concerns about RSA being applicable to satellite spectrum and submits that RSA should not be applied to satellite services. To this end, reference is again made to ESOA's submission dated 7 October regarding a possible introduction of Recognised Spectrum Access. For the same underlying reasons, i.e., satellite operators are efficient users of spectrum and they do not provoke harmful interference in transmission downlinks, ESOA contends that the existing licensing regime is adequate and fair, and it has concerns over the currently proposed combination of RSA with Spectrum Trading.

The consultative document on Spectrum Trading raises the particular issues of competition, interference, international agreements (including frequency coordination between NRA's) and points out the need for appropriate oversight of trading arrangements in these respects.

According to the consultation document, Spectrum Trading would be a particular form of national assignment of spectrum, where assignment provides for the trading mechanism in order to also favour innovation and growth. It is highly doubtful that, for radio-communications providers operating across national borders such as satellite, introducing uncertainty in access to spectrum rights in entire countries will be beneficial to exploiting all technological resources. Whilst the consultation document states that ex-ante checks could be minimal to avoid delays and regulatory uncertainty (Section ix, p4), ESOA advocates that adequate prior justification and oversight is given in view of the de facto international arrangements that apply to satellite spectrum. It should be absolutely clear that spectrum allocation arrangements advanced within the ITU and the CEPT will be complied with.

With particular regard to satellite operations, ESOA is concerned about any effect of commercial opportunism or of individual state arrangements which may naturally lead to a distortion of a pan-European, trans-national market. The satellite market is international by definition extending over many national boundaries, as satellites offer unique service coverage and quasi-global reach. Therefore, Spectrum Trading is likely to adversely affect the efficient use of spectrum and the viability of operator's business plans to the detriment of the space, media and telecomms industry at large. The "Television Without Frontiers" Directive¹ in fact seeks to establish the conditions necessary for the free movement of television broadcasts. Current proposals combining RSA and Spectrum Trading together are seen as running counter to the Directive, and the adequate controls and proposals need to address all these concerns.

It is to be noted that Professor Martin Cave has acknowledged that, due to extensive international planning and coordination, trading of spectrum used by satellite systems within the UK's jurisdiction "is unlikely to be feasible", and "the use of auctions would also be difficult where satellite transmissions extended across a number of different countries" (Section 8.50 of the March 2002 Review). As pointed out in the consultation document, Spectrum Trading should be introduced selectively in a way that takes account of the market and technical characteristics of the different license classes. Undoubtedly, satellite products belong to a particular license class that is not suitable for trading.

As ESOA already has pointed out in its response to the consultation document on RSA, it is possible that RSA will result in a limitation of access to and efficient deployment of satellite services in the medium term, due to opportunistic market strategies of new players. This scenario is particularly likely if Spectrum Trading is introduced together with RSA and transferability of licenses.

Finally, ESOA wishes to emphasise that the main argument on the basis of which some limited form of Spectrum Trading could be seen as advantageous, provided that there is adequate control by the regulator in order to avoid speculation disconnected from the users needs and interests, is most often flawed with respect to satellite services. In transmission uplinks, satellite operators using the same frequency bands exclusive to BSS (Broadcasting Satellite Services) or to FSS (Fixed Satellite Services) can operate together without mutual interference and, also, without problems of scarcity – simply by using different orbital positions in the geostationary arc. Whereas in transmission downlinks, the same principal argument remains valid as that which has been evoked against RSA, i.e. there is no justification to pay for unharmed receiving signals, the origin of which already has been licensed elsewhere.

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Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ No. L298/23 of 17 October 1989

In conclusion, ESOA believes that the introduction of both Spectrum Trading and current proposals for RSA, would impose an unnecessary and undesirable level of cost and uncertainty on providers of satellite services and networks, resulting in an unjustifiable increasingly cumbersome mechanism to access spectrum in the UK.

Yours sincerely,

Fulvio Sansone
Secretary General ESOA