

**SPECTRUM TRADING IN GERMANY, AUSTRIA AND THE UK: THE  
INFLUENCE OF REGULATORY REGIMES AND EVALUATION OF CRITERIA  
ON COMPETITION IN THE EUROPEAN MOBILE TELECOMMUNICATION  
SECTOR**

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Abstract:

Spectrum is one of the most important and valuable assets of mobile telecommunications operators. According to the options provided in the European Directives, national legislative bodies are in the process of defining the regulatory framework for spectrum trading. While the details of the individual regulations in the various member states may differ, spectrum trading will, in any case, confront operators with a new challenge encompassing potential competition, complexity, risks and opportunities.

In Germany, a first draft of the new law has been presented for public discussion. In Austria, after a discussion process last year, the new law was supposed to be enacted before the summer of 2003. In the United Kingdom, a draft communication bill is subject to broad and intense discussion. Despite the fact that all concepts are based on the European framework, when analysed in detail, the differences among the various countries are significant. This paper describes three national concepts, thereby showing the range of possibilities and considers the competition law criteria that national regulatory authorities (NRA) might utilise when deciding whether to approve individual transactions.

In section 1, after a general description of the regulatory framework as the basis for all national laws, the competition criteria stipulated in and derivable from the European framework will be analysed.

Section 2 will focus on the status of regulation in Germany. According to the current draft of the new law, rights of frequency will be transferable with the prior consent of the NRA, who

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sees to it that any transactions comply with competition law. Beforehand, the NRA may - after a public discussion process - under certain conditions (e.g. improved efficiency and interest of operators) declare specific frequency bands to be tradable and provide a framework for trade if certain results are to be expected and the general goals of regulation are not endangered. The paper will show how criteria specific to the sector and general competition law might be utilised when individual frequency trading is subject to approval by the NRA.

In section 3, the concepts contained in the Austrian draft will be presented. When auctioning new spectrum, the NRA may consider certain spectrum tradable. This provision might be understood to mean that frequency trading is only possible for new spectrum. In fact, this has been the main topic of discussion in Austria thus far. In case the NRA decides on an individual transaction, the technical and competition-related effects must be taken into account for the sake of preventing any distortion of competition law.

Section 4 describes the situation in the UK, according to the current discussion and draft Communications Bill. The issue of frequency trading has been subject to broad discussions in the UK since 1996. The study "Review of Radio Spectrum Management" arguments for frequency trading under a regime keeping transaction costs low, with clear definitions for rights of use and publicity. The Radio Communications Agency's "Strategy for the Future Use of the Radio Spectrum in the UK 2002" delivers arguments for an adequate regulatory framework for spectrum trading, taking into account that competition must not be distorted and finding mechanisms for guaranteeing the occurrence of transactions without interference.

Section 5 develops possible scenarios and transactions in the three relevant markets and tries to provide answers to how the NRA might apply the criteria to individual transactions.

Section 6 tries to answer the question of how different standards for frequency trading regulation in the member states might influence competition in the three markets, especially related to pan European operators and whether the regimes of frequency trading might influence the European consolidation processes in mobile telecommunications markets.