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SAP REG Comments on
Authorisation of terrestrial mobile networks complementary
to 2 GHz mobile satellite systems
Ofcom's statement and second consultation on proposals for
authorisation of 2 GHz MSS Complementary Ground Components (CGC)

The satellite communications industry in Europe represented by the SAP REG is pleased to submit the following comments to Ofcom's second consultation on the "Authorisation of terrestrial mobile networks complementary to 2 GHz mobile satellite systems".

The satellite industry formed the European Union Satellite Action Plan Regulatory Group (SAP REG) in 1997 under a mandate from the European Commission, to address from an industry perspective, regulatory provisions affecting satellite communications services in the community. SAP REG members include Aeromobile, Alcatel-Lucent Mobile Broadcast, Boeing, EADS Astrium, ESOA, Europa-Max, Eutelsat, France Telecom, GVF, Globalstar, Hispasat, Hogan & Hartson, Hughes Network Systems, Inmarsat Ventures PLC, Intelsat, ISI, Iridium, Mobile Satellite Ventures L.P., MSUA, New Skies Satellites N.V., ONDAS Media, ROSE Vision, SES Global, Solaris Mobile, Squire Sanders, Thales Alenia Space, Telespazio, Terrestar, Thuraya and WorldSpace Europe / WorldSpace.

The industry understands that one of the primary objectives of the present consultation is to address the technical terms and conditions of the CGC licence. While it is our intention to fully support the work that is ongoing at ETSI and ECC level with regard to the CGC standards, we wish to concentrate our comments to Ofcom on the proposed regulatory framework for authorising the use of spectrum for the CGC that complement 2 GHz MSS operating within the specific conditions imposed by the Decision 626/2008/EC.

The Statement provided by Ofcom further to its first consultation on the subject endorses a series of regulatory principles and licensing conditions that will establish spectrum access certainty in the country. It announces as well that another future statement before the end

of the year will detail the licence fee scheme applicable to the MSS operators selected and authorised by the EC Decision resulting from the ongoing procedure.

We consider it appropriate that, at this time, the industry re-conveys to Ofcom its views on the detrimental effect of Administrative Incentive Pricing (AIP) licence fees to CGCs in the UK. In particular, SAP REG responds to sections 5.57 through 5.69 of the consultation.

Ofcom has proposed to apply AIP fees for CGC spectrum based on “opportunity cost” (rather than administrative costs) with the understanding that it would incentivise spectrum efficiency, thus promoting innovation and competition. However we consider that given the EU regulatory framework constraints and the high level of engagement undertaken by the candidate operators for the MSS 2GHz, the application of these spectrum pricing principles would discourage the rolling out of CGCs in the UK and jeopardise the harmonisation efforts undertaken by the Community.

In accordance with the EU framework, as an integral part of the MSS infrastructure, CGCs will be awarded, in the UK or anywhere else within the EU, the same portion of the frequency bands awarded to the MSS operator(s) authorised by the EU selection process.

The spectrum in use by the CGCs is therefore shared with the MSS system and entirely under the control of the selected satellite operator. The EU spectrum Decision 2007/98/EC of February 2007 in Article 3 prohibits the use by any alternative service that would cause harmful interference.

Under the assumption that at least one of the selected MSS operators would cover the whole of the UK, (even without deployment of CGC), the use of the frequency bands in which it has been authorised would be strictly limited to “*any next best alternative non MSS use*” which could not cause harmful interference or claim protection against the selected MSS as established by Commission Decision 2007/98/EC. In light of this restriction, from a legal and practical point of view it is not feasible to roll-out a stand-alone terrestrial network as an alternative.

Nevertheless, Ofcom takes the position that it will define opportunity cost by the technological possibilities of using spectrum, rather than taking into account legal constraints on the use of the spectrum. SAP REG maintains this approach is unsound, as Ofcom does not have the authority to ignore legally binding constraints on particular frequency bands. We are unaware of any economic theory that would define opportunity cost in a way that ignores legal constraints on the use of a particular resource. Moreover, if the test for opportunity cost is what is technically feasible, then the test is meaningless. Ignoring legal standards (including constraints under the Table of Allocations) means that any service could be provided if a high enough power level is provided or interference is ignored. If that approach is taken, then the notion of “next best use” is divorced from reality and the resulting opportunity cost calculation lacks meaning.

SAP REG members believe that it is not correct to use price points from terrestrial use as the comparable where this is not legally allowed nor practically possible. Moreover, the high level at which the application of AIP pricing is set seriously risks to discourage the emergence of CGC operations. Such a scenario would defeat Ofcom objectives to increase quality of services and efficient use of spectrum, and would ultimately deny benefits to the UK citizens.

SAP REG believes that the vast majority of the NRAs in Europe are expected to apply cost recovery charges for the CGC spectrum, adopting the approach of cost recovery which will be more compatible with the objectives of fostering the EU single market and promoting greater harmonisation within the EU. ¹

SAP REG members, while they compliment and fully support the valuable advancement brought by Ofcom to the framing of the national conditions for the licensing of the CGC element, therefore believe that 'Administrative Cost Recovery' rather than AIP is the most objectively justified and proportionate fees mechanism for the authorisation of the CGCs.²

Respectfully submitted,

Gerry Oberst

Vice chairman, SAP REG

geoberst@hhlaw.com

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¹ MSS and CGCs using the 2GHz frequency band are a perfect illustration of "trans-European networks" whose deployment fits into the policy objectives of innovation and competition in the EU internal market of electronic communications which should be promoted by national regulatory authorities.

² cf. Art. 13 of Directive 2002/20/EC in conjunction with Art. 8 of Directive 2002/21/EC