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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Legal Framework for Mobile TV Networks and Services:
Best Practice for Authorisation – The EU Model**

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1. BACKGROUND AND PURPOSE

Following the strong political message given by the Commission in its Communication of 18 July 2007 “**Strengthening the Internal Market for Mobile TV**”¹, this Communication sets out some best practice examples from the Member States' regulatory approaches to mobile TV networks and services. Although it is for the Member States and competent regulatory authorities to decide upon the procedures for the granting of authorisations / licences, the Commission is keen to support the deployment of mobile TV in the EU and worldwide by providing guidance on appropriate regulatory practice for the authorisation of such services. This represents an additional step in the Commission strategy for mobile TV in the European Union.

Mobile TV is a new service platform for transmitting audiovisual content – and associated interactive services, in particular in association with 3G services - to a mobile device.² The 2007 Communication indicated the main elements of a European strategy for mobile TV with a view to facilitating the take-up of these innovative services across the Union. One of the key elements is the regulatory environment. **Legal certainty** is paramount for operators to take investment decisions, especially with respect to new, innovative technologies such as mobile TV; early investors in particular need to be reassured that they will not be subject to unforeseen constraints at a later stage. Other elements of the EU strategy include the recognition that DVB-H will be the standard for terrestrial mobile TV in Europe (DVB-H was added to the list of official standards of the European Union on 17 March 2008³), and the call for frequencies to be granted to mobile TV services in the UHF band⁴, notably on the occasion of the refarming of this band in the context of the digital dividend⁵. On the other hand, interoperability concerns still need to be tackled by industry and the Commission's services will monitor developments closely and assess the need for a policy initiative.

¹ COM(2007) 409, hereafter referred to as the "2007 Communication".

² There are several devices available for receiving Mobile TV, but the most common is the mobile phone.

³ Commission Decision 2008/286/EC of 17 March 2008 amending Decision 2007/176/EC as regards the List of standards and/or specifications for electronic communications networks, services and associated facilities and services (OJ L 93, 4.4.2008, p. 24)

⁴ Under the framework applicable to broadcast spectrum in the UHF band, Member States may not grant or maintain "exclusive or special rights of use of radio frequencies" (Article 4 of Directive 2002/77/EC), must ensure efficient use of spectrum (Article 8.2.d of the Framework Directive 2002/21/EC), and must encourage effective competition (Article 8.1) without any undue discrimination (Article 8.3.c). Combined, those articles result in an obligation to allocate spectrum in an efficient way.

⁵ Some Member States such as France, Italy and Austria already took the decision to allocate UHF spectrum for mobile TV use and the majority of the remaining Member States plans to do so alike.

In addition, and as the success of mobile TV largely depends on content availability, the new Directive on Audiovisual Media Services⁶ adapts audiovisual content rules to the evolution of Europe's audiovisual landscape and ensures a platform-neutral approach between broadcasting – including mobile broadcasting – and on-demand audiovisual media services.

When the Commission launched its mobile TV initiative, only some Member States had started addressing regulatory issues. The first action taken by the Commission's services aimed at clarifying the existing regulatory landscape in the EU via a study carried out for the Commission by independent consultants. The information, which was validated by the Committees of national experts established under the e-communications framework⁷, is updated regularly and published on the Commission's website⁸. This fact-finding exercise has shown a **high degree of variation** in the way mobile TV has been treated in national law.

After clarifying the regulatory situation, the Commission in its 2007 Communication called upon the Member States to put in place a **favourable regulatory environment** for the provision of mobile TV services and to coordinate with each other in order to exchange best practice in authorisation regimes. Furthermore, it committed itself to providing guidance on a coherent framework for authorisation regimes across the EU, by identifying best practice in the EU and promoting adoption by the Member States. This was endorsed by the Telecommunications Council's November 2007 conclusions on mobile TV, whereby it invited the Commission to go beyond a simple collection of information and *“to identify best practice with regard to the authorisation regimes across the EU and promote through appropriate guidance their consistent adoption by the Member States”*⁹.

A stakeholders' consultation was organised in February 2008 in the context of the preparation of these guidelines. This included a Commission workshop for the industry, at which stakeholders were invited to submit written contributions. Two major industry associations¹⁰ and several individual companies replied to the call for input. In addition, this issue has been presented and discussed in several meetings with Member State representatives in the framework of the Communications Committee and its broadcasting experts' sub-committee (CBISS).

Mobile TV lies at the heart of convergence. This means that at EU level, mobile TV is subject to two sets of rules, governing transmission and content: the e-communications framework, including aspects related to spectrum policy, and the new Audiovisual Media Services Directive. This Communication addresses authorisation models at national level only with reference to the **e-communications aspects of national regulatory regimes**, and does not touch upon content licences. It summarises the main results of the fact-finding exercise and indicates best practice examples with regard to the main elements of the authorisation regimes for mobile TV. This is intended to serve as a basis for further discussion and exchange of best practice among national authorities.

⁶ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 (OJ L 332, 18.12.2007, p. 27).

⁷ The Communications Committee (COCOM) and its subgroups on authorisation (AUTH) and broadcasting matters (CBISS).

⁸ http://ec.europa.eu/information_society/policy/ecomms/doc/current/broadcasting/mobile_tv/table_mobile_tv_auth_web_july08.pdf

⁹ Council Conclusions - Strengthening the Internal Market for Mobile TV, 29 November 2007

¹⁰ UMTS Forum and GSM Association Mobile TV Joint Work Group; BMCOforum

2. AUTHORISATION OF MOBILE TV NETWORKS AND SERVICES ACROSS THE EU: MAIN MODELS AND BEST PRACTICE

Regulatory approaches to the authorisation of mobile TV networks and services **vary considerably** across the EU. In several Member States, the general regime applying to broadcasting would implicitly or explicitly be extended to mobile TV broadcasting. In some others, there are no specific rules, or the regulatory framework for this new platform is still being debated. So far, there is little experience with broadcasting services using exclusively mobile transmission.

As stated above, it is of paramount importance to **avoid a legal vacuum** or situations characterised by a high degree of **regulatory uncertainty** at national level which would discourage investment and potential mobile TV operators in the Internal Market. Differences in national regimes are not *per se* an impediment to the successful launch of mobile TV services, as regulation may need to cater for national or even local specificities. However, mobile TV is a **wireless service** and, as such, it has the potential to acquire a cross-border dimension in the future. From this perspective, authorisation regimes for mobile TV services should take into account the **Internal Market dimension**. The aim should be to strive for a **level playing field** allowing the various actors to compete under similar conditions. **Consistency of regulatory approaches across the EU** is needed in order to create a regulatory environment conducive to investment and innovation.

Mobile TV regulation is constrained by the scarcity of spectrum and by the need to facilitate market entry to all players, coming from both the broadcasting and the telecommunications world. In the **mobile TV value chain**, several layers are combined, starting from the network operation, service platform operation and content provision, to the distribution chain. **Currently, the most common practice is to assign spectrum to the platform operator or, more rarely, to the network operator.** In this case it will act, in practice, also as the platform operator or it may sub-contract this activity.¹¹ It is around this authorisation regime - defining rights and obligations of the licensed operator - that the regulatory models are built up.

It is currently possible to identify the following **three main regulatory models** for the mobile TV market in Europe:

One model is based on the **extension of existing Digital Terrestrial Television (DTT) rules** to new services, in an explicit or in an implicit manner (e.g. Italy, UK). Although this model presents the advantage of simplicity and swiftness of application, a **specific regime for mobile TV should be provided for under national legislation; the simple extension of DTT rules could prove insufficient and/or inadequate after an initial period.**

A second model is the **“plain wholesale model”**. Since the regulation is focused on the wholesale operator which plays a key role in network management, spectrum acquisition, licensing and optionally also content aggregation, this may lead to deadlock, as happened in the Finnish case, if the content providers do not have an incentive to make content available. The network operator needs also to apply fair, reasonable and non-discriminatory terms to mobile TV service providers present on its network. In addition, the “plain wholesale model” where spectrum is attributed to a single operator may raise concerns under the Competition

¹¹ It is only in Germany that a network operating licence was granted separately from the platform service licence.

Directive¹², in particular if the assignment of spectrum is made without an open and fair procedure under non-discriminatory rules¹³.

In the third model, the “**integrated approach**”, all players in the mobile TV value chain, including content providers, have to find an agreement on the services before the granting of authorisation (e.g. Austria).¹⁴ This regulatory model presents the advantage of **avoiding deadlocks in the value chain**. Vertical integration between players is established in two ways: first, one of the selection criteria for the network/platform operator is the conclusion of agreements with programme-aggregators and/or broadcasters to ensure a feasible business model; second, content providers need a regular licence for digital television, which is granted upon proof of contracts with the multiplex operator.

Under this model, a coordinated timing of the start of commercial operations of all actors in the value chain can be ensured, provided that the rules set in place are coherent. This is why **the “integrated approach”, seems to be particularly suited to guarantee the successful launch of mobile TV service.**

Best practice guideline: Any new authorisation regime for mobile TV under national law should aim at involving the different actors in the value chain whilst ensuring compliance with EC and national competition rules.

3. IDENTIFYING REGULATORY BEST PRACTICE AT THE VARIOUS LEVELS OF THE REGULATORY REGIME

In order to identify regulatory best practice for mobile TV, it is important to define the main elements of the regulatory regime to be taken into account. For this purpose, the following clusters have been identified:

- (1) General framework
- (2) Authorisation regimes
- (3) Award procedures
- (4) Specific aspects.

This conceptual framework was discussed with the Member States and with industry representatives in February 2008. These elements have then been assessed keeping in mind the **objectives of regulation, from an EU perspective**. As stated in the 2007 Communication, the main regulatory objective should be a light regulatory regime, enabling the launch of mobile TV services without undue impediments and delays. No unnecessary obligations should be imposed on market players. At the same time, regulation should provide for the minimum requirements to be fulfilled in order to ensure efficient use of frequencies.

¹² Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (Text with EEA relevance), (OJ L 249, 17.9.2002, p. 21–26)

¹³ See also article 5(2) of the Authorisation Directive 2002/20/EC (OJ L 108, 24.04.2002, p. 21).

¹⁴ Privatfernsehgesetz (PrTV-G) [BGBl. I No 84/2001] as amended by BGBl. I No 52/2007, Section 23 paragraph (3) subparagraph 3.

3.1. General framework

In countries where specific legislation will be adopted, but also in countries where the existing broadcasting rules apply for the time being to this new service platform, the main characteristics of the general regulatory framework for mobile TV should be **clarity, transparency and efficiency of procedures**. A **timely legislative process** is also a major factor. If the regulation needs to be completed by implementing measures, it is advisable that these measures be adopted without delay. The start of mobile TV services should not be held up because the relevant legislation or implementing regulations are not adopted on time.

It should also be recalled that actors in the mobile TV value chain come from different industry sectors. It is therefore important that the **authorisation process for this new service platform is not restricted to one category of players, but is open** to all economic operators that have the ability to comply with the minimum necessary requirements.

Best practice guideline: Authorisation procedures should be open to all market players in order to ensure a level playing field for different actors in the mobile TV value chain.

3.1.1. Public consultation mechanism

As mobile TV economic operators may have conflicting interests, mobile TV regulation needs to take into account their various concerns. **Provision for public consultation mechanisms**, before the adoption of any specific regulation or in the context of a review of the existing rules, may facilitate the tailoring of regulation to the needs of the market and secure the compliance of market players with the new provisions.

Best practice guideline: Public consultation of citizens and all interested parties should be organised systematically, in parallel with commercial trials on, *inter alia*, the opportunities related to mobile TV deployment, the use of the digital dividend for mobile TV services and the financing models.

3.1.2. Regular reporting and review

Regulation for mobile TV services needs to be not only clear and transparent but also **flexible and fine-tuned to new developments**, in an innovative, fast-changing technological environment. Associated with regular reporting by public authorities on market developments, the provision for a review clause, as set out in the French regime, is positive in this respect. Of course, any such review, possibly resulting from market reporting, should strike a good **balance between the pace of technological and market change and the need to ensure legal certainty for market players**.

Best practice guideline: Regular reporting by public authorities on market developments should take place, together with appropriate proposals to adapt existing rules.

3.2. Authorisation regimes

3.2.1 *Clear relationship between applicable rules*

Authorisation regimes are the core element of the regulatory environment for mobile TV. Due to the “convergent” nature of mobile TV, it is necessary to identify specifically the rights and obligations of the operators, as e-communications operators and as broadcasting providers. In this respect, it is important that the **relationship between e-communications, spectrum and content aspects be clearly defined**, in order to avoid regulatory ambiguity or overlapping.

Best practice guideline: The relationship between e-communications, spectrum and content rules should be clearly defined, in order to promote a clear and transparent authorisation regime.

3.2.2. *"One-stop shopping"*

In the majority of Member States, the granting of authorisation for mobile TV falls under the competence of more than one authority – ministry and / or independent regulatory authority - due to the separation between e-communications and media aspects. **Whether the regulator is converged or not, it is important that a clear and coherent sharing of responsibilities is established.**

“**One-stop shopping**”, whereby operators have a single contact point to deal with for different types of authorisation, is considered by the majority of market players as best practice, provided that the principles of pluralism and cultural diversity are respected. The advantage of this procedure stems from administrative simplification and coordinated timing, in cases where multiple clearance is needed.

Best practice guideline: The national regime for mobile TV should ensure a "one-stop-shop" approach or at least limit to the minimum the number of public players in decisions to grant mobile TV authorisations. In Member States with a sub-national authorisation level, a similar or coordinated procedure for all federal/regional bodies should be put in place. "One-stop shopping" is of particular importance when multiple clearance is required.

3.3. Award procedures

Time is a key factor for the EU as a whole in terms of competitiveness in the global marketplace. For the quick launch of mobile TV in all Member States, a key to success is a **clear schedule for the award procedure** which is **public, transparent and defined in advance**.

Best practice guideline: A clear schedule for the award procedure should be announced no later than the start of the commercial trials of mobile TV services.

3.3.1. *Award type and criteria*

Auctions and beauty contests are two alternative ways for national authorities to grant authorisations. Until now, beauty contests have tended to be used to assign the platform authorisation. Award criteria are an important tool at the disposal of national authorities to

ensure that services provided will comply with certain requirements, which are the guarantee of an efficient use of spectrum dedicated to mobile TV.

The award procedure should also secure the timely start of mobile TV operations. **Certain conditions could be used to minimise the risk of a deadlock, e.g. between platform operators, content providers and mobile operators.** Requirements for applicants may therefore include agreements between the different players in the value chain, subject to compliance with competition rules.

In terms of specific award criteria, it is worth stressing the importance of **quality of service**, which plays a key role in terms of consumers' expectations for mobile TV, in particular with reference to indoor coverage and transmission quality.

Best practice guideline: Objective, transparent and non-discriminatory award criteria should be applied, in conformity with Community law. Award procedures should encourage a collaborative approach between the players, subject to compliance with competition rules. Requirements for quality of service, including indoor coverage, and optimal use of the spectrum should be part of the award conditions.

3.3.2. *Other conditions of award*

In most of the Member States, a single multiplex is or will be dedicated to mobile TV – in France, the ongoing discussion opens the way to two multiplexes, on frequencies from the digital dividend, e.g. frequencies freed by analogue switch-off. In order to **prevent spectrum hoarding**, regulation may include a provision for a maximum period of inactivity.

Best practice guideline: The possibility of withdrawing spectrum awarded for mobile TV that is not put to use within a reasonable time period should be included in the award conditions.

3.4. **Specific aspects**

At this early stage of development of the market, it would appear desirable that any specific conditions attached to authorisations are appropriate and avoid imposing unnecessary burdens on operators.

3.4.1. *“Must-carry” rules*

In accordance with European legislation¹⁵, “must-carry” obligations can only be imposed if a significant number of end-users of a network use it as their principal means to receive radio and television broadcasts. At present, mobile TV is still in its start-up phase; **“must-carry” rules may not be imposed on mobile TV at this stage.** At any rate, channels benefiting from must-carry are also often “must-have” channels, which actually increase the commercial value for the distribution services and are likely to be included in any main mobile TV bouquet.

¹⁵ Article 31, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002, Universal Service Directive (OJ L 108, 24.4.2002, p. 51–77)

In that respect, and in the spirit of the cooperative approach advocated by this Communication, national regulatory authorities could usefully envisage “must offer” rules for mobile TV as a nascent service needing attractive content.

Best practice guideline: A discussion on “must offer” rules for mobile TV services should be organised in every Member State and at EU level.

3.4.2. *Network Infrastructure Sharing*

Network infrastructure sharing is an important element to minimise roll out costs and increase coverage and transmission capacity.¹⁶ As stated in the 2007 Communication, Member States may consider permitting **network infrastructure sharing**¹⁷ and encouraging co-location when this is needed to facilitate network deployment. Co-location may also be imposed where necessary to address possible environmental concerns¹⁸.

Best practice guideline: Network infrastructure sharing for mobile TV services should be encouraged, to the extent permitted by competition rules.

3.4.3. *Interoperability and roaming*

The objective of **full interoperability** across networks and devices remains important in order to make possible EU-wide roaming where appropriate, and interoperable solutions should be favoured. Developments in the market have shown that interoperability can be achieved when stakeholders act together with a common aim of implementing a technical standard such as DVB-H. Efforts are currently being made in this respect in industrial and standardisation fora, notably focusing on the services and applications layers.

Furthermore, the wireless nature of mobile TV means that consumers will legitimately expect devices to work across borders, as is the case with “roaming” mobile telephony. **EU-wide mobile TV roaming** is likely to gain importance as the take-up of services grows across Europe. It should also be recalled that some **cross-border or pan-European channels** are already available today and can provide an important test-bed for future pan-European services.¹⁹ The launch of DVB-SH based mobile satellite TV services is expected for next year in Europe.

Best practice guideline: Aspects related to interoperability and roaming for mobile TV should be given due consideration in light of the wireless nature of the services.

¹⁶ A similar position is supported at the international level, for example at the 8th Global Symposium for Regulators on 13 March 2008, Pattaya, Thailand.

¹⁷ Such agreements have been in place in some markets in the context of GSM and/or UMTS infrastructure and exempted by the Commission under the EU Competition rules. E.g. Commission Decision of 16 July 2003 (Case COMP/38.369: T-Mobile Deutschland/O2 Germany: Network Sharing Rahmenvertrag - OJ L 75, 12.3.2004, p. 32) and Judgment of the CFI of 2 May 2006 (Case T-328/03).

¹⁸ In line with Article 12 of the Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002, Framework Directive (OJ L 108, 24.4.2002, p. 33–50)

¹⁹ By way of example, Euronews, Arte, 3 Sat, Eurosport, France 24 and BBC World.

4. CONCLUSIONS AND FOLLOW-UP

Clearly, regulatory **best practice needs to be shared in order to be effective**. In this context, the Commission will continue to promote the exchange of information, experience and best practice between national administrations and other stakeholders. The information on mobile TV regulation submitted by the Member States is publicly available on the Commission's website²⁰ and will continue to be updated regularly. Exchanges of information and best practice will take place notably through the existing committees of Member States' experts, such as the Communications Committee and its sub-committees on authorisation and broadcasting. The Commission's services will also report regularly to the European Parliament and the Council's working parties on this issue.

²⁰ *Idem* footnote 8