

Results and conclusions of the public consultation on Inmarsat's proposed "European Aviation Network" in the 2 GHz band

The Bundesnetzagentur launched a consultation on Inmarsat's proposed European Aviation Network (EAN) in Official Gazette Communication No 679/2016 published on 1 June 2016. The responses to the consultation show that the proposed use of ground components for the EAN is controversial:

- **Inmarsat, Deutsche Telekom, Nokia** and **Thales** are directly involved in the value-added chain for implementation of the EAN and fully support the project.
- **Another company** sees Inmarsat's project as an important building block in providing coverage for airline passengers in the future.
- **EchoStar**, another operator of 2 GHz mobile satellite services, also favours a flexible interpretation of the regulatory framework.
- Mobile operators **Telefónica** and **Vodafone** stated that the effects of synergy would be detrimental in particular to them. There would be not only an abstract but also a direct impact on competition, for example a lock-in effect for customers at airports or on board aircraft wishing to connect to a network.
- **Panasonic** and **ViaSat**, which provide broadband telecommunications services for aircraft via satellite only, stated that the extensive use of complementary ground components would have a massive impact on competition.

Article 7(1) of Decision No 626/2008/EC (known as the 2 GHz MSS Decision) provides the legal basis for the EAN. Accordingly, the EAN must be "in accordance with Article 4(1)(c) *[of the 2 GHz MSS Decision]*, and in accordance with national and Community law".

The EAN or comparable systems are therefore to be assessed in particular with respect to the following secondary EU legislation:

- a. **Commission Decision 2007/98/EC** on the harmonised use of radio spectrum in the 2 GHz frequency bands for the implementation of systems providing mobile satellite services, in particular Articles 2 and 3 and recitals (4) and (9);

- b. **Decision No 626/2008/EC of the European Parliament and of the Council** on the selection and authorisation of systems providing mobile satellite services (MSS), in particular Articles 2, 4, 7 and 8 and recital (18);
- c. **Commission Decision 2009/449/EC** on the selection of operators of pan-European systems providing mobile satellite services (MSS).

The Bundesnetzagentur finds that Inmarsat's proposed EAN is not directly reflected in this underlying EU legislation. However, the Decisions suggest there is scope that enables the EAN to be authorised under certain conditions.

In addition, the European Commission has indicated that to date it does not see any legal or competitive problems with respect to the EAN.

For these reasons, the Bundesnetzagentur considers that the EAN can be authorised subject to the following conditions:

Secondary legislation framework for selection procedure

- The milestones set out in the Annex to Decision No 626/2008/EC must be met before the EAN enters commercial service. The satellite components must therefore be operational and offered to the customer.

Note: In the event of failure of the satellite system, Article 8(3)(c) of Decision No 626/2008/EC – independent operation of complementary ground components for no longer than 18 months – applies.

- The coverage requirement according to Article 4(1)(c) of Decision No 626/2008/EC must be met.

Avoidance of distortion of competition and radio interference

- The ground components used for the EAN may be used for mobile communication services on board aircraft only and not for terrestrial mobile services.
- In accordance with Commission Implementing Decision (EU) 2016/2317, the mobile radio interface of mobile terminals used on board aircraft may only be activated during flight (between take-off and landing) – as a rule above 3,000 metres – to protect terrestrial mobile networks.
- In light of the compatibility studies in ECC Report 233 ("Adjacent band compatibility studies for aeronautical CGC systems operating in the bands 1980-2010 MHz and 2170-2200 MHz", May 2015), the EAN may only be operated during flight (between take-off and landing) at a minimum height of 1,000 metres.
- Airline passengers' mobile terminals may not be transferred automatically from the EAN to a terrestrial mobile network.
- To ensure efficient use of the radio spectrum, Inmarsat is authorised – taking due account of German and European competition law – to enter into cooperation agreements with other companies that enable these companies, taking account of the provisions of Decision No 626/2008/EC, to access the 2 GHz MSS spectrum assigned to Inmarsat for use via both satellite and ground components or to provide services on this basis (see Article 9b(1) of the Framework Directive (Directive 2002/21/EC)).
- Should Inmarsat allow other companies to access 2 GHz MSS spectrum capacity for use or to provide services, third parties must also be given non-discriminatory access to 2 GHz MSS spectrum capacity upon request.
- Inmarsat undertakes to negotiate with third parties the access as referred to in the two previous points.