



Mobile Broadcasting and EU Competition Law

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Outline

- 1. Article 81 of the EC Treaty**
- 2. Article 82 of the EC Treaty**
- 3. The Competition Directive**
- 4. Some Preliminary Conclusions**

Article 81 of the EC Treaty

- Prohibits agreements which have as their object or effect the prevention, restriction or distortion of competition within the Common Market
- Exemption is possible under Article 81(3)
- The 3G Network Sharing Decisions of 2003:
 - separate decisions for Germany and the UK
 - site sharing in itself did not raise competition concerns
 - national roaming was exempted under certain conditions

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Article 81 of the EC Treaty (cont'd)

- 1 May 2004: a directly applicable exception system replaced the previous notification system
- It is not possible anymore to notify to the European Commission, although a shrinking number of Member States still maintains a notification system
- Possibility of getting informal guidance on novel questions from the Commission (Commission Notice 2004/C 101/06)

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Article 82 of the EC Treaty

- Prohibits the abuse of a dominant position within the Common Market or in a substantial part of it
- Some examples are listed in the EC Treaty
- Any finding of an abuse requires:
 - The definition of the relevant product market
 - The definition of the relevant geographic market
 - The establishment of a dominant position within the relevant markets defined
 - The proof of the abusive behaviour

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Article 82 of the EC Treaty (cont'd)

- Today, any attempt to define a relevant market or to assess a possibly abusive behaviour would be premature, mostly because of the absence of any commercially offered mobile broadcasting service.
- However, certain competition-related concerns can already be tackled at the licensing stage: a good example for this is the mobile television licence recently issued in Finland

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The Competition Directive

- Broadcasting networks and services are covered by Directive 2002/77/EC (“the Competition Directive”)
- The granting of exclusive and special rights for broadcasting services and networks is prohibited
- General authorisations should be based on objective, non-discriminatory, proportionate and transparent criteria
- The assignment of rights of use of broadcasting frequencies is in the scope of the Directive, but special procedures can be followed at national level for Public Service Broadcasters

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Some Preliminary Conclusions

- Although the notification requirement to the European Commission does not apply anymore, future site sharing agreements should comply with Article 81 of the EC Treaty
- The exact applicability of Article 82. of the EC Treaty can not be assessed today
- Nevertheless, certain competition-related concerns can already be tackled at the licensing stage
- The relevant provisions of the Competition Directive will remain applicable

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