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Sent via email

Consultation Response: MSS 2 GHz Decision

Sir,

Inmarsat Ventures Limited is pleased to provide this input to Portugal's public consultation on domestic provisions relating to the 2 GHz process. As one of the two 'Selected Operators', via the 'Selection Decision'¹ of 2009, Inmarsat is directly affected by the measures set out in the draft Decision. National licensing developments that take account of the requirements of the Operator are critical to Inmarsat's ability to implement the 'EuropaSat' S-band system. This is particularly important given that Member States are responsible for ensuring that the Operators have rights to operate an MSS system² and that any necessary authorisations to deploy CGC's are available³.

Investment and ecosystem partners maintain careful review on national licensing developments during due diligence negotiations – this takes on an increased importance as national provisions can (and do) vary from Member State to Member State. Due to the economic linkages between MSS and the CGC element, a feasible set of domestic regulations must ensure that licence fees levied on the CGC component do not undermine the viability of the MSS business case.

This is a complicated ecosystem and business model – clear and enabling licensing fees and conditions are crucial to the successful financing of EuropaSat.

Key metrics under review are:

1. **Cost of market access** – can the business plan bear the cost of licences/authorisations levied by Member States given that the ecosystem is nascent and that the pan-European business plan is predicated on a core satellite component?
2. **Service neutrality** – Inmarsat's immediate business case is directed towards the delivery of a wholesale hybrid 2-way data network, incorporating CGC's in 2-way mode. Does the licensing framework permit MSS and CGC operation in this network topology?

¹ 2009/449/EC

² 626/2008/EC Article 7

³ Ibid Article 8

The recent adoption by the European Commission of the independent study into CGC licensing⁴ found that considerable work remained to be completed by Member States and that:

'The conclusion we draw from this finding is that the 2 GHz MSS operators as of the end of 2010 could not yet say what services would be permitted in about half the Member States.'

In this regard, the action taken by Portugal to develop clear terms of access is welcomed; however it is important to note that until now, investors have not been able to estimate EuropaSat's rights in Portugal – the impact on these legacy discussions cannot be retro-impacted by action at this time.

On the specific terms of the consultation, our views are that:

Section '8' '1' of the consultation document (Draft Decision)

Inmarsat agrees with the proposal to issue a right of use encompassing both the satellite and CGC elements. The two segments are integrated at the network layer and also through the business plan – both are dependent on each other and the single authorisation described in the Decision reflects this perspective. However, CGC deployment is expected to scale in line with market demand; hence, service delivery via the satellite segment only in Portugal is expected in the early stages of the EuropaSat venture.

Section '8' '2' of the consultation document (Draft Decision)

- Inmarsat agrees with the references to the European level conditions defined in 'a', 'b', 'c'.
- With regard to no. 1 of Article 27 of the ECL. Inmarsat wishes to stress that 'EuropaSat's' operations will be at the wholesale level only, and will not entail Inmarsat entering into direct billing relationships with end consumers. In this regard, it is important to ensure that the 'General Conditions' set out in Article 27 could apply to downstream supply chain partners of Inmarsat - where they are not relevant, they do not apply.
- Due to the intent of the EuropaSat venture to serve disparate user groups including: communications service providers, public protection and disaster relief (PPDR) users as well as machine to machine (including smart grid, telemetry, intelligent transport) applications; provisions pertaining to public networks, such as must carry obligations, may not always be applicable to this specific network type. Similarly contributions to the universal service fund may not be applicable when the network functions with significant 'private network' character.
- With regard to Article 27 'd', Inmarsat welcomes compliance with these provisions and wishes to highlight that the presence of the core satellite component will provide a critical resource available to emergency users during major disasters.

⁴ Report for the European Commission Study on MSS Authorisation Regimes and Authorisations in the EU Member States SMART N° 2010/20 O.J./S247-353250-2009-EN of 21/12/2009 Gerald E. Oberst, Jr. Partner, Hogan Lovells International LLP.

- Inmarsat agrees with the reference to no. 1 of Article 32 of the Electronic Communications Law.

Fees

- It is understood that specific fees are not the subject of this consultation as they are to be set by government. The viability of the business is substantially influenced by the fee level set. **Portugal's national framework cannot be regarded as finalised until concrete fees are provided.**
- With regard to the fee schedule identified by 'e' '6', it is important to note that the S-band system is subject to a number of specific constraints that do not bear more generally on national operators. Specifically, the coverage requirements by satellite and the nascent ecosystem are crucial factors to take into account.
- The conditions of the European level spectrum award place obligations on Inmarsat beyond the borders of Portugal – these conditions are unique and do not bear on other licence holders, who are subject only to Portugal's domestic code.
- As described in the consultation document, the core satellite component defines the system as MSS, though with CGC elements integrated into the network. Fees levied on EuropaSat should take into account that the terrestrial component of the system has significant MSS character and is not a standard land mobile network.
- Public network operators have access to commodity terminal product and a formed ecosystem characterised by competition amongst hardware and other network equipment suppliers. Due to the nascency of the 2 GHz ecosystem, the market shares many similarities with the market for start up technologies – **substantial fees from the first days of the venture will price EuropaSat out of the Portuguese market and we urge ANACOM to ensure that the final fee schedule is enabling and fit for purpose.**
- It is important to recognise that Inmarsat is fully incentivised to utilise the spectrum to its fullest extent and in the most efficient manner possible. The opportunity provided by the Spectrum Decision⁵ to co-locate satellite and terrestrial infrastructure under the control of the satellite operator *per se* introduces substantial potential for gains in spectrum efficiency; however, these gains will be foregone if pricing renders full network deployment uneconomical.

⁵ 2007/98/EC



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- EuropaSat's target markets, particularly Machine to Machine and PPDR, are already served by incumbent network providers. EuropaSat will provide an enhanced measure of competition into those markets and will hence be incentivised by competition to deliver further efficiencies and contributions towards consumer welfare.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ann Vandembroucke", with a horizontal line underneath.

Ann Vandembroucke
Director International Regulatory & Policy Issues