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SCARCITY IN SPACE: THE SPECTRUM/ORBIT TRADING SOLUTION (?)

Abstract

The spectrum/orbit is one of humanity's most valuable scarce natural resource. Access to orbital positions along with access to radio frequencies is a prerequisite for the operation of a satellite system. The rapid development of the satellite industry has driven a large portion of spectrum/orbit demand. To this effect, it is critical that these resources are managed as efficient as possible.

The fairly recent trend of spectrum/orbit trading allows spectrum users the flexibility to transfer part or all of their rights to third parties. This mechanism contributes to an economically efficient use of the spectrum/orbit resources as they are to be used by those who value them the most. Allowing trading makes it easier for new players to enter the market and for space technology to develop. An increasing number of countries have adopted, or are in the process of adopting this concept in order to give market forces a greater role in the determination of how spectrum/orbit resources should be managed. The European Union (EU) in its Directive 2002/21/EC as amended in 2009, obliges the EU Member States to ensure that undertakings may transfer or lease to other undertakings the rights of use of radio frequencies.

The present paper studies how the spectrum/orbit trading is regulated from an international, European and national point of view. In this context, this paper explores whether the spectrum/orbit trading is compatible with the Outer Space Treaty, especially with the non-appropriation principle, as well as with the procedures set forth by the International Telecommunication Union. Moreover, recognizing that individual spectrum/orbit trades may lead to a distortion of competition, this paper looks into the competition safeguards that need to be present in the relevant legislative framework to prevent potential competition abuses.