European Satellite Operators Association

Monday, 24 October 2005

Mr. Paul Counet
DG ENTR/ H2

European Space Policy
Industrial Policy for the Space Sector
Position Papers

Dear Mr. Counet,

ESOA is happy to submit its views on the EC's Industrial Policy for Space as follows:

REGULATORY ISSUES:
1. **Frequency spectrum, orbital positions**
2. **Licensing**
3. **Inter-Operability**

1. Frequency spectrum, orbital positions:

Frequency spectrum is allocated on a global level by the ITU and the CEPT contributes at European level to harmonise the use of specific frequency bands. This is for the good and simple reason that spectrum is used across borders, orbital positions are available to players from all over the globe, and satellites placed on them can serve large geographical areas irrespective of national borders.

Recent developments in Member States to 'optimise the use of spectrum', it being a resource in high demand, cause concern as they may encroach on the positive effect of the international harmonisation by creating 'special' and different circumstances from one Member State to another. ESOA recalls that the EC in its recent Communication to the Council concerning using a market-based approach to spectrum management in the EU[1] stated:

"Spectrum .... managed at the global level, such as aviation and satellites, is not part of this proposal."

[1] EC COM (2005) 400 FINAL

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The EC has thus already recognised the need to exclude satellite from the scope of application of market mechanisms to spectrum due to the fact that this is managed on a global level. However we note that the effect of this Communication is not binding on Member States and does not solve all issues such as the effect of trading other wireless services in shared bands. ESOA is strongly committed to support CEPT and eventual RSPG/ RSC efforts and therefore believes that if a Member State decides to follow an independent course of action to optimise its use of spectrum, which is not coordinated throughout the EU, it should not have the backing of the EU, as minimum harmonisation is an essential element of the sustainable deployment of satellite solutions and a component of efficient management of the radio spectrum as a whole.

Further, although there may be a legitimate desire to avoid 'paper tigers', ESOA advises caution when seeking optimisation "so as to ensure that frequencies and positions will only be assigned to systems that will in the end use them". For one, satellite systems require foresight, planning and considerable upfront investment; therefore it is quite normal that an assignment may be held without imminent use and further some amount of strategic planning in regard to frequencies and positions can be an important component of innovation and competitive edge which should not be ignored.

2. Licensing:

ESOA and its members have valued the efforts of the CEPT to ensure free circulation of terminals as well as the creation of a one-stop-shop for satellite services and networks followed by a proposal for a common application form. While exempting users of terminals for licensing obligations was generally successful[2], the initiatives did not achieve a workable level of harmonisation of licensing procedures and conditions imposed on service providers/ network operators nor did it alleviate the necessity for certain providers to obtain licenses in every single EU Member State based on highly divergent licensing procedures.

Given the limitations of the end result of the considerable effort put into harmonisation, ESOA is fully supportive of the paradigm shift implemented by the Authorisation Directive 2002/20/EC. The principle of regulating by exception has in a number of EU countries lead to general authorisation for satellite networks and services. However a substantial number of countries have seized the opportunity offered by the Directive to maintain individual licences to the users of spectrum as a means to licence EComms services and networks. The Authorisation Directive stipulates that countries should refrain from issuing individual licences where the risk of harmful interference is minimal. Satellite services, using harmonised on a pan-European or even global scale and fully coordinated with other services are the prime example of a service carrying minimal risk of harmful interference. This is to be clearly acknowledged.

[2] Although site clearance and registration procedures have often been maintained at national level for the use of fixed terminal equipment

ESOA would encourage the Commission to continue along the philosophy of the Authorisation Directive and in the context of the forthcoming Review of the 2002 EComms Framework, to clarify that satellite services operating in harmonised bands or that are fully co-ordinated with sharing services should be considered as a category where harmful interference will not occur. Hence no EU Member State has sufficient reason to impose an individual licence, either on the use of spectrum, or on terminal equipment, or on the provision of network/ service. A clear EU policy in this regard would provide a valuable clarification to implement the concept. Further, ESOA would be happy to develop specific views, in conjunction with SAP REG, on the optimal way to amend selected Directives and Decisions of the Framework accordingly and hopes that DG ENTR will also support this process.

3. Inter-operability:

Interoperability of the space and terrestrial components of innovative satellite systems incorporating a complementary ground component would enhance the competitiveness of satellite systems and enable the greater proliferation of their services. Nevertheless this is not an easy task bringing with it both regulatory licensing and competition issues) and standardisation considerations. ESOA considers that any efforts in this regard by the EC should be in close cooperation with those industry players closest to the users and should also be targeted to specific application areas (mobile satellite services for example) so as to be manageable and realistic.

STANDARDISATION:

1. Standardisation as an element of the European Space Programme
2. Comments on the draft mandate to ETSI/ CEN/ CENELEC

1. Standardisation as an element of the European Space Programme:

ESOA supports the EC's intended mandate to ETSI/ CEN/ CENELEC because standards can give volume production, lower terminal costs, stimulate new services, grow markets and contribute to competitiveness of the industry as a whole. They are also necessary to ensure interconnection and interoperability between different products and between different systems, including terrestrial and satellite-based systems.

While ESOA supports the notion of standardisation for these reasons, we consider it unwise for the European Space Programme to establish and implement a single set of European space standards for all future and existing space projects, which may be mandatory. Applying this to existing and developed services is impractical since it is impossible to retrofit satellites in outer space and terminals held by customers which may be anywhere around the globe. For future services, this would constrain the

ability of operators to develop solutions or make use of commercially efficient approaches that may not be within the approved 'standards'. ESOA would consider it wise to distinguish carefully between the availability of voluntary, industry-accepted 'standards' and mandatory standards which although useful in some areas, may be harmful in others. In the past, the DVB project and ETSI (e.g. through the S-UMTS working group) have played a crucial role in developing open and high quality standards, based on market-based consensus and following well-defined commercial requirements. This approach should be maintained and managed as efficiently as possible.

ESOA considers that more can be done and given the commercial experience of its members and their proximity to the market and its needs, we feel that a close cooperation between ESOA and the EC and ETSI/CEN/CENELEC will be beneficial. ESOA notes for the EC's information that some of its member companies are already co-operating with ETSI in developing standards in specific areas.

ESOA would suggest that particular emphasis is put on research and standardisation in areas that need volume production and interoperability, including two-way broadband communication and broadcasting via satellite. The standards should consider both fixed/ portable and mobile terminals. Since satellites have footprints that cover large territories, beyond the boundaries of EU borders, there is no issue with availability of the signal or roaming and it is easy to combine different standards in dual use terminals. A single standard is therefore neither desirable nor needed.

2. Mandate to ETSI/ CEN/ CENELEC:

The proposed mandate should have a positive impact, as it will allow for the formalization of the satellite interface standardization.
The mandate should also aim at providing a better technical interoperability between:

- Terrestrial & satellite applications
- Satellite applications

Furthermore, ESOA considers that the mandate should be more general when referring to satellite telecommunications, and give due consideration especially to applications intended for the mass market and where interoperability is important in order to secure volume production by independent manufacturers. The standardisation effort should be followed by actions, as necessary, to ensure that technical neutrality can be maintained for satellite versus terrestrial based solutions.

ESOA members are happy to continue and contribute to work with ETSI and other relevant organisations in the manner in which they already do.

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INTERNATIONAL MARKETS:

1. Dialogue between EU – US to promote cooperation in key areas (EO/ Galileo/ GPS/ electronic communication/ space science & exploration)

2. Address remaining regulatory barriers on the transatlantic market:

- remove unnecessary ITAR controls

- liberalise launcher market

1. Dialogue between EU – US to promote cooperation in key areas (EO/ Galileo/ GPS/ electronic communication/ space science & exploration):

ESOA has indeed made the point to DG ENTR that other countries across the globe spend public money in their space industries, and in particular in satellite telecommunications, to a far greater extent than Europe. As recognised by DG ENTR, this brings with it technology advancement for industrial players in those countries and has a knock-on commercial effect giving them competitive edge on a global front. On top of this, other factors such as market access issues, protectionism, etc. also play a key role.

In its paper, the EC is focussing on cooperation with the US. This is understandable as the issue of public investment in space systems in the US is well identified with the availability of quantitative data. ESOA notes that the same issue may also exist with other 'space nations' such as Russia, China, India and Japan although it may be less prominent due to lesser availability of concrete data. With the common factor between these nations being public funding and investment into – potentially commercial – space programmes, ESOA considers that the answer lies in finding adequate funding for similar programmes in the EU rather than in making cooperation itself the objective.

With respect, ESOA considers that the main concern behind the EC's paper, more than cooperation with the US, should be how to ensure that the European Satellite Operators Industry can count on a competitive Space Industry in the global market.

While engaging in a dialogue with successful players like the US is obviously something to pursue, ESOA considers that other steps could also prove useful. Cooperation with other countries could help Europe become more competitive on the global market. These include Russia, India, China and Japan and already one or more of them have engaged in dialogue with the EC concerning cooperation in space projects (Galileo, GMES). Notably however, some of these are also countries in which satellite operators face significant market entry barriers such as protectionist measures for national industries, outright prohibitions on the use of foreign satellites, as well as cumbersome and expensive administrative procedures. ESOA strongly suggests that any dialogue for cooperation with these nations should include negotiation/ agreement on market access issues so that the cooperation is truly of mutual benefit.

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2. Address remaining regulatory barriers on the transatlantic market:

***Remove unnecessary ITAR controls*:**

The European Union, especially following enlargement, has a vast and diverse population which makes administration of ITAR requirements (e.g. controls on nationalities involved in certain projects) difficult. Following past experience of individual members in dealing with the US on specific projects, ESOA considers it unlikely that the US will agree to special rules for the EU when it comes to the application of their ITAR controls, putting Technical Assistance Agreements in place, etc.

ESOA encourages the EU dialogue with the US to pursue the removal of unnecessary controls that cause harmful delays to European Companies.

Liberalise launcher market:

Europe today has an established and largely successful launcher business, albeit one which is subject to strong global competition. Regulatory barriers exist with a number of countries such as the US, China, India and Russia – these are markets to which the access of Ariane is limited. By way of example, a US made military satellite has, for regulatory or security reasons, to be launched from US territory. The same applies to Chinese/ Indian/ Russian made satellites which, due to regulations and markets barriers have de facto little or no chance to be launched on a European Launch Vehicle. However we note that, conversely, there is no or little regulation that would prevent a European satellite, even military, to be launched on a US launch vehicle.

ESOA would like to recall the point that Europe wanted, and still wants its own independent access to space. It seems natural therefore to want to use it for European public sector funded/supported programmes in order to guarantee its operational capability. ESOA would therefore propose that so degree of priority for European Launchers is given to European Publicly-funded Programmes

ESOA would like that market access issues in particular for launchers and satellite platforms used for public needs can be guaranteed reciprocity with a special focus on the US market.

CONCLUSION:

ESOA would submit that an important issue to be incorporated into an industrial policy for the European space industry is how to make it more competitive in a discriminatory international market place.

We believe that some elements of answer lie in:

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1. Increasing public investment allowing EU industry to develop and flight qualify its most advanced space technologies on the basis of public contracts;

2. Focusing on making the European space industry more competitive through:

    - Increased independency of European technology and increased international cooperation
    - Upfront investment in non-recurring R&D, flight qualification of components, public institutions to become customer satellites for the deployment of new technologies and terminals

3. When engaging in a cooperation, give due and proper consideration to reciprocal market access issues as part of the deal

PROCUREMENT:
1. Possible particular procurement rules for the space sector
INDUSTRIAL RETURN:
2. Impact study to define how, when & under which conditions the geographical return principle could be applied in future

1. Possible particular procurement rules for the space sector:

The European space industry today supplies a variety of customers, both public and private. Concerning European Public Procurements, the distinction between the roles of ESA and the EU has broadly speaking been made as follows:

- ESA procures space and related ground infrastructure with a focus on research, technology and scientific missions
- EC procures applications and services

Although there are exceptions to the procurement rules and practices cited in the EC's document, ESOA considers that the basic division above leaves a gap that the EC could usefully address. The principle of Industrial Return is also relevant but only after a discussion of the appropriate roles of both EC and ESA.

ESA procurements necessarily concern research and scientific programs. Operational programs, which are potentially commercial, are not covered within their remit. At the same time, the EC may be considered to be exceeding its remit if it were perceived to be procuring satellite services or a satellite solution without the involvement of ESA. Of course the EC could mandate ESA to undertake a procurement on its behalf but the EC is unlikely to proceed alone.

The EC does on the other hand invite different technologies to respond to its policy requirements in the form of calls for tender in different areas. Examples of recurring interest are the delivery of broadband communications to all parts of Europe and services within the frame of GMES.

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As indicated in ESOA's response to the EC's Digital Divide Forum Report Consultation dated 16th September 2005[3], satellite would be amply suited to respond to this pan-European need however typically such needs are funded with Structural Funds which are applied on a regional basis for regional solutions. The very nature of these procurements disadvantages new satellite solutions while the need they are addressing in this example is essential to current EU policy – i2010 action plan, i-Inclusion, etc.

ESOA would be in favour of a dialogue between DG ENTR and DG REGIO to address this discrepancy. For example, where it is clear that a satellite component will be needed to address a particular policy objective, then a specific procurement for the satellite element could be established. It is not clear whether new, specific procurement rules are required, or whether the existing rules could be applied differently.

With a suitable procurement approach, (new or existing rules), coupled with adequate accompanying budget, the EC could launch competitions – either technology neutral or just for space solutions (where it is clearly demonstrated that a space based solution will be required):
E.g. "to connect all EU emergency services centres"
E.g. "to connect all public sector locations throughout the enlarged EU"
E.g. "to connect TBD thousands of disadvantaged users in rural areas across several countries within the next 2-3 years"

Drafting of the tender documents is often the key to the success of a specific procurement. ESOA is keen to work with the EC to optimise the manner in which tenders (where satellites could offer a value for money solution) are drafted to ensure for the fairest, most transparent and innovative bids are secured.

2. Impact study to define how, when & under which conditions the geographical return principle could be applied in future:

ESOA notes that while the benefits of the juste retour mechanism have clearly demonstrated themselves, the impact of different juste retour schemes is nevertheless evaluated by ESA Member States from time to time. This has resulted in the agreement on the 'fair contribution' adaptation and ESOA would firstly query whether the short delay during which this scheme has been in operation is sufficient to see actual results and therefore whether an impact review at this juncture is really worthwhile. Moreover given that ESA does engage in periodic reviews of the implementation of juste retour, ESOA would query the value of an independent assessment by the EC at all and suggest that the EC rather be involved in the ESA reviews taking place from time to time.

[3] Attached for information and reference

To comment on the substance of the EC document: ESOA considers that the space industry, or in fact any industry, should be actively encouraged to develop cross border cooperation and where appropriate, to invest in activities in the new Member States. It is to our mind, strange that the EC should argue that "Particular attention shall be paid to avoid that space industry is "encouraged" to make cross-border investments, particularly in the new Member States, creating de facto duplicated capacities." This comment presupposes that cross border investment creates a duplication of capacities and that such duplication of capacities is a downside – ESOA would submit that both assumptions are not always the case noting that without a healthy supply of multiple potential suppliers, there cannot be an effective competitive environment.

The paper argues that "the impact of the way in which the system is applied has to be assessed and its benefit weighted against its potential costs in terms of competitiveness, along with the relationship with Member States' motivation to contribute to programmes". This would appear to be a part of the process already followed periodically by ESA and which has led to refinements in the way the geographic return system is implemented.

In light of the points made above, the benefits of an EC sponsored impact study are unclear to ESOA, not least of all because it seems that ESA already does this on a continual basis. However, some clarification of the boundaries of activities of both the EC and ESA in this regard could be beneficial.

ESOA remains at your disposition for any further clarification or discussion concerning these matters that you many require.

Sincerely,

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