Civil Society Activism, Strategic Alignment and International Public Policy Making for Spectrum

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Introduction

Processes of international public policy making are complex and contested, especially those involving decisions on the allocation of scarce resources with strategic technical and economic significance. They can often take place in long-standing international institutional environments in which states continue to be the key decision-taking actors, though changes in the international political economy in the direction of the neo-liberalism (Harvey, 2007) in recent decades have meant that commercial players are now frequently prominent in such contexts. Despite the often strong public interest character of matters under consideration, scope for the presence of civil society actors – that is those which are non-state, or non-commercial in character and practice - would thus appear highly limited. Academic work has, nevertheless, asserted a growth in the prominence of civil society in international political-economic life (Scholte, 2007; O'Brien et al., 2000). Yet, the conditions under which such civil society presence is developed, the ways in which it is manifest and their implications are still incompletely understood. The recent international policy debate on the allocation of spectrum provides a particularly apposite context for research aiming to close this gap in knowledge and is the focus of this article.

Spectrum is one of the most strategically significant public and commercial communication resources (Harvey and Ala Fossi, 2016). The article's focus is on deliberations in the EU which took place in the lead up to the International Telecommunication Union's (ITU) 2015 World Radio Conference and subsequent related EU policy decisions. The ITU is the long-standing international institutional context for decisions on the pattern of allocation of the airwave spectrum. WRC-15

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was preceded in Europe by a particularly controversial debate on potential reallocation of spectrum away from broadcasting and towards the burgeoning mobile communications sector.

Though potential international policy change in spectrum held highly significant public interest implications for the media sector and was thus of concern to civil society actors, the operating conditions of the international public policy environment for spectrum militated strongly against their participation for four reasons. First, organising at the international level is costly in terms of time and financial resources. Second, spectrum policy is innately technical in character, often making a precise understanding of its social and public interest significance and future difficult to determine and articulate. Third, the particular issue of potential spectrum capacity transfer at stake in the debate around WRC-15 involved consideration of policy change of an inter-sub-sectoral variety. That is, it presented the extra challenge to all concerned of understanding broader changes that are ongoing in the highly specific sister communication fields of broadcasting and telecommunications that mean they have come to inhabit increasingly the same space. Fourth, as might be expected, the strategic commercial significance of potential policy change in spectrum meant that the debate arena was heavily populated by powerfully resourced industry players from the broadcasting and telecommunication sectors.

Despite this, the article provides evidence of a significant - though ultimately highly contingent - civil society presence in the spectrum debate, where the key actors were those representing the viewer and listener (the Voice of the Listener and Viewer - VLV, the European Voice of the Listener and Viewer – Euralva). The Uni Global Union - Media, Entertainment and Arts (UNI MEI) and the European Federation of Journalists (EFJ) also made significant input. The article explains this presence through the construction of a framework of international civil society strategic alignment. This original framework is derived from existing understandings of the capacity of civil society for action from the literatures on global civil society activism and lobbying. It is then applied to illustrate and explain the conditions that allowed civil society to articulate its voice in the spectrum debate and the means through which and how this was achieved. In so doing, the article contributes to extending the literature on civil society activism in communications by illustrating both civil

society's capacity for action - but also the highly significant limitations placed on it - in utilising strategic alignment to engage in international public policy making debates.

After briefly setting out its methodological approach, the article provides an outline of key changes in broadcasting and mobile communication which underpinned the at-times-fractious debate on spectrum policy change and the public interest. Thereafter, it provides a critique of relevant literature on global civil society activism in European public policy making and constructs a strategic alignment framework (see Table 1). This is followed by a brief outline of the importance of spectrum, its international policy institutional setting, and recent changes of perspective on spectrum policy in Europe in the light of media convergence. The article then undertakes an application of the elements of its framework to the example of civil society, the debate on spectrum reallocation in Europe in the lead up to WRC-15 and subsequent EU policy actions in the field.

Data Sources and Methodology

The research for this article draws on qualitative data gathered from primary and secondary sources, triangulated with semi-structured stakeholder interviews. The academic literature on spectrum policy activism in relation to the ITU's WRC is understandably sparse. Stakeholder websites, specialised electronic publications and online newspaper articles provided an initial information base. Analysis of submissions to key public consultations on national and supranational level spectrum policy in the lead-up to WRC-15 served as an important primary data source. These consultations were carried out by institutions such as the European Communications Committee (ECC) of the European Conference of Postal and Telecommunications Administrations (CEPT), the EU's Radio Spectrum Policy Group (RSPG), the European Commission and the UK media regulator, Ofcom. Analysis of these provided evidence of key public and private sector actors in the debate and their positions. The research tracked inputs from civil society actors, which led to a particular focus on the input of the Wider Spectrum Group (WSG), comprising civil society, private commercial and publicly funded non-civil society organisational membership. A series of interviews were then undertaken covering ten of the member

organisations of the Group: the Association of Professional Wireless Production Technologies (APWPT); Broadcast Networks Europe (BNE); European Coordination of Independent Producers (CEPI); Digital UK; the European Broadcasting Union (EBU); the European Federation of Journalists (EFJ); Pearle* - Live Performance Europe; UNI MEI; the Voice of the Listener and Viewer (VLV), and the European Alliance of Listeners' and Viewers' Associations (Euralva).

The Spectrum Debate: Broadcasting, Broadband and the Public Interest in Wireless Communication

Terrestrial television and radio broadcasting systems have, in Europe, for the most part, utilised key parts of the UHF communication spectrum to deliver their services. Other significant users of spectrum in this range have been the providers of services related to the maintenance of public health and security, as well as providers of satellite communications and parties concerned with the testing and development of equipment and systems potentially deployable through the network in the future. Preferences for the shape of this system and its actual deployment were largely a matter of national concern and discretion. However, given the international significance of coordinating effectively the use and development of radio communication, agreement on the allocation of spectrum was reached in the context of the International Telecommunication Union (ITU), based in Geneva. The economic and social importance of spectrum has imbued it with distinct political significance (Delaere and Cullell-March, 2014, p. 360).

Historically, in Western Europe, much of the use of the UHF spectrum had underpinning it a strong public interest rationale. In terms of broadcasting, this reflected the development of public service radio and television through most of the 20th century (Tracey, 1998). Even as terrestrial broadcasting systems using the airwaves became more commercialised from the late 1980s, through primarily the deployment of funding models other than the licence fee and the introduction of more competition (Brants and Siune, 1992), the idea of terrestrial broadcasting services as providing at least one of the core universal public service staples of education, information and entertainment to audiences has persisted (Ferrell Lowe and Martin, 2014).

The huge expansion in television broadcasting in recent decades has been facilitated by capacity infrastructure increases of various kinds. A big part of this has been digitalisation techniques, which have affected cable and airwave based systems (specifically satellite and terrestrial) alike. Digitalisation – through, for example, compression technology - has afforded more efficient use of the spectrum, and has called forth a major process of transition across most of the world from analogue to digital broadcasting. Such a movement has resulted in the 'freeing up' of key parts of the spectrum: the so-called 'digital dividend' (Wheeler, 2016).

Availability of new spectrum capacity has also coincided with a particularly significant period in the growth of the mobile communications industry. The emergence of personal mobile communications services has been one of the most prominent developments in telecommunications of the last 30 years. The value of mobile communications has recently been turbo-charged by the growth of broadband Internet communications services. This was initially developed through cable based communications; however the growth of high quality mobile Internet broadband services is now seen as a key strategic goal for an increasingly diverse communications sector (Bauer, 2010). Whilst the industry cliché of the 1990s that 'the future is mobile' has not materialised entirely, the mobile handset, or 'smartphone', has become a device allowing users to send and receive voice, data, text and pictures in combination: online communication is becoming increasingly mobile (Dwyer, 2009). Like its 'fixed link' broadband equivalent, the timely availability of network capacity (Papachrissi and Zaks, 2006) – in this case spectrum – is considered an essential ingredient in the future of mobile communication. These separate developments in broadcasting and mobile communications have taken centre stage in the debate on the digital dividend. In essence, the mobile communications sector has demanded more spectrum; the broadcasting sector has resisted strongly any attempt to provide this at its expense.

An important feature of this contestation has been the input of civil society actors from the broadcasting realm. Prominent here was the VLV, the UK's viewer/consumer representative body which advocates for preservation of the public value of public service broadcasting (PSB) in the UK and Europe. Its work has shown

it how broadcasters and national broadcasting regulatory bodies can be 'malleable' and receptive to lobbying (VLV interviewee, June 21, 2016). The VLV considers the terrestrial TV system as vital due to its free-to-air characteristics, a key element of the universalism that is a fundamental principle of PSB (VLV interviewee, May 19, 2016). It has argued that 'it is important that spectrum continues to be available to broadcasters to do research and development and to be able to demonstrate the future potential of broadcast technology. Mobile communications providers tend to argue in terms of what they can do in the future; however, broadcasters have a strong evidence base of past achievements in their argument to have spectrum available to them. A vital element of the current policy environment is that viewers don't realise that they are being asked to choose between the broadcasting and the mobile path into the future' (VLV interviewee, June 21, 2016). For organisations like the VLV, apart from funding constraints, a major challenge has been gaining access to key decision-making venues like WRC events.

Strategic Alignment as Civil Society Activism in European Public Policy Processes

Recent academic work highlights the growing influence exerted by civil society interests organised internationally (Sikkink, 2011; Keck and Sikkink, 1998; Risse, Ropp and Sikkink, 1999; O'Brien et al., 2000; Scholte, 2007) leading Brian et al. (2000) even to discern, in the economic sphere, the growth of 'complex multilateralism'. However, whilst civil society has pressed influentially for institutional and policy change, any type of bottom-up global governance has been found to be "in its infancy" (p. 208). In the EU, Kohler-Koch (2010) argues that civil society organisations undertake discursive and interactive public functions, in the process representing societal interests.

A noteworthy aspect of transnational civil society activism is alignment with private actors (Flohr et al. 2010). Cullen (2015, p. 206) contends that 'diverse organisations can cooperate effectively in loose, episodic and strategic alliances'. Mahoney (2007) notes collaborative behavior involving information sharing after key meetings, email circulation of key discussion issues, conference call briefings and sending of joint communications to policy makers along a 'continuum from very informal and loose,

comprised of occasional information sharing, to highly coordinated enterprises with logos, letterheads and secretariats'. The EU policy-making domain allows for a wide range of lobbying activity, performed by different types of collective formations. So-called ad-hoc issue coalitions serve the two important purposes of showing a depth and variety of actors in favour of a particular approach and allowing resource efficiencies among the coalition's members. Pijnenburg (1998, p. 305) has defined four main characteristics of ad hoc coalitions: 'little or no formalization'; 'limited duration'; 'considerable autonomy of coalition partners'; and focus on 'a single-issue'. Coen (2004) notes how business actors can use coalitions to gain access to exclusive policy fora – our analysis of the European spectrum policy case provides evidence that such coalitions have also proven beneficial for civil society groups, though through the provision of indirect means of access. The primary purpose of the coalition examined in this paper was to demonstrate to policy-makers a wider community support for preserving the *status quo* allocation of spectrum to the broadcasting sector. In ad hoc coalitions, actors possessing limited resources tend to occupy positions on the periphery of the coalition (Hula, 1995 in Mahoney, 2007). In our case, operators managing the digital terrestrial television (DTT) infrastructure in the Broadcast Networks Europe (BNE) association, together with public service and private commercial broadcasters formed the 'core' of the coalition, initiating its creation. Civil society groups representing audiences (VLV) and labour (UNI MEI and EFJ) occupied the periphery, joining the coalition once the core was created.

Civil society contributions to the policy making process can have distinct practical value through their possession of key assets, such as technical information, as well as knowledge and expertise. Relatedly, civil society can possess the capacity to make a significant contribution to policy innovation and development. This may emerge through an understanding of technical or human behavioural matters. Mintrom and Norman (2009) cite their ability to define policy problems and be receptive to actors from state, public and private quarters variously when windows of opportunity arise. This can include the tactical dramatization of issues in terms of a crisis (after Nelson 1984, Stone 1997). Such activity amounts to what we term cooperative flexibility.

Some recent work has focused on the influence which different non-state interest groups attempt to exert around prominent moments of international public policy

making, such as diplomatic conferences, or in our case WRC-15. One aspect of this is the circumstances in which so-called outside lobbying strategies - defined as awareness raising of issues through use of public communication media and thus indirect addressing of policy makers - might be utilised (Hanegraaff, Beyers and De Bruycker, 2016). Another aspect of this work tackles the possible nature of interaction that might be pursued by non-state actors in relation to those with policy-making authority. Beyers and Hanegraaff (2017) highlight what they term confrontational interaction, underpinned by the actor's desire to provide an argument to policy makers to secure a change of perspective. It might also be possible for a confrontational approach to be adopted in more open situations, where a policy maker has is an open mind on a topic, as occurs during a consultation process - in the media sector in Europe, in our case.

Mahoney (2007, p. 370) argues that actors may be attracted to the idea of coalition formation 'in political systems where policymakers are highly attuned to cues about public support for policy proposals, as they are when they are directly elected.' Broadcast services are intrinsically bound into the experience and well being of citizens any changes to which can prove highly sensitive. Put plainly, broadcasting services can mean a lot to a lot of people. Accountability of the political structure is an important variable in the institutional framework for spectrum decision-making in the EU, since, whilst technically complex and contributed to by a range of sectoral specialists, states nevertheless remain 'the primary agents' (Delaere and Cullell-March, 2014, p. 363). The European Commission plays an important role in spectrum policy-making through formulating initial policy proposals, co-decided ultimately by the European Parliament and the Council of Ministers. Here, member state spectrum usage characteristics – such as how many people rely on digital terrestrial TV services in our case - are highly influential[2]. As we show, divergent member states' circumstances in terms of spectrum usage and lack of harmonisation of spectrum

[2] In addition, as seen in the section below, the common EU spectrum policy positions for ITU's WRCs, are agreed within the EU's Radio Spectrum Policy Group (RSPG), an advisory body to the European Commission, whose members include delegations of senior representatives from member states' regulatory bodies and relevant ministries. In Europe as a region, the European Conference of Postal and Telecommunications (CEPT) is formed by national representatives on telecommunications regulation and other inter-governmental organisations as observers, which the European Commission is only one of. Thus, by and large, spectrum decision-making remains a policy area where states are primary actors, both as regards supranational (EU) and global (ITU) domains.

assignment, shaped EU spectrum policy in line with the demands of the broadcasting community under the Wider Spectrum Group. We draw on Klüver (2013: 200) who concludes that 'member state support is a crucial determinant of interest group influence during the decision-making stage' and that '[t]he likelihood that interest groups succeed in shifting the policy outcome towards their ideal points increases with the number of member states supporting their objective'.

Mahoney notes that the salience of policy issues is an important factor in coalition formation (Mahoney, 2007, pp. 371-372). In our case, prior to 2015, broadcasters - the incumbents of the UHF radio spectrum bands in question - lost portions of the so-called upper bands (i.e. 700 MHz and 800 MHz) in two consecutive international spectrum re-allocations in the ITU's WRC meetings of 2007 and 2012. Importantly, Resolution 233 of WRC-2012 stipulated a potential *further* re-allocation of frequencies from broadcasters to mobile broadband operators in the sub-700 MHz band, which was to be decided at WRC-2015. The scene was thus set for a detailed and fractious debate on spectrum in Europe in the years leading to WRC-15.

As we show, the creation of a broadcasting ad hoc coalition to articulate its arguments jointly proved crucial. Klüver et al. (2015, p. 483), note that the choice of a particular argument frame is a strategic decision. Further, a lack a resources can mean that this is the only tool available to attempt to exercise influence. Here, the relationship between the interest group and the 'contextual characteristics' of issues at stake is significant. In our case, we show how civil society actors highlighted economic issues - as much as the more predictable socio-cultural matters they tend to be concerned with – to play to the primary interests of spectrum policy makers and in the process displaying significant argument diversification capacity. In Table 1, we draw from the findings of the above literature to present a framework displaying the core contextual and processual features of civil society activism as alignment in spectrum public policy, which are used hereafter to illuminate our case.

Table 1: Civil Society Activism as Alignment in Spectrum Public Policy

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Alignment Context

Information/knowledge/experience asset possession

Problem definition capacity

Presence of receptive actors (state, public and private)

Existence of windows of policy opportunity/issue salience

Alignment Process

Cooperative flexibility

Use of outside lobbying tactics

Willingness to confront

Argument diversification capacity

Source: Authors

The institutional framework for EU radio spectrum decision-making in the lead-up to ITU's WRC-15: access points for stakeholder participation

As a specialised agency of the UN, the ITU is the foremost intergovernmental organisation responsible for regulating electronic communications globally. In the area of radio frequencies, it holds an exclusive mandate to allocate and manage spectrum. Radio Regulations that are adopted at its WRCs which take place every three to four years, are binding for all member states (ITU Radio Regulations, n.d.). The whole cycle of decision-making, however, has resembled a public-private cooperation (El-Moghazi at al., 2012, p. 9) which includes the active participation of private sector members that carry out the technical studies and reports in preparation for each WRC meeting. Currently, the organisation has more than 700 non-state 'sector members' and industry 'associates'[3] (ITU Members, n.d.). This has generated an informal division of labour in which most technical work in radio frequency decision-making is conducted by corporate members (McCormick, 2007, p. 70), while the role of representing the public interest has been assigned to the state (Irion, 2009, p. 2-3) since civil society access to the ITU decision-making processes is

[3] While the former are eligible to "participate in all activities in ITU, including chairing groups, take part in consensus-based decisions, and make contributions to all meetings", the latter can participate in a single study group in one of the three ITU sectors (Radiocommunication – ITU-R; Telecommunication Standards – ITU-T; Telecommunication Development - ITU-D) (ITU Members, n.d).

marginal. High membership fees (see ITU Membership Fees, n.d.) as well as lack of solid technical expertise have restricted meaningful civil society participation (Horvitz 2009).

Historically, the assigned primary occupants of the UHF (470-862 MHz) band have been terrestrial broadcasters. At the ITU's WRC held in 2007 (WRC-07), frequencies in the 700 and 800 MHz bands were re-allocated to mobile communications in ITU Region 2 (Americas) and Region 3 (Asia-Pacific), while Region 1 (Europe, Middle East, Africa) preserved the 700 MHz band for terrestrial broadcasting (Ala-Fossi and Bonet, 2018, p. 346). European countries successfully opposed US demands for the global release of both bands for mobile use. At WRC-12, however, European states were taken by surprise when their Arab and African counterparts proposed to make available the 700 MHz band for mobile use on a co-primary basis in ITU Region 1, to come into effect at the end of the subsequent WRC-15 (Ala-Fossi and Bonet, 2018, p. 346; ITU Resolution 232, 2012). Another resolution set in place at the WRC-12 turned out to be even more controversial. In line with Resolution 233, member states were asked to identify additional frequency bands for allocation to mobile communications services, which potentially included the spectrum occupied by broadcasters in the so-called sub-700 MHz band (470-694/698 MHz) (ITU, 2015).

The EU has relied on its own body, the Radio Spectrum Policy Group (RSPG), to assist the European Commission in establishing the Union's common positions for ITU conferences. RSPG members include senior representatives from regulatory authorities or ministries of the 28 EU member states and representatives of the European Commission. Most of its policy reports, opinions, and strategies are open to public consultations, which offer clear access points to stakeholders to contribute to the decision-making process. In the lead-up to WRC-15, the RSPG invited stakeholders to express their views on 1) a Draft Opinion on Common Policy Objectives for WRC-15 (RSPG Consultation, 2014a), and 2) a Draft Opinion on a Long-term Strategy for the UHF band in Europe (RSPG Consultation, 2014b). The 'common policy objectives' adopted at the EU level are aimed at uniting EU Member States in their WRC positions.

In order to facilitate the development of an EU consensus on the use of spectrum allocated to broadcasting, in 2014, the then Digital Commissioner, Neelie Kroes, created the High Level Group on the Future of the UHF band (470-790 MHz), chaired by former EU Commissioner for Trade, Pascal Lamy. The composition of the Lamy Group included broadcasters (Mediaset, ARD, MTV Media, BBC); broadcast network operators (TDF, Albertis Telecom, OiV); mobile network operators (Vodafone, Telefonica, Deutsche Telekom, Orange, Teliasonera, KPN) and technical and trade associations from both quarters (GSMA, BNE, EBU, Digital Europe, APWPT) (European Commission, 2014). Only one member came from civil society: the Community Media Forum Europe, making internal lobbying strategies highly difficult for civil society. Despite a fractious process in which differences between its broadcasting and mobile communications members were clear, the Lamy Group opened its recommendations to a public consultation in 2015, which, as outlined below, established the basis of the EU's spectrum approach regarding broadcasting.

In order to reduce potential differences between EU member states' spectrum policy positions and those of the European continent as a whole, the EU has reduced its level of direct involvement in the ITU in the last decade. Instead, the ITU's pan-European regional body, the European Conference of Postal and Telecommunications Administrations (CEPT), has assumed prominence in preparations for upcoming WRCs (Shahin, 2011, p. 693 in Ala-Fossi and Bonet, 2018, p. 346). The CEPT's European Communications Committee (ECC) is responsible for harmonisation and spectrum use policy development. Its Conference Preparatory Group (CPG) has been in charge of developing the general European Common Proposals (ECPs) for WRC meetings. CEPT members are responsible for national level policy design and regulation (CEPT, 2009) for 49 states in Europe and the former Soviet Union. Intergovernmental organisations for telecommunications from other regions, as well as the European Commission and the European Free Trade Association, may attend meetings as observers, without having a right to vote.

Work on preparations for WRC-15 commenced in April 2012 (ECC, 2012), and, in June 2013, the ECC announced the creation of a new Task Group (TG6) to study the future of the 470-694 MHz band in the light of WRC-12's Resolution 233 (ECC, 2013). Between 2013 and 2015, the TG6 held two joint workshops with the European

Commission. The workshops collected stakeholders' reactions to the draft European Common Proposals for WRC-15 (Joint European Commission-CEPT Workshop, 2015). This offered another window of opportunity for interested parties, such as the representatives of the digital technology industry in Europe (Digital Europe) and the broadcasting sector (European Broadcasting Union) to participate in the debate. Importantly, in terms of capacity for internal lobbying strategies, no civil society groups were present on the agendas of these events.

Strategic Alignment and the framing of European civil society arguments in the WRC-15 Debate on Spectrum

The debate over the future of UHF spectrum in Europe was noteworthy for being a policy area that united both public service and commercial broadcasters which have not been typical allies when it comes to other broadcasting policy issues. Additionally, since the introduction of digital terrestrial broadcasting, spectrum policy issues in Europe have been particularly important for private broadcast network operators, in charge of the infrastructure for transmission of digital broadcasting services in Europe. These include companies such as Arqiva in the UK, ORS in Austria and 14 other operators, as part of the Broadcast Networks Europe (BNE) association. In order to bring to the attention of EU policy-makers the breadth, but also the concerted nature, of the broadcasting industry actors' positions, the BNE initiated the formation of the Wider Spectrum Group (WSG) as a follow-up to the Lamy Group. WRC-2015 was the key reason for its constitution. The WSG was aware of the risk of allowing the well-organised and well-funded mobile broadband sector to establish its argument for more spectrum (Digital UK interviewee, June 10, 2016).

The BNE first turned to the broadcasters' representatives, the European Broadcasting Union (EBU) to galvanise support in an ad hoc coalition. The EBU was the only member of the group which was an ITU member and became the 'main co-operator' in the BNE (BNE interviewee, July 20, 2016). BNE acted strategically to broaden its support base through bringing in commercial providers of Programme Making and Special Events (PMSE) services, like wireless microphones and wireless in-ear monitor (IEM) systems used mainly in large venues and productions. These

companies co-existed historically with broadcasters in the UHF band, utilising the so-called 'white spaces' left unoccupied by broadcasters to avoid transmission interference. They were represented by Pearle* – Live Performance Europe and the Association of Professional Wireless Production Technologies (APWPT). The WSG was also strengthened by the European Coordination of Independent Producers (CEPI), which represented media production companies across the continent.

The establishment of the core of this ad hoc coalition by its most strongly resourced actors provided a window of opportunity for civil society organisations to align themselves with the position of the WSG. The latter was particularly receptive to the Uni Global Union - Media, Entertainment and Arts (UNI MEI) and the European Federation of Journalists (EFJ). The most prominent civil society organisation members, however, turned out to be those representing the interests of viewers and listeners. The long established VLV joined the group, acting as a link to its European level equivalent, the European Alliance of Listeners' and Viewers' Associations (Euralva), which was not at the time a member. These actors displayed considerable cooperative flexibility by working in line with the interests of a diverse range of organisations in the WSG. They asserted arguments against reallocation of spectrum away from broadcasting and towards mobile communications. They were strident in opposing any views from the mobile communications and IT industry that argued for a co-primary and so-called 'flexible' utilisation of the sub-700 MHz band, notably the potential introduction of a downlink option for one way transmission of broadcast content to mobile devices in the band (see BITKOM, 2015).

As the work of the Lamy Group developed throughout 2014, the influence exerted by the broadcasting constituency became evident. In the UK, the VLV worked with the EBU and Digital UK[4] to contribute to the shaping of the debates held in the lead up to the Lamy Report (VLV interviewee, June 21, 2016). This influence soon became clear when the Report acknowledged that DTT had formed the 'backbone' of the European audiovisual model, offering free 'quality programming' and accomplishing 'major public policy objectives, such as cultural diversity and media pluralism' (Lamy Report, 2014, p. 3). Although unable to reach a consensus between the

[4] Owned by Arqiva, the BBC, Channel 4 and ITV in the UK.

participants of the High Level Group, Lamy offered a compromise position that promised to provide "certainty" and "predictability" of spectrum resources for the broadcasting sector. He proposed the so-called '20-25-30 model' which envisaged freeing the 700 MHz band for mobile communications by 2020, preserving the sub-700 MHz band for broadcasting until 2030, whilst carrying out a stock-taking exercise by 2025. This satisfied the broadcasters' side. Yet, in line with the preferences of the mobile broadband constituency, the Lamy Report also produced a recommendation, endorsed by the RSPG and the ECC, whereby member states would be able to allow supplemental downlink for mobile broadband content in the sub-700 MHz band (Lamy Report, 2014). The report set the tone for EU's WRC-15 position on the sub-700 MHz band which, in effect, followed Lamy's proposals (VLV interviewee, June 21, 2016; BNE interviewee, July 20, 2016).

The WSG capitalised on the window of opportunity provided by the Lamy Report's acknowledgment of the success of the European audiovisual model and praised its "evidence-based proposals" (Digital UK interviewee, June 10, 2016) through external lobbying tactics. UNI MEI was active here and showed its argument diversification capacity by linking the production of diverse content with employment growth in an ecosystem that "represent[ed] 14 million jobs and €860bn of turnover in Europe" (WSG, 2015). The WSG was keen to remind policy makers that the EU audiovisual industry had both economic and cultural significance. A BNE representative noted that broadcasting 'had created jobs and this was of huge relevance to the EU policy-makers, who have been trying to save pan-EU business models' (BNE interviewee, July 20, 2016).

Showing further argument diversification capacity in civil society quarters, Euralva linked market power arguments to the interests of its own constituency, arguing that "[a] weakened DTT platform [would] result in powerful gatekeepers and too much market power in the hands of players (e.g. telecommunications operators) who have not been subject to content regulation traditionally, thereby putting at risk the significant public policy goals associated with DTT" (Euralva, 2015a). Euralva aligned itself with broadcasting players in utilizing evidence based tactics in a direct and forceful external confrontational challenge, demanding "transparency of [sic] the way the MT [mobile telecommunications] and WBB [the wireless broadband]

industry is using already allocated spectrum" (Euralva, 2015a; Euralva, 2015b). It requested "studies about the incremental value of further spectrum allocations to the MT/WBB industry" and pointedly asked "What could the MT/WBB industry offer with this and further (as demanded) allocations that would be so exceptional and would far outweigh the substantial economic, social and cultural value that the DTT platform currently offers?" (Euralva, 2015b). This perspective, bolstered by media industry players, suggested that DTT has returned greater value from spectrum than mobile operators[5], which have increasingly offloaded mobile communications traffic to Wi-Fi providers using unlicensed spectrum bands (ARD, 2015; Arqiva 2015; Wik and Aegis, 2013). This research was seized upon to argue that there was thus less need for additional spectrum. Furthermore, the broadcast industry lobby argued that the introduction of the downlink "flexibility option" presented potential risks of interference with DTT and PMSE licensees (EBU, 2015a; ARD, 2015) in a clear reference to the quality of service experience of viewers at the core of VLV interests. The VLV aligned itself with this, but reinforced it with the more confrontational, emotive view of downlinking as a "Trojan Horse" that would effectively mean a co-primary allocation of the sub-700 MHz part of the spectrum (VLV, 2015).

For the WSG, the negotiations at WRC-15 were pivotal in respect of item 1.1 which required states to identify additional frequency bands for allocation to mobile services on a primary basis, potentially including the sub-700 MHz band. The 700 MHz band reallocation (agenda item 1.2) was, by contrast, in effect regarded as a *fait accompli* (Euralva interviewee, June 13, 2016). The organisation of the European broadcasting constituency proved highly effective. The WRC-15 meeting concluded that the sub-700 MHz band spectrum in Region 1 would remain exclusively for broadcasting. The re-allocation of this band would not be part of the WRC-19 agenda, while a review of the whole UHF band was scheduled for WRC 2023 (EBU, 2015b). As a result, it is unlikely that any change of policy regarding the sub-700 MHz band will take place until the subsequent WRC, set to take place in 2027, an outcome significantly in line with the broadcast constituency's position.

[5] See, in particular, Digital UK (2014).

The Significance of Civil Society Strategic Alignment Activism in the European Policy Debate on Spectrum

Focusing on civil society involvement in recent European spectrum policy debates through the lens of strategic alignment constructed in this article enables new light to be shed on the context and process of such activity. Whilst relatively poorly resourced compared to other protagonists in spectrum debate, organisations such as VLV, Euralva and UNI MEI were well enough established in their respective fields to have amassed sufficient technical resources and expertise to play a significant part in the WSG. They were able to utilise the key knowledge asset of a strong general sectoral understanding, as well as specific knowledge of the position of media workers, and the viewer and listener. This set the ground for them to demonstrate their capacity to define plausibly, from their specific perspectives, the problems at the heart of the debate on possible spectrum reallocation away from broadcasters towards mobile broadband providers. They possessed sufficient experience and standing to be taken seriously by a range of better resourced - though highly receptive - actors from the broadcasting industry in the WSG. They showed themselves amenable to alignment with these actors which were outside their specific domain of activity and interest. The most noteworthy aspect of this was their lining up alongside players from production and (often commercial) service provision. Civil society actors, more than any others in the broadcasting coalition, were able to embody and articulate the sustained importance of free to air digital terrestrial television to core electoral constituencies of interest at the national level across the EU. For example, the VLV argued that the delivery of high definition pictures to mobile handsets did not make sense in the current technological environment (because of the bandwidth requirements entailed in doing so). It has also contended that it 'is important to make choices on spectrum based on what broadcasters are actually doing rather than on what the mobile sector argues it might deliver in the future. It is interesting to note that consumers replace their TV sets every six to eight years whereas mobile consumers replace their handsets every twelve to eighteen months currently' (VLV interviewee, June 21 2016).

As a small and modestly funded organisation, the VLV has demonstrated strong civil society orientations, tapping into the expertise of other like-minded organisations on

key spectrum issues to build often technical arguments around viewers' and consumers' perspectives. Thus, joining broader sectoral coalitions such as the WSG has provided it with a crucial opportunity to obtain information on the procedures of the decision-making at WRCs, and the lobbying tactics applied by mobile operators and broadcasters. According to an interviewee, 'without knowing what has happened behind closed doors at WRC-15, it will be difficult to know how to campaign for the retention of free to air broadcast television both before and at WRC-19. It is important to know who did what and when to be able to plan ahead and to be effective in influencing both the British government and, by extension, the WRC itself in the run-up to its next meeting in 2019' (VLV interviewee, May 19, 2016). The policy fulcrum of WRC-15 created windows of opportunity through which civil society voices could be articulated. Spectrum by that stage had assumed a high degree of policy salience. These factors combined to create an opportunistic context for civil society to undertake an effective process of strategic alignment to resist change to the sub-700MHz part of the spectrum.

The process of civil society activism in the spectrum policy debate shows the preponderance of confrontational outside lobbying tactics. None of the civil society broadcast actors most active in the spectrum debate had direct inside access to the EU's Lamy Group. A barrier like this is nothing new for civil society. The case of spectrum shows clearly a consequential utilisation of the outside lobbying modus operandi. However, the opportunity - but also the responsibility - entailed in strategic alignment motivated a more nuanced approach that meant that civil society generated more than simply noisy protest in line with its direct interests. In order to do realise this, civil society actors were required to broaden and diversify their argument set as shown, in line with the interests of fellow non-civil society members of the ad hoc coalition.

Whilst the broadcasting industry was able to provide its own strong arguments for the retention of the 470-694 MHz band for terrestrial broadcasting in Europe, UNI MEI, for example, advanced arguments for retaining spectrum allocation in terms of ensuring the maintenance of content diversity, which sat beyond its core interest of employment rights. The debate also evidenced the employment by civil society bodies of a strongly confrontational challenges to the mobile communication industry, using

language mostly associated with the latter's arguments to be allowed to occupy new parts of the spectrum. Euralva went outside what could be regarded as its core remit through making strident calls for studies to establish both the practical need and relative value of more spectrum allocation to the mobile industry. It also produced economic arguments around market structure and linked them to a potential detrimental impact on the historic public policy goals of digital terrestrial television. This kind of issue linkage and development took its place among a raft of technical arguments propounded by the broadcasting industry, which in their turn were linked to the public interest matters of universal coverage, as well as the ability to secure future spectrum efficiency generating innovations through research and development.

Post-WRC-15 EU Policy on Spectrum: the Significance of Member State Preferences and National Broadcasting Characteristics

A BNE representative, reflecting on the outcome of WRC-15, described it as a 'victory' for the WSG, though not the 'end of the war' since WRC 2023 would be a crucial event (BNE interviewee, July 20, 2016). Euralva also sounded a cautionary note in declaring a 'conditional victory' for the broadcasters' coalition (Euralva interviewee, June 13, 2016). The WSG as a pressure group had created strong and persuasive arguments. Yet, very importantly, there was acknowledgement that it was impossible to attribute this success causally to the formation of the coalition alone (Digital UK interviewee, June 10, 2016), since it was evident that a number of European national regulators and policy-makers were opposed to the kind of changes favoured by mobile broadband providers. Yet, following the conclusion of WRC-15, the European Commission submitted a *Proposal for a decision on the use of the 470-790 MHz frequency band in the Union*. This was regarded by an interviewee from the BNE as the 'greatest challenge' from the European Commission to the broadcasting constituency's position (BNE interviewee, July 20, 2016). Nevertheless, the outcome of this ultimate phase of EU decision making on the matter proved very much in line with the broadcasting sector's preferences and is thus important to consider.

The Commission argued that its proposal would harmonise the use of the UHF band in order to achieve the Union's connectivity targets of universal wireless broadband coverage at high transmission speeds. This, in return, would 'boost mobile network

capacity' and facilitate the deployment of 5G mobile broadband services and the Internet of Things (European Commission, 2016, p. 6). The Commission advocated use of the 'flexible' approach suggested in the Lamy Report [6], meaning that, depending on national spectrum use and demands, the band could be shared between the incumbent audiovisual (DTT, PMSE) and the wireless broadband services providers. In order to avoid interference between these users, the Commission proposed that the latter's activities would be limited to a 'downlink-only' mode. This was 'proposed to accommodate varying situations in the EU. Some Member States hardly used the 470-694 MHz for DTT, and are therefore able to deploy alternative transmission in the frequency band, while other countries, as heavy users of DTT, [wer]e provided with a safeguard that alternative use is limited' (EPRS, 2017).

A documentary analysis of the final version of the Decision on the matter adopted by the EU on 17 May 2017 (European Commission, 2017) through the co-decision process is telling, since almost all of the Commission's articles in the originally proposed draft were amended by the Council of Ministers and the European Parliament. This is important since it highlights the significance of political accountability and perceptions of public support for change in spectrum policy, which provided a fertile ground for the preferences of civil society actors from broadcasting to be realised. First, the Council extended the deadline for the re-allocation of the 700 MHz band to wireless broadband users (European Council, 2016) by up to two years after the initially proposed deadline of 30 June 2020, provided that there were duly justifiable reasons for the delay[7]. Second, the Council negotiated the removal, from the original proposal, of the requirement on member states to "take all necessary measures to ensure a high-quality level of coverage of their population and territory at speeds of at least 30 Mb/s" (European Commission, 2016).

[6] As well as RSPG's Report on a 'Proposed spectrum coordination approach for broadcasting in the case of a reallocation of the 700 MHz band' (RSPG, 2013) and Opinion on a 'Long-term strategy on the future use of UHF band (470-790 MHz) in the European Union' (RSPG, 2015).

[7] Upon the proposal of the European Parliament rapporteur who lead and coordinated the amendment of the document, MEP Patricia Toia, the list of justifiable reasons were added as an Annex to the final version of the Decision (European Council, 2017). They include reasons such as 1) unresolved cross-border coordination issues resulting in harmful interferences; (2) the need to ensure, and the complexity of ensuring, the technical migration of a large amount of the population to advanced broadcasting standards; (3) the financial costs of transition exceeding the expected revenue generated by award procedures; (4) force majeure' (European Council, 2017).

Third, the Council included an amendment which stipulated that the sub-700 MHz band would remain available exclusively to DTT and PMSE services *at least* until 2030 (European Council, 2016). Fourth, it also rejected the downlink-only alternative use of the sub-700 MHz band. Instead, any alternative uses of UHF spectrum would depend on member states' considerations of national needs for broadcasting provision. Fifth, the Parliament and the Council also created a new article 6 in the final version of the Decision, which allowed compensation for the direct cost, incurred particularly by consumers, from moving broadcasters out of the 700 MHz band. Finally, the Council rejected granting the Commission the responsibility to carry out an *assessment* by 2025 of 'whether it is necessary to change the use of the 470-694 MHz frequency band, or any part of it' (European Commission, 2016). The Commission was instead merely allowed to *report* to the Council and the Parliament on the developments in the use of the sub-700 MHz frequency band (European Commission, 2017).

The nature of these legislative changes suggests strongly that the broadcasting lobby had substantially achieved its preferences. The EBU had argued that the downlink-only option should be eschewed since it had 'not yet been validated by technical studies and market demand' (EPRS, 2017, p. 7). It also contended that the 2020 deadline for releasing the 700 MHz band was too short for broadcasters, 'as it would neither allow sufficient time to upgrade their DTT networks nor for consumers to upgrade their equipment' (EPRS, 2017, p. 7). The BNE had argued for 'guarantee[d] access of DTT services to the sub-700 MHz band until *at least* 2030' (EPRS, 2017, p. 7, emphasis added). It contended that the 2020 deadline 'for making the 700 MHz band available for wireless broadband should be extended until the end of 2022' (EPRS, 2017, p. 7). All these demands were reflected in - and became part of - the final version of the EU Decision on the future use of the UHF band. Clearly, as shown, for civil society actors, whilst not central players, being strategically aligned with the broadcast industry constituency allowed their preferences to be expressed and incorporated in the ultimately influential broadcasting ad hoc coalition's arguments.

Yet, it is also clear that a key factor in accounting for this policy outcome is the divergent national circumstances in DTT use. Michalis (2016, p. 353) highlights that some states, such as France and Germany, have already assigned the 700 MHz band for mobile communications use, and others like Denmark, Finland, Sweden and the UK are expected to follow suit. Rather differently, others, such as Italy and Spain, have significantly increased the numbers of new local broadcasting channels following the introduction of the DTT system where narrowing spectrum capacity available to broadcasters would run counter to supporting these new service providers. More generally, the terrestrial distribution of broadcasting services has remained of considerable importance in most EU member states where nearly 'half of all households (250 million people) rely on DTT'. In countries such as Greece, Italy, and Spain - but also France and the UK - the DTT platform has been either the most dominant or the only one that has offered universality of access (Michalis, 2016, p. 356).

Conclusion

The strategic alignment by civil society actors with interests from the broadcasting industry in order to mount what turned out to be successful, though possibly temporary, opposition to change in the status of the 490-694 MHz band was classically ad-hoc in nature in Pijnenburg's terms: informal, time-limited, single issue and loose in character. Its affordances notwithstanding, it is important to understand that the strategic alignment evident in this case provides civil society indirect and somewhat proxy access to policy decision making that is valuable but highly contingent. However, what does evidence of this article tell us about civil society actors' ability to sustain and develop further their alignment capacity in the future?

This is likely to hinge on three core factors. First, the WRC-15 debate allowed the establishment of an informal cooperative understanding between publicly funded and private broadcast interests and civil society. The extent to which this can be strengthened into the future will be very important for civil society actors, should they wish to influence the debates that will inevitably occur on spectrum allocation in coming years. In July 2017, Euralva formally joined the WSG, a development which further embeds the presence of civil society in a coalition which has proven to be highly significant in European spectrum policy in recent years. Second, civil society

actors will need to be able to build on the evidence they have shown in this debate to display breadth of argumentation and technical understanding of core issues. This amounts to sustaining the ability to move beyond noisy protest - albeit that the latter is useful up to a point - to achieve persuasiveness. To date, there is little evidence of the ability of civil society actors to achieve their preferences through *inside lobbying* and this is unlikely to change a field dominated by large corporate interests. Thus, outside lobbying tactics, such as those witnessed to date, would appear the most useful to focus upon. Third, whilst civil society actors have shown some ability to provide sophisticated normative and instrumental strategic responses to changes in their external environment, this needs to be developed further in the light of future changes which are likely to occur in the mobile media environment and which will form part of a likely highly controversial debate on future changes to the sub-700MHz part of the spectrum in years to come. For example, representatives of viewers and listeners will need to understand, and come to a position on, the extent to which using more spectrum for personal mobile broadband services has entailed within it a public interest function. It is realistic to point out that as the broadband environment evolves in the EU over the next 10-15 years, more spectrum is likely to be assigned in the direction of the mobile broadband sector. Broadcasting service delivery is also likely to gravitate even further towards the Internet. Thus, what constitutes the public interest in media is likely to be subject to detailed examination and significant change.

As shown above, the public interest arguments put forward by key elements of the broadcasting industry at the core of the ad hoc coalition, and with the strongest strategic economic interests in the debate, proved an important factor in the decision of Member States support the no change position to the sub-700 MHz band allocation. These highly specific conditions allowed civil society interests to be accommodated and endorsed but this outcome can be viewed as circumstantial. It shows how much the public interest in spectrum policy relies on network operators and service providers, and the nation state, ultimately. Potential change in the interests of the broadcasting industry as Internet Protocol technology evolves over the next decade underlines the highly contingent and thus precarious position of civil society interests in broadcasting, where the decisive role of the nation state on spectrum policy in Europe is unlikely to be static and, importantly, to become more receptive to civil society interests acting alone.

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