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**Submission on Public Consultation on
*“RSPG Report on Efficient Awards and Efficient Use of Spectrum”***

(RSPG15-619)

Lisboa, 2015

RSPG Public consultation on

"RSPG Report on Efficient Awards and Efficient Use of Spectrum" (RSPG15-619)

General Comments

Notwithstanding the following comments, I would like to express my general agreement and support regarding the analysis and conclusions expressed in the document "*RSPG Report on Efficient Awards and Efficient Use of Spect*" submitted to public consultation.

In particular, I fully agree that:

- a) Implementation of the harmonisation measures must take into account market variations and Member States (MS) specificities, namely MS must be allowed to use the spectrum for services that fulfil national needs as long as they do not constrain the use of services in those Member States who have harmonised their spectrum;
- b) There is no one-size-fits-all in terms of spectrum awards;
- c) The most efficient mechanism for an award, absent other countervailing public policy issues or objectives, will be through a competitive process, namely auctions;
- d) It is important to incentivise, all parties, to update new technologies that may be more spectrally efficient.

I consider unacceptable any outcome of the upcoming review of the regulatory framework that:

- 1. Introduces any centralized provision already rejected in the TSM process, recently concluded, or grant any new powers to the Commission in what concerns awarding procedures;
- 2. Introduces binding common EU assignment criteria via Commission implementing decisions that RSPG did not support;
- 3. Introduces the possibility for the Commission to veto a MS award process at any stage;
- 4. Creates an EU regulatory agency for spectrum in charge of the EU-level issues or allows the Commission to monitor Member States' planned national assignment procedures.

Specific Comments

- 1. *Suitability of current and near future harmonised spectrum bands to meet needs for mobile broadband*

Harmonisation, as stated in the Comissiom document *ROSCOM08-84 final*, of 23 June 2009, is a powerful tool of spectrum management and, in general, has a great impact in the dynamics of radiocommunications markets that are subject to those measures.

That 's why I agree with RSPG when it states that flexibility may be required in some MS when they do not impede the use of the band under harmonised conditions by neighbouring MSs. However I am of the view that harmonisation measures must respect ITU Convention and Radio Regulations and that RSPG should have greater power, inter alia, the power of a binding Opinion.

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2. Awards

As mentioned, I agree that there is no one-size-fits-all in terms of spectrum awards. I must add that, notwithstanding the respect for EU general policy objectives, I consider that the spectrum awarding is an exclusive competence of Member States.

Regarding the objectives of awards, RSPG says that *“it is important to be clear about what the Member State wants to achieve and this will then help to inform the award design and other related decisions”*. I agree. However, what to do and how to do when MS objectives conflicts or do not fully matched EU objectives? What objectives will prevail and subject to what conditions? Who and how will decide? I consider that RSPG should have addressed these and other related questions.

3. Promoting efficient use of spectrum, competition and coverage

Licence duration

Licence duration is an important issue, not only to the mobile sector, and I am of the view that it is an aspect that could be harmonized without major difficulties.

I consider that, by default and where the number of rights of use has been limited, licenses should: (i) have indefinite duration; (ii) have a minimum initial duration of 20 years, without change of obligations or conditions of use; (iii) include a clause requiring a notification with 5 years in advance communicating the intention not to renewal or communicating modifications envisaged in case of renewal.

Licence renewal

I am of the view that spectrum awarding and licence renewal are two completely different processes and, consequently, licence renewal must not include any procedure of awarding or re-awarding of spectrum.

Licence renewal through, for instance, a spectrum auction may, in my view, unnecessarily put incumbent operators in a very difficult position if they have to bid against new entrants with better conditions to access spectrum. How to ensure continuity of services and consumers interests if incumbent operators fail to secure the necessary spectrum?

Revenues from awards as a policy objective

Spectrum is an essential and finite resource. This is why I consider that ensure a reasonable return for the spectrum asset should not be an objective spectrum award process.

I agree with the RPG in what concerns the importance of being transparent about award objectives and ensuring that the objectives of the award are appropriately balanced.

Spectrum fees

National authorities should use spectrum fees not only as a tool to incentivise the efficient use of spectrum but also to promote certain policy objectives such as the coverage of rural or less dense areas. This can be done using geographically differentiated fees.

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In any case, the fee model should be set, with transparency and certainty, in the award process.

Mechanisms to re-farm spectrum for ECS

I agree that re-farming encompass various aspects and that it should be addressed at national level on a case-by-case basis.

However, considering the impact that re-farming may have in competition and to avoid harmful interferences, I consider that it would be useful to have guidelines on main issues.

Promoting competition: spectrum caps and set asides

Availability and use of spectrum have impact on the level of competition in electronic communications markets. However spectrum cannot be an instrument of competition in support both of regulators as of users. In accordance, I cannot agree that managers use spectrum caps and/or set asides as rules to promote competition or new entrants.

Spectrum caps and set asides should only be used to promote efficient and effective use of spectrum. Practical enforcement of those principles will contribute to free spectrum and to create conditions to promote new entrants.

Coverage obligations

I favor the inclusion of coverage (population and/or geographic) and/or roll-out obligations in award process and in licenses. I also agree that, taking due account EU policy objectives, coverage obligations are better developed at national level where they can be aligned with national policy and priorities. Nevertheless these obligations must be proportionate.

Trading and leasing of spectrum rights

I consider that spectrum trading and spectrum leasing of usage rights should be allowed not only in harmonized frequency bands but in all awarded spectrum. National authorities should set the relevant framework addressing different allowed situations.

Addressing under-utilised spectrum

The development of IoT platforms and the provision of new and innovative services requiring large amounts of spectrum will make difficult to satisfy demand in certain frequency bands.

Monitoring spectrum use and address situations of underutilized spectrum should be a concern of national authorities. Processes to recoup and re-allocate unused or under-utilised spectrum should be streamlined and all available measures (sunset clauses, UIOLI, penalties, etc.) should be considered.

4. *Sharing/pooling between MNOs in awards?*

Notwithstanding the necessity of a competition assessment, I am of the view that spectrum pooling is an important tool that managers should consider when designing coverage and/or roll-out obligations in spectrum awards process.

Spectrum pooling in the context of existing licenses should also be permitted, subject to prior authorization and on a case-by-case basis.

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