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GSMA Europe response

Public Consultation on the *Draft RSPG Opinion on Streamlining the regulatory environment for the use of spectrum*

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**Herman Schepers
Director GSMA Europe**

**Diamant Building
Blvd. A. Reyers 80
B- 1030 Brussels**

**Tel: +32 2 706 81 06
GSM: + 32 497 37 88 33
E-mail: hschepers@gsm.org
www.gsmeurope.org**



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Summary

GSMA Europe welcomes the opportunity to respond to the public consultation on the draft RSPG Opinion "Streamlining the regulatory environment for the use of spectrum".

GSMA Europe is of the opinion that:

- 1) **Certainty of regulation** - In order to maintain the confidence of spectrum stakeholders, it is very important that the Commission and National Regulatory Authorities make reliable and predictable regulation. In particular, whilst GSMA Europe supports the move towards a more flexible market led approach to spectrum management, we believe that the increase in flexibility of regulations must not discourage existing and future investments.
- 2) **Consistency and co-operation** - GSMA Europe agrees that it is necessary to ensure consistency between the various regulations affecting the use of spectrum, and that co-operation between the European bodies involved in spectrum should be improved where possible.
- 3) **Scope** – We believe it to be important not to exclude any spectrum band or radio service from the streamlining process unless detailed analysis has shown that such exclusion is needed.
- 4) **Transition** - It is of utmost importance that any changes made are implemented in a careful manner – GSMA Europe suggests a step-by-step-approach, with consideration given to the potential implications that changes would bring. A cautious approach should also allow sufficient time to assess how changes affect the whole environment before proceeding between steps.
- 5) **Efficiency** - The most efficient and effective use of spectrum can only be achieved by a balanced combination of all approaches that seek to enhance spectrum efficiency. The streamlining of the regulatory regime requires careful analysis to identify where potential benefits might be outweighed by unintended negative consequences.
- 6) **Harmonisation** - GSMA Europe believes it is important for consumers to be free to use their equipment in as many countries as possible without suffering from interference. Harmonisation through standards or radio regulations can play an important part in achieving this objective whereas national deviations can be counterproductive.
- 7) **Spectrum Users** – We consider that it will be important for all relevant stakeholders to be involved in the ongoing development of the regulatory environment and to take a more active role in the streamlining process.
- 8) **Market Surveillance** – The RSPG notes that market surveillance should be enhanced as it is an important pillar for ex post regulation. GSMA Europe supports this recommendation wholeheartedly. Spectrum users and radio network operators would pay the price for any increase in received interference as a result of insufficient surveillance.



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About GSMA Europe

GSMA Europe is the European interest group of the GSM Association, the premier global body behind the world's leading wireless communications standard. GSMA Europe represents around 147 operators in 50 countries/areas in Europe and counts around 588 million subscribers.



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Approach to streamlining

GSMA Europe acknowledges that the draft RSPG Opinion considers the entire regulatory environment and the inter-working between the different regulatory bodies dealing with the use of spectrum. In our view this is the right approach to help make spectrum use more efficient. Solutions that only address parts of this regulatory environment will not necessarily satisfy the future needs of consumers nor radio-based industries.

Spectrum regulation is often complicated and difficult to understand, but in order to control radio emissions and to enable interference free radio communication for all spectrum users around the world it has been necessary to develop a complex set of national and international regulations. In some cases regulations are unnecessarily strict and not flexible enough; these cases should be identified and investigated with the highest priority. At the same time, where harmonisation of spectrum is needed, this should also be addressed in a timely manner and with a high priority. However, GSMA Europe believes that it is of the utmost importance that any changes are made in a very careful manner and that sufficient time is given to assess how changes affect the whole system.

Reliable and predictable regulation, the experience of interference free use of spectrum and the participation of stakeholders in the decision making process will strengthen confidence in the regulatory system. With regard to consistency within the system, we agree with the RSPG that it is essential to ensure coherence between the respective Mandates that are issued to the CEPT and ETSI, in terms of both scope and timing. It is also important for the Commission to take into account the result of CEPT public consultations.

The draft Opinion discusses the inter-working of ETSI, CEPT and the Commission. However, CENELEC also has some relevant responsibilities, especially in relation to Harmonised Standards for broadcast receivers.

GSMA Europe agrees with the RSPG that the Commission should avoid finalising a Commission Decision until the respective processes within the CEPT are complete.

Facilitating new technologies and sharing solutions

GSMA Europe considers that streamlining the regulatory regime to allow the introduction of innovative technologies and new spectrum sharing models is only one aspect of the desire to make spectrum use more efficient. Harmonisation and standardisation also have their part to play.

As we noted in our 2005 response to the RSPG WAPECS questionnaire, standardisation of wireless equipment and harmonisation of the use of spectrum are closely related issues. GSMA Europe still considers that harmonisation of the use of frequency bands should remain a priority consideration, establishing a basis for the



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efficient development of electronic communications equipment and networks, as well as promoting innovation through the introduction of new applications, as demonstrated by the success of GSM and 3G (UMTS/HSPA). In the same way that we argued WAPECS must not impose a revolutionary regulatory framework across the EU but should adopt an evolutionary approach to changing the legal framework, taking into account the legacy issues arising from the fact that, as an example, fixed, mobile and broadcasting networks remain distinct in terms of investment levels and ongoing costs, GSMA Europe considers that streamlining changes to the regulatory environment must be introduced with care. Long term and significant investments have been made by many industry sectors, including the mobile communications sector, and this necessitates a sufficiently long transition period and evolutionary approach to be taken.

Importantly, the impact of harmonisation is not solely limited to the availability of standards. With regard to the discussion of radio system parameters within the streamlining review, we note that it is essential to base work on an agreed set of reference parameters. Care should be taken in order to ensure that there is no room for ambiguity and that the parameters used by ETSI are consistent with those used within the CEPT and, where appropriate, the ITU. Harmonisation is important for the availability of equipment available on the market in due time, and at a sufficiently acceptable price, for the customer. Harmonisation ensures the necessary economies of scale to see a reduction in prices for networks and end user equipment.

The increasingly intensive use of the radio spectrum can only be achieved if matched by a trend in improvement in the RF performance of products that incorporate transmitters or receivers. GSM and UMTS networks demonstrate the efficiency in spectrum utilisation that is possible, and the GSM and UMTS specifications demonstrate the level of RF performance that is achievable at reasonable cost in consumer products. In general, if users of a wireless product have an expectation that it will not suffer from interference, then the Harmonised Standards applicable to that product will need to include receiver parameters. This is not achievable through the market – it is not reasonable to expect consumers to be able to take the RF performance of wireless products into account in their purchasing decisions.

GSMA Europe considers that the most efficient use of spectrum will only be achieved by a balanced combination of a number of spectrum management tools that influence spectrum efficiency. These include the flexibility to allow innovative technologies, harmonisation, spectrum trading and the study of new spectrum sharing strategies. To find the right balance for all applications, services and users requires the constant attention of all stakeholders, more coherent procedure between all involved bodies in order to avoid time delays, to streamline the consultative and study part of the process and to avoid duplication of the efforts.



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Maintaining confidence

The RSPG have noted on several occasions in the draft Opinion how important it is to maintain the confidence of spectrum stakeholders when streamlining national and European regulation. An important element in this regard is that the NRAs and the European Union should make regulations reliable and predictable. Investors that acquire spectrum need to safeguard their investments over a significant period of time to ensure that a return on their investment is possible.

For consumers of wireless services it is important that interference free use of spectrum and/or operation of their equipment is possible, even when travelling. Interference immediately reduces the confidence of consumers in wireless services and thus the willingness to pay for them. Lack of European harmonisation can be a significant source of interference.

The relationship between the Regulatory Framework, the R&TTE Directive and the EMC Directive is complex, and not fully understood by many stakeholders (nor consumers). The forthcoming review of the R&TTE Directive is an opportunity to clarify this relationship.

GSMA Europe is of the opinion that a closer coordination between TCAM and RSCOM would be beneficial. The Commission could also assist by publishing guidance notes. A positive measure to increase confidence in the regulatory system is to increase the possibility for stakeholders to influence this system. GSMA Europe thinks that a positive measure to increase confidence in the regulatory system is to increase the possibility for stakeholders to influence this system.

Involvement of spectrum users in the streamlining process

Currently only representatives of the European Commission and administrations are entitled to participate in RSPG, RSCOM and TCAM meetings, with few observers. Some national administrations do not involve stakeholders in their national preparations for these meetings. The only possibility is for stakeholders to comment on RSPG, RSCOM and TCAM documents that have been made public, which in many cases is at the end of their development. We believe that it would be appropriate for the Commission and NRAs to involve the relevant stakeholders on a routine basis in their discussions.

GSMA Europe thinks that it is important that all relevant stakeholders are involved in the further development of the regulatory environment and are allowed to take a more active role in the regulatory processes, which should be made more transparent. Especially, GSMA Europe believes that it would be appropriate for the Commission and NRAs to involve the relevant stakeholders on a routine basis in their discussions.



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Standardisation and interfaces to spectrum regulation

Of special importance for the protection of radio communication services are EMC standards for electrical equipment and standards that are harmonised according to the R&TTE Directive. The development of EMC standards is currently dominated by the manufacturing industry, mainly of non-radio electric and electronic equipment. GSMA Europe thinks that the development of these standards is insufficiently followed by European regulators. It appears to be normal for the EMC standard for a certain type of equipment to be developed by the manufacturers of that equipment, with insufficient checks and balances in place. This is particularly true for standards developed by CENELEC, because this body is not open for direct participation by industry, or indeed by spectrum regulators¹. Market surveillance is then the only “emergency break” to discover and counterbalance any failure of the system. Unfortunately it also appears from the draft RSPG Opinion that market surveillance is today at a very low level in Europe and may not therefore be functioning correctly.

In order to avoid the same problem as with EMC standards it is necessary in our view that the MoU between ETSI and CEPT should more clearly identify that the CEPT/ECC has the final responsibility for the definition of radio compatibility parameters. Moreover, the compatibility parameters defined in the Harmonised Standards should not then be changed arbitrarily by national licensing. For the sake of clarity and predictability it is important that these values are applied in all European countries in the same way. If the current version of the R&TTE Directive does not fulfil this objective it may be necessary to revise the corresponding text in the forthcoming review of the Directive.

GSMA Europe therefore thinks that NRAs should put more efforts in following the development of Harmonised Standards. Hand in hand with this, CEPT/ECC should have final responsibility to define radio compatibility parameters, in close cooperation with ETSI, which should then be implemented within the EU in harmonised manner.

Market Surveillance and product labelling

In the draft Opinion it is noted that market surveillance should be enhanced as it is an important support for ex post regulation. GSMA Europe supports this proposal wholeheartedly. Unfortunately, it appears that market surveillance is regarded as a very low priority in some EU Member States. If the essential parameters of the R&TTE directive are not met this could result in a loss of capacity and efficiency of cellular networks. This would effectively force operators to pay for the badly constructed equipment and, indirectly, the lack of surveillance. If market surveillance does not work properly, the entire concept of ex post regulation is put at risk.

¹ Many standards published by CENELEC are transpositions of international standards developed by IEC or CISPR. It is difficult to understand how this process can ensure that these standards meet the requirements of the relevant Directives for the European environment.



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The current requirements in the R&TTE Directive on labelling of products and information in instruction manuals are inadequate – the information supplied is often not sufficient for consumers to understand any limitations on the use of the product². For products bought by mail order, the user will not know these limitations until too late if the information is on the packaging or in the instructions. It would be more effective if sellers of transmitting equipment to end users were required to inform them of any potential restrictions on the use of the product or the need for a licence at the time of sale³.

GSMA Europe therefore thinks that NRAs should strengthen their market surveillance mechanisms.

² For example it has been estimated that in UK, two thirds of the radiomicrophones operating on Channel 69 do not have the required licence. See: http://www.ofcom.org.uk/consult/condocs/ddr/reports/report_sagentia.pdf

³ This would be less onerous than the current obligations on retailers in relation to sale of alcohol, tobacco, knives or (in some countries) television sets.