

ecta RESPONSE

TO THE PUBLIC CONSULTATIONS BY THE RADIO SPECTRUM POLICY GROUP

ON

- 1) DRAFT RSPG OPINION ON A RADIO SPECTRUM POLICY PROGRAMME (RSPP) – RSPG21-014 FINAL**
- 2) DRAFT RSPG OPINION ON SPECTRUM SHARING – PIONEER INITIATIVES AND BANDS – RSPG21-006 FINAL (AND RSPG21-016 FINAL)**
- 3) ADDITIONAL SPECTRUM NEEDS AND GUIDANCE ON THE FAST ROLLOUT OF FUTURE WIRELESS BROADBAND NETWORKS – RSPG21-008 FINAL**

26 MARCH 2021

Introduction

1. **ecta**, the **European Competitive Telecommunications Association**,¹ welcomes the opportunity to comment on the three Radio Spectrum Policy Group (hereafter 'RSPG') consultations launched early in 2021.
2. **ecta** represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. **ecta** represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks and who demonstrate unique innovation capabilities. **ecta** counts Mobile Network Operators (hereafter 'MNOs'), Fixed Wireless Access operators (hereafter 'FWA operators') as well as Mobile Virtual Network Operators (hereafter 'MVNOs') among its members.
3. Since the beginning of the pandemic crisis, **ecta** members are 'all hands on deck' taking care of the networks and their users. Competitive telecommunications operators hugely contribute to network resilience and redundancy to assure service continuity not only for citizens and enterprises - large and small - but also ensuring resilient connectivity to the data centers and for those on the front line, the health actors.
4. This **ecta** response addresses all three documents issued by the RSPG for consultation (RSPG21-014 FINAL, RSPG21-006 FINAL, RSPG21-008 FINAL), with primary emphasis on the RSPG's draft Opinion on a new Radio Spectrum Policy Programme.

1. Response to the consultation on the Draft RSPG Opinion on a Radio Spectrum Policy Programme (RSPP) – RSPG21-014 FINAL

Introduction and Over-Arching Comments

5. **ecta** has been a staunch supporter of the 2012 Radio Spectrum Policy Programme² (hereafter 'RSPP'), especially its provisions on technology and service neutrality (enabling spectrum re-farming for 4G and later 5G), infrastructure sharing, competition, the licensing of the 800 MHz band with a concrete deadline, and its strong ambition and encouragement to Member States to make at least 1200 MHz of suitable spectrum available by 2015 to best meet the increasing demand for wireless data traffic.

¹ <https://www.ectaportal.com/about-ecta>

² [DECISION No 243/2012/EU](#)

6. Where Member States properly took account of the 2012 RSPP, this has proven important in supporting **ecta** members' ability to expand in mobile/wireless markets and to become sustainable spectrum-based market participants (e.g. thanks to wide availability of spectrum, new entrant preference for obtaining <1 GHz radio spectrum and complementing own network rollout with national roaming), to take the lead in 4G deployment (e.g. authorization to re-farm 1800 MHz spectrum kicking-off a 4G investment race), to provide far better service in less densely populated areas such as rural areas (e.g. through passive infrastructure and network sharing), to deploy Fixed Wireless Access (e.g. thanks to availability of sufficient spectrum, plus technology and service neutrality), and to provide unlimited data bundles to customers. The target of having 1200 MHz of spectrum available has also been a driver for the availability of the 3.4-3.8 GHz band, and was a visionary decision which greatly helped to create the conditions for Europe's leadership in 5G spectrum policy in the following years (including the subsequent definition of 5G pioneer bands, which facilitated the creation of the vendor/operator ecosystem for 5G). Taken together, these policies have helped to boost competition and innovation in markets, and have undoubtedly benefited European consumers, businesses, and public administrations making use of mobile/wireless communications.
7. **ecta's first over-arching comment on the RSPG's consultation document is that the provisions of the 2012 RSPP listed above need to be confirmed and enhanced in the new RSPP. In particular, the commitment to competition (contained in Article 3(i) and Article 5 of the 2012 RSPP) needs to be reiterated** (*promotion of competition is sadly quasi-absent from the RSPG's draft opinion*).
8. **ecta's second over-arching comment is to express its regret that the draft RSPG Opinion on the new RSPP lacks ambition, by not identifying specific bands for licensing by a specific deadline (as was done in Article 6.4 of the 2012 RSPP), and by failing to set a new quantitative level of ambition and encouragement to Member States to make additional spectrum available (as was done in Article 3(b) of the 2012 RSPP). An ambitious quantitative target must be included in the new RSPP** (*such specific identification of bands, deadline(s) and quantitative provisions are absent from the RSPG's draft opinion, which represents a missed opportunity*).
9. In addition, and as a **third over-arching comment**, **ecta** considers that **the RSPP's provisions on competition must be sharpened to enable the intensification of competition from challenger operators facing a spectrum deficit, and to enable market entry, in both mobile and Fixed Wireless Access markets.** Therefore, it is necessary to ensure that Member States' authorities designing spectrum assignment procedures take better account of the needs of challenger,

smaller, and new entrant MNOs and FWA operators, which are the innovative actors shaking-up the status quo. Operators deploying FWA play an important role in the roll out of Very High Capacity Networks in areas not covered by fibre-to-the-home networks and are recognized as such by BEREC³. Unfortunately, in many Member States, auction design in recent years has not sufficiently supported competition, leading to accumulation of spectrum in the hands of (often one or two) leading MNOs. Corrective action is needed, to enable challenger MNOs and FWA operators to achieve, where they so request, spectrum portfolios that are equivalent to those of leading operators, including across low, mid and high bands. This is necessary to ensure that challengers have the ability to compete across-the-board for all existing spectrum use cases, and are enabled to innovate and develop new use cases. Moreover, spectrum assignment procedures should be flexible, using assignment mechanisms that are not based exclusively on financial bids. For instance, a worthwhile approach is to incentivize achieving greater geographical coverage by setting coverage off against financial bids (an approach that has been adopted in a few cases in the EU). The imbalance between the spectral endowment of incumbents/leading operators on the one hand, and smaller operators on the other hand, is often the result of the spectrum assignment mechanism being based only on competitive financial bids, which favours the operators with the greatest financial resources (typically the incumbents/leading operators). The effect of this practice is to decrease the ability of challenger operators to invest in network deployment (due to the fact that challenger operators have had to invest their limited financial resources in the auction part of the tender, with negative effects the competitiveness of the market and resulting harm to end users).

10. Based on what is stated in paragraph 9 above, **ecta's fourth over-arching comment is that the new RSPP must be given a much more binding form, and must be accompanied by European Commission guidance, and by a supervision mechanism, to ensure that Member States' authorities effectively implement its provisions, notably the requirement to take pro-competitive measures in the context of spectrum assignment procedures.**
11. **ecta** is convinced that 5G's success is predicated on enabling and promoting operators' ability to come up with new business-to-business (B2B) and business-to-business-to-consumer (B2B2C) services and solutions, and equivalents involving the public sector. Innovative solutions will only come from those operators (MNOs, FWA operators and MVNOs) that have all to gain, and little to lose, from disrupting the staid markets for services to corporate customers and public administrations, which in most Member States remain dominated by the incumbent telecommunications operators which most often hold the largest amount of

³ [BoR \(20\) 165 - BEREC Guidelines on Very High Capacity Networks and BoR \(20\) 223 - BEREC Guide to the BEREC 5G Radar \(Point 21 of which recognizes explicitly that 5G FWA has emerged as one of the early 5G use cases offering gigabit connectivity\).](#)

spectrum. Challenger MNOs need the opportunity, based on adequate spectrum resources, to define connectivity and IT solutions that are more tailored to the needs of businesses and public administrations, and new ‘vertical’ segments in areas such as industry, healthcare, intelligent transportation, smart cities, education, etc. The requirements of MVNOs, especially those providing pan-European connectivity and related IT solutions, also need to be catered for.

12. **ecta’s fifth and final over-arching comment is that it is the duty of the European institutions (the RSPG included) to promote a genuine Single Market, and to act accordingly.** Recognizing that the Internet of Things (hereafter ‘IoT’) is a pan-European market (if not a global market), would be a good starting point. For European IoT companies, Europe is their home market. One way to make spectrum utilization more efficient in all Member States is to ensure a more diverse ecosystem and community of service and solution providers active on networks, who can invent new use cases and develop IT solutions not thought possible before. **Enabling pan-European IoT service providers will contribute to accelerating the payback period on network investments and fees paid for spectrum assignment.**

1.1. Specific comments on the RSPG’s introduction (RSPG Section 1)

13. **ecta** agrees with the RSPG when it states (relating to the 2012 RSPP and to the future) that *‘Most of its provisions have been implemented, however many of the themes are still valid. The challenges in spectrum policy have shifted but the need for clear spectrum policy direction is as valid as ever’*. **ecta’s** comment (see also paragraphs 6-7-8 above) is that the RSPG’s final Opinion should specify that the key policy directions of the 2012 RSPP should be explicitly reiterated in the new RSPP, i.e. the new RSPP should again explicitly address technology and service neutrality, infrastructure sharing, competition, the licensing of specific bands by a specific deadline, and a quantitative ambition on the licensing of a specific amount of spectrum by (a) specific deadline(s) – e.g. 2025 and 2030.
14. **ecta** regrets that, despite the existence of Article 5 of the 2012 RSPP which requires Member States to take pro-competitive measures, new entrants, smaller MNOs and FWA operators (as well as MVNOs) have been disadvantaged in many Member States by auction design (e.g. spectrum caps set too high, lack of (sufficient) competitive safeguards such as spectrum reservations, thresholds for new market entry set at a level where no entrant was able to obtain a sufficient spectrum portfolio to be an effective competitor, erroneous frequency lot packaging decisions, and lack of (or inadequate) national roaming provisions and Full MVNO access). This has resulted in spectrum accumulation by (often one or two) leading MNOs. This is not only detrimental to competition, it also means that spectrum sharing is affected, because the decisions to share are in the hands of those that have a

spectrum position to protect, and usually the least incentive to share. ecta considers (see also paragraphs 9-10-11-12 above) that the RSPG's final Opinion should state that an article on competition needs to be re-included in the new RSPP, and that this article and accompanying recital must make unequivocally clear that Member States do not just have the option to take pro-competitive measures, but are under the explicit obligation to do so. In addition, the text should be sharpened, to require Member States to correct competitive imbalances that have their roots in past policies. The provision in Article 5(2)(a) should no longer be directed mainly to <1 GHz spectrum, but should apply to all low/mid/high bands, because a complete spectrum portfolio is necessary to be able to compete for the full breath of service and to be able to innovate.

15. Where it states *"It is crucial that a new RSPP, building on the forward-looking spectrum policy elements of the European Electronic Communications Code (EECC), benefits the internal market, EU economy and society as a whole. Efficient use of radio spectrum supporting EU policies while maximizing societal value is the overarching target", and, "A future Radio Spectrum Policy Programme us a mean to support key Union policy areas: the European Gigabit Society, the European Green Deal, New industrial strategy for Europe and Shaping Europe's digital future"* the RSPG omits to mention competition. Competition is a core provision in the Treaty on the Functioning of the European Union. Promotion of competition and the interests of citizens are core to the EU regulatory framework (Articles 2(b) and (c) of the European Electronic Communications Code (hereafter 'EECC'), and the recognition of the necessity of ex-ante instruments to protect competition before harm is inflicted has received a strong boost through the EC's 2020 legislative proposal on a Digital Markets Act⁴. Based on the above, ecta advocates that the RSPG cannot remain silent on competition: the RSPG's final Opinion, and the new RSPP, must further promote competition with explicit measures. In addition, the European Commission should be empowered in the new RSPP to issue Guidelines and make Recommendations to Member States on the application of the RSPP in order to ensure that pro-competitive measures and measures correcting existing competitive imbalances are effectively taken by Member States.

1.2. Strategic Spectrum Issues (comments on RSPG Section 2)

1.2.1. Spectrum Sharing and Spectrum Pooling

16. ecta notes that the RSPG suggests that the new RSPP should: (i) actively promote innovative spectrum sharing solutions, (ii) ensure that Member States engage in spectrum sharing, and (iii) prevent obstacles to dynamic spectrum sharing. While cautiously welcoming these points in principle, before being able to agree on any of

⁴ [Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector \(Digital Markets Act\) - COM/2020/842 final](#)

those elements, **ecta** considers that a lot more context and clarity is needed, and that pro-competitive safeguards are needed, which are missing from the RSPG's draft Opinion. It should also be noted that, for many **ecta** members, spectrum sharing remains a theoretical possibility or a major competitive risk, because practical pro-competitive cases are rare, and spectrum accumulation in the hands of (one or two) leading operators is occurring in some Member States.

17. Before going into further detail, **ecta** wishes to make its position clear on the following points in particular:

- There is a need to distinguish between intra-service sharing (e.g. MNOs in the electronic communications sector agreeing to share their Radio Access Networks (RANs)) and inter-service sharing (e.g. between a governmental entity and MNOs, and many other scenarios). **ecta's** views on both types of sharing, and further aspects, are discussed in paragraphs 18 and 19 below.
- Licensed and license-exempt spectrum should be kept separate.
- The next RSPP should include a provision to the effect that where new spectrum is to be made available for electronic communications, award processes must be designed in such a manner as to avoid initial concentration of spectrum in the hands of one or two leading MNOs (or other organizations such as private brokers) as from the award process, and to ensure that challenger, smaller and new entrant operators – where they express interest in being assigned spectrum – stand a fair chance to obtain a portfolio of spectrum that enables them to become an effective competitor. Allowing access to new spectrum to be unduly concentrated from the outset, would only lead to new competition problems that are impossible or very difficult to correct at a later stage. **ecta** notes in this context that several Member States' authorities have applied limited spectrum caps, made erroneous lot packaging decisions, or have not applied spectrum caps at all, in (parts of) recent spectrum assignment proceedings. This has already damaged prospects for effective competition in the long run, and should not occur again.
- Making reference to Section 4.3 of the BEREC Common position on Mobile Infrastructure Sharing⁵, **ecta** is of the view that spectrum pooling among smaller operators should not be impeded, as it can be beneficial for the smaller operators to redress their spectrum deficit compared to the incumbent/leading operators.

⁵ BoR (19) 110

https://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/common_approaches_positions/8605-berec-common-position-on-infrastructure-sharing

- Shared usage of spectrum (through MOCN, national roaming, network slicing, etc.) should be promoted as a way to foster the coverage of less densely populated and rural areas, and is also a way to contribute to reducing the environmental impact of spectrum-based electronic communications networks.
 - Spectrum assignment (and sharing) should not be ‘outsourced’ (deliberately or accidentally) to entities acting as spectrum (sharing) brokers and aiming to extract brokerage fees from actual spectrum users, and which may have no regard for the implications for competition from their brokerage activities.
18. With regard to intra-service sharing, this is already readily possible (and indeed occurs) on commercial terms, subject to competition law, often – but in some cases not – with a satisfactory outcome. The RSPG rightly refers to the need to consider the competition aspects in one paragraph, but not in others, and does not provide any specific suggestions for the new RSPP in terms of promoting and protecting competition. **ecta** believes that further explicit competitive safeguards are needed in the text of the RSPP, in particular to ensure that spectrum pooling among (e.g. two) leading MNOs does not fundamentally lead to creating a spectrum position that damages the possibility for smaller MNOs (e.g. the third or further) to remain effective competitors going forward due to a spectrum deficit compared to the leading MNOs. Specific attention is needed to situations where a third or further MNO wishes to be included in an intra-service sharing agreement, but its participation is rejected by the other participants.
19. Where inter-service sharing is concerned, it is clear that there are legitimate prospects (and indeed actual cases⁶) in which spectrum held by governmental entities and satellite services (etc.) can be shared in order to add capacity to MNOs’ nation-wide mobile/wireless networks. This is for instance readily possible where those entities (including military and security organizations, transport organizations, satellite operators, etc.) only use their spectrum in locations that are known and restricted geographically and in time. In some cases, it is possible that the sharing arrangement involves a clause for prompt clearing in case of a security situation, ‘sharing back’ transmission capacity or providing services to the governmental entity in exchange (e.g. for 4G broadband emergency communications and railroad communications solutions). **ecta** considers that this should be explicitly welcomed and promoted in the next RSPP, subject to

⁶ [For instance the UK Ministry of Defense has a long-running programme to share spectrum with third parties. See among others the tables at pages 8 and 9 of: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833094/Electromagnetic_Spectrum_Blueprint_V1-0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/833094/Electromagnetic_Spectrum_Blueprint_V1-0.pdf)

competition safeguards. We note in this context that sharing military spectrum is mentioned in Section 4.3, bullet points 4 and 5, of the RSPG's draft Opinion, but **ecta** asks that it should also be explicitly included in the spectrum sharing section of the final RSPG Opinion.

20. The RSPG introduces "*the 'use-it-or-share-it' principle*". **ecta** may be able to agree, as it allows more efficient use of a scarce resource, but this would have to be conditional on much more clarity being provided on this concept, taking into account the perspective of both the primary spectrum holder (which may legitimately be required to share it) and the entity gaining rights-to-share the spectrum. If decisions are left solely in the hands of large spectrum holders, or governmental entities, they may be able to impose terms and conditions (technical, non-technical and monetary) which in practice do not lead to sharing. Conversely, if there is no compensation (e.g. no monetary compensation, or no compensation in terms of wholesale network access (e.g. on a MOCN national roaming or RAN sharing basis between MNOs) or in terms of retail services (e.g. prioritization of broadband emergency communications for public authorities) being 'shared back' to the primary spectrum holder), sharing may resemble expropriation, which seems difficult to justify. A reasonable 'modus vivendi' must be established, and include competition safeguards.

21. For all cases discussed in paragraphs 18-20 above, there is a need for vigilance that spectrum sharing is applied in a pro-competitive manner. This is necessary to avoid that benefits from sharing only accrue to the largest MNOs, to companies controlled or closely associated with the State, or to giant companies seeking to extend license-exempt spectrum or encroach on licensed spectrum in order to compete with licensees who paid large one-off and recurring fees for rights of use over spectrum. **ecta** expects the RSPG to add pro-competitive safeguards in its final Opinion on the next RSPP (not just for some parts, as is the case in the draft, but for each spectrum sharing scenario).

1.2.2. Licensing and Spectrum Awards

22. **ecta** deeply regrets that pro-competitive policies are completely absent from the section on licensing and spectrum awards. This needs to be corrected, because spectrum is and will remain a scarce and strategic resource. Hence, it cannot be allowed to be controlled by a few entities (e.g. one or two leading MNOs). Active intervention is needed to strengthen competition, including through spectrum assignment proceedings (be they auctions or other designs).

23. It is particularly important that it is recognized that several recent spectrum assignment proceedings (spectrum auctions) in EU Member States have been poorly designed, for instance by setting spectrum caps too high, or even excluding certain bands from spectrum caps altogether. This has resulted in accumulation of

spectrum by one or two leading operators, damaging the long-term prospects for effective competition, which will result in detriment to citizens' interests. Also, recognition is needed that a new MNO cannot realistically enter the market from scratch without regulation requiring/triggering national roaming. The new RSPP needs strengthened provisions on these points, going beyond Article 5 of the 2012 RSPP, in order to make clearer that national authorities cannot consider pro-competitive measures as optional, whereas they are in fact mandatory. This could be achieved by re-inserting the equivalent of Article 5 with stronger wording to make it more clearly binding on Member States, and by the European Commission issuing related guidance (to accompany the new RSPP and Article 52 of the EECC). **ecta** considers that, above all, clear European Commission and Member State guidance is necessary through the new RSPP: uncertainty favours only the dominant network operators; a regulatory vacuum (e.g. when competent authorities do not act when they should) is not acceptable.

24. Going into more detail, **ecta** is surprised that the RSPG does not emphasize the importance of low bands (<1 GHz) for competition. This is needed, because spectrum below 1 GHz remains important for coverage and indoor penetration, and is not always fairly and efficiently distributed among MNOs. That being said (and as stated in Section 1.2.1 above), the provision in Article 5(2)(a) of the 2012 RSPP should no longer be directed mainly to <1 GHz spectrum, but should apply to all low/mid/high bands. This is necessary because **ecta** has observed that several Member States have designed auctions which allowed 700 MHz, 800 MHz, 2.6 GHz and 3.4-3.8 GHz and 26 GHz spectrum to be concentrated in the hands of too few operators due to insufficient competitive safeguards. Given the increasing importance of mid band and high band spectrum going forward, competitive safeguards are needed to ensure that all MNOs and FWA operators can achieve a fit-for-purpose spectrum portfolio that enables them to be an effective competitor.
25. Where coverage obligations are included in licensing and spectrum awards, recognition must be given to the position of smaller operators and new entrants, including the possibility for meeting the coverage obligations both directly and indirectly, e.g. through a combination of own network and national roaming (be it regulated or commercially agreed national roaming).
26. With regard to local licensing for so-called 'verticals' (e.g. industrial sites, ports campuses, etc.), **ecta** is concerned that this can jeopardize the availability of large contiguous blocks of spectrum for MNOs, especially in mid bands. Challenger MNOs are well placed to work in close collaboration with industrial and government users to define new B2B and B2B2C solutions, including through network slicing. This is necessary to break the stranglehold of incumbent telecommunications operators on the markets for services to businesses and public administrations. Therefore, local licensing should not be adopted in the primary low and mid bands for 5G, or at least

large portions of those bands should not be reserved on a nation-wide basis for local licensing, because it would leave a lot of evidently useful spectrum unused in practice. If local licensing is considered needed, doing so in millimeter wave bands may be more appropriate (a point the RSPG itself makes in its Section 3.1, bullet point 4).

27. The 3.8-4.2 GHz band represents ‘sweet spot’ mid band spectrum that should in future evolve towards exclusive allocation for nation-wide mobile/wireless broadband, with inter-service sharing perhaps as an interim state. It should not be extended to local vertical applications.
28. As stated in Section 1.2.1 above, **ecta** is of the opinion that licensed and license-exempt spectrum should be kept separate. This is the case notably because interference risks in license-exempt bands are real, and can change unpredictably over time as new use cases and additional devices are rolled-out (potentially on a large scale, or in specific concentrations) without the knowledge of the public authorities and other users.

1.3. Spectrum Needs and Supporting EU Vision/Policies (comments on RSPG Section 3)

29. **ecta** was surprised to learn, and regrets, that the draft RSPG Opinion misses the opportunity of identifying specific bands for licensing by a specific deadline (as was done in Article 6.4 of the 2012 RSPP), and fails to set a new quantitative level of ambition and encouragement to Member States to make additional spectrum available (as was done in Article 3(b) of the 2012 RSPP). This is all the more surprising given that the European Commission asked the RSPG for an opinion on making available 12 GHz of spectrum, in the following terms⁷:

“as a political target, making available at least 12 GHz of spectrum below 100 GHz (including already EU-harmonised spectrum) to promote innovative wireless services, including next generation mobile and wireless access systems (such as Wi-Fi), in support of the Union’s Gigabit connectivity targets;” []

The RSPG’s draft Opinion is also surprising in this regard because Point 1 of the draft RSPG Opinion on Additional Spectrum needs (RSPG21-008 FINAL), which is being consulted upon simultaneously, is: *“The RSPG: 1. Recognises that the current demand in the majority of MS for additional spectrum is mainly for the mid-bands.”*, which clearly points to there being additional demand over and above demand covered by existing available harmonized spectrum.

⁷ [Request for an Opinion on a Radio Spectrum Policy Programme, page 3:](https://rspg-spectrum.eu/wp-content/uploads/2020/02/RSPG20-003final-request-for-RSPG-opinion-on-RSPP.pdf)
<https://rspg-spectrum.eu/wp-content/uploads/2020/02/RSPG20-003final-request-for-RSPG-opinion-on-RSPP.pdf>

30. **ecta** cannot emphasize enough how important it is for a voluntarist quantitative (and indeed political) target, expressed in GHz, to be included in the new RSPG. Such a target must again (as in the 2012 RSPG) concern a large amount of spectrum, with a focus on increasing demand for mobile/wireless broadband capacity and speed, to support the ambitions expressed in the European Commission's Communication entitled "2030 Digital Compass: the European Way for the Digital Decade"⁸.
31. **ecta** would consider it reasonable for the RSPG to support European stakeholders' position regarding the 6 GHz band for IMT⁹ ahead of the 2023 World Radio Conference, and thus to include the identification of the upper 6 GHz band (6425-7125 MHz) as a European position and high priority work item for WRC-23, and to propose the inclusion thereof in the new RSPG.
32. As regards the points made by the RSPG on innovative wireless service (Section 3.1 of the draft RSPG Opinion), **ecta** welcomes the points made on fixed wireless access, and in particular the notion that the European Commission and Member States should support the flexible usage of ECS EU harmonized spectrum in order to support fixed wireless access and wireless backhaul.
33. Where it wireless backhaul is concerned (Section 3.1 bullet point 5 of the draft RSPG Opinion), **ecta** emphasizes that although fibre will be the preferred backhaul solution where possible, there are, and will remain, many cases in which wireless backhaul is the solution of choice. Whilst we agree that there is no need for specific policy initiatives in spectrum terms, **ecta** would welcome an RSPG statement to the effect that existing MNOs and FWA operators' wireless backhaul links (e.g. in the 11 GHz, 18 GHz, 23 GHz, 32 GHz 38 GHz and 80 GHz bands) should not be put in jeopardy. Bands which are not currently made available in all Member States are also relevant, such as: E-Band 71-76 – 81-86 GHz, and W-band within the 92 – 114.25 GHz range and D-band within the 130 – 174.8 GHz range.
34. As regards interactions with the transport sector, efforts are needed to ensure competitive mobile broadband offers (i.e. customer choice among various operators and service providers) on board cars, trains, aircraft, etc. even if there is only one or a limited number physical RANs in operation on the relevant routes. There is also an important IoT dimension related to connected mobility, and a need to recognize that specialized providers, including European MVNOs, have an important role to play in this field. Attention is therefore necessary to ensure that domestic wholesale access and wholesale roaming access are available on suitable commercial terms to enable pan-European IoT, and subject to regulation if the market fails to deliver

⁸ https://ec.europa.eu/info/files/communication-2030-digital-compass-european-way-digital-decade_en

⁹ [Statement by major trade associations, operators and vendors: https://ee-paper.com/the-spectrum-above-6ghz-has-become-the-main-source-of-5g-band/](https://ee-paper.com/the-spectrum-above-6ghz-has-become-the-main-source-of-5g-band/)

commercial wholesale for IoT on fit-for-purpose terms. **ecta** wishes to add as a remark that the telecom sector is a key enabler for greening the transport sector.

1.4. Spectrum Governance (comments on RSPG Section 4)

35. **ecta** notes that the draft RSPG Opinion is silent on the spectrum peer review process (Article 35 of the EECC). **ecta** deeply regrets that the RSPG-led peer review process on radio spectrum assignment has so far occurred in a closed forum, and that neither the RSPG nor BEREC invite stakeholders to inform their work relating to peer reviews, do not provide any transparency on what is discussed, and on what the outcome is of peer reviews. This must change. The RSPP represents an opportunity to clarify the transparency and stakeholder involvement aspects of the peer review process.
36. **ecta** is particularly concerned that peer reviews might not sufficiently take the competition dimension into account (e.g. spectrum caps, spectrum set-asides for new entrants/operators with a structural spectrum deficit, national roaming, wholesale access), as well as the access and take-up dimensions of Article 3 (2) (a) EECC – which also applies to networks relying on radio spectrum.
37. More generally, **ecta** finds it surprising that, despite the existence of the RSPG-led peer review process, spectrum auctions remain designed in extremely different ways, even as spectrum assignment proceedings are based on the same legal and regulatory framework, and where market circumstances are objectively similar. In particular, it appears that some Member States are allowing higher spectrum concentration in the hands of (one or two) leading operators than other countries, without any objective justification.
38. The fundamental concern is that some governments and regulatory authorities pay insufficient attention to the binding requirements of Article 5 of the 2012 RSPP. There is therefore a need for stronger wording in the new RSPP to make the requirement for explicit competitive safeguards more clearly binding on Member States, and for the European Commission to issue related guidance (to accompany the new RSPP and Article 52 of the EECC).

1.5. External Relations (comments on RSPG Section 5)

39. **ecta** appreciates that the RSPG refers to international negotiation with third countries on spectrum coordination issues. However, it can be observed that this process is opaque and takes far too long. **ecta** advocates that the new RSPP should reflect that the status-quo is not inevitable and that improvement is necessary, and that there should be explicit triggers (for MNOs to make formal requests that

must be followed-up on by administrations) to conduct and accelerate international negotiations.

1.6. Other Policy Areas with Spectrum Dimension (comments on RSPG Section 6)

1.6.1. Migrating Regulatory Service Obligations to the Latest Technologies

40. With reference to the RSPG's Section 6.2, bullet point 1, **ecta** is of the view that deviating from the principle of technology neutrality is unwise. Operators should be entitled to use any technology to deliver their services. If and when deviations would be considered by the EU institutions, this should be subject to public consultation, including on the exact wording of any proposals, with sufficient time given to stakeholders to consider and develop their position.
41. **ecta** agrees (Section 6.2, bullet point 2) that the European Commission and Member States should anticipate any impact from possible future phasing out of 2G, 3G, and even 4G in the next decade. **ecta** asks the RSPG to include in its final Opinion that the impact assessment should be subject to a full public consultation, and should explicitly not only concern retail services, but also wholesale access, for both traditional services and for IoT. Where stakeholders express concerns about market distortions in the context of phase-out/shut down, it must be possible to take measures to prevent/correct such distortions and prevent exclusionary effects. The approach to migration from legacy infrastructure (Article 81 of the EECC) may serve as inspiration, although it needs to be unequivocally clear that wholesale access takers cannot be excluded from the market merely on account phase-out, and cannot be excluded from access to the latest technologies.

1.6.2. Green New Deal + Climate Change

42. On the topic of climate change (Section 3.6 of the draft RSPG Opinion, and also Section 6.2), **ecta** is on record as supporting the European Green Deal. In connection with spectrum, it is well established that MNOs able to rely on wide contiguous blocks of spectrum and deploying 5G New Radio (5G NR), are expected to achieve better energy performance than has hitherto been possible. Therefore, wide contiguous bands available for all MNOs, and rapid evolution towards 5G NR, are to be welcomed, which are points that the RSPG could usefully include in its final Opinion on the RSPP.
43. In the last bullet point of Section 6.2, the RSPG indicates: "*The European Commission and Member States should assess whether and how ECS network operators could report on their emissions and contributions to the Union's environmental targets. The RSPG will contribute to any such assessments within its field of knowledge and expertise*". **ecta** is concerned that this could impose an additional layer of

administrative burden specific to MNOs, potentially extending over and above horizontal measures that may be adopted.

1.6.3. *Electromagnetic Fields, EMF*

44. Section 6.3 of the RSPG's draft Opinion is surprisingly limited in addressing a topic as important as Electromagnetic Field Radiation (hereafter 'EMF').
45. **ecta** considers that the RSPG should take a more voluntarist approach, and explicitly recommend to the European Commission and Member States that they should incorporate provisions on EMF in the new RSPP, for instance by stating explicitly that Member States shall align EMF limits applied at national or at sub-national level on the latest WHO and ICNIRP (International Commission on Non-Ionising Radiation Protection) limits. **ecta** submits that making those levels binding at EU level will help a great deal to bring outlier Member States (and regions within Member States) into line with well-established practice elsewhere. Converting (while updating) EU Council Recommendation 1999/519/EC to a Directive may also be a worthwhile way forward.

1.6.4. *Additional Point*

46. Where consideration is given to assigning radio spectrum on a temporary basis, the same concerns about competition and accumulation of spectrum in the hands of (one or two – or more) leading operators apply. Care is therefore needed that challengers, smaller operators and new entrants are not disadvantaged where it comes to temporary spectrum assignments.

2. Response to the consultation on the Draft RSPG Opinion on Spectrum Sharing – Pioneer Initiatives and Bands – RSPG21-006 FINAL and the RSPG Report on Spectrum Sharing – A Forward Looking Survey – RSPG21-016 FINAL

47. **ecta's** over-arching messages regarding this draft RSPG Opinion are that: (i) it is unclear from the text of this document (and from the draft Opinion on the RSPP) what the benefits are for ECS providers from sharing, (ii) this document is very technical, and should be more accessible to stakeholders that are not entitled to participate in the RSPG's work, and (iii): there is a need for vigilance that spectrum sharing is applied in a pro-competitive manner.
48. Section 1 above already contains **ecta's** substantive comments on spectrum sharing, when, discussing the draft RSPG Opinion on the RSPP. Please refer especially to paragraphs 16-21 of Section 1 above, where our comments distinguish between intra-service sharing (not to be confused with dynamic spectrum access) and inter-service sharing. **ecta's** points are briefly specified and augmented here as needed in

response to specific elements contained in RSPG21-006 FINAL and RSPG21-016 FINAL.

49. **ecta** welcomes the RSPG’s statement in Section 1.1, point 9 that: *“Member States may need to assess any competition issues arising from the measures introduced”*, but **ecta** emphasizes that this statement is clearly insufficient. It **should be modified and enhanced in the RSPG’s final Opinion to: (i) make it not optional, but a requirement for Member States to ensure that competition issues are assessed, (ii) provide for case-by-case competition assessment of spectrum sharing cases (i.e. not only an assessment of the principles or measures to be introduced), and (iii) require authorities to have procedures in place and effectively take corrective action where the assessment on a case-by-case basis reveals is that there is potential harm to competition.**
50. **ecta** was pleased to read, in the accompanying document RSPG21-016 FINAL, Section 2.3, paragraph 2, first sentence that: *“Spectrum sharing may contribute to achieving the main objectives of the Code, namely promoting competition, the internal market, end-user interests and connectivity among others.”*. **This statement should be included, in full, also in both the final RSPG Opinion on the RSPP (for inclusion in the new RSPG), and in the final RSPG Opinion on Spectrum Sharing.**
51. With regard to spectrum pooling among licensed operators (Section 1.1, paragraph 11), **ecta** emphasizes the necessity to prevent that pooling among (e.g. two) leading MNOs does not lead to creating a spectrum position that damages the possibility for smaller MNOs (e.g. the third or further) to remain effective competitors going forward due to a spectrum deficit. Specific attention is needed to situations where a third or further MNO wishes to be included in a pooling (or other sharing) arrangement, but its participation is rejected by the other participants.
52. In Section 1, paragraphs 4 and 2, of RSPG21-006 FINAL (Options for Promoting Spectrum Sharing), the RSPG strongly seeks to promote the *“principles of “use-it-or-share-it”* and reference is made to what is called *“the Italian “club use” at 26 GHz, which follows the principle of “use-it-or-share-it”*. **ecta** considers that insufficient detail and analysis of the implications of ‘these principles’ / ‘this principle’ is provided by the RSPG (Are there several principles? Is it one principle? And what are they/what is it exactly?). The implications for each party subject to the Italian 26 GHz ‘club use’ system are considerable, resulting in differing views on the appropriateness of the model as currently implemented in Italy. More generally, **ecta**’s agreement on a concept such as ‘use-it-or-share-it’ would have to be conditional on much more clarity being provided, taking into account the perspective of both the primary spectrum holder (which may legitimately be required to share it) and the entity gaining rights-to-share the spectrum. If decisions

are left solely in the hands of large spectrum holders, or governmental entities, they may be able to impose terms and conditions (technical, non-technical and monetary) which in practice do not lead to sharing. Conversely, if there is no compensation (e.g. no monetary compensation, or no compensation in terms of wholesale network access (e.g. on a MOCN national roaming or RAN sharing basis between MNOs) or in terms of retail services (e.g. prioritization of broadband emergency communications for public authorities) being ‘shared back’ to the primary spectrum holder), sharing may resemble expropriation, which seems difficult to justify. Where ‘use-it-or-share-it’ would be applied to smaller and new entrant spectrum holders, which might as a consequence have to share their spectrum with leading operators (possibly without receiving compensation in monetary terms or in terms of wholesale network access), this could result in strengthening the position of leading operators to the detriment of competition. This can clearly not be the intention, and therefore competition safeguards must necessarily be associated with any general or specific application of (a) ‘use-it-or-share-it’ principle(s).

3. Response to the consultation on the Draft RSPG Opinion on Additional Spectrum Needs and Guidance on the Fast Rollout of Future Wireless Broadband Networks – RSPG21-008 FINAL

53. ecta’s over-arching observation is that this document contains rather little to comment on, since it is essentially describing survey results, and contains a draft Opinion worded in very brief terms (1 page), with which ecta is mostly in agreement, although far more explanation and nuance would be most welcome.
54. That being said, ecta is under the impression that this document appears to find that there is more spectrum demand than for the 12 GHz currently available, certainly as regards MNO demand for more mid band spectrum for 5G NR and beyond (Point 1 of this draft RSPG Opinion). It is therefore surprising to ecta that the draft RSPG Opinion on the RSPG issued on the same date fails to set a new quantitative level of ambition and encouragement to Member States to make additional spectrum available. For further substantive comments on this matter, please refer to paragraphs 29-31 above).
55. With regard to Points 2, 3, 6 and 7 of this draft RSPG Opinion, ecta notes that the RSPG states that there is demand from so-called ‘industry verticals’ for spectrum in the millimeter wave (hereafter ‘mmWave’) bands. Evidence on the scale of demand seems limited, and thus the extent to which it will turn into reality needs further assessment before reaching a conclusion. The RSPG rightly observes that Member States have adopted dissimilar approaches to spectrum for verticals so far, including some assigning mid band spectrum for such purposes. From ecta’s point

of view, the RSPG Opinion should not advocate setting aside spectrum for ‘verticals’ prematurely. This applies to: (i) the mid band (where serious errors have already been made in a few Member States, resulting in the reduction of block sizes for operators and inflated prices for spectrum being paid) and (ii) also to mmWave bands, because these bands represent key resources for FWA services, which will be put to good use to achieve the Gigabit connectivity objective contained in the European Commission’s Communication entitled “2030 Digital Compass: the European Way for the Digital Decade”. The mistakes made by some Member States for the mid band should not be repeated for mmWave bands. Based on what precedes, [ecta](#) disagrees with Point 6, where the RSPG recommends to investigate the possible use of the 3.8-4.2 GHz band for local vertical applications. The 3.8-4.2 GHz band represents ‘sweet spot’ mid band spectrum that should in future evolve towards exclusive allocation for mobile/wireless broadband, with inter-service sharing perhaps as an interim state. An extension to local vertical applications is not desirable. The same applies for mmWave bands such as 26-28 GHz. In sum, spectrum should not be reserved for ‘verticals’, as this will unduly fragment bands that can be put to better use (yielding better socio-economic welfare) by MNOs and FWA operators, and because the requirements of ‘verticals’ can be met by MNOs eager to meet B2B customer needs (including through network slicing and localized network sharing where relevant). [ecta](#) also expects the RSPG to be much more explicit on the future treatment of the 6 GHz band in its final Opinion on additional spectrum needs. As discussed in paragraph 31 above, [ecta](#) would consider it reasonable for the RSPG to support European stakeholder’s position regarding the 6 GHz band for IMT ahead of the 2023 World Radio Conference, and thus to include the identification of the upper 6 GHz band (6425-7125 MHz) as a European position and high priority work item for WRC-23, and to propose the inclusion thereof in the new RSPP and in the final Opinion on additional spectrum needs.

56. Point 4 of this draft RSPG Opinion concerns fixed wireless access. Given its strong support for the principles of technology and service neutrality, [ecta](#) explicitly agrees that “[...] *there is no need for a dedicated designation for FWA in the mmWave bands*” [...]. MNOs should have the possibility to provide fixed wireless access relying on their rights-of-use over spectrum, but at the same time, [ecta](#) emphasizes the importance of FWA operators operating as fixed network operators in their own right, using fibre (or microwave) backhaul to deliver Gigabit connectivity to fixed locations. Such operators have already accomplished a great deal in some Member States, and great further promise lies ahead for (5G) Very High Capacity Network operators providing fixed connectivity in rural areas throughout the EU. The point made here is that spectrum policy should not tilt the playing field: MNOs can be FWA operators, but there should also be opportunities for companies to develop their business case for Gigabit connectivity delivered via FWA. Spectrum policy should not lead to FWA being de-facto the ‘option’ or ‘add-on’ for MNOs, to the exclusion of others.

57. **ecta** readily agrees with Point 10 of this draft RSPG Opinion and with Annex II, part IV on EMF. It is urgent to update EU Council Recommendation 1999/519/EC (and perhaps to convert it to a Directive) in order to take into account the revision of the ICNIRP guidelines. As stated in paragraph 45 above, **ecta** considers that the RSPG should take a more voluntarist approach, and explicitly recommend to the European Commission and Member States that they should incorporate provisions on EMF in the new RSPP, for instance by stating explicitly that Member States shall align EMF limits applied at national or at sub-national level on the latest WHO and ICNIRP limits. **ecta** submits that making those levels binding at EU level will help a great deal to bring outlier Member States (and sub-national regions within them) into line with well-established practice elsewhere. It should be noted in this context that emissions of current and 5G NR networks are significantly below the ICNIRP limits and that Member States are starting to apply IEC standards for EMF evaluation of 5G Massive MIMO.
58. **ecta** also has a comment to make on the presentation of survey results within the draft RSPG Opinion on additional spectrum needs. In Annex II, part II, bullet point 3, the RSPG finds that: *“Migration of existing users in the mm-waves seems to be preferable than co-existence”*. It is not clear to **ecta** how this conclusion was reached, and which Member States support it. **ecta** wishes to re-emphasize that although fibre will be the preferred backhaul solution where possible, there are, and will remain, many cases in which wireless backhaul is the solution of choice. Existing MNO wireless links (e.g. in the 11 GHz, 18 GHz, 23 GHz, 32 GHz 38 and 80 GHz bands) should not be put in jeopardy. Bands which are not currently made available in all Member States are relevant, such as: E-Band 71-76 – 81-86 GHz, and W-band within the 92 – 114.25 GHz range and D-band within the 130 – 174.8 GHz range.
59. Finally, **ecta** is compelled to express its regret that RSPG21-008 FINAL and its accompanying material does not indicate which Member States took which position in response to the survey. This makes it difficult for **ecta** and its members to assess to which extent the conclusions drawn reflect the position in each Member State. Even more concerning is the fact that it is not clear whether or to which extent Member States have themselves consulted stakeholders to reach the positions that they have taken in response to the RSPG survey. In this regard, **ecta** must report that none of its members have been explicitly consulted by their Member States’ authorities in the specific context of this RSPG workstream. **ecta** therefore expects greater transparency and involvement of all operators in RSPG work going forward.

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For further information, clarification or discussion, please contact Mr. Luc Hindryckx, **ecta** Director General.