



Telefónica Group response to consultation on draft RSPG 2011 Work Programme

General comments

Telefónica would like to thank the Radio Spectrum Policy Group (RSPG) for giving stakeholders the opportunity to comment on their draft 2011 Work Programme. We agree that the most important element of the RSPG Work Programme will be its further contributions to the implementation of the first multi-annual Radio Spectrum Policy Programme (RSPP).

On a general point, it is unclear to Telefónica if the RSPG is proposing to hold public consultations on all of its deliverables, which we would wholeheartedly support, or whether it is yet to decide, since the table entries "Public consultation" appear in some places to be sub-headings, similar to "Type of Delivery" or "Expected by". In previous years some of the deliverables of the RSPG have not been open to comment. There is a need for confidence to be maintained in the regulatory approach to spectrum management as we go introduce the RSPP, and that confidence can be boosted by open and transparent procedures relating to all aspects of the European institutions' work.

Review of Spectrum use

The increasing demand on new electronic communications services and applications by users requires an increasingly efficient management of resources, including the radio spectrum. Telefónica believes that the RSPP proposal (Article 8) to:

- Create an inventory of existing spectrum usage;
- Assess the technical efficiency of existing usage;
- Take into account future needs for spectrum; and
- Identify spectrum bands that could be assigned or re-allocated;

is one of the more important elements of the programme and it is appropriate, in our view, for the RSPG to spend time in 2011 to investigate the best process for analysing spectrum demand and the impact of technology trends on such demand.

Although the RSPP will be reviewed by the end of 2015, its implementation also needs to take into account trends that extend to at least 2020. The trends that Telefónica has seen in recent months with the phenomenal uptake of Mobile BroadBand (MBB) suggest that more spectrum will be required for mobile services, in both high and low frequency bands, as the bandwidth per user increases. A long-term view (10+ years on end user requirements,

technologies and markets) is needed. In particular, the focus should be on the economic benefits that different radio services and applications could offer Europe as a whole.

Our customers are demanding an increasingly wide range of services, with a high focus currently on social networks, hyper-connectivity and machine-to-machine communications. These content rich services require a transformation of existing networks from voice enabled communications to high data traffic enabled ones. In addition to increasing efficiency (for example through the switch to digital technologies), Telefónica called in our response to the Commission's consultation on the RSPP for a review of spectrum allocations between at least 400MHz and 5GHz to ensure that there will be sufficient spectrum allocated to Mobile BroadBand through to at least 2020. We note that the focus of the Commission's proposals (Article 8(1)) are on the range 300MHz to 3GHz, and we are concerned that this is not sufficiently broad to address future requirements. In particular, we note that the Commission itself acknowledges the importance of the 3.5GHz bands¹ in the provision of broadband for all. Telefónica therefore suggests, as two of the first points of discussion, that the RSPG confirms the most appropriate frequency range(s) and timescales for the RSPP review to address.

Collective use of spectrum

Telefónica supports the efficient use of spectrum but prefers to focus on the flexible use of spectrum within exclusive licences. There are applications that benefit from a Licence Exempt (LE, or general authorisation) approach, but we have seen no evidence that the relatively large amount of spectrum made available for short range LE use in recent years is in danger of becoming limited in utility. Telefónica would therefore not expect any further increase in the amount of spectrum set aside for licence exempt use in the short to medium term in frequencies below about 60GHz. The proposal that the RSPG focus its attention on two specific areas, one of which is the millimetric wavelength frequency bands, is therefore, in our view, entirely appropriate.

As we noted in our response to the public consultation on the draft RSPG Opinion on the collective use of spectrum (CUS), CUS complements individual usage rights, and we noted that with the definition of CUS adopted by the RSPG there are some instances, such as the private commons, where CUS is achieved within an individual authorisation. However, Telefónica considers that most services currently being provided over radio spectrum need individual rights to be granted in order to ensure an appropriate quality of service by avoiding the threat of harmful interference, and that this puts limits on the applicability of the hybrid (private commons) approach. It is our view that this requirement for guaranteed quality of service will also limit the applicability of CT in many licensed spectrum bands, especially where there is a primary rights holder, although we acknowledge that there may be exceptions (for example, the use of "white spaces" in terrestrial broadcasting bands). The second specific area of work proposed, further exploration of the policy implications of the use of white space spectrum, should in our view be qualified further to identify which white space spectrum is in focus – terrestrial broadcast or other?

Improving broadband coverage

We agree with the RSPP proposal that using the radio spectrum to provide Mobile BroadBand services can help to achieve widespread broadband access for European citizens. The radio spectrum can be used more efficiently by the deployment of newer technologies,

¹ For example, in recital 12, which references Decision 2008/411/EC, in recital 22, and in Articles 6(2), 6(5) and 9(3).

allowing the provision of a wider range of services to the customers, reducing the digital divide and sustaining a high level of infrastructure competition (between fixed and wireless networks as well as between wireless networks). Telefónica believes that it is important for regulators to take into account spectrum management policy in conjunction with market regulation. We acknowledge that it will be difficult to find any “unique” and definitive solutions to the different issues facing Member States but note that, as the RSPP proposal acknowledges, national regulators retain the final responsibility for implementation of these measures.

Many “markets” that rely on radio spectrum, such as mobile, are highly competitive. Spectrum should be managed with the main objective of ensuring business certainty: national regulators retain a high level of responsibility and they should not consider spectrum as a means to “intervene” in the market, but should take great care when considering spectrum issues. We are particularly concerned, therefore, about the use of undefined measures of competition² in the RSPP, as this may be seen as decreasing legal certainty and consequently discouraging investment, and consider that the RSPG’s further work on the RSPP, and on broadband coverage in particular, should result in the removal of ambiguity and the increase of legal certainty in the final wording.

Other work

Telefónica believes that there is also a need for the RSPG to follow up its recommendations in the 2009 Opinions on the preparation of WRCs and on the main themes of WRC-12, and its new Opinion on common policy objectives for WRC-12, as stakeholders prepare for the next World Radio Conference in early 2012. In addition, we acknowledge that work on the energy saving potential of spectrum usage and on interference management is needed to follow up on the recommendations in the RSPG Opinion on the RSPP.

Finally, if there are to be Reports developed by the RSPG in 2011 on spectrum sharing, the competition aspects of the liberalisation of spectrum usage, and/or other topics, undertaken jointly with BEREC, Telefónica considers that these should not only be published (as has been done in the past for similar Reports), but also that they should be open for comment through a public consultation.

² For example, use of the phrases: “ensuring effective competition” in Article 2 (d); and “preventing ex ante, or remedying ex post, excessive accumulation of radio frequencies” in Article 3 (d).