

Wireless Access Platforms for Electronic Communications Services (WAPECS)

Response to the Radio Spectrum Policy Group
Consultation on a Draft Opinion

Q1. Do you agree with the operating definition of WAPECS? Do you consider that the WAPECS concept should include spectrum intended for private, as well as public, applications?

Ofcom considers that the definition of WAPECS given in the consultation is appropriate. As such, we believe that the WAPECS concept should include spectrum intended for private, as well as public, applications.

Ofcom considers that, for WAPECS to be of most benefit, the Opinion must be pitched at a sufficiently high level, thus providing an overall strategic framework. This requires a sufficiently broad definition of WAPECS which encompasses all the bands which might be covered by the concept. This will enable further work, to be undertaken by other bodies such as the Radio Spectrum Committee (RSC), to consider how WAPECS might be applied to individual bands. It also means that future services and technologies are more likely to fall within the scope of WAPECS. This is important as a key aim of WAPECS is move away from narrowly defined applications and instead consider how spectrum can be most effectively managed in a converging world. This will only work if the definition of WAPECS in the Opinion is sufficiently broad such that all applications/services, making use of any frequency band, that we might wish to include in future are covered.

For these reasons Ofcom believes that the definition of WAPECS, as given in the draft Opinion, is correct.

Q2. Do you consider that the term “platform” should be more closely defined? If so, what definition do you propose?

As explained above in answer to question 1, Ofcom considers that the definition of WAPECS should be kept deliberately broad. The role of the RSPG is to provide strategic and high level advice to the Commission on spectrum issues. As such, the aim of the Opinion should be to provide an overall strategic framework, under which more specific work on particular policy issues can be undertaken in future. We therefore do not think it is appropriate for the RSPG to seek to more closely define terms such as “platform” or to seek to narrow the scope of the definition in any way.

Q3. What, if any, constraints should there be on the provision of services using spectrum primarily in the broadcast domain?

The draft Opinion states in the introduction that, wherever possible, constraints attached to the usage of specific radio spectrum bands must be removed. Ofcom agrees with this statement and consequently believes it would be inappropriate to seek to impose specific constraints in the broadcast domain as part of the WAPECS Opinion.

As a generalisation, Ofcom believes that there are often better ways of meeting individual policy aims, such as may exist in the broadcast domain, than imposing specific constraints on the use of spectrum. However, this is an issue that can better be assessed on a case-by-case basis with each band being considered on its own merits. For the reasons set out above, Ofcom considers that the WAPECS Opinion should focus on high level strategic issues, leaving more detailed policy issues such as constraints that may need to be placed on use of particular spectrum bands to be dealt with at a later date. Ofcom believes that this future more detailed work could most appropriately be undertaken by the RSC, under the supervision of RSPG.

Q4. What specific rules should be introduced or maintained to safeguard the delivery of Services of General Economic Interest in the future? Is it appropriate to deal with these issues through the regulation of spectrum, or through other instruments such as competition law or state aid policy?

Ofcom considers that all unnecessary constraints on the use of spectrum should be removed. This will provide for maximum flexibility, thus enabling best use to be made of spectrum as fixed, mobile and broadcasting services continue to converge.

This is not to say that all constraints on spectrum use should be removed and the draft Opinion helpfully identifies a number of reasons why constraints may be necessary. However, any constraints must be justified and proportionate, in line with the requirements of the Framework Directive. It is essential to consider whether the market, combined with ex-post controls such as competition law, will be able to deliver an effective and efficient outcome. Only if this is not the case is it appropriate to consider the sort of additional restrictions that may be required, including the possibility of spectrum constraints.

The key point, which is being repeated in the answer to many questions, is that the WAPECS Opinion should provide the strategic framework, under which more detailed work can be undertaken in future on more specific policy issues. It is as part of this more detailed work that it will be appropriate to consider whether additional constraints need to be placed on the use of particular spectrum bands. By first considering whether other instruments, such as auction design or competition law, will deliver the desired result it will be possible to keep unnecessary constraints to the minimum.

Thus, Ofcom believes that constraints on spectrum use should only be used once other alternatives have been considered and rejected as inappropriate (an impact assessment will demonstrate that any constraints are justified). This is because there will often be better ways of achieving policy objectives than through imposing restrictions on spectrum use. As indicated above, any restrictions on spectrum use which are imposed must be compliant with the requirements of the Framework Directive.

Q5. How do you think changes in spectrum policy will impact on the requirement for standardisation? What policy will best ensure the timely availability of standards?

Ofcom considers that standardisation can often be beneficial to producers and consumers, and that (subject to compliance with competition and other laws) it is something generally to be encouraged. But we don't see this as an activity that regulators need to lead. Standardisation occurs in many sectors of the economy, and it is an area where we expect the businesses with an interest to lead, working through the usual standards bodies like ETSI and IEEE.

Ofcom considers that a flexible approach to spectrum management, including market mechanisms, will provide more scope for the industry to take the lead in harmonisation activities. It will enable the industry to obtain quicker and easier access to spectrum in which to deploy services and provide opportunities for market-led harmonisation for particular standards and applications across the EU. This should encourage innovation and competition. Ofcom considers that industry led standardisation is likely to become increasingly important as spectrum harmonisation becomes more flexible.

In the interim period, until such time as market mechanisms and flexibility are better established across the EU, there will be a need for regulators to continue to make blocks of spectrum available to the market. However, this should not affect the approach towards standardisation. The need for regulatory intervention to make blocks of spectrum available to the market can be dealt with by RSC and CEPT under the framework of the WAPECS strategy.

Q6. Are there any other challenges that the RSPG should consider?

We note that the Commission has recently issued ITTs for two Projects, one of which relates to the collective use of spectrum, including how a spectrum commons model can best be used alongside other spectrum management approaches. Ofcom believes that this work could in due course usefully build on the work on WAPECS to assist in the development of more flexible approaches to spectrum management, thus encouraging innovation and competitiveness.

In terms of the future, other work which could be usefully undertaken might include the definition of spectrum rights. This was mentioned by Viviane Reding when she addressed the RSPG in June 2005.

Q7 What is your view on the above-mentioned issues and more specifically on how to achieve the right balance between “minimising and harmonising constraints”?

Ofcom does not consider that increased flexibility and harmonisation are necessarily opposing. It is Ofcom's view that minimising and harmonising constraints in the use

of spectrum can best be delivered by adopting a neutral approach to both services and technologies. Ofcom considers that this will facilitate both flexible use of spectrum and single market cohesion by allowing the industry to take the lead in harmonisation activities.

Such an approach will work because, where harmonisation offers benefits, such as economies of scale or interoperability, market mechanisms can be expected to favour the harmonised application over more fragmented alternatives. If regulatory intervention is required to promote or facilitate harmonisation, then it should be imposed with maximum flexibility and the minimum constraints required to achieve the sought benefits. Encouraging market-led harmonisation will avoid some of the potential rigidities, constraints and potential inefficiencies that are inherent in a regulatory approach.

Ofcom supports harmonisation and agrees that it can bring benefits. However, we consider that it is essential that harmonisation is introduced with maximum flexibility and we will not normally support harmonisation with exclusive access. Where exclusive access is imposed, it must be clearly justified (for example, for reasons such as safety of life). In most instances we consider that more flexible types of harmonisation, such as market-led harmonisation, will be most appropriate. Flexible harmonisation can deliver the benefits of harmonisation without risking the disadvantages associated with regulators attempting to predict the future and choose winning technologies. Such flexible harmonisation will, Ofcom believes, help to promote innovation and competitiveness in the European market, both of which will benefit European consumers.

Q8. Are there any other long-term policy goals that the RSPG should consider?

One issue that could usefully be considered is how best to maximise the opportunity that exists for market-led harmonisation as described in the answer to the previous question. As explained above, Ofcom considers that such an approach will encourage more efficient spectrum use by removing the rigidities that are inherent in regulation. Ofcom believes that it will be useful to consider how the industry can be encouraged to take the initiative in harmonisation activities as market mechanisms become more established across Europe.

Q9. Do you think that these steps form an adequate basis for achievement of the European objectives in this area? Are there any other steps that are required?

Ofcom considers that a key issue for RSPG concerns how the WAPECS work is progressed. The RSPG Opinion should, in itself, provide a useful basis for achievement of the European objectives in terms of promoting competitiveness, innovation and competition and developing the EU internal market. However, a key issue will be the application of this Opinion to individual spectrum bands. This task should probably be undertaken by another group – most likely the RSC – but will

require supervision from RSPG to ensure that the principles of WAPECS are being properly adhered to.

Ofcom believes that the approach discussed at the recent WAPECS Working Group meeting held at the end of August provides a useful way forward. This outlined next steps to include:

- identification of a list of bands where the principles of WAPECS can be applied in the longer term;
- identification of a sub-set of the above bands where it may be possible to apply the principles of WAPECS in the shorter term, thus providing 'quick wins' as well as a model which can be used in other bands.

In addition, the WAPECS Working Group meeting also proposed that further work should include discussion and identification of a common and minimum set of principles/constraints which could form the basis of an authorisation regime to be applied across WAPECS bands.

Ofcom believes that this future work can most suitably be undertaken by the RSC, particularly as RSC has access to advice on wider issues (such as expertise in the application of competition policy from DG Competition). However, while Ofcom believes that RSC should be responsible for taking forward the work, we believe that RSPG will need to maintain close involvement in a supervision capacity. In the first instance it will be appropriate for RSPG to set a time frame within which appropriate next steps should be undertaken.