

Response to RSPG consultation on WAPECS

Introduction

France Telecom understands WAPECS concept as proposed by the RSPG group as a way to illustrate how the flexibility concept in the regulatory framework could be interpreted. The general move to a modern digital economy and the more integrated business models justifies globally an appropriate regulatory adaptation.

Somehow, whatever the approach is, it must pay attention to the economic side taking into account the huge investments currently engaged on mobile, fixed and nomadic applications as well as both the spectrum scarcity and technical limits by maintaining the benefits of an efficient and optimised use of spectrum when designing a concept.

Considering that and to stimulate innovation while maintaining stability in the spectrum organization, spectrum policies are meant to search for an equilibrium by finding right economic balance between both homogeneous approach versus a clusterized one, service by service and between the solutions brought to the changes in the environment of technologies and harmonization process when proposing changes.?

Even though this proposed WAPECS concept is identifying new challenges, as a prerequisite; interoperability between systems and technologies must remain a must to enable seamless and transparent communication. Consequently, the necessary adaptation of the regulatory framework must take into consideration the need for harmonization as well as the imperative requirement to address the interference and compatibility challenges.

Q.1 Do you agree with this operating definition of WAPECS? Do you consider that the WAPECS concept should include spectrum intended for private, as well as public, applications?

The proposed concept refers, as we understand it through the RSPG consultation paper, to the adaptation of the framework to the convergence of existing services or applications as perceived by the customer and sustained by the convergence of the radio access networks.

We are concerned by the following interpretation that the Wireless Access Platform would involve all spectrum bands, harmonised but also licensed and unlicensed bands. Such an approach is discriminatory as for those who have to pay for an authorization when other is targeting same markets without any fare.

While the investments have to be fostered/encouraged regarding the license fee side and also the license term side, proposals are made and are seemingly neglecting return on investments which are dear for the Innovation processes. Investments are made possible when an operator has in advance the capacity to determine the business plan with more or less predictable profitability.

This definition, as it appears to us, is challenging the regulatory framework but may introduce risks and adverse consequences among which:

- The enhancements of discriminatory cases if regulation are not equitable in terms of access to spectrum
- The convergent system or platform as intended is omitting the identification of new spectrum and denying access to spectrum to innovative applications.
- The existing distinction between spectrum for public and private services has no longer relevancy. The commercial nature of an application should be the only criterion that counts.

We propose:

- To identify further the definition of the concept and propose a pragmatic approach sustained by different regulatory regimes taking into account the typology of existing services and markets.
- To identify the different regimes linked to the existing bands and particularly to establish a clear distinction between licensed and license-exempt spectrum uses :
- We think it highly desirable to set new horizons to consider with equitable regulatory considerations commercial and "non commercial" spectrum by erasing the existing frontier between the "public" and the private spectrum management in order to undertake the current challenge proposed by this concept. [The opportunity costs linked to the public spectrum management are high and needs to be apprehended.

Rationale: not to generate discriminatory situation that may negatively impact competition, the review of the spectrum regulatory framework shall encompass the different existing arrangements/regimes by adapting the rights of use spectrum and the associated obligations to avoid unfair competition issues as well as interference problems.

The aim must remain the avoidance of unnecessary regulatory obstacles to the development of the electronic communication services. The application of same rules between unlicensed and licensed spectrum should generate discriminatory cases. The overall context has to be scrutinized and the evolution has to be as smooth as possible.

Q.2 Do you consider that the term “platform” should be more closely defined? If so, what definition do you propose?

The term platform has been generally used to make reference to a common system based on open standard gathering different partners to process it/to operate it.

Such a definition is inevitably linking the harmonisation of frequency bands to the standardization process enabling the involvement of a community of stake likely to benefit from the economic advantage brought by harmonised approach to define the common system at both bands harmonization process as well as the systems conformity process.

Our understanding of the term "convergence", through the RSPG consultation paper, may reside in the commonality of rights and obligations bearing on spectrum use.

These conditions have to establish a framework allowing equitable access conditions to spectrum for new applications or technologies. The regulatory regime for spectrum

allocation must reveal coherence and obviously transparent, fair and objective set of rules.

Of course, the regulatory regime must bring possible rearrangements when incoherent rules are applied regarding different spectrum bands.

As already state, a clear distinction has to be proposed between licensed bands and unlicensed.

Our understanding is in keeping with a pragmatic perspective and supposes a concept of concrete feasibility which could be applied in a very short term.

Any other regulatory approach would jeopardize the existing framework by adapting inconsistent rules and creating unfair cases.

Q.3 What, if any, constraints should there be on the provision of services using spectrum primarily in the broadcast domain?

As defined in the Radio Regulation, Broadcasting is a radiocommunication service in which the transmissions are intended for direct reception by the general public. However, new broadcasting services involve transmission towards a restricted target possibly including interactivity and mobility of the receiver. Up to now, the use of spectrum for broadcasting is generally free, provided constraints on content. These constraints, which were mainly related to the scarcity of transmission media, should be redefined taking into account the growing number of technologies for content delivery. By the way, the Broadcasting related regulatory framework should be extended to other media contents. To illustrate that, the Transfrontier TV Directive could be addressing other applications and markets.

Consequently, spectrum fees could be redefined in accordance with those paid for other uses.

The constraints imposed by the regulators must enable a fair competition in market field between services in a same relevant market whatever the system or the technology.

It is then highly valuable to apply same constraints to services competing within a same market.

Following the planned transition from analogue to digital broadcasting, part of the spectrum presently used for broadcasting should be used for other purposes, and in particular, possibly for mobile communications. We believe that it would be highly desirable that such spectrum is designated on a harmonised basis throughout Europe.

In addition, the definition of coherent conditions for communications service providers (that currently are using spectrum bands among the designed pool of bands) should benefit, for example, from alleviated obligations regarding its respective rights of use spectrum. This would establish equitable conditions to access spectrum between spectrum users and in particular Broadcasters and Telecom service providers. ?

Q.4 What specific rules should be introduced or maintained to safeguard the delivery of Services of General Economic Interest in the future? Is it most appropriate to deal with these issues through the regulation of spectrum, or through other instruments such as competition law or state aid policy?

We understand the Services of General Economic Interest as useful for the social and economic welfare and as such we consider that it shall be maintained in the future. Nevertheless, the delivery of SGEI should not generate discriminatory conditions for electronic communication operators. The regulatory approach needs clearly to avoid inappropriate mechanisms which might bring a competitive advantage to a particular operator [and favour the designed structure to be embedded for the service of the general economic interest in particular on the market field, likely to impact competition between players.

For instance when a geographical coverage obligation is associated to rights of use spectrum so as to give access to these services in very remote places, or rural areas, an state aid policy should be envisaged supporting the economic development of the considered geographical area. Somehow, the clear definition and the role of the designated embedded "operator" or structure shall be assessed as for its impacts on competition rules.

- France Telecom believes that when SGEI gives raise to unprofitable business, this should be financed by state aid policy, provided that there will be no adverse repercussion on competition rules.

Q.5 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?

Standardisation of wireless equipment and harmonisation of the use of associated frequency bands are closely related issues.

We consider harmonisation of the use of frequency bands as a prerequisite, establishing a basis for the efficient development of communication equipment and networks as well as innovative new applications.

Recent studies indicate that in CEPT countries, frequency spectrum has reached a high level of harmonised use.

It is understood that changes in spectrum policy consecutive to evolutions towards a WAPECS single category of service would result in significant departure from this situation and to a gradual disappearance of harmonisation as it is implemented today.

France Telecom again express its concerns regarding such evolution, possible adverse effects on their activity and questions its justification.

While a more flexible use of some frequency bands may be needed based on practical experience, reference to harmonised standards would be favoured in the foreseeable future.

Timely availability of standards should be ensured based on efficient relations between CEPT and ETSI. The other existing fora (more industry led standardization) where from new standards are emanating are compatible with the current ETSI body validation process as illustrated by the CDMA 2000 experience.

Q.6 Are there any other challenges that the RSPG should consider?

The development of convergence of telecommunications, broadcasting and internet will ask for regulatory clarity for new electronic services.

Technological trends as well as a strong demand for radio services need a stable regulatory organization in the future to foster technological developments and the global benefits generated. A positive initiative might be to develop a set of rules focusing on the sharing techniques and harmonization to face the globalisation of markets.

Significant aspects of competition conditions are determined by the national regulation and licensing process. Important differences exist in the conditions which are applied to the broadcasting and telecommunication sectors for example resulting from different national transpositions of the regulatory framework for electronic communications. A consistent authorization procedure has to be implemented at the national level. RSPG could have a reflection on the way to move closer the regulation of these domains.

Q.7 What is your view on the long term policy goals mentioned above and more specifically on how to achieve the right balance between “minimizing and harmonising constraints” presented under point 9 ?

The spectrum policies have to take into account the necessary equilibrium between a visionary attitude and pragmatic regulatory approach to step ahead. Somehow, it shall, when identifying the changes, set a frame that is forward looking and, at the same time, consider the current existing services, and that constitutes a concrete challenge. Smart systems and other technologies are emerging and an appropriate regulatory framework should give them access to spectrum without destabilizing the current organization that works pretty well.

Harmonization remains the main objective for the foreseeable future. Introduction of flexibility in the use of frequency bands should not jeopardize the harmonization of the bands.

France Telecom is of the opinion that in the near future, it should be preferable to focus on particular issues and frequency bands and consider practical cases where converging situations could be addressed.

Among example which could be identified:

- Implementation of 3G in 2G bands.
- PAMR and cellular mobile networks convergence
- Complementary use of 2G-3G and WLAN-WIMAX
- Evolution of the use of IV-V broadcasting bands with the transition from analog to digital. Consideration of broadcasting towards mobile and development of interactive solutions. Possible use of part of the band for mobile communications...

Q.8 Are there any other long term policy goals that the RSPG should consider?

It is well recognised that wireless electronic communications as participating to the knowledge based economy targeted by 2000 Lisbon European Council is a strategic sector of growing economic importance. WAPECS which is understood to be only a modification or suppression of the borders between the different participating services does not address the global need for an increase of the amount of spectrum available. It could be valuable that based on a long term approach, RSPG considers possible solutions to these needs as sharing or transfer of spectrum from government which remains the main spectrum user under 10 GHz.

Existing obligations when allocating spectrum bands must be revised so as to link such obligations to a service provision and not to spectrum bands utilization. As a consequence, the rights of use and associated obligations would take into account the provision of a service utilizing spectrum bands.

Q.9 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?

As mentioned in the answer to question 7, any action should focus on practical issues as a way forward. Some relevant cases where a consistent approach at the European level should be implemented can be already identified and are listed.