Intellect Response to the RSPG Consultation on WAPECS

(Due date: 15 September 2005)

Intellect welcomes this RSPG consultation and the opportunity to respond. Intellect regards the issue of Convergence as a key issue that must be adequately addressed by the regulators in order to facilitate its successful implementation in the European society . Intellect generally supports the policy suggested by RSPG about WAPECS but do consider that some aspects require further clarification ..

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?*

Intellect understands the WAPECS concept to include the kind of systems illustrated in Figure 1 of the consultation and could include spectrum for private and public systems, noting that some devices such as Wireless LANs already operate in the same spectrum when being used variously for private and public use depending on the location of the user at the time. Indeed multimode terminals may in future commonly have cordless (Bluetooth, WLAN) and Cellular (GSM, 3G) technologies in the same device to give different methods of seamless access to services on a common core network platform from various network environments.

It is not clear whether the intention is to use the term for competitive wireless use generally, or only where strict technology neutrality is envisaged. The definition given does not express the technology/service neutrality that is implied later in the document (eg on page 10 and in the discussion on bands.). We assume that the term is all embracing to cover the future world of convergence in which common services are delivered in a seamless manner involving a functional fusion of multiple networks and access technologies, with appropriate interworking between networks.

Intellect can accept the definition proposed, but would suggest an alternative of:

"Wireless access platforms for electronic communication services (WAPECS) are the wireless access networks used to access electronic communication services which operate without restriction on services (public or private) or interoperability and may use spectrum that may be licensed or license-exempt

Naturally such systems will comply with all relevant national and international regulations, including competition laws. However, we note that as a consequence of convergence some regulations may need to be amended.

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

The term Platform could be clarified to mean "networks based on wireless technology to connect the end customer"

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

Constraints on content and advertising are justifiedHowever, as stated in our response in connection with EC Television Without Frontiers Review consultation, we encourage policy makers to refrain from extending to new media (offered via WAPECS) the traditional broadcasting regulation (i.e. quota and media pluralism).

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?

Market mechanisms work well when the competing parties have comparable externalities. This is not the case when commercial services and SGEI are competing for the same raw material (spectrum.) Benefits from SGEI are in part externalities. For example the benefits derived from an ambulance service or from watching TV are not directly related to the spectrum values or advertising revenues. Therefore the market in this case would be neither fair nor efficient. Competition law is not well placed to address 'input' issues. State aid (provision) could in theory be used to fund the acquisition of spectrum for SGEI but this could be expensive for the taxpayer, especially if spectrum has to be aquired from the market (rather than national holdings.) and should therefore be used sparingly or avoided.

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?

Availability of harmonised spectrum bands will be beneficial, with a technology neutral licensing policy where license-exempt use is not feasible. The choice of technology should usually be made by market forces, selecting from available standards developed in SDOs. Basic minimum regulatory requirements need to be specified to prevent undue interference between networks and services (e.g. block edge eirp masks).

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

Competition issues will require more attention in a liberalised spectrum market. Spectrum Trading and Spectrum Liberalisation fit well with the WAPECS concept and should be seen as complimentary approaches. However RSPG should envisage a mechanism for testing the effectiveness of the newly proposed approach and find means to inform the stakeholders of the results. This information process should be transparent..

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 "minimising and harmonising constraints" presented under point 9?

Enshrined in European law, revised three years ago, is the objective of actively promoting harmonisation of spectrum use. This was reafirmed by the RSPG in their opinion on spectrum trading (Opinion 7 on page 5 of RSPG04-54). Some services provide benefits which are external to market forces, and therefore it is sometimes more efficient to use non-market mechanisms ie allow the regulator to decide that certain bands should to be used for certain services, e.g. emergency services.

Intellect emphasizes that harmonization of spectrum (from a technical standpoint) and exclusive designation of use are different issues and should not be confused. Harmonisation of spectrum and harmonized applications should be facilitated but not to the exclusion of other technologies.

Regulation that encourages harmonization where appropriate and fair competition when the market can provide it should determine optimum spectrum use.

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

Allowing technology choice can often enhance competition and the introduction of new innovative, and possibly lower cost, services, however too much emphasis on technology neutrality could have an opposing influence on competition in both services and terminals. The reason for this is that competition is stimulated by consumers being able to change hardware (TV, mobile phone etc) or service provision independently. Proliferation of incompatible technologies will frustrate this, as services become linked to specific standards.

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?

Intellect agrees with the RSPG proposals for next steps. However the transition seems too fast. It is important that adequate consideration is given to assessing in which bands the benefits of retaining harmonisation might prevail and if all categorised bands shall be bound by the same or different specific terms and conditions from a competitive standpoint.

Intellect ultimately encourages RSPG to start working with market stakeholders in a more open and transparent manner (i.e. RSPG sub-working groups meetings and hearings to be open to industry representation). It is very difficult for market stakeholders to express views/support or criticism with respect to draft policy documents that – once consultations are launched – are modified but not publicly distributed for further review.

End of Document (3 pages)

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