

Public consultation on the RSPG Opinion in preparation for the radio spectrum policy programme (RSPP)

General comments

ECTA members welcome the RSPG's opinion on the Radio Spectrum Policy Programme. In particular, we support the RSPG's belief that the RSPP should reflect a longer-term and forward-looking approach and also envisage perspectives beyond 2015. Such an approach will help to ensure from the outset that the emergence of a serious market failure is prevented and that industry has the regulatory certainty it needs to maximise investment and innovation. We also welcome regular monitoring of the RSPP using methods such as public consultation and stakeholder workshops. Above all, the RSPP should be a forward-looking programme, which sets out timely initiatives that at least maintain and, preferably, encourage competition in the electronic communications market to the benefit of EU citizens and businesses.

Detailed comments

I. Contribution to the EU2020 vision

Competition is vital for the EU to achieve its targets in terms of affordability and speed. We agree with the RSPG that one of the key objectives of EU spectrum policy should be to enhance the quality of life of European citizens and that the promotion of competition will be key to achieving this objective. If we want to realise the full benefits of the intangible public asset that spectrum constitutes, and, in particular, newly allocated spectrum such as the digital dividend, its utilization must be characterised by competition and be consistent across Europe. Consequently, spectrum should be assigned on a transparent, pro-competitive and non-discriminatory basis.

There is a significant competitive challenge associated with the assignment of scarce, prime spectrum, which needs to be addressed. Member States should be given guidance not to assign spectrum in a way that distorts competition and ultimately restricts its benefits for consumers. If this scarce resource is assigned in a discriminatory way then the expected benefits will not be realized, rollout of new technology will be slower, and lower speeds will be offered for higher prices.

The RSPP should recommend a catalogue of solutions to the competitive challenge to Member States so as to provide harmonised guidance, but also to permit flexibility to take account of national specificities. Measures that would prevent the assignment of spectrum in a manner which reinforces the market power of dominant firms and which would prevent the restriction of competition, ultimately to the detriment of the consumer, include:

- assigning spectrum on a transparent, pro-competitive and non-discriminatory basis:

- including wholesale access obligations in the licence conditions: Wholesale access (national roaming and MVNO) requirements on non-discriminatory terms to be included in the licence conditions of all licensees or of at least one¹ of the licensees, or several wholesale only relatively large capacity infrastructures are built in the digital dividend spectrum without restrictions on the identity of beneficiaries of such open access (e.g. not restricted to entities that already have rights of use over other spectrum);
- dedicating some blocks of spectrum to new entrants²: Assignment of dedicated blocks of frequencies to telecommunications operators that have not previously been assigned frequencies or that have significantly less frequencies than incumbents, because of their recent entrance on the market. This should be accompanied by pro-competitive measures such as roaming requirements by existing mobile operators, lighter coverage requirements compared to those imposed on early entrant mobile operators and facility sharing;
- assignment of spectrum in smaller blocks with a reasonable spectrum cap (which could be pooled into shared infrastructure): The digital dividend spectrum is allocated in small (for instance 5 MHz³) building blocks with a maximum spectrum cap for each entity/group, as well as a global spectrum cap per entity/group including 800 MHz, 900 MHz, 1800 MHz and 2.1 GHz spectrum, aimed at preventing spectrum hoarding and exclusive rights to large amounts of prime spectrum for just one, two, or three operators or groups. Big blocks are needed for higher speeds, but may result in a competition problem if assigned to a limited number of operators. Smaller blocks could be pooled into shared infrastructure;
- a single, open access network⁴: A single, “wholesale-only” and large capacity infrastructure is built in the digital dividend spectrum, which is open to all operators on non-discriminatory terms, without restrictions on the identity of beneficiaries of such open access (e.g. not restricted to entities that already have rights of use over other spectrum);
- a more holistic approach that takes into account existing rights of use and re-farming: Member States’ examinations of the competitive consequences of re-farming the 900 MHz band should not be considered in isolation, they must be considered in conjunction with how the Digital Dividend is to be assigned. In particular, where the 900 MHz spectrum assignment has been uneven (which is a widespread reality in the Member States), competitive distortions could be avoided by the re-allocation of the 900 MHz band. In such a scenario a proportionate part of the 900 MHz spectrum should be given back if new 800 MHz spectrum is allocated to its holder and the regained 900 MHz spectrum could be allocated to late and new entrants. Such discretionary state interventions need to be carefully justified and stakeholders need to be informed before the licensing process of the 800 MHz band begins; and
- shared access to spectrum where technically feasible⁵: Spectrum sharing (e.g. to accommodate shared low-power use of spectrum by femtocells) as a policy option for

¹ The licence with open access conditions could conceivably be accompanied with a larger frequency allotment than the other licences.

² Proposed by ECTA’s fixed only members and some new mobile entrants.

³ For example, LTE FDD, LTE TDD and WiMAX will be able to function in 2x5 MHz blocks, and it should not be ruled out that this would be sufficient to satisfy the requirements of certain operators/certain geographies.

⁴ Proposed by ECTA’s fixed only members.

⁵ Proposed by ECTA’s fixed only members.

re-farmed spectrum that is reflected in spectrum licence fees and subject to the explicit approval of spectrum rights holders.

Such measures would not be intended to all be employed cumulatively, though several could be appropriately combined.

The Commission should also provide further guidance to Member States concerning their obligation under the GSM Directive⁶ to examine and address any potential distortion of competition relating to the assignment of the 900 MHz band. The Commission should give more detail to this provision to make it clear to Member States what is expected of them, and in particular what factors should be considered, in their evaluation of the competitive consequences of refarming. In addition, it is important that Member States undertake their examination in a timely manner, so as not to impede new services and market developments. Any guidance given by the Commission, including within a refarming or renewal process, should not preclude Member States taking alternative measures to adequately address the competitive challenge that take account of national specificities.

More spectrum should be allocated for the rollout of mobile⁷ broadband services to satisfy increasing demands and foster the EU's global competitiveness. ECTA supports the RSPG's proposed actions for the Commission with a view to releasing "new" spectrum. ECTA members believe that the harmonized freeing up and allocation of the 72 MHz sub-band, also known as the 800 MHz band, should be considered as a starting point. ECTA members strongly supported and continue to advocate approximately 100-115 MHz of spectrum under 1 GHz being made available for telecommunications services on a harmonised basis across Europe and believe that mobile allocation should be extended further in the UHF band in order to sustain traffic growth. In the United States, the FCC has formally proposed to make 500 MHz newly available for broadband use within the next 10 years, of which 300 MHz between 225 MHz and 3.7 GHz should be made newly available for mobile use within five years⁸ In order to effectively compete with other regions, the Commission needs to take a bolder approach to opening up spectrum to electronic communications services outside the 800 MHz band (ideally below, but also above 1 GHz).

Encouraging regulators to introduce spectrum trading, whilst minimising the barriers to trade between users, will facilitate the introduction of more spectrum efficient technologies. This is because the cost of introducing the new more efficient technologies can be offset by selling the surplus spectrum, which is no longer required. Spectrum trading may also help to address spectrum hoarding by incentivising efficient use, though trading limits should be coherent with the framework needed to address spectrum hoarding. The introduction of a market-based framework for public sector spectrum could ensure an equitable framework between spectrum users and promote the most efficient use of spectrum. The Commission should encourage national regulators to work with public sector users in order to identify tradeable spectrum.

⁶ Directive 2009/114/EC.

⁷ The term "mobile" is used on a technology neutral basis and refers to any terrestrial bi-directional technology available on the market including GSM, UMTS, LTE, WiMAX, IEEE 802.20, Flash-OFDM, Wi-Fi, RLAN or Hiperlan, whether enabling mobile handover, nomadic use or at fixed locations.

⁸ <http://www.broadband.gov/plan/5-spectrum/#s5-4>.

II. Spectrum governance in the EU

A coherent approach to spectrum management can promote economies of scale in Europe and facilitate pan-European services. ECTA welcomes the RSPG's call for increased coordination and sharing of best practices between the competent national authorities. The guidance discussed above could play an important role in coordinating the activities in Member States. Europe is unlikely to benefit from the economies of scale being achieved in other regions (US, parts of Asia and Africa) and consequently cannot afford to fragment the single market by permitting any Member State to ignore the digital dividend or to take otherwise unilateral action. National markets versus a pan European market would increase the cost of R&D and ultimately equipment prices (including terminal equipment such as handsets and other devices) disadvantaging European consumers and businesses compared to other parts of the world. Frequencies do not know borders, therefore EU harmonisation and coordination is necessary in order to avoid harmful interference, create a single market attractive for equipment manufacturers, and to facilitate seamless services, which may otherwise be hampered.

Technical co-ordination is necessary to avoid harmful interference. ECTA welcomes the RSPG's acknowledgement of the importance of avoiding and controlling interference. As suggested by the Commission for the transition period preceding the implementation deadline it is necessary to provide technical parameters for co-ordination between Member States that continue with high-power broadcasting in the band and those that move to medium to low-power mobile electronic communications usage. This will help to avoid harmful interference between Member States at different stages in the migration process. However, it is important for the Commission to ensure that any technical measures imposed on electronic communications service providers to protect broadcasting services in adjacent bands are proportionate and do not reduce the spectrum available to operators or subject operators to high costs that could in turn disincentivise investment in new services.

III. External relations

ECTA agrees with the RSPG's suggestions to foster a more coordinated approach to international spectrum negotiations. EU policy priorities are best defended internationally via a coordinated approach and the European Commission and CEPT should be responsible for expressing the EU position to negotiating partners.

Most of the non-EU neighbouring countries are members of CEPT/ECC, and therefore co-ordination can be facilitated through the various working groups of the ECC. The European Commission may help EU Member States by advancing negotiations of reasonable cross-border agreements with non-EU countries.

IV. Spectrum policy objectives

Where the deployment of high-speed fibre infrastructure is entirely unreasonable, even with public funding, wireless broadband can contribute to bridging the digital divide and spectrum should be made available. ECTA agrees that it is a key high-level priority for sufficient spectrum coverage and capacity to be allocated in the EU to achieve "Broadband for all". However, achieving universal broadband access should not come at the

expense of sacrificing market principles. Care should be taken to maximise benefits for consumers whilst minimising costs and competitive, social and investment distortions. In order to achieve the European Digital Agenda goal of 100% broadband coverage by 2013, effective service competition will play a huge role. In circumstances where investment is not commercially viable, targeted state aid may be a more appropriate method of delivering a high speed and inclusive environment to European citizens. Where the deployment of high-speed fibre infrastructure is entirely unreasonable, even with public funding, wireless broadband can contribute to bridging the digital divide.

Wired, terrestrial wireless and satellite systems and networks best contribute to achieving universal broadband access as complementary, not substitutable services.

Fixed infrastructures are essential for providing consumers with reliable, reasonably priced, high-speed broadband services. Where fixed infrastructure is impractical, wireless applications can contribute to bridging the digital divide by bringing broadband to rural areas. Thus, fixed and wireless broadband services work in conjunction to effectively contribute to bridging the digital divide. Wired, terrestrial wireless and satellite systems and networks best contribute to achieving universal broadband access as complementary, not substitutable services.

A binding deadline is necessary for the opening of the 800 MHz band to electronic communications services in all Member States. ECTA welcomes the RSPG's call for a binding deadline for the coordinated availability of the 800 MHz band for ECS other than broadcasting in all the EU Member States so that European consumers are able to benefit from cheaper equipment and enhanced services. Studies have shown that opening up the 800 MHz band to wireless broadband services in all Member States by 2015, under common conditions, would generate socio-economic benefits estimated at between €17 and €44 billion over and above national initiatives⁹. However, ECTA believes that a deadline of 2013, at the latest, is a realistic deadline for opening up the 800 MHz band to wireless broadband services. A 2013 deadline would promote national best practices at the EU level and takes into account the individual situations in Member States.

⁹ See Commission Communication on Transforming the digital dividend into social benefits and economic growth, 28 October 2009 and the report for the Commission, "Exploiting the Digital Dividend" – A European Approach, 14 August 2009.