



ecta RESPONSE

**TO THE PUBLIC CONSULTATION BY THE
RADIO SPECTRUM POLICY GROUP
ON**

DRAFT RSPG WORK PROGRAMME FOR 2022 AND BEYOND

RSPG21-044 FINAL

6 JANUARY 2022

Introduction

1. **ecta**, the **European competitive telecommunications association**,¹ welcomes the opportunity to comment on the Radio Spectrum Policy Group (hereafter 'RSPG') consultation on its Work Programme for 2022 and beyond – RSPG21-044 FINAL.
2. **ecta** represents those **alternative operators** who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations **quality and choice at affordable prices**. **ecta** represents at large those operators who are **driving the development of an accessible Gigabit society**, who represent **significant investments** in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks and who demonstrate unique innovation capabilities. **ecta** counts Mobile Network Operators (hereafter 'MNOs'), Fixed Wireless Access operators (hereafter 'FWA operators') as well as Mobile Virtual Network Operators (hereafter 'MVNOs') among its members.
3. In a **period of rising inflation** (which may be temporary or of long duration), **ecta** cannot emphasize enough the importance of having **spectrum assignment procedures that promote competition** – so that the electronic communications networks and services making use of spectrum remain affordable for users. This is crucial, because, in an economy and society that are going digital, electronic communications represent a significant share of users' wallets. **Competitive markets help to combat inflation**.
4. Since the beginning of the **pandemic crisis**, **ecta** members are **'all hands on deck' taking care of the networks and their users**. Competitive telecommunications operators hugely contribute to network resilience and redundancy to assure service continuity not only for citizens and enterprises - large and small - but also ensuring resilient connectivity to the data centers and for those on the front line, the health actors.
5. Many **ecta** members have developed detailed programmes, specific investment plans, and have entered into **public commitments to achieve carbon neutrality**. **ecta** members also contribute actively to the **digital transformation** of businesses and public administrations, enabling the 'greening' of other sectors of the economy, including through their activities regarding the Internet of Things (IoT).
6. **ecta's** responses to the RSPG's 2021 consultations (006, 008, 014, 021, 027) contain positions on the substance of spectrum policy. The points made in those **ecta** responses remain highly relevant, and are not entirely reiterated in this brief response relating to the Work Programme for 2022 and beyond.

¹ <https://www.ectaportal.com/about-ecta>

1. Peer Review and Member States cooperation on authorisations and awards

7. **ecta** has addressed Peer Reviews in its response to the consultation on RSPG21-014 (in the section on spectrum governance), and invites the RSPG again to take good note of the points made. **ecta** wishes to briefly emphasize here that the **Peer Reviews remain a black box for industry stakeholders**, and **would gain in credibility** if they were more transparent, for instance if the RSPG would:
- a. Publish the date of initiation of every peer review (at the same time as invitations are sent out).
 - b. Promptly publish the date of completion of every peer review, identifying precisely who were the participants (e.g. Ministry/Ministries and/or NRA and/or competition authority from Member State X, European Commission, BEREC, any others).
 - c. Publish, even if only a posteriori, the issues at stake in a specific peer review, and publish the outcomes:
 - i. In the first stage, of the peer review itself.
 - ii. In a second stage, on the decision taken by the competent authority for the spectrum assignment procedure, with reference to which elements contribute to the achievement of each of the objectives of the EECC, and
 - iii. Finally, on the outcome of the spectrum assignment procedure held.
 - d. Add substance to the peer review reports, and to annual reports according to Article 35(8) EECC. As these stand to-date, they contain much less than 1 page of material text per peer review, as is exemplified by RSPG21-39 FINAL² (17th progress report, covering peer reviews in Lithuania and The Netherlands) and RSPG21-20 FINAL³ (16th progress report, covering peer reviews in Malta and Croatia).
8. With regard to peer review reports published by the RSPG to-date, and the wider 15th progress report RSPG21-004 FINAL⁴, which discusses the relevant EECC articles and the rules of procedure for peer reviews, **ecta finds to its dismay that none of these contain any reference to Article 52 of the EECC, on the promotion of competition and the avoidance of distortions of competition when deciding to grant, amend or renew rights of use for radio spectrum. This is**

² https://rspg-spectrum.eu/wp-content/uploads/2021/11/RSPG21-039final-progress_report-peer-review.pdf

³ https://rspg-spectrum.eu/wp-content/uploads/2021/06/RSPG21-020final_progress_report_Peer_Review.pdf

⁴ https://rspg-spectrum.eu/wp-content/uploads/2021/02/RSPG21-004final_Progress_report_peer_review.pdf

not acceptable and must be changed as a matter of priority. Article 52 of the EECC is an essential and integral part of any spectrum assignment procedure for electronic communications.

9. With reference to the 2022 Work Programme consultation (*page 3, paragraph 2*), **ecta notes that the RSPG refers to Articles 3, 45, 46, and 47 of the EECC, but omits Article 52. This is incomprehensible and must be changed.**

10. Please allow **ecta** also to take this opportunity to reiterate a comment made at the stakeholder forum of 6 December 2021: **selective invitation of stakeholders/speakers at RSPG meetings and workshops may bias the outcomes** – and this is also why **ecta** insists on being made aware of who attends Peer Reviews and Peer Review Forum meetings. For instance, at the RSPG Stakeholder Workshop on 30 March 2021, Telia was invited to speak on spectrum auction designs, and Telefónica was invited to speak on OpenRAN. These are two telecommunications operators holding and expressing particular views on matters, which are not necessarily representative for the diversity of the market, and notably for the challenger operators that **ecta** represents. Therefore, we suggest that, **at every meeting where stakeholders are invited to participate, not only the incumbent operator view is represented, but also the challenger view.** There are sufficient relevant alternative operators with positions of interest in many EU Member States, for instance our members Iliad (active in France, Italy and Poland) and MasMóvil (active in Spain and Portugal) have clear views on spectrum assignment procedures – including procedures in which opportunities for challenger operators were severely curtailed by inappropriate auction design. Our member 1&1 (Germany) is highly relevant where it comes to OpenRAN, since it is the first European operator that is deploying an OpenRAN network from the beginning, and not as an add-on to a legacy network. Similarly, our members Fastweb (Italy), EOLO (Italy, Croatia) have clear and specific positions on spectrum assignment procedures, and Fixed-Wireless Access. We also have members with relevant experience with Internet of Things (Transatel) and Smart City/ Mobile Backhaul solution (Colt). **ecta** remains at the RSPG's disposal to help identify the most suitable participants amongst its members on specific topics.

2. WRC-23

11. **ecta** welcomes the scope of the RSPG's planned activity and deliverables, with particular attention for the forthcoming RSPG Final Opinion on EU positions for WRC-23.

12. One key negotiation point for WRC-23 is the status of the **6425 – 7125 MHz band**. **ecta** is a signatory of the industry statement dated 2 December 2021 **calling for**

licensed use of this band for public mobile network operators, and ecta would consider it reasonable for the RSPG to support European stakeholders' position regarding this band for IMT⁵, and thus to include the identification of the upper 6 GHz band as a European position and high priority work item for WRC-23.

3. "Good offices" to assist in bilateral negotiations between Member States

13. ecta welcomes the RSPG's work in this area, and noted the presentation made on the TV broadcasting case during the Stakeholder Workshop of 6 December 2021.
14. ecta is also aware that there have been issues between Member States with the 3,6-3,8 GHz band.
15. It is of particular importance that Member States do not engage in 'races', for instance to be first or early with making available spectrum for local/private 5G networks, leading to situations in which one Member State may deliberately ignore the services operating in relevant bands in a neighbouring Member State, to be able to crown itself as a 'winner' with early spectrum assignments.
16. Aside from issues between Member States, clearly there remains much work to be done in improving co-ordination and co-operation with third (non-EU) countries. Perhaps lessons can be learned from the "good offices" process within the EU, to handle other cases with similar procedural approaches and expediency imperatives.

4. Mobile technology evolution – experiences and strategies

17. ecta agrees that over the course of the next 5-10 years, many of the core bands and licences are up for re-awards or reallocation in many EU Member States.
18. With re-awards and reallocation being some years away in many EU Member States, **ecta calls upon the RSPG to initiate or commission a study exploring and comparing the different forms and modalities of spectrum assignment proceedings, taking a socio-economic and societal welfare perspective.** Particular attention could be given to comparing benefits for the State itself, in the short term (including monetary benefits to the State from proceeds of spectrum auctions), versus the medium to long term (also in monetary terms for the State, including proceeds from spectrum auctions, but extended to socio-economic

⁵ <https://www.ectaportal.com/news/ecta-press-releases/1467-ecta-endorses-industry-statement-on-the-licensed-use-of-the-6-425-7-125-mhz-band-by-public-mobile-network-operators>

welfare, economic growth, resulting income from general corporate taxation, etc.). **In light of the results of such a study, the RSPG could conceivably make recommendations in the future.**

19. Broadly speaking, [ecta](#) believes that high reserve prices for auctions and unequal opportunities in auctions (or other assignment forms) have proven to diminish investment and competition, in ways that are ultimately detrimental for users of wireless communications, and ultimately detrimental to the State itself. Looking forward, please also refer in this context to the statement made in the introduction (paragraph 3 above), about rising inflation. In an economy and society that are going digital, electronic communications represent a significant share of users' wallets. **Good design of spectrum assignment procedures should ensure sustainably competitive markets, and competitive markets help to combat inflation.**

20. In addition, mobile network operators and fixed-wireless access operators should always be entitled to **benefit from technology- and service neutrality**. The future **phasing out of legacy technologies**, including 3G, and especially 2G operating below 1 GHz, **should be handled with utmost care, to avoid distorting competition**. Any shut-down should guarantee continuity of services, including moving services to 4G and 5G without delay to avoid disruptions to the market and to end-user services.

21. **All mobile network operators deserve the opportunity to benefit from fair access to sub-1 GHz spectrum** (crucial for coverage and indoor services). **Rewards and reallocation should therefore be seen as opportunities to reform and re-attribute spectrum below 1 GHz in a manner which promotes competition and rebalances sub-1 GHz spectrum between mobile network operators**. Such rebalancing and prolongation of spectrum licences, could, for instance, be envisaged **in exchange for coverage commitments**. This has already occurred by means of the so-called 'New Deal' on spectrum in **France**, involving all 4 mobile network operators – reinforcing both coverage and competition (and promoting pro-competitive sharing arrangements for white areas). Particular attention is needed to avoid that prolongation of spectrum licences in exchange for coverage commitments, on the contrary, would entrench the unequal spectrum holdings of some mobile network operators to the detriment of others. This is a real and present danger in **Germany**, where scenarios are being envisaged that involve the prolongation of 800 MHz (and potentially other) spectrum licences for the three leading mobile network operators, to the direct detriment of the fourth mobile network operator which has so far never had the opportunity to be granted sub-1 GHz spectrum. **Scenarios in which a late entrant mobile network operator never has a fair opportunity to acquire a balanced and competitive spectrum portfolio (incl. sub-1 GHz spectrum) must not be allowed to play out.**

5. Digital Decade 2030

22. [ecta](#) notes with interest that the RSPG makes a statement (*page 7, paragraph 3*) in the context of the European Commission's targeted consultation on the 2030 Digital Compass, as follows: *"The EC proposes to recommend policies, measures and actions to be taken. Regarding spectrum, these possible recommendations would be without prejudice to the possibility for the EC to propose a new Radio Spectrum Policy Programme (RSPP)".* During the Stakeholder Workshop of 6 December 2021, RSPG representatives hinted more than once that no new RSPP may be forthcoming, although the European Commission declined to confirm this.
23. Given the importance of the matter, and [ecta](#)'s clearly expressed views on the contents of a future RSPP (extensive response to RSPG21-014 FINAL), [ecta](#) calls upon the European Commission and the RSPG to **rapidly clarify whether essential aspects future EU spectrum policy will be expressed through a future RSPP or through implementing measures of the 2030 Digital Decade Policy Programme.**
24. [ecta](#) has responded to the European Commission's Summer 2021 Targeted stakeholder survey on 5G in the context of the Digital Decade strategy, but was not at the time aware of possible doubts on the issuance of a revised RSPP. In any case, [ecta](#) **considers that full public consultations on the exact text of drafts of essential EU spectrum policy measures are imperative.**

6. The development of 6G and possible implications for spectrum needs and guidance on the rollout of future wireless broadband networks

25. [ecta](#) reiterates its position on additional needs and guidance on the fast rollout of future wireless broadband networks, and in particular calls for competition to be properly addressed going forward, and a large amount of spectrum (including additional spectrum) to be made available. Please refer to [ecta](#)'s response to RSPG21-008 FINAL.
26. [ecta](#) welcomes the proposed RSPG activity, and in particular (*page 9, last paragraph and top of page 10*), that *"The RSPG will conduct an evaluation of 5G in Europe (licensing strategies, auction design, deployment progress, etc.) with the aim to gain knowledge around what has been successful and what still needs to be addressed, thus providing valuable input when designing future 6G strategies".* As already indicated earlier in this response, [ecta](#) draws attention to the following:

- a) Spectrum assignment procedures should actively promote competition, including as a way to combat inflation (paragraphs 3, 19 and 20 above).
- b) Past re-awards and reassignment of spectrum could usefully be evaluated for their pro-competitive effect, or, where applicable, negative effects on competition, especially with reference to the treatment of sub-1 GHz spectrum among mobile network operators (paragraph 20 above). The past assignment proceedings for the 3,4-3,8 GHz band are also worth examining, notably in terms of distortions of competition (see also paragraph 10 above).
- c) The RSPG could usefully explore and compare the different forms and modalities of spectrum assignment proceedings, taking a socio-economic and societal welfare perspective, notably comparing short-term and medium- to long-term considerations (paragraph 18 above).

7. Strategy on the future use of the frequency band 470-694 MHz beyond 2030 in the EU

27. **ecta** is aware that this is a complicated issue, and looks forward to any new insights in the forthcoming RSPG consultation on a draft Opinion, scheduled for November 2022.

8. Role of radio spectrum policy to help combat climate change

28. **ecta** reiterates a point, already expressed in response to RSPG21-027 FINAL. The RSPG should be very cautious in ensuring that the formulations it uses, and the proposed scope of activity it defines in the final Work Programme, does not lead to imposing an additional layer of administrative burden specific to Mobile Network Operators and Fixed Wireless Access Operators, potentially extending obligations on such operators over and above horizontal measures that may be adopted for all industries.

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For further information, clarification or discussion, please contact Mr. Luc Hindryckx, **ecta** Director General.