



ECTA RESPONSE

TO THE PUBLIC CONSULTATION BY THE RPSG

ON THE

DRAFT RSPG WORK PROGRAMME

FOR 2018 AND BEYOND

RSPG17-040

6 JANUARY 2018

1. Introduction

ECTA, the European Competitive Telecommunications Association, representing more than 100 challenger electronic communications operators and digital communications companies, welcomes the opportunity to comment on the Radio Spectrum Policy Group's draft Work Programme for 2018 and beyond (hereafter 'draft WP2018+').

ECTA thanks the RSPG for opening this public consultation. ECTA wishes to attach two general comments to the consultation, which concern the expected duration and openness to public consultation of follow-up activity.

First, the duration of the Work Programme is not clearly inferable from information in the draft document, such as the suggested delivery dates. If the intention is to establish a two-year cycle for RSPG Work Programmes, ECTA would suggest to state this explicitly. Alternatively, ECTA considers that the forward planning of activities, including continuation of such activities as were not completed within the initially envisaged planning timeframe, be made subject to a general review cycle process, which could enter discussions about the Group's future working methods.

A second overarching remark is that it is not clear whether the items listed in the draft WP2018+ will themselves be subject to public consultation. ECTA asks the RSPG to ensure that public consultation be the default option for individual work items and that departure from this principle be explicitly specified and justified in the finally adopted WP2018+.

2. European Electronic Communications Code, RSPG Structure and Working Methods, and the Role of Competition in Electronic Communications

ECTA recognises that key spectrum-related aspects of the draft European Electronic Communications Code (hereafter 'EECC') are currently in trilogue negotiations, which creates uncertainties as to the future role and tasks of the RSPG.

In case the final political agreement on the EECC results in new responsibilities and deliverables for the RSPG, we request the RSPG to issue public consultations in good time, on possible revisions/additions to the WP2018+, and on the specific new work items, if any.

In the context of the European Commission's public consultation on the Framework Review (end-2015), ECTA explicitly welcomed the role and work of the RSPG. As we have since confirmed,¹ ECTA supports enhanced and structured cooperation between the RSPG and BEREC.

We note that the RSPG plans² to assess the impact of the EECC on the Radio Spectrum Policy Programme (hereafter 'RSPP'). ECTA underlines the importance of competition in electronic communications, and the crucial role of spectrum licensing in enabling competition. ECTA draws particular attention to Article 52 of the draft EECC, which parallels Article 5 of the RSPP. ECTA has always supported Article 5 of the RSPP, which addresses competition, and ECTA has urged the co-legislators to maintain its integrity in the draft EECC, notably by avoiding to make it more

¹ Cf. ECTA response to the public consultation by BEREC and the RSPG on the draft BEREC and RSPG Joint Report on Facilitating Mobile Connectivity in 'Challenge Areas' BoR (17) 185, 28.11.2017, p. 1.

² RSPG17-040, 21.11.2017, p. 3, para 4.

difficult to promote competition via spectrum authorisation procedures (proposed addition of ‘in exceptional circumstances’ by the European Commission, proposed connection with assessment of significant market power by the European Parliament’s ITRE committee). While these references may be removed in the trilogue, but we wish to make sure that the RSPG understands ECTA’s views on Article 52 of the draft EECC.

More generally, ECTA observes that the RSPG’s draft WP2018+ is essentially silent on the role of competition, and on the possibility (and in some justified cases, the necessity) to adopt pro-competitive measures, including by way of authorisation conditions, when making radio spectrum available. ECTA believes that, especially in the context of 5G, there will likely be circumstances in which network sharing (passive and/or active), and forms of wholesale (roaming) access (reciprocal or not), will be needed, and may not emerge on a commercial basis. Regulatory measures may have to be imposed on an ex-ante basis, where specifically justified, as part of the spectrum authorisation process in order to preserve and promote effective competition that ensures effective and efficient use of spectrum. Overall, ECTA urges the RSPG to give explicit consideration to preserving and enabling competition, notably in a 5G context. This needs to involve the possibility for new entrants to secure spectrum in all relevant bands and avoid relegating new entrants and innovative business models solely to higher frequency bands. Where this cannot be avoided, the RSPG should encourage Member State spectrum management to foresee a process for successively opening relevant bands to alternative operators and innovation-centred business models. Experimental licensing may offer an interim solution to protect innovative service development.

3. Peer Review and Member State Cooperation on Authorisations and Awards

ECTA agrees with the RSPG that there are considerable benefits from the continued, and increased, sharing of best practices across the EU Member States, to promote consistency of approach and improve the quality of spectrum award procedures, without unnecessarily fettering the discretion of Member States to adapt to national circumstances or diminishing the potential for innovation.

ECTA notes with interest the steps taken by the RSPG towards that end, including the launch of a voluntary peer review platform (PRP) allowing Member States to share documents and experiences and to seek advice from their peers during the spectrum award design process. ECTA is keen to learn more about these initiatives and would welcome a bilateral discussion with the RSPG on these matters, also in light of the ongoing trilogue negotiations on the draft EECC. ECTA underlines that since these initiatives currently constitute the sole vehicles for ensuring cross-frontier learning in award process design and spreading good spectrum management practices at the critical stage of granting spectrum usage authorisations, it is imperative that they be exploited to the fullest extent possible. ECTA’s members who participate in these procedures as challenger operators, including as challengers in multiple jurisdictions, have unique experiences and insights into how such processes should be crafted and organised in order to ensure the maximum pro-competitive impact and therefore constitute natural ports of call for award design process optimization and enhanced administrative consistency in surrounding administrative processes. ECTA and its members are therefore ready and eager to volunteer their unique portfolio of award background experiences to the goal of enhancing domestic spectrum usage

authorisation processes from an EU-wide perspective, including to ensure that the RSPG Report on the Continued Development of the Peer Review platform reflect these. By integrating these experiences, the RSPG will make a distinct contribution to enabling the EU to successfully strive for world leadership in competitive, best-in-class effective and efficient spectrum authorisation and use. Such joined-up effort is particularly relevant and critical as the introduction of 5G is under way.

In addition to its own input, ECTA also considers that a greater degree of transparency concerning the RSPG's own initiatives in this domain, e.g., more public information about and access to the voluntary peer review platform, will make significant contributions to rationalising authorisation and award practices and maximizing socio-economic benefits from spectrum use. ECTA has concrete proposals for how to leverage the PRP to this end and would welcome discussions about the feasibility of these possible process improvements. More generally, ECTA is convinced that the elaboration of key authorisation quality indicators (KAQIs) could significantly improve the ease of cross-jurisdictional practice transfers and the quality of actual authorisation processes. By elaborating such a set of indicators, the RSPG could define a framework for collaboration, which subsequently would permit to organize case practice and exchange between administrations. In the medium term, such indicators can provide the much needed basis for assessing the actual development of more consistent administrative practices. Already within the remit of implementing the WP2018+, the RSPG should strive to identify and publicize examples of successful knowledge transfers and peer learning that Member State cooperation has given rise to.

As regards the RSPG deliverable in the form of workshops on upcoming and past spectrum awards, ECTA hereby expresses its interest in participating in such workshops. In any case, it must be clear that if there is engagement with private sector stakeholders, such engagement should not be selective and open to participation by ECTA.

4. 5G Implementation Challenges

ECTA welcomes the focus on implementation challenges as a key element for enabling the commercial launch of 5G by 2020. The following comments complement ECTA's response to the public consultation on the RSPG's draft Supplementary Opinion on 5G Networks.³

In the rationale,⁴ the RSPG refers to delivery of services to all European citizens, 5G use cases which are not straightforward mobile broadband, and engagement to enable information and experience sharing in support of a successful roll-out of 5G in Europe. We wish to emphasise that 5G and M2M/IoT is likely to be particularly relevant to business users (and public administrations), including in scenarios where businesses from outside the telecommunications sector will be the providers of products and services that incorporate connectivity.

ECTA urges the RSPG to be attentive, on a systematic basis, to the needs of alternative operators, innovators, business users, and the likely emergence of new 'verticals', network slicing, etc. which

³ Cf. ECTA's response to the public consultation by the RPSG on Strategic Spectrum Roadmap towards 5G for Europe – 2nd Draft RSPG Opinion on 5G Networks (RSPG17-034, 21.11.2017), 6.1.2018.

⁴ RSPG17-040, p. 6.

will create new forms of business-to-business relationships, and new forms of interactions between businesses and public administrations, and with citizens/consumers. We ask the RSPG to involve ECTA as a stakeholder when engaging on these issues. This is an area where workshops and public consultations are clearly justified.

When discussing the scope of RSPG activity, reference is made to ‘defragmenting the 3.5 GHz band’.⁵ ECTA welcomes strategic reflection on well-measured approaches to enabling the entire 3.6 GHz band as 5G pioneer band. In this context, ECTA asks the RSPG to clarify the meaning of ‘defragmenting’, and in particular to ensure that defragmentation does not render obsolete already ongoing efforts to establish 5G in the 3.5 GHz sub-band. ECTA would therefore notably encourage clarification of various transition scenarios, including organic evolution from existing use cases, bearing in mind that 5G inherently reaches more broadly than simply the next generation of mobile communications technology.

5. Common Policy Objectives for WRC-19

ECTA observes that (a) common policy objectives need to be defined, as early as possible, in order to be an effective participant in WRC-19; (b) and this is an area where workshops and public consultations are urgent and clearly justified.

6. ‘Good Offices’ to Assist in Bilateral Negotiations between EU Countries

ECTA supports this RSPG function and welcomes the RSPG’s continued involvement in the resolution of cross-border issues between Member States.

ECTA looks particularly forward to the RSPG report on lessons learned from the application of the Good Offices process for the 700 MHz band, and encourages the RSPG in that context to focus on issues of spectrum sterilization and value loss from failed coordination.

7. European Spectrum Strategy

ECTA strongly welcomes the notion that longer-term thinking (e.g. on a 10-30 year horizon) is needed, taking not only technical parameters into account, but also economic, political, social and other strategic considerations. ECTA agrees that the RSPG is well-placed to be the body leading European thinking, and that there is almost certainly a need to challenge established thinking about spectrum management.

ECTA considers, however, that the draft WP2018+ on this particularly crucial item unfortunately ignores the key role of competition. ECTA therefore urges the RSPG to revise its draft, to reflect, systematically, the role of competition in promoting innovation and ultimately resulting in benefits to end-user interests and developing the European socio-economic model.

ECTA believes that there is clear need for the possibility (and in some justified cases, the necessity) to adopt pro-competitive measures/authorisation conditions when making radio spectrum available. In the context of 5G, there will likely be circumstances in which network

⁵ RSPG17-040, p. 6, para 5.

sharing (passive and/or active), and forms of wholesale (roaming) access (reciprocal or not), will be needed, and may not emerge on a commercial basis. Regulatory measures may have to be imposed on an ex-ante basis, where specifically justified, as part of the spectrum authorisation process in order to preserve and promote effective competition that ensures effective and efficient use of spectrum. This is a concern not only with regard to the imminent challenge of adapting spectrum management practices in preparation of the introduction of 5G. In addition to the suggestions already set out in section 2 above, ECTA further invites the RSPG to include competitive considerations as a baseline element in all of its follow-up items and include this as a permanent monitoring priority.

More generally, the development of a long-term European spectrum strategy is an area where workshops and public consultations are clearly justified. ECTA therefore suggests to include exchanges with pan-European stakeholder associations in the context of high-level workshops and plan public consultations in line with the principle set out in section 1.