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RADIO SPECTRUM POLICY GROUP

Subject: Chairman's Report of RSPG#15, 27 February 2008

RSPG #15
Gothenburg, 27 February 2008

Summary

(1) Introduction to RSPG#15

The RSPG chairman, Mrs Marianne Treschow, Director General of the Swedish National Post & Telecom Agency, opened the meeting and noted the approval of the agenda¹. The meeting was divided into two sessions: a regular plenary session of the RSPG, followed by a session held jointly with the European Regulators Group (ERG)².

(2) Preparation of the RSPG Opinion regarding a European approach to collective use of spectrum

Work progress

The **Rapporteur** of the working group developing the draft Opinion, **Mr Chris Woolford** (Ofcom, UK), presented the **second progress report**³. During its second meeting, the working group addressed in more details two important aspects: the issue of Quality of Service, in particular its implication regarding the responsibility that it affords to manufacturers and users in the context of dynamic sharing of spectrum, and the evolving role of this approach in the overall mix of spectrum management approaches. The group also established a clear preference for generic allocations in the field of collective use, in line with the WAPECS objectives pursued in the case of licensed frequency bands. In addition, the working group considered the future potential of the collective use approach beyond the typical case of short range devices, based on possible technological scenarios. Mr Woolford finally reported a general expectation that the collective use approach is likely to increase in importance in future but that it is very difficult to predict how much spectrum should be made available and when. Instead, he proposed to focus on the identification of common criteria which could help to determine when and under which conditions the approach should be best used in the future. The Rapporteur requested a time extension for

¹ Document RSPG08-201. This document as well as all subsequently quoted RSGP documents are available at http://rspg.ec.europa.eu/meeting_documents/index_en.htm

² Report available separately (document RSPG08-220 on the RSPG web site)

³ Document RSPG08-203

the future adoption of the Opinion, mainly to be able to conduct a public consultation on the final draft version during this summer period. The new planned date for adoption would therefore be November 2008 (RSPG#17).

The **next meeting of the working group** is scheduled on **24 April 2008** in Brussels.

Discussion

The RSPG welcomed the second progress report and endorsed the proposal to hold a public consultation on the future draft Opinion.

As requested by the Rapporteur, the ensuing RSPG discussion focussed on the need to identify a proper balance between two main options for making collective use spectrum available, namely:

- a) to make spectrum available as the need arises (i.e. in response to user demand), or;
- b) to make spectrum available in advance of market demand in order to try to stimulate demand and promote innovation.

There was a general support of a more proactive approach in future allocation of spectrum for collective use while it was also stressed that one should carefully consider other important factors such as the overall objective of efficient use of spectrum and the need to avoid the proliferation of "pockets" of unused spectrum. In addition, the "irreversible" nature of a collective allocation (i.e. the difficulty to get spectrum back from the users due to the large number of them, usually not inventorised and very diverse) was considered by some delegations as an issue not to be undermined and which will require more investigation by the working group.

The Commission representative expressed his appreciation for the fast progress of the work and requested the group to continue investigating the potential economic benefits of improving the supply side of collective spectrum, as well as assessing in more quantitative terms the value of doing allocation in a harmonised way at EU level (economies of scale, potential for innovation), referring also to the experience accumulated in other parts of the world.

Presentation by Messrs Eric Bohlin and Simon Forges

Messrs. Forge and Bohlin, authors of the recent study contracted by the European Parliament⁴ in the context of the preparation of the ITRE debates on the spectrum-related proposals of the review package, presented their views on the essential function and

⁴ The full text of study which was requested by the ITRE Committee and contracted by ITRE Thematic Department to the ETEPS NET consortium (www.eteeps.net) is available at the following web address: http://www.europarl.europa.eu/meetdocs/2004_2009/documents/dv/itre_st_2007_spectrum_poli/ITRE_ST_2007_SPECTRUM_POLICY.pdf

economic potential of the "Collective Use" model of managing spectrum, as well as its role in the mix of spectrum management approaches⁵. One of the salient points in the presentation was the demonstration of the critical role of collective use spectrum to respond to the growing need for transmission capacity which underpins the main trend of the sociology of communications.

Among the issues discussed in reaction to the Consultants' presentation were:

- The potential effect on competition and in particular on existing licensees of an extended offer of unlicensed spectrum allowing to deliver similar services;
- The high dependence of the approach on future technological capabilities, and the possible need for a more active role for the regulator regarding equipment regulation and equipment standardisation in order to ensure the high level of compliance required to enable co-existence of numerous sophisticated communications protocols. This may also require to re examine the deregulatory trend pursued in the context of the R&TTE directive;
- The opportunity for collective use offered by the so-called "white spaces", the spectrum located between broadcasting channels in the digital dividend.

Mrs Treschow concluded by thanking the Rapporteur, the participants in the working group and the consultants for their valuable contributions.

(3) Best practices regarding the use of spectrum by some public sectors

Progress of the preparation of the RSPG Opinion

The **Rapporteur** of the working group developing the draft Opinion, **Mr Stelios Himonas** (Ministry of Communications and Works, Cyprus), presented the **second progress report**⁶. Mr Himonas first enumerated the main preliminary findings and issues highlighted in the discussions of the working group, among which:

- The fact that several authorities are actively involved at national level in spectrum regulation in most Member States, and that the distribution of roles is quite variable between Member States;
- The absence of designated authorities in several Member States to resolve disputes between public users or public users and commercial users;

⁵ Copy of slides included in document RSPG08-215

⁶ Document RSPG08-204

- The diversity of methods and incentives used to ensure timely re-farming of unused spectrum.

Mr Himonas reported that the group identified the promotion of spectrum sharing between public uses and commercial uses as the most pragmatic and promising way forward in the context of this RSPG initiative. This increased band sharing should rely on each of the possible sharing dimensions: geographical sharing, temporal sharing and technology-based (frequency) sharing. A recurrent challenge is to define clear and effective parameters to rule the sharing arrangements, ensuring the proper involvement of the public sectors affected. There should also be effective mechanisms in place to solve disputes between the sharing partners. It was reported that a good synergy has been established with the Commission study on public use of spectrum which was launched in January.

The RSPG commended the Rapporteur and the working group for the work achieved to date and further discussed the issues raised in the introductory paper⁷, among which band sharing and the issue of objective evaluation of spectrum needs. During the discussion, delegations reiterated the clear intention to develop this Opinion as an exchange of best practices and not to aim at binding recommendation or formal guidelines to Member States. However, delegates confirmed that this Opinion is a unique opportunity to raise awareness on the potentially significant efficiency gains which could be achieved by improving coordination between public use and other uses of spectrum, and to give a "push" at EU level to stimulate national initiatives in that sense throughout Europe.

The next meeting of the working group is scheduled on 31 March 2008 in Brussels.

The Group was also informed that a public workshop is scheduled to take place in Brussels on 1 April 2008 in the context of the Commission study mentioned earlier. Delegations were invited to participate. The RSPG will be formally represented by Mr Himonas as the Rapporteur for the working group preparing the relevant Opinion.

(4) Future spectrum reforms and competition policy considerations

Introduction by the Commission Representative

The Commission representative, **Mr Langeheine**, welcomed the initiative of the Chairman to start a reflection with the RSPG on competition aspects in relation to spectrum management and presented a short background paper to trigger the debate.

Mr Langeheine recalled the significant contribution of the RSPG, via several Opinions (WAPECS, secondary trading, etc), to the ongoing spectrum reforms and to key elements

⁷ Document RSPG08-212

proposed in the context of the review of the regulatory framework. These spectrum reforms can have consequences which would be relevant from a competition policy view point.

The subsequent discussion had mainly two purposes:

- to make a short inventory of the main relevant aspects, and
- to structure them by broad categories.

This exercise would in no way interfere with presently ongoing national procedures

Preliminary exchange of views

The RSPG welcomed the opportunity to discuss competition issues in the light of the forthcoming spectrum reforms and acknowledged that, although most of those issues were already identified in the context of various past Opinions, many of them were actually not solved in this context. Competition issues are also becoming more prominent as market-based approaches are now being put into practice by several Member States. There is therefore a more urgent need to start addressing outstanding issues in cooperation with the ERG.

The main areas which are likely to require further investigations are:

- the anticipated long term impact of the reform on competition of services and networks;
- the risks of competition distortion during the transition to the reform such as temporary hoarding of spectrum;
- legacy problems resulting from the introduction of the reform such as discrimination, windfall gains, cheaper access to spectrum;
- the best methods to deal with competition issues: from ex ante to ex post measures.

Mrs Treschow concluded that the discussion should be continued in the context of the cooperation with the ERG and that a way forward should therefore be prepared jointly with the ERG and the Commission.

(5) **Report on the first Swedish government decision on the allocation of the digital dividend**

The RSPG chairman, Mrs Treschow, reported on the recent decision by the Swedish government (19 December 2007)⁸, which she referred to formally as the "800 MHz decision". Analogue TV has been switched-off in Sweden in October 2007 and the digital dividend is therefore already a reality. The first decision creates a potential win/win situation for the broadcasting and the mobile sectors as it paves the way for more capacity for both sectors. In addition to the existing six digital multiplexers, broadcasters will receive two additional multiplexers (respectively located in the UHF and VHF band) when they vacate the spectrum above 790 MHz. The vacated spectrum (72 MHz) will be made available under technology and service neutral licences, which will be tradable, via a competitive process tentatively planned for 2009/2010.

(6) **Streamlining the regulatory environment for the use of spectrum**

Progress of the preparation of the RSPG Opinion

The progress of the preparation of the Opinion was presented by the Rapporteur, **Mr Eric Fournier** (ANFR, France)⁹. Mr Fournier first underlined the complexity of the issue of harmonisation of spectrum in Europe due to the high diversity of stakeholders (industry, service operators, users, etc) and the number of institutions (i.e. national and EU governmental and non governmental bodies) involved in the development of regulatory / technical conditions of use. Mr Fournier further stressed the need to properly consult all these concerned parties during the preparation of the Opinion.

Among all existing parties, three main organisations play a central role: the European Commission (with the TCAM and RSCOM committees), the CEPT and ETSI. The main challenges for these institutions in setting together appropriate regulatory conditions and ensuring proper enforcement are twofold:

- Ensure confidence for all users of the spectrum (including governmental users) that access conditions and parameters for use will meet the required interference compatibility requirements;
- Allow the possibility for technological evolution of both new and incumbent applications.
- In this context, it was noted by the working group that recent experience has revealed a growing concern regarding the appropriate distribution of roles and responsibilities

⁸ Copy of slides included in document RSPG08-215

⁹ Document RSPG08-205

between the three organisations, which has the potential to impair innovation on the longer term. Mr Fournier concluded that the working group intends to concentrate on the above-mentioned challenges in view of providing both operational and strategic recommendations on how to address them in a fast evolving technological and regulatory environment.

The RSPG agreed with the main objectives as reported by Mr Fournier, in particular the need to ensure a balance of both operational and strategic/long term considerations. The group stressed the importance of identifying the most appropriate delineation between equipment regulations and spectrum regulations in an attempt to avoid duplication as well as regulatory uncertainties. There were also calls for re-examining the scope of regulation to assess how more flexibility could also be introduced at the same time as ambiguities are removed. The need to make regulations more generic, and as much technology and service neutral as possible (in particular in the context of WAPECS), was also raised at this meeting.

The **Commission** gave a short feedback on the recent public consultation in the context of the second progress report regarding the implementation of the R&TTE directive¹⁰. The consultation revealed i.a. that many stakeholders believe that, despite the deregulation of rules for putting equipment onto the market in Europe, the regulation set-up for spectrum and equipment are not yet sufficiently harmonised throughout the EU to fully exploit the single market for equipment and services, while more flexibility in regulation is required to better stimulate innovation.

Various other issues were discussed including the increasing complexity of market surveillance procedures and the possible need to improve EU-level coordination, the need to take into account the accumulative effect on interference of the increasing number of devices sharing spectrum, the need for a future-proof vision at EU level, and finally the need to examine how notified body could work more effectively in the future.

Mr Fournier welcomed the advice from the RSPG and acknowledged the importance to focus on strategic recommendations while addressing, in sufficiently concrete terms, each of the questions included in the request for opinion.

The chairman Mrs Treschow suggested holding a public consultation on the draft Opinion, which would require postponing the formal adoption of the Opinion from June to November. Mr Fournier agreed with the new time table on behalf of the working group.

The next meeting of the working group is scheduled on **9 April 2008** in Paris.

¹⁰ Document RSPG08-211

(7) Spectrum issues concerning outer EU borders

Work progress

The Rapporteur for the preparation of the RSPG opinion on the topic, **Mr Díez de Frutos** (Directorate General for telecommunications and information technology, Spain), presented the result of the first meeting of the working group. He started mentioning the good level of involvement of Member States in the group, despite the fact that this topic mainly concerns only Member States located on the external borders of the union. He further provided a first status on progress achieved for each of the five tasks as identified in the request for Opinion¹¹.

The report was well received by the RSPG which appreciated the amount of information collected and analysed, and noted that this topic seems to include many more "facets" than initially thought. The Rapporteur was more particularly thanked for having prepared a comprehensive report in the relatively short period of time since the working group meeting on 5 February.

Discussion on the two selected issues introduced by the Rapporteur

The Rapporteur requested the RSPG to provide further guidance on the two selected issues outlined in the associated introductory document¹².

On the relevance of addressing issues by geographical clusters, most delegations agreed that this is worth considering as it would provide an opportunity to develop common regional positions vis-à-vis third countries and to facilitate the use of EU-level tools for coordination. Other delegations pointed out that coordination issues were mostly local and therefore grouping cases may not always be efficient.

On the issue of spectrum remaining unused due to the impossibility to implement harmonised spectrum decisions as a result of external constraints, delegations were sensitive to the issue of efficient use of spectrum and pointed out the need to avoid a possible sterilisation of spectrum. The possibility to consider alternative uses of spectrum while coordination is on-going or cannot be concluded was raised. On this subject, the Commission, supported by several delegations, stressed the need to balance spectrum efficiency with the need to maintain coherence in the internal market which is an objective that underpins most of the harmonisation decisions. The Chairman invited the working group to explore this issue in more details in view of exploring ways to accommodate this need for alternative use in future framework.

¹¹ Document RSPG08-207

¹² Document RSPG08-213

The **next meeting of the working group** is scheduled on **29 April 2008** in Brussels.

(8) Report on Commission activities in radio spectrum policy

Report on Commission activities in radio spectrum policy

The **Commission** provided an overview of the relevant activities in radio spectrum policy since RSPG#14¹³.

(9) Other matters

RSPG delegates were informed on the tentative dates for the RSPG meetings in 2009:

RSPG#18: 11 February 2009
RSPG#19: 13 May 2009
RSPG#20: 5 November 2009

The next RSPG meeting (RSPG#16) is scheduled to take place in Brussels on **Wednesday 4 June 2008**.

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¹³ Document RSPG08-208