

REQUEST
TO THE RADIO SPECTRUM POLICY GROUP
FOR A REPORT
ON
IMPACT OF SPECTRUM MANAGEMENT ON COMPETITION REGULATION

1. INTRODUCTION

The Radio Spectrum Policy Group is hereby requested to develop a report on “Impact of Spectrum Management on Competition Regulation”. The deliveries under this request could be one report or a number of reports depending on the nature of the issues identified under this request.

2. CONTEXT

The European electronic communications regulatory package is standing on two important pillars, namely competition regulations and spectrum policy regulations.

The origin of this Request for a Report to the Radio Spectrum Policy Group is the joint meeting between the RSPG and the European Regulators Group, ERG in Gothenburg early 2008. From the joint meeting the RSPG and ERG chairs took upon themselves the task to elaborate the potential areas of cooperation. This Request for a Report is the result of these discussions.

The aim of this Request is to set up a joint working group between the RSPG and the ERG to produce one or more reports focussing on the area of spectrum and competition aspects. Deliverables could then be issued both as RSPG and ERG Report.

The goal is to provide strategic guidance and advise when it comes to the cross border section of sector specific regulation and spectrum management in the field of competition.

3. SUBJECT

3.1. Impact of Spectrum Management on Competition

Convergence, digitalisation and technological advance call for a new regulatory approach allowing more freedom for spectrum users including service and technology neutrality and trading of spectrum rights.

Many of the issues on the agenda for the RSPG are directly or indirectly competition related, and the reverse is also true, many of the issues on the ERG agenda are spectrum related. Spectrum management and market regulation will increasingly intertwine in the future. Many policy and regulatory aspects related to a new, more flexible, approach would have to involve the ERG as well as the RSPG.

A situation is emerging where the distinction between different infrastructure access methods is becoming less important given that similar services can be provided over a number of different platforms. In many cases, there is no fundamental difference any longer between fixed and wireless networks when they offer similar services (or similar user experience despite differences in performances).

Convergence in infrastructure and services unavoidably raises questions regarding the need for convergence in policies and regulatory approach. In this context, a common view and approach between regulators are necessary.

In the centre of this trend is the fast deployment of broadband infrastructures, where market regulation and spectrum policy have to be discussed not only in parallel but together. Broadband has in its wider sense become the key driver for electronic communications, connectivity and the information society.

This process leads to regulatory challenges and a number of questions that need to be answered. What tools are needed for regulators and spectrum management authorities tomorrow? Initially four areas were identified as described below:

- **Market definitions** – how does the emergence and multiplication of new wireless services affect the broader context of definition of relevant markets (at EU level but also at national level)?
- **Transitional issues** – how does the transition to a liberalised "spectrum management" system affect competition (windfall gains or losses, continuity of existing contracts, etc)?
- **Information transparency** – how to provide adequate information regarding spectrum use to all involved players, without creating distortions in markets? What is the minimum requirement?
- Increased risk of use of spectrum to establish **dominant positions** in markets – how can dominance in the spectrum domain be handled (hoarding, etc)? Influence of spectrum management in competition in downstream markets?

After discussions it was proposed to move forward with the issue of **transitional issues** and on **dominant positions** in spectrum. For more information on these issues see under point 5 tasks to be performed.

As for the two other issues (**market definitions** and **information transparency**), they were placed on "hold" to be reassessed at a later stage.

3.2. Relevance

An EU-wide Internal Market with harmonised spectrum is pivotal for many products and services relying on spectrum. It supports the competitiveness of the

manufacturing industry as a result of increasing economies of scale which simultaneously result in lower costs for consumers. In addition, the perspective of larger markets for products and services should stimulate innovation. In addition to lower prices, consumers would also benefit when they can use the applications throughout the European Union.

Harmonised spectrum can also contribute to other EU policy objectives than the completion of the Internal Market and promotion of innovation in the information society.

4. MAIN OBJECTIVES

The main objective of this Request is to gather and share on the strategic elements of Impacts of Spectrum Management on Competition Regulation in order to be able to anticipate future regulatory and/or market challenges. Deliverables should also help identifying national best practices, taking into account that most (if not all) competition issues will concern mainly national authorities and markets. There is however a degree of similarity and consistency that should be reached in an internal market.

Deliverables should provide an inventory of best practices, as well as guidance and advice on the main regulatory challenges facing NRAs and competition authorities in the field of competition and spectrum management in the future, more particularly;

- A clear understanding of these challenges.
- A detail assessment of their significance and impact in different sectors and time frames.
- Guidance and advice on how to handle these regulatory challenges.
- An assessment of the possible European dimension and/or need for more consistency of approach at EU level.

5. TASKS TO BE PERFORMED AND ISSUES TO BE ADDRESSED IN THE REPORT

In order to reach the objectives mentioned under point 4 above the Members of the group are hereby invited to develop one or more reports on the two different areas described below.

1. Transitional issues

We have the issue of lasting structural competition imperfections in new markets and services due to legacy spectrum distribution. The present (and future) regulatory framework requires that procedures for assigning spectrum usage rights be objective, non-discriminatory, transparent and proportionate in order to ensure fair competition amongst applicants for spectrum usage rights.

There is a need to look at possible approaches to avoid competition distortions between incumbent users and newcomers due to the transition to a liberalised spectrum management system (i.e. windfall gains or losses, new competition created by the increase of unlicensed spectrum etc).

- What is the net effect on competition when considering the way these principles need to be taken in a reformed spectrum management environment?
- What possible remedies could be used to avoid competition distortions?
- Is there a need for EU-wide consistency?

2. Risk of use of spectrum to establish a dominant position in markets

There is a need to establish safeguards against the use of spectrum ownership to establish a dominant position in a downstream market (e.g. via hoarding, M&A, price squeezing, etc).

- What role does "ex-ante" sectorial regulation play in this respect?
- Is it necessary, how should it be applied and by whom should it be applied (institutional set-up)?
- How may general competition law be applied to situations of dominance in spectrum holdings?

6. TIMING

- RSPG#17 (19 November 2008): Progress report from the rapporteur, approval of the request for report, confirmation of rapporteur
- RSPG#18 (11 February 2009): approval of first report on transitional issue
- RSPG#19 (13 May 2009): approval of second report on dominant positions

7. ORGANISATION OF WORK

A joint working group between the RSPG and the ERG is to be set up to prepare the reports.

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