

Comments on the Commission consultation document 'Transforming the digital dividend opportunity into social benefits and economic growth in Europe'

General remarks

ECTA welcomes the opportunity to comment on the Commission's coordination and harmonisation plans on the digital dividend.

We broadly support the establishment of a longer term 'EU roadmap' entailing a set of strategic actions with attached implementation deadlines for Member States with the objective of increasing both the size and quality of the digital dividend. ECTA strongly supports the harmonized freeing up and allocation of the 72 MHz sub-band, which should be considered as a starting point and ideally approximately 100-115 MHz should be made available for telecommunications services across Europe.

We strongly support that the Commission takes urgent steps to accelerate the analogue switch-off by 2012 and the adoption of an EC decision in early 2010 in order to ensure that the 800 MHz band is made available across Europe and in a timely manner.

We are of the view, however, that a very important element, the need to address competitive issues, should be added to the Commission's work on the digital dividend. It is foreseeable that, in many Member States, wireless broadband services will be provided in this prime spectrum. These services are much more frequency consuming than mobile voice services for instance and it is likely that in some Member States the number of digital dividend licenses awarded will be less than the number of mobile operators currently present in these markets. Clearly, those operators who will not have access to this prime spectrum and might also have a smaller amount of 900 MHz spectrum than other mobile network operators will be at a very serious competitive disadvantage.

All of our members agree that the Commission's policy document should give guidance to Member States to ensure that the current level of competition in the mobile market is not reduced as a result of allocating the digital dividend.

For instance a single, large capacity and wholesale-only infrastructure could be built in the digital dividend spectrum that is open to all operators on non-discriminatory terms. Another solution is the allocation of the digital dividend spectrum in relatively smaller blocks with a reasonable spectrum cap aimed at preventing spectrum hoarding and exclusive rights to large amounts of prime spectrum for just one or two operators or groups.

Moreover, ECTA's fixed members are concerned that the 790-862 MHz band, or a subset thereof, may be allocated in a manner supporting only two networks in some countries. This leads to the creation of a duopoly in the provision of very high speed wireless broadband services, which should be addressed from the outset in order to ensure the competitive development of this market.

ECTA's fixed members suggest that the Commission's policy document recommends a catalogue of solutions to prevent a competitive failure, one or two of which should be implemented depending on national specificities. The proposed solutions in addition to the abovementioned two methods are dedicating blocks of digital dividend frequencies to new entrants and the inclusion of an open access requirement in at least one of the digital dividend licences, potentially in exchange for a wider spectrum allocation.

Detailed comments

4.1.a Ensuring the availability of a compression standard on all DTT receivers sold after 1 January 2012 that is at least as efficient as the H264/MPEG-4 AVC standard.

ECTA welcomes this proposal, not only to harmonize and improve DTT receiver quality and standards, but also with a view to adopting protocols with a higher compression ratio which could enable a more efficient allocation of spectrum resources. This could be critical in those countries which will not have a very high number of frequencies available for wireless broadband even after switch-off.

4.3. Making the 800 MHz band (790-862 MHz) available for low/medium power electronic communications networks, under harmonised technical conditions, following the principle of technology and service neutrality.

ECTA agrees that the most economic and social value can be achieved by opening and making available the 800 MHz band in a timely manner. Several studies carried out to quantify the economic impact of the digital dividend have shown that using the 800 MHz spectrum for telecoms services would result in greater contribution to the economy in terms of GDP and job creation than using it for broadcasting. The Commission study¹, the ARCEP study², the MICUS study³ and the recent study for the Dutch Ministry of Economic Affairs⁴ reached similar conclusions in this regard.

In addition to the economic value that wireless broadband services are expected to create in the 800 MHz band, an important factor from the consumer perspective is that the digital dividend spectrum could ensure good wireless broadband coverage in rural areas (in some rural areas coverage is likely only in the UHF band) and much higher quality indoor coverage in both urban and rural areas.

Furthermore it is much more expensive to roll out a wireless network and provide the same broadband services in a different band, for example in the US costs in the 2.4 GHz band are up to six times higher than in 700 MHz band.

We also support the Commission's proposed finding that EU harmonisation of making available the 800 MHz band is necessary to achieve greater economies of scale and to ensure that the European market is not fragmented along national borders.

¹ Commission study "A European approach to the digital dividend" launched on 15 November 2008, conducted by Analysys Mason, DotEcon and Hogan&Hartson
http://www.analysismason.com/EC_digital_dividend_study

² Analysys Mason and Hogan & Hartson, Valuation of the digital dividend in France, 27 May 2008
[http://www.analysismason.com/PageFiles/4324/Valuation%20of%20the%20digital%20dividend%20in%20France%20\(English%20Version\).pdf](http://www.analysismason.com/PageFiles/4324/Valuation%20of%20the%20digital%20dividend%20in%20France%20(English%20Version).pdf)

³ Dr. Martin Fornefeld, Gilles Delaunay, Dieter Elixmann, The Impact of Broadband on Growth and Productivity, 2008
<http://www.micus.de/pdf/bb-study/FinalReport-MICUS-BroadbandImpact.pdf>

⁴ Analysys Mason, Final Report dated 24 July 2008, Economic and Social Limitations to Alternative use of 'Digital dividend' Spectrum
<http://www.ez.nl/dsresource?objectid=164458&type=PDF>

As the RSPG has recognized in its draft Opinion 'if Member States take a unilateral approach there is a significant risk of fragmentation [...] which could have consequent costs resulting from smaller markets', therefore 'the greater the number of countries and size of market, and all making available similar frequencies, the better'.⁵

Europe will not benefit from economies of scale from other regions (US, parts of Asia and Africa) and consequently cannot afford fragmenting 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.

Ofcom's analysis of aligning its approach to the digital dividend with other countries has shown that there would be large benefits from doing this, including:

- lower equipment prices for consumers
- more efficient use of spectrum
- improved opportunities for new generations of mobile broadband
- more scope for competition and innovation in new wireless services.⁶

Ofcom estimated that benefits to citizens in the UK would be totalling £2-3 billion over twenty years from synchronising action with the rest of Europe.⁷

Consequently, ECTA fully supports the adoption of a Commission decision binding upon Member States that harmonises the technical conditions of making the 800 MHz band available for wireless broadband services.

We suggest, however, that in addition to requesting Member States to implement the Decision as soon as possible the Commission includes a final implementation deadline in the technical harmonisation measure for making available the 800 MHz band according to the Decision. This would create legal and market certainty from the outset both for Member States and all other stakeholders affected and exclude the possibility of market fragmentation. In order to allow sufficient flexibility for Member States the deadline could be a long one, beyond the analogue switch-off; for instance 2014.

We also agree with the approach, which follows by analogy from the *Inter-Environnement Wallonie* judgment⁸ of the European Court of Justice, that any Member State developing its spectrum planning beyond the current broadcasting use before the

⁵ Draft RSPG Opinion on the Digital Dividend, page 8

⁶ Ofcom, 'A better Digital Dividend for Britain', 2 February 2009
http://www.ofcom.org.uk/media/news/2009/02/nr_20090202

⁷ Ibid.

⁸ Judgment of the Court of 18 December 1997 in Case C-129/96, *Inter-Environnement Wallonie ASBL v Région wallonne*, European Court reports 1997, Page I-07411 in paragraphs 44 and 45: "[i]t is during the transposition period that the Member States must take the measures necessary to ensure that the result prescribed by the directive is achieved at the end of that period. Although the Member States are not obliged to adopt those measures before the end of the period prescribed for transposition, it follows from the second paragraph of Article 5 in conjunction with the third paragraph of Article 189 of the Treaty and from the directive itself that during that period they must refrain from taking any measures liable seriously to compromise the result prescribed. "

final implementation deadline must do so in accordance with the technical parameters of the Decision.

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 electronic communications usage in order to avoid harmful interference between Member States more and less advanced in the process.

4.6. More effective cross-border coordination with non-EU countries

The European Commission and the CEPT have a clear role to play in cross-border negotiations with non EU countries, in particular with accession countries and Russia, in order to renegotiate GE-06 as appropriate. It should be noted that GE-06 has not been developed in order to enable an equitable access between broadcasting and mobile at the border. The revision of trigger mechanisms to more balanced levels is necessary to prevent difficulties of deployment.

4.7. Addressing future challenges

ECTA agrees with the establishment of a mechanism to monitor developments affecting the roadmap. The impact of digital dividend spectrum allocation on the competitive development of all mobile services is likely to be significant, but dependent on the exact approaches taken by Member States. Therefore we support the inclusion of competitive challenges and in particular a spectrum bottleneck in the list of uncertainty factors. This is without prejudice to the need to address the already foreseeable competitive challenge in the policy document by the Commission as suggested below.

As the opening of the 800 MHz band is the starting step in the digital dividend process, ECTA suggests that a new mandate is given to CEPT already now, in order to analyze the technical conditions of using other digital dividend spectrum for telecommunications services, in particular the spectrum directly below 790 MHz.

5.1. Accelerating analogue switch-off by 2012

The analogue switch-off by 2012 is the natural prerequisite of making available the digital dividend spectrum in a timely and harmonised manner across Europe. Therefore, ECTA strongly supports the Commission's plan to have the deadline of 1 January 2012 reconfirmed in all national laws as an urgent step.

5.2. Taking steps towards the opening of the 800 MHz band for electronic communications services by adopting harmonised technical conditions of use in Europe

ECTA fully agrees with the Commission's proposal to have a Commission Decision proposed and adopted urgently on the technical harmonisation of the 800 MHz band.

The competitive challenge⁹

It is foreseeable that, in many Member States, wireless broadband services will be provided in this prime spectrum. These services are much more frequency consuming than mobile voice services for instance, therefore there is a possibility that the 790-862 MHz band, or a subset thereof, may be allocated in a manner supporting a smaller number of networks than the number of mobile operators currently present in the market and only two networks in some countries. This leads to the reduction in the level mobile competition and in some cases to the creation of a duopoly in the provision of very high speed wireless broadband services.

The scarcity of the digital dividend spectrum excludes the possibility of granting spectrum rights of use to many different very high speed wireless network operators in this prime spectrum, whilst the costs of networks of similar capability in a different band are multiple times higher.

Additional allocation beyond the 72 MHz sub-band from the digital dividend spectrum may occur only later if at all. Even in those countries where additional digital dividend spectrum is allocated at a later stage, first mover advantages are great.

There is clearly a large potential for a lack of effective competition in the provision of very high speed wireless broadband services that are likely to be developed in the digital dividend spectrum, which should be assessed and addressed from the outset.

For instance in Germany in lack of an effective spectrum cap (it exists but is too large) the two early entrant mobile operators hold most of the 900 MHz spectrum and are very likely to be able to buy also most of the 800 MHz spectrum. The coverage conditions likely to be attached to the digital dividend licences (coverage of all white spots) coupled with the possible emergence of a 'bidding war' already effectively exclude new entrants from the possibility to provide services in the spectrum bands with the best characteristics. In order to provide similar services in a higher band new entrants would have to invest approximately six times more and the quality of service in these bands would still be worse.

ECTA suggests that the competitive challenge stemming from the allocation of the digital dividend spectrum is examined and addressed by the Commission in its Communication planned for this autumn and solutions are recommended to Member States.

We have identified four methods through which a competitive failure can be prevented by Member States:

- A single, "wholesale-only" and large capacity infrastructure is built in the digital dividend spectrum that 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);

⁹ ECTA's comments on the competitive issues cannot be assumed to represent the views of early entrants to the mobile market.

- Another solution is the allocation of the digital dividend spectrum in relatively smaller blocks with a reasonable spectrum cap aimed at preventing spectrum hoarding and exclusive rights to large amounts of prime spectrum for just one or two operators or groups.
- ECTA's fixed members suggest that open access (national roaming and MVNO) requirements on cost-oriented and non-discriminatory terms are included in the licence conditions of all licensees or of at least one¹⁰ of the licensees, 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);
- Our fixed members propose the allocation of dedicated blocks of frequencies to new entrants (i.e. telecommunications operators which have not previously been assigned frequencies). This should be accompanied by pro-competitive measures such as national data roaming requirements, lighter coverage requirements compared to those imposed on early entrant mobile operators, facility sharing, etc).
This could be done also by the re-allocation of the 900 MHz band where 800 MHz spectrum is given to holders of 900 MHz spectrum. In such a scenario 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 new entrants.

ECTA suggests that the Commission recommends that Member States adopt one or more solutions to prevent a reduction in the existing level of mobile competition in very high speed wireless broadband services. Addressing the competitive challenge from the beginning of the allocation process not only prevents the emergence of a serious market failure but creates certainty for all market players from the outset thereby maximizing the potential for investment and innovation.

¹⁰ The licence with open access conditions could conceivably be accompanied with a larger frequency allotment than the other licences.