



European Commission  
Directorate General Information Society and Media

E-mail: [info-b-4-ext@ec.europa.eu](mailto:info-b-4-ext@ec.europa.eu)

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**Response of Skype Communications sarl to European Commission's consultation document: *"Transforming the digital dividend opportunity into social benefits and economic growth in Europe"*.**

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Skype Communications sarl (hereafter 'Skype' [www.skype.com](http://www.skype.com)) is a Luxembourg-based provider of peer-to-peer software applications which enable Skype users to communicate with other Skype users, and enabling, optionally and where possible, certain forms of communication with the subscribers of electronic communications networks and services.

Skype welcomes the opportunity to comment on the European Commission's public consultation on the Digital Dividend.

We support the European Commission's aims to take urgent action to expedite analogue terrestrial television switch-off, and to take steps towards the opening of the 800 MHz band for electronic communications services by adopting harmonised technical conditions of use in Europe. We also support the aims for a longer term roadmap.

However, we believe that the Commission is insufficiently ambitious.

A more decisive approach is clearly needed on white spaces and cognitive radio.

Critically, the plans, as put forward by the Commission, entail serious risks of failing to deliver the anticipated social benefits and economic growth in Europe, for the following reasons:

1. The Commission does in fact not propose mandatory harmonisation, but instead proposes to rely on mandatory boundary conditions in the context of voluntary opening of the 790-862 MHz band by Member States, with no firm deadline.

Skype believes that mandatory harmonisation, including a firm deadline, is necessary to avoid fragmentation of the single market. Studies conducted for the Commission and for national authorities in charge of radio spectrum demonstrate

powerfully that lack of harmonisation will have major effects on the extent to which socio-economic benefits are achieved.

2. The Commission does not propose to open spectrum beyond the 790-862 MHz band in the short to medium term (the Commission's consultants stated in presentations that there is '*no current value*' in doing so).

Skype believes that this is a serious mistake, which is very likely to lead to a reduction of competition at network operator level compared to the present situation, leading to detrimental effects for European citizens, public administrations and businesses (the present situation already being unsatisfactory – see below).

If only 72 MHz is made available, and it takes years, if not more than a decade, for further prime spectrum (e.g. in the 470-790 MHz range) to become available, this is very likely to lead to the creation of monopolies, duopolies, or at best very tight oligopolies for public wireless communications networks (including consolidation with owners of existing public wireless networks), and to grant insurmountable first-mover advantages to those that secure 800 MHz spectrum in the short term.

Skype strongly advocates that a greater amount of spectrum should be made available from day one, so as to enable a sufficient number of network operators (or arrangements/entities enabling alternative spectrum usage) to access spectrum and engage in vibrant competition with one-another, in a manner that does not enable any operator to behave independently from its competitors and customers, and in a manner that puts an end to currently existing widespread restrictive practices – see below. If this cannot be guaranteed (which most likely will be the case in many Member States), then mandating ex-ante conditions on 800 MHz licensees becomes imperative, as has been done for the 700 MHz band in the United States. The Commission is best placed to ensure that such ex-ante conditions are effective and will not distort the single market.

The French national regulatory authority ARCEP, which is likely to be among the first EU administrations to make available 800 MHz spectrum, has, in its consultation document entitled "*Consultation publique sur l'attribution d'autorisations dans les bandes 800 MHz et 2,6 GHz pour les services mobiles à très haut débit*", clearly identified the risk of reduction of competition, and has invited interested parties to express themselves on potential remedies. Skype has responded to that consultation, and has stated the following, given that ALL French (and indeed many European) mobile network operators currently apply contractual prohibitions on the utilisation of Voice over Internet Protocol (VoIP) and peer-to-peer (P2P) applications, and certain forms of utilisation are otherwise impeded. Skype advocated in its French response, and reiterates in this response to the Commission, that ex-ante interventions are necessary, and should take the form of: (i) doing the utmost to promote competition at network operator level, including by making available more spectrum, delivering meaningful consumer

choice at network operator level, (ii) imposing national roaming obligations and MVNO access on 800 MHz licensees, from which any interested party would be entitled to benefit, and (iii) requiring, through the licences of very high speed mobile network operators, the provision of Internet access as one of the 'standard services', and mandating that this is provided with quality that is suitable to enable fully functional very high speed broadband Internet access, taking into account the requirements expressed by users to make use of, and distribute, content, applications and services on the Internet.

3. The Commission's consultation document makes only oblique reference to competition, and makes no reference at all to the importance of the Internet for the achievement of social benefits and economic growth from the Digital Dividend.

Skype wishes to stress in particular that it is not the mere availability of wireless broadband as such, but rather the availability of very high speed unrestricted access to Internet content, applications and services, which is necessary to deliver key socio-economic benefits going forward. We refer in this context to a keynote address delivered by David S. Isenberg in April 2009, entitled "*Broadband without Internet ain't worth squat*"<sup>1</sup>.

Commissioner Reding<sup>2</sup> has also emphasised the importance of the Internet (not merely wireless broadband) and stated her belief that '*we are at the start of a new phase of internet driven innovation and growth*', that '*we will only be able to reap the full social and economic benefits of a fast moving technological landscape if we manage to safeguard the **openness** of the Internet*', and that it is necessary '*to better prevent (such) unfair abuse to the detriment of Consumers*'.

Over the past two decades, the global public Internet has been a relentless source of individual, public sector, and industrial creativity, a massive breeding ground for innovation and for the development of entirely new concepts and models, to the delight and evident benefit of European citizens, European businesses, and facilitating the delivery of key public services by European government authorities at all levels.

The remarkable success of the global public Internet, including its many socio-economic benefits, is largely attributable to its open and non-hierarchical nature, and especially to the fact that there are no gatekeepers deciding on which content, applications and services can be accessed, used and distributed by its users (individuals, public administrations, businesses).

It should be taken into account that very high speed unrestricted Internet (fixed and mobile; wired and wireless) is not only relevant for interpersonal communications, but that there are many self-evident and very desirable person-

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<sup>1</sup> <http://www.isen.com/blog/2009/04/broadband-without-internet-ain-worth.html>

<sup>2</sup> [http://ec.europa.eu/commission\\_barroso/reding/docs/speeches/2009/brussels-20090202.pdf](http://ec.europa.eu/commission_barroso/reding/docs/speeches/2009/brussels-20090202.pdf)

machine interactions, machine-to-machine applications, including for example in 'smart grid' electricity to reduce waste and preserve the environment, safety applications, etc. On existing networks, it has been seen that when these applications are custom-developed, using custom protocols, etc. development is slow and features are limited, but when the Internet is used, development is fast, innovation is great, and take-up is far greater.

It is an undeniable fact that network operators have historically supported, in their own commercial interest, open and unrestricted access to the global public Internet, but it is equally evident that some network operators, including some major European network operators, are now restricting or are seeking to restrict such openness (e.g. many European mobile network operators, and in several cases ALL mobile network operators in specific Member States, restrict the use of VoIP and P2P applications).

Skype believes that it would be against the European Union's interests, and against all its constituents' interests, if policy adopted in the context of the Digital Dividend would allow a situation to arise in which wireless broadband network operators that seek to restrict, or would effectively restrict, open access to the global public Internet, would be able to do so without constraints and without regard by the Commission and by NRAs for the situation on downstream retail markets.

On the basis of the above, Skype advocates that the European Commission's forthcoming Communication on the Digital Dividend should contain explicit statements, along the following lines:

- a) Effective competition and unrestricted open access to the global public Internet are important policy goals, as they are the key for securing maximum social benefits and economic growth. The Digital Dividend policy must be defined, and the Digital Dividend spectrum must be made available, in a manner which guarantees the achievement of these policy goals.
- b) Ex-ante regulation will be needed to support the achievement of these policy goals, at the level of the spectrum assignment modalities, and at the level of the individual licensing conditions.
- c) Unrestricted access to the global public Internet may not be impeded by Digital Dividend licensees, neither at wholesale level (e.g. through restrictive agreements/conditions on network access), nor at retail level (e.g. through restrictive terms and conditions or technical means, co-ordinated or not), so as to ensure that users have genuine choice and ability to easily switch between providers that are effectively competing with one-another, including choice between providers of unrestricted open access to the global public Internet.
- d) The Commission will take a lead role in ensuring that the above policy goals are effectively achieved and will accelerate work on white spaces and cognitive radio.

Should you require any additional information with regard to the contents of this response, please do not hesitate to contact us. We would be happy to engage with you to discuss in more depth the points raised here.

Yours faithfully,



P.P.

Jean-Jacques Sahel | Skype

Director, Government and Regulatory Affairs | Europe

SkypeID: jsahel

e-mail: jean-jacques.sahel@skype.net