

4 September 2009

RTL Group welcomes the opportunity to comment on the Commission's consultation document regarding the digital dividend.

With the view to take concrete steps towards a common approach to the use of the digital dividend in the EU, the consultation document outlines 1) a general EU roadmap for future action in the medium-term; 2) actions which the Commission wants to undertake urgently. RTL Group wishes to make observations regarding the following elements of the consultation.

I. As regards the proposed elements for a roadmap.

1. High quality standards for digital terrestrial television (DTT) receivers in Europe.

To this end, the Commission suggests to:

a) *Ensure that all DTT receivers sold after 1 January 2012 incorporate a compression standard that is at least as efficient as the H264/MPEG-4 AVC standard.*

- RTL Group shares the Commission's concern with viewers being served with high quality broadcast services. Indeed, consumers expect enhanced TV services as a benefit from the digital switchover. As a content company, it is easier to provide content with a compression standard that would fit most TV receivers; instead of having to adapt to important discrepancies between various TV receivers.
- At the same time however, it's important to avoid compelling a single exclusive standard for the following reasons. It is crucial to preserve enough flexibility to allow coexistence with other standards and ensure compatibility with DTT networks that use MPEG2 as it is not expected that all DTT networks will migrate to MPEG4 in the short term and that all multiplexes will be converted at the same time. It would also allow keeping the possibilities for further developments in compression technologies and the emergence of improved standards on the market. We would therefore consider that no regulatory action is taken to impose a standard at EU level, and rather suggest that performance indicators be developed for future DTT receivers.

b) *Set standards for the ability of DTT receivers to resist interference.*

- As we already pointed out at several consultations, we believe crucial for the quality of services to undertake all relevant actions to avoid interferences. To this end, it is important indeed to reduce equipment's radiations, thereby enabling DTT receivers to better resist interference.
- However, this is not sufficient. The objective of ensuring an interference-free environment will only be achieved by ensuring that other equipment operating in adjacent frequency bands (such as mobile phones, dect phones, powerline applications) being also capable to better resist interferences and to comply also with higher standards in this respect. Together with the Member states, the Commission should investigate whether further action should be developed as regards standardization in this area.

- In the meantime, for the short term, the existing receivers will need to be protected to avoid interferences. This is particularly important should broadcast and telecommunications services co-exist in the same band. The Commission should encourage the Member states to take all relevant measures to ensure the protection of broadcasting services.

2. Increasing the size of the digital dividend through further spectrum efficiency gains.

To this end, the Commission notably contemplates to:

- Promote collaboration between Member States to share future broadcasting network deployment plans (e.g. migration to MPEG-4 or DVB-T2)*

The deployment of future broadcasting networks takes place at different speed in different markets and requires significant investments from the industry. In such context, harmonisation in this area would be irrelevant. EU action should rather seek to stimulate the exchange of information between Member States, in line with the approach suggested in the consultation document.

- Encourage the deployment of Single Frequency Networks (SFN) over multiple frequency networks*

- Though technically possible, we would recommend the Commission not to impose compelling actions to Member States in this area. The deployment of SFN would entail high switching costs for broadcasters, notably if the location of transmitters has to be changed or need extra transmitters. Furthermore, as it is pointed out in the consultation document, the deployment of SFN may not equally bring significant benefits in every country, compared to MFN or a combination of the two, depending on each country's size and transmission infrastructure. Therefore the decision to deploy SFN networks or not should be for Member states to decide, in collaboration with the broadcasters and network operators.
- In addition, care should be given to avoid artificial creation of an environment where operators may become increasingly dependent on one single SFN operator, which would result in increase of costs for network users and consumers.

3. Adopting a common position on the potential use of the "white spaces" as part of a possible extension of the digital dividend.

- In this respect, it should be stressed that the Commission has recently mandated the CEPT¹ to conduct in depth studies in order to assess the two following aspects: 1) *"the technical and operational requirements for the operation of cognitive radio systems in the white spaces of the UHF broadcasting band to ensure the protection of incumbent radio services"*, and 2) *"to investigate the consequential amount of spectrum potentially available as "white space".*
- The Commission should not attempt to anticipate the results of these studies by prompting the early adoption of a common position without a thorough technical investigation into the potential consequences on existing services.

¹ CEPT - 9 June 2009, Working assumptions and roadmap for the SE43 studies (Annex 4 to document SE43 (09)10).

4. Making the 800 MHz band available for low/medium power electronic communications networks, under harmonised technical conditions, following the principle of technology and service neutrality.

- The progressive opening of the 790-862 MHz band in several Member States (Austria, the Czech Republic, Finland, France, Germany, Spain, Sweden, the Netherlands and the United Kingdom) and the emergence of a momentum to earmark this sub-band for electronic communications networks, is the result of the negotiations which took place at ITU WRC-07 radioconference. This shows that spectrum efficiency gains may be reached through ITU and relevant international agreements, with due respect for Member states competence in this area.
- Against such background, the added value of an additional layer of regulation at European level and of Member States being compelled to adopt the sub-band is questionable (given that an increasing number of them are announcing decisions to adopt it). Member States should be able to decide on spectrum issues taking into account national specificities (size and density of population, topology, existence and substitutability of other distribution platforms, technical constraints, costs, consumer demand).
- In this respect, we observe that both the mandate given to the CEPT on the digital dividend and the RSPG Position Paper on the Digital Dividend² mention that any harmonisation decisions for the use of 800 MHz sub-band should be made under non-mandatory, non exclusive conditions and in line with the GE-06 agreement. In such context, therefore, we consider that EU action should not compel mandatory harmonised decisions on spectrum but rather foster coordination between Member States.
- Opening the 800 MHz band for electronic communications services will have significant consequences for broadcasters. The existing DTT services operating in this spectrum area will have to be relocated, without entailing reduction of coverage and disruption for viewers. Referring to RSPG's opinion, re-planning of spectrum used by broadcasting networks *"could cause significant cost or disruption to the provision of broadcasting services"*. In our view, the costs arising from this re-planning's should be borne by those who will benefit from the availability of the 800 MHz band.
- In addition, broadcasting services need to be protected from interference caused by electronic communications networks. The European Commission should encourage national authorities to take all necessary measures to ensure such protection.

² RSPG Opinion on EU Spectrum Policy implications of the digital dividend, February 2007.
Opinion of the RSC pursuant to Article 4.2 of Radio Spectrum Decision, 3 April 2008.

II. As regards the urgent actions

As an urgent action, the Commission proposes to take immediate action on the 790-862 MHz band by adopting harmonised technical conditions for its use in Europe.

To this end, the Commission would submit to the Radio Spectrum Committee (RSC) pursuant to the Radio Spectrum Decision a draft Commission's decision on the technical harmonisation of the 790-862 MHz band in autumn 2009, with the view to receive regulatory opinion. This draft decision would be finally adopted by the Commission at the beginning of 2010.

- In addition to the points outlined above, it should be recalled that in the context of the ongoing adoption of a revised telecommunications package, both the Council and the European Parliament have significantly limited the scope of technical implementation measures being imposed by the Commission.
- In addition, the Spectrum decision (Article 6.4) clearly provides that the “measures taken (pursuant to this Article) shall be without prejudice to the Community's and Member States' rights and obligations under relevant international agreements.
- The consultation document justifies such compelling action by the most recent opinion from the RSPG³. However, we read this opinion as less compelling. While it indeed calls the Commission to act swiftly on its recommendations, the latter do not call for a mandatory EC decision. Indeed: it reads:
 1. *“ The EC to assess the advantages and disadvantages of options for a coordinated non-mandatory EU approach to the availability of the 800 MHz band for ECN and ECS, other than broadcast transmission networks and services.*
 2. *The EC to act on the recommendations contained in the Opinion as quickly as possible in order to minimise EU level uncertainty in the ability of Member States to make available the 800 MHz band.*
 3. *The EC to encourage Member States who are making available the 800 MHz band for new and/or enhanced ECN and ECS to apply WAPECS principles, particularly of service and technology neutrality, recognising that Member States may maintain broadcasting use in all or a portion of the band;*
 4. *Any EU harmonisation of technical elements such as channeling arrangements and common and minimal (least restrictive) technical conditions should be based on the outcome of the CEPT work in response to relevant EC mandates;*
 7. *The EC to give further consideration through a review process to the merits of facilitating EU-wide long term availability of the 800 MHz band for mobile and fixed broadband applications.”*

The Commission further specifies that Member States would be requested to implement this measure as soon as possible but that no final implementation date would be specified. In parallel, it would be *recommended to Member States to refrain from any regulatory action* regarding the use of the 800 MHz band that would contradict, or complicate the application of the technical harmonisation measure.

³ RSPG position paper on the digital dividend -27 April 2009.

Later in the document, the Commission however indicates that:

- *“After further investigations, the Commission may still consider proposing a final date for implementation beyond which the measure would have to be implemented by those Member States that have not already done so”.*
- In absence of a more generic allocation of the UHF band in the ITU, *“Member States could also be requested to show commitment to the digital dividend policy at international level by adhering to footnote 5.316 of the ITU Radio Regulations, which allocates the band 790–862 MHz to the mobile service on a co-primary basis. Those Member States which are not yet associated with this footnote would be requested to do so at the forthcoming WRC-11”.*

While we share the view taken by the RSPG that *“uncertainty in the ability of Member States to make available the 800 MHz band should be minimised”* as it would ensure a better visibility of the process for all stakeholders, we would stress that:

- The Commission is not competent neither to oblige Member States to sign an international agreement such as this ITU footnote, nor to impose this at a specific deadline and should respect national competence in this area.
- As pointed out by the RSPG, EU harmonisation of technical elements should be based on the outcome of the CEPT work in response to relevant EC mandates. The outcome of these assessments should be released before contemplating the adoption of binding measures for all EU Member States.
- The Commission does not give any indication as to what these harmonised technical conditions would be and should clarify this further. Absent any further precision in this area, it is difficult, if not impossible, to comment further on this issue.

Finally, we fully share the Commission's view pointed out at the end of the document that the follow-up to be given to the proposals made in the consultation document, as well as their impact on the respective spectrum users, should be the object of a full policy debate. It should involve the Member states, the European Parliament and all spectrum users concerned, including the broadcasters.

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