



ERG 18th Plenary Meeting, Madeira (PT)
5 - 6 October 2006

CONCLUSIONS

1) Opening of the meeting and adoption of the agenda **ERG (06) 35 Rev1**

The agenda was adopted without changes.

2) Information from the Chairman and the Secretary on meetings and other activities **ERG (06) 36**

This document records significant meetings and activities conducted by Kip Meek as ERG Chair and Davide Gallino as ERG Secretariat. The report was noted.

3) Development of ERG (Chair/ OFCOM)

a) ERG development

The development of ERG was discussed focussing on three elements: a theoretical approach to harmonisation (meaning of harmonisation in terms of market analysis, adopted remedies and market conditions), the development of concrete actions (identify priorities and key markets) to provide better and deeper guidance to NRAs in order to foster harmonised response, and changes in the way the ERG work and resources are organised, also taking into account some procedural constraints and the respective roles of IRG and ERG.

Priorities

ERG members undertake to review and keep up to date the priority areas for harmonisation. This will be done on the basis of consultation with stakeholders and evidence-based assessments of the costs and benefits of harmonisation in each such area, to identify where harmonisation is necessary or will contribute to the establishment of an internal market for electronic communications. This includes harmonisation of remedies applied to SMP players in similar circumstances following market reviews under the EU Regulatory Framework. Priority will be given to broadband access markets and termination markets, and to VOIP and cross-border services.

Monitoring

In respect of key markets, ERG members undertake to develop case studies of regulatory ‘best practice’, designed to demonstrate how the ERG Common Position on Remedies – [ERG \(06\) 33](#) - can be applied in practice to those markets. While ERG Common Positions shall not be binding, Members shall be recommended to take the utmost account of them. ERG members commit to provide reasoned

regulatory decisions, by reference to the relevant ERG Common Position(s). ERG members undertake to agree a way of monitoring and comparing their respective regulatory approaches across key markets, with the objective of continually improving their regulatory approaches and implementation of the EU Regulatory Framework.

b): Collaboration between NRAs (MCA)

ERG (06) 38

The ERG considered ways how NRAs can share their expertise in various markets or specific best-practices to work towards more harmonised outcomes and to foster cooperation. In particular, a mechanism for knowledge base building and sharing was agreed. Work is under way to build the knowledge base and improve exchange of information and expertise between NRAs

4) Harmonisation

a. Theory of harmonisation

ERG (06)37e

b. Harmonisation in practice:

- i. Harmonisation of remedies – evolution of the "Remedies" Common Position **ERG (06) 37**
- ii. ERG Common Position on best practice in regulation of Wholesale Broadband access **ERG (06) 37b**
- iii. ERG Common Position on best practice in regulation of Wholesale Local Access **ERG (06) 37c**
- iv. Ethernet leased lines (presentation) **ERG (06) 37d**

Background

The Update of the Remedies Common Position was agreed for publication at the last May Plenary meeting. However, certain stakeholders had raised concerns during the consultation on the draft, that they regarded as insufficiently prescriptive. As a result, the Remedies Project Team was mandated to develop more detailed guidance, that is, identifying specific markets and situations which complements the Remedies Common Position. Examples for two areas in which to provide concrete guidance, WBA (wholesale broadband access and wholesale local access) were given. The Remedies PT also held an industry workshop in Brussels (on September 27) on the issue of harmonisation which included these proposals.

In addition, OFCOM has drafted a paper of the Theory of Harmonisation, ERG (06) 37e, which addresses the issue of which circumstances most demand harmonisation of regulatory remedies, why, and the depth of harmonisation required. It is a contribution to the ongoing debate about whether ERG is doing “enough” to promote harmonisation.

It was also noted that stakeholders mainly express two types of concerns with NRAs' behaviour: a) failure to analyse market properly and deal fully with competition problems, b) ineffective choice of remedy.

The harmonisation proposals in the form of Common Positions on wholesale access try to address the first concern, while the “Remedies CP” already contains considerable guidance aimed at addressing the second concern. It was thus suggested to agree common methodologies for the selection of SMP remedies, to apply the proposed methodologies individually at the NRA level and explain the results of their application.

The "proposed methodologies" consist in developing CPs which identify specific competition problems, as described in the documents (37 b and 37c) on Wholesale Broadband Access and Wholesale Local Access. For each identified problems in the CP, NRAs should identify and assess the nature and scale of each identified problem in the MS in question; explain clearly how each of the problems is addressed by the chosen remedies – and refrain from applying a remedy automatically.

Collective pooling of experience on important issues in practice could be achieved through drafting of CPs, with the idea that if a remedy works to address the problem, it should not need be identical to another one which obtain the same result. Some NRAs might have addressed problems identified in CP only implicitly. For the future, close monitoring of actual results, or independent comparative review could be required.

Following discussion, the Plenary has decided to undertake the following actions:

- 1) agree on the proposed general approach to be illustrated in a forthcoming paper developed within the PT on Remedies/harmonisation;
- 2) adopt as priority areas for harmonisation:
 - I. Regulation of key wholesale inputs – it is foreseen to consult, following additional work and CN (Malta, 16/17 Nov) approval, on two draft Common Positions on (a) wholesale broadband access and (b) wholesale local (broadband) access and the Theory of Harmonisation and Harmonisation of Remedies documents. There will also be a public workshop (while the consultation is open);
 - II. Termination rates (fixed and mobile);
 - III. VOIP as this is a key area where the pan-european potential deployment is prevented by non-alignment of national regulations; it is also felt that increasing use of NGN and IP will worsen the existing situation unless proper measures are undertaken;
 - IV. Services with a significant cross-border dimension similarly require a high degree of regulatory coordination, as action by individual NRAs risk to be ineffective (as in the case of international wholesale roaming). A harmonised approach should also be devised over generic issues as costing methodologies, avoidance of margin squeeze, regulatory accounting, which might represents areas for integration and harmonisation

Additional future work includes best practice exchange, guidance and monitoring of the actual implementation of European legislation and development of regulatory practice.

5) Work Programme 2006 (IRG Secretariat)

ERG (06) 27 Rev2

a. Review of WP 2006.

The plenary noted the report and agreed with the removal of the fixed and wireless broadband competition project from the programme, due to lack of resources; other delays to be dealt with rescheduling some items.

6) End User WG (ANACOM/BNetzA)

a. ERG report on VoIP consumer aspects

ERG (06) 39

Background

This report deals with VoIP issues from a consumer perspective. It reveals that the regulatory requirements for VoIP (i.e. emergency services, numbering and number portability, tariffs, and quality of service, cross border issues) vary considerably across Europe.

The Plenary approved the report for publication, and invited further work to consider which steps ERG should make to make the regulatory conditions for European VoIP providers more harmonised.

7) Fixed Network WG (BnetzA/ ARCEP)

a. ERG opinion on the practicality of duct sharing

ERG (06) 40

Background

At the Vienna Plenary the Commission asked ERG for an Opinion on the practicalities of duct sharing. The Fixed Network WG conducted a short survey among NRAs on the demand and supply side of duct sharing as well as on its practicalities. The Plenary required the opinion should be redrafted to allow for some changes before submitting it to the Commission.

b. ERG Report on broadband market competition for consultation

ERG (05) 23 Rev1

Background

The report deals with competition in the wholesale broadband access market (market 12 in the Commission's Recommendation on relevant markets) and its relationship to broadband penetration. The work was originally started in 2003 with an analysis and comparison of broadband market data with regard to penetration and the competitive situation both on the European as well as country level. Based on 15 country studies (provided by the responsible NRAs), the impact of regulatory intervention is analyzed and explained with the theoretical concept of the "ladder of investment". At the end of the report there are conclusions with regard to regulatory strategies to be adopted.

The Plenary approved the Report plus the annex with the country studies to be published for consultation

c. Internal benchmark of ULL, BSA and retail prices/margin squeeze test

ERG (06) 41

Background

The report - intended for ERG internal purposes only - is submitted in the form of a presentation. It comprises an overview of the results of the data collection of LLU prices, BSA prices and comparisons with retail prices. Simple margin squeeze tests have been performed. Bearing in mind the simplicity of the tests, it is tentatively concluded that the margins for competitive pricing are thin in most cases.

The Plenary approved the report and indicated the need for some future work, also in cooperation with the Commission.

8) IP-Interconnection /Next Generation Network PT (BNetzA)

a. ERG draft consultation document on IP interconnection

ERG (06) 42

Background

This draft document issues of IP interconnection in Europe and outlines how technological change towards NGNs may affect regulation in this matter. It builds on an update of a previous ERG document (ERG (05) 47 rev1) and describes the significant evolution which is taking place in (IP) interconnection and in the networks of most European operators, particularly PSTN-incumbent's networks, reflecting the developments towards NGNs and VoIP. It analyses the effects this evolution might have on interconnection regimes and also tries to develop some general principles with regard to regulatory treatment of IP interconnection and interoperability issues reflecting the development towards multi-service NGNs. It also discusses different billing principles that might be applicable for interconnection in IP-enabled NGNs. The analysis is based on the results of a thorough stock-taking on IP-interconnection and NGNs, taking into account the responses to a fact finding questionnaire by NRAs and also by several European industry associations (ECCA, ECTA, ETNO, ETP, GSM-E and EuroISPA). Fact finding has shown that IP interconnection is not currently a problematic issue in most MS. Yet, possible changes in the functional levels (service, transports and control layer) and ensuing decentralization, might change the picture. Also, interoperability and quality of service, and the differences in provision of both, represent critical issues for the future. The paper address all of these items, providing NRAs with indications on how to deal with issues as they arise.

The Plenary approved the Report for consultation and further work on specifics of harmonised response.

b. Interim ERG report – on NGN Regulatory principles

ERG (06) 43

Background

The Interim Report on NGN summarizes the results of a fact finding exercise incorporating answers from NRAs and stakeholders. The fact finding exercise has been a good starting point giving a snapshot of the current status quo, an assessment of future development towards NGN, with a perspective time frame for this development. It turned out however that the state of NGN development differs across member states and that NGN issues are still at a very early stage in most members' states. This judgement is backed by the results of the stakeholder answers to the questionnaire.

The Plenary adopted the Interim report and identified areas for future work:

- a) implications of the possible separation of functions across layers;
- b) borderline between the NGN core network and the access network;
- c) service interoperability in NGNs;
- d) access competition in terms of infrastructure and use of existing rules.

"A" points (adoption without discussion):

9) International Roaming Regulation PT (OFCOM)

a. Oral update and next steps

Background

OFCOM reported on the Commission's proposal for an Article 95 regulation of international roaming prices, currently in discussion in a Council Working Group. The Plenary noted the item.

10) Retail Roaming Tariff Transparency PT (AGCOM)

a. Report on International Roaming Retail – Tariff transparency

ERG (06)44

Background

AGCOM presented the updated report on tariff transparency of international retail roaming prices and measures taken by NRAs (such as national websites featuring roaming charges) to increase transparency) The Plenary adopted the Report for publication..

11) Mobile Markets WG (PTS) / Mobile access market PT (NPT)

ERG (06) 45

a. Reports on

- (i) Mobile access market competition
- (ii) MVNO/access and bottlenecks

Background

NPT presented the two separate reports documents and explained the progress made from the report on mobile market competition presented at the last Plenary in Vienna. The documents are an updated version of the report on mobile market competition and a complementary document on bottlenecks (referring to the spectrum allocation aspects and their impact on mobile access market competition). It was proposed that they are for internal use only.

The Plenary adopted the reports.

12) Regulatory Accounting WG (BAKOM/AGCOM)

a. Consultation document on PIBs on the calculation of WACC

ERG (06)46

Background

AGCOM presented the draft PIB (principle of implementation and best practice) on the calculation of WACC (weighted average cost of capital). The document has the objective of providing guidance to NRAs for estimating the cost of capital of regulated assets. It analyses the various methodologies developed up to now for cost of capital determination and identifies the problems most commonly encountered by NRAs when implementing them.

The Plenary noted the document and approved it for public consultation.

13) Significant Market Power WG (OPTA)

a. Internal report on Mkt 18 analysis

ERG (06) 47

Background

The internal report (which gives an overview of the results of market analysis on the market for broadcasting transmission services in 11 Member States, and is essentially a comparative analysis of NRA notifications according to Article 7 of the Framework Directive) was not circulated to the Plenary.

14) Framework Review

a. Presentation of ERG response

ERG (06) 48

b. Discussion with the Commission

Background

ComReg gave a presentation on the key points arising in the draft ERG Response to the Commission's Framework review proposals. The Responses are going to be submitted before the end of Commission consultation on the Review 2006 (deadline 27 Oct). The ensuing discussion – touching on different subjects such as functional separation, voluntary undertakings and retail markets amongst other issues - has indicated that further cooperative work between ERG and the Commission is expected in the light of the Review.

15) Work Programme 2007 (AGCOM)

ERG (06) 49

a. WP 2007

The Plenary discussed the draft Work Programme to define areas and priorities in detail. AGCOM recalled that the WP 2007 will be on the Review, on harmonisation and innovation (NGN and convergence). With regard to the ERG organisation, it will be necessary to restructure WG operations and PT functioning, as well as the role of the Plenary which preferably should discuss policies rather than technical details of regulation or organisational matters, unless required by circumstances. The programme, modified in accordance with the above, will be published for consultation. The Plenary approved to meet with the EPRA (European Platform of Audiovisual Regulators) in 2007.

16) Information from the European Commission

Background

Commission reported on recent COCOM meeting and market notifications.

17) Plenary meeting in Bratislava, 7-8 December - planning

Prior to the I/ERG Plenary meetings there will be a meeting between ERG Heads and Heads of the MEDA Group of Regulators on 6 December in Bratislava.

18) A.O.B.

a. Press Release

(debriefing session scheduled for 12 October at 9.30 in Brussels)

b. Agreement of documents to be issued for consultation

c. Other