

## HARMONISATION – THE PROPOSED ERG APPROACH

In May 2006, ERG published a revised version of its Common Position on SMP Remedies [ERG (06) 33], in furtherance of its responsibility to work towards the consistent application of the regulatory framework. In welcoming the document, a number of stakeholders commented that the guidance needed to be supplemented by more explicit guidance, dealing with specific markets and situations.

### *Recent ERG work*

ERG recognises the need for continuing work on the harmonisation of regulatory remedies. It has indeed proposed this as one of 3 main themes of its work programme for 2007. Work has been proceeding in the meantime and ERG is now ready to consult on further developments, as set out in 3 papers, described below.

The paper “Effective Harmonisation within the European Electronic Communications Sector” (**ERG (06) 68**) examines the question of what “harmonisation” means and what the criteria for prioritising further harmonisation projects are. It concludes that, in most cases rapid and widespread dissemination of best practice is the correct route to the appropriate degree of harmonisation. However, in the case of services with pan-European potential, such as VOIP, special efforts are needed to achieve national approaches with a high degree of mutual consistency, in order to ensure that potential is realised.

During 2007, ERG proposes to take forward its harmonisation work in a number of ways:

- (a) by applying a methodology for promoting consistent application of best practice, in the context of SMP remedies applied in accordance with the provisions in Articles 8-13 of the Access Directive
- (b) by the identification of “Centres of Knowledge” in particular NRAs on particular regulatory issues which can be accessed by other NRAs studying those issues;
- (c) by developing and cataloguing case studies of best practice by particular NRAs;
- (d) by deepening its understanding of best practice in priority areas through the development of new and revised *Principles of Implementation and Best Practice* on specific topics
- (e) by reviewing its previous Common Statement on VOIP with the intention of removing barriers to the realisation of the pan-European potential of this service

### *General methodology for best practice in remedies in SMP markets*

ERG has agreed a general methodology for promoting the consistent application of these provisions. For each market analysed, ERG will aim to identify the competition problems which commonly arise in the relevant market (assuming that a position of SMP has been identified in that market) and to link them to an illustrative set of suitable remedies. In applying the methodology to their future regulatory decisions, NRAs should check systematically whether or not the problems do arise (or would be reasonably likely to arise in future in the absence of suitable regulation) in the relevant market under consideration. It is not necessarily the case that all such problems will arise in all the national markets in question where a position of SMP has been identified. But when they do arise in practice, they will need to be addressed through the imposition of remedies on the SMP player(s).

ERG therefore proposes to agree a number of Common Positions covering the key competition problems which commonly arise in specific markets (starting with those identified by ERG as priority markets for harmonisation). Those competition problems that are reasonably likely to arise in the light of the market analysis carried out by the NRA will need to be considered explicitly in any relevant regulatory decision process. These Common Positions will not *prescribe* remedies for dealing with these problems when they arise as these will need to take full account of national circumstances and differences in national legislations. However, they will provide guidance on commonly accepted solutions to those problems, based both of theoretical considerations and on practical experience of regulation in these markets. Two Common Positions covering the broadband access markets (papers **ERG(06) 69** and **ERG (06) 70** are also published for consultation alongside this paper<sup>1</sup>.

As for all ERG Common positions, while they shall not be binding, Members shall be recommended to take the utmost account of them and they commit to provide reasoned regulatory decisions by reference to the relevant ERG Common Position(s).

In order to take the utmost account of one of these methodological Common Positions in their future relevant regulatory decisions, NRAs would need to:

- analyse the objectives identified in the common position and the related competition issues
  - to the extent consistent with applicable national law, provide an effective regulatory solution to those issues unless market forces can reasonably be expected to be sufficient to guarantee a solution
  - explain transparently how those competition issues have been addressed

This systematic approach is designed to ensure that:

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<sup>1</sup> Remedies proposed for these markets take account of best practice described in the update paper “Broadband Market Competition Report” – ERG(05)23\_rev1 – currently under consultation

- The set of remedies is complete and effective; no significant problems have been overlooked; while
- No individual remedies are either ineffective or redundant; and
- The overall package of remedies is proportionate

#### *Priorities for harmonisation of SMP remedies*

As explained in the “Effective Harmonisation” paper **ERG (06) 68**, in addition to reconsideration of regulation of VOIP, ERG proposes to prioritise the following markets:

- ◇ Wholesale broadband access
- ◇ Wholesale local broadband access (full and shared access to unbundled local loops)
- ◇ Mobile termination
- ◇ Fixed termination

#### *Monitoring and evaluation*

ERG recognises the value in monitoring the application of its common methodology in practice and of evaluating the outcomes. It is currently developing its thinking in these areas and will consult stakeholders in due course.

#### *Consultation*

ERG is now consulting on its overall approach and on the corresponding common positions for the broadband access markets which will complement the Revised ERG Common Position on SMP remedies [[ERG \(06\) 33](#)]. Consultation closes on **15 January 2007**. ERG welcomes:

- (a) general comments on the approach set out in this paper and on the analysis and conclusions in the “Effective Harmonisation” paper **ERG (06) 68**
- (b) views on the priorities defined above
- (c) detailed comments on the attached broadband access Common Positions set out in papers **ERG (06) 69** and **ERG (06) 70**

ERG recognises that a number of individual topics justify detailed guidance, for example migration, margin squeeze, accounting separation. Some of these are generic issues which apply in more than one market or across markets. Many of these are already covered by the Remedies Common Position [[ERG \(06\) 33](#)] or by other generic ERG guidance. ERG would welcome views on:

- (a) whether there are topics where existing generic guidance does not deal sufficiently with the specifics of broadband access

- (b) whether there are topics specific to broadband access which need to be addressed by detailed guidance
- (c) which generic issues require further work, alongside the more detailed work on specific markets

Comments on this paper should be sent to the **ERG Secretariat** via e-mail ([erg-secretariat@ec.europa.eu](mailto:erg-secretariat@ec.europa.eu)) **no later than 15 January 2007**, with the words "Harmonisation approach" in the subject, and specifying if the content of the response is to be considered confidential. Unless so specified, responses will be posted on the [erg.eu.int](http://erg.eu.int) website.

For comments on papers **ERG (06) 68, 69 and 70**, please follow similar instructions on the [erg.eu.int](http://erg.eu.int) [website](#) (consultation on harmonisation papers).

#### *Public workshop*

ERG proposes to hold a public workshop during the consultation period in January 11 in Brussels. Details will be circulated shortly.

Consultation closes 15 January 2007