



Report of the Consultation on the Draft I/ERG WP 2010 (17 Oct – 7 Nov 08)

Twelve contributions were received by I/ERG in response to the public consultation held on the draft IRG/ERG Work Programme 2010. This document summarises these responses, and focuses on the comments which refer to which work items the ERG should include in its work programme, and in what manner they should be approached over the course of 2010. While some substantive policy arguments were offered by stakeholders, a summary of these is beyond the scope of this consultation report. The full texts of these responses are published separately.

CON (09) WP 2010 01 Cable Europe

Cable Europe noted that regulation should take account of high investments, and should not act as a disincentive to investment, and should in general be gradually phased out in favour of oversight based on competition law. For the cable industry, regulation of NGNs should ensure that operators have the correct incentives to compete and innovate. In regard to items on the work programme, Cable Europe considers that full consultation on the convergence, future of the universal service and net neutrality issues is required. Cable Europe welcomes increased co-operation with the Radio Spectrum Policy Group (RSPG), and invites further analysis of potential interference from new Long Term Evolution (LTE) mobile broadband services with existing customer equipment.

CON (09) WP 2010 02 SFR

SFR noted that incumbents retain almost the entire market for fixed telephony and on average enjoy at least 50% of the market for broadband. SFR urged the ERG to provide detailed guidelines on LLU valuation methods, as well as measures to prevent incumbents from enjoying excessive returns on copper. SFR also recommended that attention be paid to the monitoring and setting up of Regulatory Accounting mechanisms.

CON (09) WP 2010 03 Corning

Corning welcomed the continued emphasis on the implementation of NGA and other related issues. They noted that ERG/BEREC could give meaningful guidance on how the revised Articles 11 and 12 of the Framework Directive should be interpreted to facilitate effective NGA deployment.

CON (09) WP 2010 04 BT (British Telecom)

BT welcomed the ERG's proposals, and suggested that public consultations should be held more regularly, and that ERG summarise its response to the main points made in responses to these. In particular, consultations should be held on the issues such as net neutrality and universal service. In respect of NGA, the ERG should examine the actual demand for passive remedies. BT noted that European businesses should enjoy as competitive a choice of suppliers as possible, and that non-discriminatory wholesale services offers must be available on NGN/NGA networks as these are deployed. The future of Universal Service is something on which the ERG should set out a more detailed set of proposals. BT believes that net neutrality is a vitally important area for the future, and the ERG should consider the effectiveness of the measures outlined in the new Directives before considering additional measures. BT also welcomed the proposal to hold consultations on the issue of switching suppliers and accessibility services for disabled end-users.

CON (09) WP 2010 05 ETNO (European Telecommunications Network Operators' Association)

ETNO notes that given the establishment of BEREC, the ERG work programme is of transitional nature, and that BEREC should consult early after its establishment. With this in mind, BEREC should focus on transparency and the right of stakeholders to be heard. ETNO's concerns regarding transparency relate to the inclusion of a continued informal as well as formal dialogue with industry, stakeholders and BEREC. ETNO also believes that companies should have the right to be heard by BEREC and the Commission, particularly during the Phase II of Article 7 and 7a procedures. ETNO also believe that when ERG produces documents, a consultation procedure should be used to fully inform the resulting regulatory policy. ETNO believes that the ERG should focus its efforts on key areas for the internal market, such as harmonisation and ensuring a flexible regulatory framework to encourage the roll-out of NGA. ETNO welcomes the proposed co-operation between ERG and RSPG, but notes that such co-operation should not introduce elements to spectrum policy which are currently outside the regulatory framework. In relation to the business services workstream, ERG should carefully consider the current market analyses of such markets, and the geographic scope of the issue. With respect to NGA implementation issues, ETNO asked for clarification of terms used by ERG in respect of the current or future framework. Finally, ETNO welcomed the proposed work item on network neutrality but questioned the relevance of some issues and encouraged an evaluation of priorities.

CON (09) WP 2010 06 INTUG (International Telecommunications Users Group)

INTUG welcomes the draft work programme and urges prioritising those elements which concern business customers. INTUG believes there should be a separate analysis of the business market, and of the international dimension that affects this. With respect to Next Generation charging mechanisms, INTUG considers that these should facilitate operator interoperability, rather than obstruct it. INTUG welcomes the continued focus on price regulation, and believes that market analyses should consider the impact on the total economy, rather than the telecommunications industry. INTUG also welcomes the co-operation between ERG and RSPG. Finally, INTUG recommends that ERG monitors the implementation of the illicit file-sharing measure in the new Framework, to ensure that it is not interpreted in a manner which would place business services at risk of disconnection.

CON (09) WP 2010 07 The Number (118 118)

The Number is concerned that upcoming network transitions may be used by network operators to restrict access to third party value-added services. In respect of the proposed workstream on international roaming, The Number believes that the ERG should conduct an analysis of the market conditions that lead to uncompetitive roaming rates. In relation to NGA, the ERG should ensure that implementations of NGA should be done on an open access basis where possible and appropriate, extending to both infrastructure and service layers. Regarding the convergence workstream, the ERG should ensure that wholesale access products are available from all networks (fixed, mobile, TDM and IP/NGN based) as soon as possible. The cross-border enforcement workstream should ensure that there are no restrictions to prevent users from calling directory enquiry services in another Member State. Furthermore, any review of the scope of the Universal Service Obligation should retain references to the provision of directory enquiry services.

CON (09) WP 2010 08 Telecom Italia

Telecom Italia (TI) supports the current work being undertaken on the monitoring of the implementation international roaming, and recommends that ERG assess the issue more carefully with regard to the need for public consultation. In respect of the NGA workstream, TI welcomes plans to take account of multi-fibre solutions, and emphasises the principle of technological neutrality. With regard to conformity with ERG Common Positions, TI believes that this should be open to public consultation. Benchmarking should be based on common and reliable factors, which should take account of tangible as well as intangible factors. Regulatory accounting methodologies should be broken out by member state, and the pricing/costing methods should be considered as a separate item. When considering the business services market, the ERG should consider the legal as well as implementation issues. The ERG should clarify the scope and objective of the convergence workstream. TI would welcome a public consultation on the issue of cross-border enforcement, particularly with respect to data protection issues. TI welcomes the increasing co-operation with RSPG, believes that this will increase transparency, and re-iterates that stakeholders should be consulted with at the relevant point. In respect of the future of Universal Service, the ERG should involve industry to

ensure that the actual difficulties in network and service development, together with the real needs and expectations of customers, are taken account of. TI believes that further regulation regarding network neutrality is unnecessary at this stage, and that any deliverable on this issue should be accompanied by a public consultation. TI noted that there is some confusion over the notification procedure during the transition phase from ERG to BEREC, and believes that a separate workstream to cover this issue is warranted.

Finally, TI believes that there are two issues which are not covered by the draft work programme: treatment of the functional separation remedy and the requirement for an opinion on the identification of geographic markets and the imposition of differentiated remedies.

CON (09) WP 2010 09 VON Europe

Von Europe recommends that the ERG add a specific workstream to consider numbering policy, particularly the eligibility and usage conditions. In respect of international roaming, the ERG should conduct an analysis of the obstacles to the emergence of technologies that could substitute roaming. With respect to the convergence workstream, the ERG should be careful not to classify all services as ECS, and should in some cases challenge the definition of a market (particularly where bundles of service operate across markets). The cross-border workstream should ensure that regulation is harmonised across Member States so that the regulatory burden is not unnecessarily increased. When discussing the accessibility of services to disabled end-users, the ERG should be mindful that only services classified as PATS should be required to be accessible to such users. In relation to the network neutrality debate, the ERG should first define what it means by this concept, and take account of the views of all stakeholders, not just telecommunication providers.

CON (09) WP 2010 10 Skype

Skype comments that the ERG should orient its workstreams in relation to the value derived by wider society from the rise of the Internet and Next Generation Access, rather than focus on the economy of telecoms networks. In respect of the actual work programme, Skype suggests that ERG should support the development of a more competitive situation regarding roaming rates, particularly in respect of ensuring that there are no barriers to the usage of VoIP, including usage restrictions. Regarding NGA, the ERG should both define and ensure availability of open access networks and services. With regard to the proposed workstream on business services, the ERG should clarify the idea of “limited notification” for the provision of cross-border services. Within the convergence workstream, the ERG should not necessarily classify new and innovative services as ECS, which may slow innovation. ERG should also involve itself in issues such as cross-border SPAM and also the arbitrary degradation of Internet traffic. Skype also believes that numbering policies across Europe should be much open. The proposed ERG – RSPG co-operation should include the issue of ubiquitous availability of Internet access should be a priority. In relation to the network neutrality issue, the ERG should first set out a definition of what this means, and follow this up by ensuring the member states implement the revised telecoms package in a harmonised and consistent manner. Finally, Skype believes that the issue of switching providers points to the important of transparency requirements.

CON (09) WP 2010 11 Fastweb

Fastweb believes that there are two omissions from the work programme, regarding non-discrimination and fixed access costing methods. In relation to the former, the ERG should encourage the Commission to finalise its Recommendation to ensure that all players have legal certainty. The ERG should also identify best practices across Europe regarding fibre unbundling. In general NGA development should be pursued on an open access basis; and the ERG should further examine how to set durable and fair access prices for NGA. Furthermore, consistent Europe-wide accounting rules should be created to ensure proper running of the internal market. Regarding the transition to BEREC, Fastweb urges caution in focussing too much on the internal procedures to the detriment of the issues that more directly impact the telecoms market and its operators.

CON (09) WP 2010 12 ECTA (European Communication Telecommunications Association)

ECTA believes that there are two omissions from work programme, namely the enforcement of non-discrimination (including the use of a functional separation remedy) and consistency in fixed access costing methodologies. The ERG should encourage the Commission to publish its Recommendation on NGA (once improvements regarding compatibility with the market analysis process, and discriminatory pricing regimes have been made). In relation to business services, ERG should include in its work programme specific deliverables to conclude a consultation with guidelines regarding the inclusion of a market for broadband and to ensure the availability of Ethernet based leased line terminating segments. ECTA also recommends that the ERG works with the RSPG to advise the Commission, Council and Parliament on spectrum allocation best practice. ECTA welcomes the other topics on the work programme. Regarding the convergence workstream, ECTA believes that ERG should examine trends towards bundled products and the implications of this trend. ECTA also encouraged the ERG to report publicly on the degree to which there has been conformity with ERG Common Positions.

I/ERG Reaction to submissions

I/ERG notes that while individual respondents emphasised some items over others, overall there is general acceptance and approval for the programme as proposed. Where more detail on some proposed items was sought, the final programme has provided this to clarify the scope of some items.

A number of stakeholders called for clarification of the position in respect of the functional separation remedy referred to in the new telecoms package. I/ERG has added this item to its work programme and intends to produce a set of guidelines on how the new provisions, as set out in Art 13a and 13b of the Access Directive, might be approached by NRAs. Some suggestions for additional work items were considered to be outside the scope of ERG's remit

(e.g. access to premium rate content), are more correctly addressed at a national level, or by a body other than I/ERG (e.g. numbering) or could not be accommodated in an already crowded programme.

In addition, I/ERG notes the calls from a number of respondents for greater use of public consultations, and in the context of the establishment of BEREC, will set out its policy in this regard.