

## Conclusions of the ninth Plenary of the European Regulators Group

**Date:** June 16 – 17, 2004  
**Location:** Luxemburg.

### Information from the Secretary

The Secretary informed the Group of the results of the recently closed public consultation on cost accounting and accounting separation (ERG 04 (15)<sup>1</sup>). At the time of the plenary, approximately 35 contributions had been filed. These will be published on the ERG webpage in the beginning of the following week (beginning with June 21). A public hearing held on Thursday, June 10, registered 53 delegates. A note from the Secretariat with a summary of the discussion at the hearing was distributed at the meeting.

### Information from the Commission

Recommendation on powerline communications (PLC): Bernd Langeheine (BL) reported on the progress on the proposal for a Recommendation on broadband communications through powerlines. The draft Recommendation discussed at the Cocom on May 12, 2004 proposes a “two-layer mode” for emission levels, with an entry level and a lower enforcement level. However, this solution was not accepted by a majority of member states.

Fabio Colasanti (FC) stressed the potential of powerline communications as a possible means of infrastructure-based access competition.

Draft Recommendation on leased lines: BL reported on the Recommendation on leased lines. Part 1, dealing with supply conditions, is undergoing translation. Regarding Part 2, on pricing, Member States have been invited to provide price data, and as soon as all data are available the draft Recommendation will be submitted to Cocom.

Renewal of 2G rights of use: BL stated that the document presented by the Commission in March 2004, analysing the regulatory issues relating to the renewal of 2G licences, has been beneficial in creating a discussion at the EU level. All member states agreed that spectrum rights should not be given for unduly long time periods. There was also consensus on the inclusion of a review clause in licences, as well as on the need to address spectrum trading. However, some member states had reserved the right to take account of national circumstances. One Member State has proposed a discussion of the usage of CDMA technology in the 450-Mhz band. The Commission intends to prepare a discussion paper on this issue.

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<sup>1</sup> Draft ERG Opinion regarding Proposed changes to Commission Recommendation of 1998 on Accounting separation and cost accounting.

Revision of the ERG decision: FC reported on the further progress on the revision of the Commission decision establishing the ERG. The major delay factor is translation services. The intra-services consultation has in effect been concluded. It is now a question of a few weeks before the new decision will be formally adopted.

Recommendation on relevant markets: FC reaffirmed that the review of the Commission recommendation on relevant markets would not take place until the end of 2005, when market analyses should have been completed in all Member States. The Commission will issue a formal statement to that effect.

#### Outcome of the Telecommunications Council

FC reported of the Council held in Luxemburg on the 10<sup>th</sup> of June. A decision on the budget for the E-content program was taken unanimously. The continuation of the Safer Internet action plan was discussed. A decision was taken on a marginal revision of the eEurope action plan. The Commission presented its document on national broadband strategies. It also asked ministers to stay informed about positions taken within their ministries regarding powerline communications, as to avoid internal discrepancies in views. The Council meeting was Commissioner Liikanen's last.

#### **Progress report on Work Programme deliverables**

The Chairman reported on the progress with deliverables of workgroups. Some results will likely have to be postponed. The 2005 Work Programme will have to take this into consideration. In particular, due to issues related to the NRAs' gathering and exchanging of data, and awaiting the Commission's (DG Competition) contribution, delays are likely as regards deliverables b) (common approach towards regulation of international roaming) and c) (proposal for a joint action plan).

Juergen Mensching (JM) of the Commission said that they would be ready during the summer to communicate their preliminary on international roaming, as contribution to the work.

#### **Bitstream access to cable TV networks (ERG (04) 19)**

Annegret Groebel presented the document ERG (04) 19 concerning regulatory treatment of and technical considerations regarding wholesale broadband access via cable TV networks. The document concludes that a product comprising the key elements defining bitstream access in the ERG Common Position on bitstream access (ERG (03) 33rev1) can also be provided over cable TV networks. While recognising the significant differences between DSL- and cable access technologies, the paper highlights the need for consistency in regulation and technology neutrality.

Supporting the general conclusions of ERG (04) 19, the ERG decided that the text should be added to its Common Position on bitstream access, following a consistency check with the remedies document and the Commission Recommendation on relevant markets together with Commission Services. The addition will be consulted publicly.

### **Update on Article 7-procedures**

JM reported for the Commission that there had so far been totally 76 notifications from seven Members States. 52 notifications had been closed, of which two have resulted in veto decisions. Only 3 national regulatory authorities (NRAs) have given comments on Article 7-notifications. 24 notifications are currently pending. These will be acted upon in June. All relevant markets in the Commission's Recommendation on relevant markets have been dealt with except wholesale mobile international roaming. The process had according to JM so far been smooth, thanks to good cooperation between regulators and the Article 7 task forces prior to the actual notifications through the use of pre-notification meetings. So far, 43 such meetings had been held with 14 NRAs including one from a new member state.

JM reported that further notifications were expected from several NRAs shortly. A number of pre-notification meetings have also been scheduled after the summer. JM encouraged NRAs to schedule such meetings early in advance as to facilitate the Commission's planning.

The question was raised how the knowledge created at the occasion of pre-notification meetings could be shared. JM suggested, in response, reports from the Commission on general problems. BL [of the Commission] said that they would prepare more comprehensive reports, including Article 7 substance matters, for coming ERG plenaries. BL also suggested that such reports be distributed in advance to allow members to better prepare for a discussion.

### **Plenary formats and organisation of discussions related to procedures according to Article 7 of the FD (ERG (04) 20)**

The Chair presented the document ERG (04) 20. The document, reflecting the results of an earlier enquiry to members, is intended to serve as a basis for a discussion on the formats of future ERG meetings and how to structure a discussion on topics related to Article 7-notifications. It suggests that ERG plenary meetings should incorporate seminar-like half-day sessions structured around a discussion topic of particular interest. Further, it is suggested that full-day seminars covering a special topic should be arranged, with a mixture of interested heads and experts. Where appropriate, external speakers can be invited.

FC clarified that the Commission will also report on outcomes of Article 7-procedures and not just statistics. He stressed that discussions must not interfere with ongoing Article 7-processes.

The Chairman concluded that the ERG should proceed in line with what had been proposed. This means that

- the Commission will produce Article 7 discussion documents for distribution before plenaries,
- generic problems distilled from experiences with Article 7-notifications or pre-notification procedures will be identified and discussed at ERG plenaries,

- specific pre-notification issues should be discussed on an ad hoc-basis. Such specific discussions should be volunteered by the involved NRA.
- the ERG Secretariat will prepare the special seminar events,
- the ERG Secretariat offered to coordinate the procedure of preparing Article 7-discussions, identified together with representatives of ERG members.

**Special discussion topic: facilitation of new mobile services from a regulatory perspective (ERG (04) 21)**

Jørgen Abild Andersen of NITA (Denmark) presented ERG (04) 21 – a discussion note on e-payments from an ICT perspective. This was followed by the presentation by of the Commission on its consultation on E-money/payment services regulation launched by DG Internal Market on the 10<sup>th</sup> of May. BL stated that it was too early to say what the outcome of the consultation will be. The goal, however, should be a more harmonised approach to the financial regulation of mobile payments in Member States.

Kip Meek of Ofcom (UK) informed of some discussions the UK had had with mobile operators as to facilitate mobile payment services, focussing on the need to find appropriate solutions for mobile operators to establish a business case.

The importance of making sure, via electronic communications regulation, that independent service providers have the same opportunity to offer mobile payments and in particular credit transfer facilities to ensure fair competition, was mentioned.

The ERG concluded by asking the Commission to take the necessary steps to remove barriers in financial regulation to the development of mobile services. The issue was foreseen to be taken up again in ERG at a later date.

**Special discussion topic: regulatory aspects of Voice over IP (VoIP) (ERG (04) 22)**

Olli Mattila of FICORA (Finland) presented ERG (04) 22 – a slide presentation on regulatory aspects of and general background on VoIP. This was followed by an account by Peter Scott (PS) of the Commission of the newly released consultation document on Voice over IP.

PS explained that the Commission's VoIP document serves both as to inform and to consult on how to find a consistent approach to regulation EU-wide. A three-phased approach is outlined in the document. The first phase is to find a consistent application of existing Framework rules. The second phase will address concerns from market players about ensuring fair competition. The remedies document could be revisited concerning how to ensure the competitive provision of voice over IP. The third phase deals with the market definition issue. When the Commission's Recommendation of relevant markets is revised at the end of next year, the effect of VoIP will have to be considered. In addition, as a fourth issue in a longer perspective with strong VoIP market uptake, there is the question of ensuring USO.

PS stressed that it is for operators themselves to choose how to operate in the market [as providers of electronic communications services (ECS) or publicly available telephony services (PATS)], following the respective rights and obligations as set down in the general authorisation. Proportionate ways must be found how to address the emergency calls issue. Information to consumers on the function of their service in this regard is key.

There followed a wide-ranging discussion on VoIP, covering quality of service, incentives for infrastructure and changes in market structure, USO, technology neutrality and how consumers can benefit from new technology to the largest possible extent.

Iris Henseler-Unger of RegTP (Germany) informed the Group that RegTP were currently holding a consultation on the regulatory approach to VoIP. The consultation document has technology neutrality as its point of departure.

PS added that the VoIP market was currently very volatile and that it would be unwise to impose rules prematurely; certain flexibility in the regulatory approach was needed. Recognising the problem with interconnection and USO financing, he expressed his hopes that the Commission's consultation would bring up issues not yet identified.

ERG decided to produce a report with issues raised in FICORA's presentation and the Commission's consultation document as starting points. The results of the Commission's consultation will also be taken into account. Coordination will be sought with the Commission Services. This report will constitute the deliverable in the 2004 Work Programme on Next Generation Networks / Internet (VoIP). As foreseen there, it should be finalised in time for the December plenary.

### **Special discussion topic: GSM gateways**

The Chairman reported on some technical, operational and regulatory issues surrounding GSM gateways.

FC [of the Commission] commented that a general negative view on the usage of GSM gateways should not be taken, and that agreements between operators should be encouraged. Several members agreed that solutions were to be found in negotiations. A discussion then ensued regarding the efficient use of spectrum in this regard. It was observed that the mere occurrence of devices such as GSM gateways is a clear sign of distortions of the price structure creating arbitrage opportunities. Their disappearance would be a sign that the market distortion has been corrected.

### **A.O.B.**

Kip Meek gave a brief presentation of Ofcom's recent policy decision on broadband, currently subject to public consultation.

The Group decided to publish the following documents:

- ERG (04) 21 – Mobile payments discussion note
- ERG (04) 22 – VoIP discussion note
- Note on the hearing on cost accounting and accounting separation.

The next plenary meeting will take place in Nicosia on the 23<sup>rd</sup> and 24<sup>th</sup> of September.