



ERG Secretariat
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Response to the ERG Report on the regulation of access products necessary to deliver business connectivity services

BT very much welcomes publication of the “ERG Report on the regulation of access products necessary to deliver business connectivity services”. It represents an important step forward in the understanding of the way in which the needs of business users diverge from those of domestic consumers of communications services. BT would like to offer the following comments in response to the Report and to the presentation by ERG at the public hearing on 29th January 2010

General Comments

1. We believe that the use of the three questionnaires has significantly added to the understanding of the needs of the business market. The focus of BT Global Services is in providing virtual private networks, and applications associated with VPNs, to major multinational corporations and organisations. One might term this the “very high end” segment. Customers in this segment increasingly outsource their communications requirements to operators who can meet their requirements across a range of countries. It is probable that these customers are poorly represented in the ERG’s research findings, because in relation to the business market as a whole they are very small in number. They are, however, very important in pointing the way towards future use of ICT. We submit that Europe needs to understand the way that businesses will use ICT in the future, and the way the telecoms industry would seek to provide the underlying services, because failure to understand the market, and failure to facilitate change, will leave Europe behind in both the supply and exploitation of advanced ICT solutions.
2. This is particularly important in relation to Next Generation Access. In BT’s view it is central to the growth of a competitive and inventive ICT sector that different types of operators should be able to compete over the new “bottleneck” infrastructure that will be created in an NGA environment. This is exactly what will be possible in the UK environment, where functional separation of the bottleneck supplier ensures equivalent supply to all operators. By contrast, some European NRAs strongly favour a model in which a small number of infrastructure operators supply passive network elements only to themselves and to each other. There would be no other wholesale supply. This model *may* work for the provision of entertainment and other services to domestic consumers. It will not support the provision of competitive VPNs, and therefore represents a serious barrier to Europe’s prosperity, because other communications providers will not be able to buy wholesale active access services over the bottleneck facilities at regulated rates and will not be able to justify the investment per customer site that such passive products would require.

3. Nevertheless, we welcome the progress made by the ERG, and the commitment made by its members to give specific consideration to the needs of high end users in their future work, and we offer the following specific comments on the Report.

Specific Comments on the Report Text

4. The point made on page 11 concerning the lack of a merchant market is important. In BT's experience we find that entrant operators frequently do not offer wholesale services to other operators even though those operators may compete in a completely different retail market segment. Indeed, where an operator provides service to consumers it may not have the network design and equipment to successfully supply wholesale services to operators providing business services. For this reason it is very important for NRAs, when they assess the level of competition in a given market, not to rely just on the number of players in that market but to actually check whether or not those players are active in the supply of corporate multi-site networks or have the willingness and capability to supply relevant wholesale services to other CPs.
5. The report also makes the point on page 11 that NRAs can sometimes achieve the same results in different ways, as illustrated by the different approach taken to the application of wholesale line rental as a remedy. BT would like to make the point that, in the context of providing pan European business services, this diversity of approach can in itself be a serious obstacle. Customers of pan European services will wish, to the greatest extent possible, to procure similar solutions across all Member States. So if in a particular Member State the NRA decides against mandating WLR in response to national circumstances, it means that the business provider must set up an alternative way of meeting its customer's need in that geography. We do not argue for slavish adherence to harmonised remedies across Europe, but we believe that the ERG should be much less accepting of national variation in the context of promoting pan European ICT uptake. In this context the most dangerous form of regulating for national circumstances is the creation of an oligopoly of network operators in each Member State, who supply wholesale service to each other but to no other market players. If a significant number of NRAs chose this form of regulation, pan European operation would become impossible.

Market Definition

6. We agree wholeheartedly with the view put forward on page 4 that different wholesale products are needed to serve high end businesses, and would agree that this requires further work.

Questionnaire 1

7. It is surprising to find that 18 NRAs claim not to have received any complaints regarding the provision of business services since their first market review. We are surprised at this finding, which may relate to the way "complaint" has been interpreted, not least because of the activities of BT itself in pressing NRAs to implement suitable remedies, including Ethernet services, bitstream services and WLR, in a wide range of Member States. A lack of formal complaint or appeal should not be considered synonymous with a lack of concern. NRAs may have been less focused on business services, especially as regards high end users, perhaps because of the focus on

residential broadband supply that has been a strong preoccupation of governments and therefore regulators in recent years.

8. The discussion of Service Level Agreements on page 12 is extremely important and the ERG puts its finger on the central problem. Large business customers do demand higher levels of service and it is very disappointing that only a minority of NRAs impose mandatory premium SLAs. As a consequence, CPs who are active in the high end business markets are obliged to seek to negotiate better SLAs under commercial terms; which very often put them at a competitive disadvantage, since there is no incentive for SMP players to offer SLAs on non discriminatory terms and conditions. The SLAs should instead permit operators to know that they are getting the same treatment as the SMP operator's own retail arm with reference to the same specific market offering.

Questionnaire 2

9. BT is disappointed that there were not more, and more representative, responses from end user organisations. We agree entirely with ERG's conclusion that there is good reason to look further into the reasons for the lack of competitive intensity.

Preliminary Conclusions from the questionnaires

10. We agree that the policy question raised on page 15 is a fundamental and important issue: whether SMP players should be required to provide service that they do not wish to supply to themselves. In BT's view it is axiomatic that where there is reasonable demand for a service and it can be supplied at a reasonable price – and of course it is necessary to define what constitutes reasonable in this context - the SMP operator should have an obligation to meet that demand. Without this requirement the provision of ICT service on a pan European basis becomes very difficult.

Plans for future work

11. BT agrees that the four areas for further work described in the paper are relevant and worthwhile. We would suggest in relation to the point made at paragraph 2 above that the ERG should look further at the way that NRAs can work together to increase the level of standardisation of wholesale service for business users in the interests of improving Europe's ability to exploit ICT solutions.



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