

**ECTA Response to European Regulators Group Consultation**

**Report on ERG Best Practices on Regulatory Regimes in  
Wholesale Unbundled Access and Bitstream Access  
ERG(07)53rev1**

**January 2008**

## **1. Introduction**

ECTA very much welcomes the ERG's initiative to put on paper the best practices adopted by its members.

We appreciate in particular the fact that this draft document contains tangible recommendations for all ERG members to adopt specific remedies that have objectively been proven to be effective (as opposed to being merely descriptive or providing a lowest common denominator).

Given that ECTA and its members have often been at the forefront in requesting certain measures (e.g. effective migration to enable moving up the ladder of investment) and that some of these are recognised in the ERG draft (which does not take away from the fact that they remain to be implemented in most Member States), our comments are limited, and are focused on further incremental improvement of this already excellent draft document.

A key area where improvement of the recommendations is needed concerns the recognition that operators focusing on the business market (as opposed to the mass market) need to be able to deliver homogenous services throughout the national territory and often also on an EU-wide basis. Such operators require business-grade Wholesale Broadband Access (hereafter 'WBA') of which they themselves can specify the profile/quality, and this WBA needs to be accompanied by suitable specific service level agreements.

In this regard, we note that this new ERG document should reflect the previously adopted ERG Common Position ERG(06)69Rev1 which specifically stated (page 2), with regard to WBA, that: *"access should be sufficient to allow competitive provision of bitstream services in both the business and residential market segments"*.

Taking account of the fundamental differences between the needs of the mass market on the one hand, and the needs of many business customers on the other hand, and the vital role of bitstream in the competitive provision of services to the latter, ECTA believes that an approach which consistently differentiates the needs of these two markets should in itself be unambiguously identified as "best practice".

## **2. ECTA comments on specific sections of ERG(07)53rev1**

### **2.1 WBA Quality of Service: Need for Business-Grade WBA**

On page 4, the draft document contains the statement:

*"Hence, there should be assurance that access products will be of reasonable quality and that service levels (delivery times, cut-off period, repair times ...) will be reasonable and comparable with that provided to SMP player's own business. Different levels of service should be available, to reflect differences in customer demand."*

We request that this text be amended to read as follows:

*Hence, there should be assurance that access products will meet the reasonable demands made by wholesale customers in terms of quality and that service levels (delivery times, cut-off period, repair times ...) will be suitable to meet demand for both mass market and business-grade wholesale broadband access and that a least a level of QoS comparable with that provided to all of the SMP player's own downstream/affiliate businesses is available. Different levels of service should be available, to reflect differences in customer demand.*

In addition, we request that the need for a differentiated approach to enable business-grade WBA is underlined in relation to each and every one of the SLA parameters mentioned in the document, and is also underlined in the context of publication of key performance indicators.

## 2.2 SLA online delivery

On page 6, the draft document contains a reference to:

*“Delivery precision”*

ECTA requests that the following principle be added:

Once the SMP player has sent the done message the service must be working. *If the service is not working e.g. due to faulty line parameters the same procedure as for failure has to be applied. In case of different procedures, the compensations need to be identical.*

## 2.3 SLA conditions on delivery precision

On page 8, the draft document contains the statement:

*“Such compensation are over and above any amount of compensation to be paid due to line delivery delays”*

ECTA requests that the following principle be added:

*“Such compensations must be identical for delay delivery and for line failure.”*

## 2.4 SLA conditions on fault clearance time

On page 10, the best practice repair times seem to fall below what is achieved in several Member States today, and contain no incentive on the SMP operators to improve performance over time. We suggest that the ERG could usefully put forward more ambitious repair times, for example as follows:

- Standard SLA: fault clearance in less than next working day.
- Premium SLA: fault clearance in less than 5 working hours.

## 2.5 Compensation

On pages 12/13, the proposed best practices on compensation rules (for failure to meet SLAs) contain exceptions for what is termed a ‘starting-up market’ / ‘market development phase’. These terms are not defined in the document, and we are not aware that the ERG might have defined them elsewhere, which leads to an unhelpfully elastic notion. We are particularly concerned that such concepts could be extended into other areas (e.g. the actual SLAs) and that they could be abused where a transition is made from ATM to Ethernet WBA, or to NGN/NGA architectures. ECTA proposes the deletion of these concepts, and if they are maintained in the final document, they should be limited in scope and associated with a clear timeframe.

On page 12, the draft document contains the statement:

- “- Period: Quarter;  
- Time granularity: month;  
- Geographic granularity: SMP management areas (regional);  
- Tolerance: 30% and more for a starting up market.”*

ECTA requests the following addition:

*Period: Quarter. Quarterly forecasts should not be demanded earlier than 30 days before each quarter. Each quarter should be treated independently.*

ECTA requests that the following principles should be made explicit:

The SMP operator should provide a document of “general information” containing the data necessary to identify the customers connected on each local exchange.

Operators taking WLA/WBA should not be required to provide binding forecasts over an extended period (e.g. more than for a quarter) with penalties for failure to meet such forecasts. If inaccurate forecasts are penalised, consideration should also be given to penalising the SMP provider for deficiencies in the quality and timeliness of its data provision, which would affect the competitors’ ability to make accurate forecasts.

## 2.6 Migration

On page 17, the draft document contains the statement:

*“[...] allowing households to benefit from affordable broadband connections”.*

We request that this text be amended to read as:

*allowing households and businesses to benefit from affordable broadband connections*

On page 19, the draft document indicates that:

*“Project lead-time (time to execute all the requested migrations) should be specified in the RO with the corresponding volumes;”*

ECTA has always strongly argued in favour of suitable migration arrangements (individual and bulk migrations and transfers), and we support the proposed inclusion of all related processes in the reference offer. However, we are concerned that the reference to “corresponding volumes” remains unspecified and could be read as an invitation to permit limits on the amount of migrations. We request the ERG to specify in the final document that, in order to prevent abuse (e.g. unreasonable restriction of the speed of migration of large customer bases – which has occurred in the past), that the NRA must have insight in all the SMP operators’ relevant processes and staffing, and can instruct the SMP operator to increase its migration capacity to achieve bulk migration within a reasonable timeframe.

ECTA agrees that migration from a downstream wholesale product to any upstream product is crucial to facilitate effective competition and efficient investments.

It is particularly important that contract terms for wholesale products do not prevent migration up the value chain. And thus we would urge the ERG to set as best practice that:

*Contracts should preferably not be subject to contract duration – although activation, migration and cancellation fees could be charged. If any contract duration is set it should be transferable across wholesale products to enable migration and investment in infrastructure.*

## 2.7 Standalone bitstream access

On page 24 the draft document contains the statement:

*From the end-users standpoint, naked DSL should be as user friendly as PSTN. This could be done by ensuring that the St-WBA fulfill at least the following requirements:*

- Availability of GNP synchronisation with St-WBA under the same conditions as those stated for FLLU;*
- Availability of an appropriate single line migration from bitstream (with PSTN) to St-WBA guaranteeing a minimum, if any, cut-off period;*

*- Availability of bulk migration processes from St-WBA to FLLU under the same conditions as those stated in 'Bulk migration' above section.*

ECTA requests the following additional clarification:

*Availability of one single invoice (SMP operator charging only to the operator and not the end user)*

## 2.8 Margin-squeeze

ECTA welcomes the ERG's attention to margin-squeeze issues, but we consider the statement on page 26/27 insufficient:

*As far as economic spaces monitoring is concerned, assurance of protection against downstream margin squeeze is essential. There needs to be reasonable certainty in advance of how a margin squeeze would be assessed and confidence that any complaint could in practice be resolved quickly.*

We request that this statement be enhanced in the final document, at the very least with an explicit reference to the Annex of the revised Common Position on Remedies (ERG(06)33).

ECTA notes that there is a trend towards geographic market segmentation, and without wishing to comment on that trend – this has the following implications for ensuring fair 'economic space'.

*Deregulation of bitstream in certain areas – particularly if accompanied by excessive (not accurately cost-based) pricing of bitstream outside those areas – could allow SMP operators to cross-subsidise between areas to undermine competition in regions with greater LLU-based competition. It is vital that regulators ensure that rural bitstream is not excessively priced and at the same time provide safeguards against margin-squeeze in more competitive areas – even if the provision of bitstream may have been otherwise deregulated.*

Furthermore in an environment where movement is occurring towards VDSL and/or FTTH, economic space should also be allowed to enable any further investment. This does not mean that prices for unbundling should be increased – but rather that in setting prices for sub-loop unbundling and/or duct access for example – that these should be set with existing regulated prices in mind and allow sufficient investment space.