



## **3 Group's response to the ERG's consultation on regulatory principles of IP-IC/NGN Core**

This paper contains the response of the 3 Group in Europe to the ERG's consultation on the regulatory principles of IP-IC/NGN Core. The 3 Group is part of Hutchison Whampoa Limited's telecoms division and includes the following operating companies in the EU: Hutchison 3G Austria GmbH, Hi3G Denmark ApS, Hutchison 3G Ireland Limited, H3G Spa (Italy), Hi3G Access AB (Sweden) and Hutchison 3G UK Limited.

### **Summary**

The 3 Group believes the ERG's consultation on future interconnection principles is timely given the pace of convergence of switched telephony and the Internet. However, the 3 Group disagrees with the ERG's proposed approach, which takes sector specific obligations from switched telephony and seeks to adapt them to the IP world. The 3 Group believes that, instead, the ERG should first examine the purpose of sector specific regulation in a converged telephony and IP world. Only when the ERG has determined the objectives and necessity of sector specific regulation in a converged world should it examine what obligations may be required. Any regulation should adhere to the following principles:

1. Regulators fix current competitive distortions and should only act when there is clear evidence of a problem. In other words, regulators should allow the new market structures to develop without regulatory or other barriers.
2. Providers of competing services should be treated equally with regard to their rights and obligations.
3. Regulators should avoid undermining investment incentives by creating free-rider situations.

### **Overall approach**

The ERG's approach has been to take existing telecoms regulation and to consider how it should be adapted with the move to NGNs and convergence with the Internet. This assumes that the objectives of regulation will remain the same. The 3 Group believes that the ERG should instead start by re-examining the basis for industry specific regulation in a converged switched telephony/ IP world. This means re-applying the basic principles of regulation (such as only acting where there is a clear policy objective and an identified problem) to the new circumstances of converged services. As well as identifying where existing regulation would continue to be appropriate it should identify opportunities for removing or, indeed, imposing new regulation on all participants in the converged market.

The enhancement of switched telephony networks to become IP capable represents a step change in the technical capability of those networks. It also represents a step change in the range of commercial models available to all market participants. Given the impending changes to the market structure and commercial models, it is inappropriate simply to re-impose the current

paradigm of industry specific regulation to fit with the new market structures where to do so is likely to constrain and bias the development of the emerging market structure.

For switched telephony, the purpose of industry specific regulation was to ensure the ubiquitous availability of voice telephony on a non-discriminatory and competitive basis. The “basic service obligation” mandated that basic telephony services should be available to all who may request them. This was accompanied by a “universal service obligation” which undertook to provide the basic service to customer groups that might be unprofitable to serve. Thirdly, a “mandatory interconnection obligation” ensured that network economies would be available to all end-users without any individual operator being excluded.

It is necessary to consider the extent to which such objectives should apply to the IP telephony world. For example, in developed markets, public mobile telephony networks are available to almost 100% of the population at affordable prices. This suggests that it is no longer necessary to mandate a basic service obligation. Similarly, potential substitutes for switched telephony services are currently offered on the Internet without the need for onerous and costly obligations on those service providers.

### **1. Regulation should fix current competitive distortions and not anticipate problems**

The ERG’s consultation attempts to identify all the possible decisions and regulatory measures that will need to be taken as telecoms converges with the Internet. The ERG is attempting to anticipate future problems and the appropriate regulatory responses. Many of the decisions on the appropriate regulatory response do not need to be taken now. In fact it would be better to wait until it is clearer how the IP world will work and what the problems are, so as not to bias the development of the market.

For example, the ERG’s consultation argues that Quality of Service (QoS) will be of increasing importance and could enable new forms of discrimination. It concludes that it may be necessary to specify minimum QoS and impose non-discrimination obligations.

It is premature to conclude that there will be QoS problems between interconnecting operators. Degrading the quality of incoming calls (for example) would reduce the QoS experienced by both the competitor’s and the operator’s own customers. Therefore, it is not obviously a tactic that networks will deploy to harm their competitors. Customers will expect their operators to provide an acceptable QoS.

There may be unintended consequences from acting to deal with a problem that has not yet materialized. Regulators should be careful not to confuse network management with intentionally downgrading a competing service for anti-competitive reasons. Different services have different QoS requirements and simply treating them all equally will not provide customers with an optimal service. The 3 Group notes the recent Committee vote in the European Parliament, which recognises the need for operators to manage their networks and differentiate their services. Some differential treatment may also be necessary to ensure all users can access services and not just the high bandwidth users. Poorly drafted non-discrimination clauses could also prevent Internet access providers from blocking spam and other undesirable content. Access providers should be allowed to protect their own customers from such unwanted information.

The 3 Group recognises that new problems may emerge and regulators will need to be alert and ready to deal with them. One possibility concerns interconnection obligations, which take on a new meaning in the Internet world. The existence and leveraging of closed use groups on the Internet using proprietary protocols has a similarly exclusory effect in the Internet world to

denying physical interconnection for terminating calls in switched telephony. The existence of closed user groups and the network economies that result is a key competitive advantage in providing Internet services.

### *Short term v. long term measures*

Having established the future regulatory objectives, the ERG should determine what decisions it needs to take in the short term and what can be left to the long term. The short term actions should aim at providing flexibility to allow the transition between the historic and emerging market structures. They should remove the barriers to convergence and to the emergence of new market structures. They should increase the flexibility for the market to develop not reduce it. It would be unfortunate to impose inappropriate obligations that have a lasting effect on the market structure.

One area that the ERG will need to address is the current barrier to a new interconnection charging system emerging. The 3 Group has previously given its views on future interconnection arrangements and explained that the current system of termination rates should be replaced with one based on Internet charging principles (bill and keep).<sup>1</sup> However, having created a termination bottleneck through the adoption of the Calling Party's Network Pays (CPNP) system, regulators must recognise that many operators have the incentive and ability to delay the inevitable move to the IP charging system of peering and transit. Regulators will need to take steps to remedy this market distortion so that convergence can take place in a smooth and timely manner. It is, therefore, timely for the ERG to address the practical steps required to move to IP charging principles.

The ERG concludes that the Internet settlement regime functions well. However, the tiered peering and transit relationships, whereby upstream Internet operators receive two revenue streams from downstream operators irrespective of the direction of traffic flow, on the face of it does not appear to be a fair market structure. The ERG should review if the Internet settlement regime should be subject to regulatory intervention.

## **2. Equal treatment of competing services**

The ERG must be careful not to create regulatory arbitrage opportunities by imposing different obligations on competing services depending on whether they are provided through switched telephony or through the Internet.

For example, placing obligations on switched telephony providers but not on VoIP providers puts the switched telephony providers (that is, network operators) at a competitive disadvantage, not least because of the cost burdens they face. It is clearly not possible to develop an unbiased competitive market for services unless the obligations are applicable to all market participants. As a rule of thumb, in order to deliver an unbiased competitive framework, either all or no market participants should be subject to regulation.

The ERG should also be careful not to create arbitrage opportunities whilst there are two charging systems in parallel. It would be inappropriate to require operators to support VoIP access, whilst CPNP exists and operator's business models include termination rate revenues. Nevertheless, the

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<sup>1</sup> See 3 Group's response to the European Regulators' Group draft Common Position on symmetry of mobile/fixed call termination rates (ERG (07) 83), 25 January 2008.

**3** Group recognises that there is a potential problem with operators favouring their own services over those of 3<sup>rd</sup> party competitors.

### **3. Regulators should avoid creating free-riders**

ERG proposes obligations to provide access. First, the ERG should not propose mandatory access unless there is clear evidence of a problem. Mandating access would change the nature of competition between service providers and may harm competition rather than enhance it.

Mobile operators currently provide managed services to their customers that include the hardware, service and transport. This does not mean that operators do not support third party services. The **3** Group for example offers services provided by MSN, Google, Skype, Yahoo! and E-Bay amongst other. Some of these services are substitutes for the **3** Group's own core services (Instant Messaging for SMS and VoIP for circuit switched voice). However, operators must be free to select the services and package them in the way they chose. Competition between mobile operators has been through service differentiation. If all operators are required to provide the same services at the same minimum quality, this removes an important aspect of competition.

Providing a managed service enables mobile operators to offer a high standard of support for their customers, in contrast to the open Internet, where users typically do not get support. Again, this is an important aspect of differentiation between operators and a source of competition.

Second, the ERG should avoid harming investment incentives by creating free-riders and denying network operators the possibility to earn a return on their investment. Complete open access to networks would facilitate services that compete directly with those offered by the network operators without the need to invest in building a network. Operators must not be forced to offer all Internet services as this is tantamount to providing a free MVNO. The Internet providers have their own existing business models. The ERG should not consider mandatory support of Internet services without considering that the Internet service providers have their own revenue stream and cannot expect a "free-ride" on the mobile operators' networks.

Mandatory access may also create onerous obligations for an access provider. It would be burdensome for access providers to ensure that all proprietary add-ons work on their networks. There are costs involved in providing access and some services will require additional investment to work on the network. For example, the Skype service available on the **3** Group's networks offers a good user experience only because of the **3** Group's investment in the handset, software and the network. It would be unreasonable to oblige network operators to invest in equipment to provide services for third party applications from which they derive no revenues.

11 July 2008

For questions and further information contact:

John Blakemore  
Director of European Regulatory Affairs  
Hutchison 3G  
Square de Meeus 35  
1000 Brussels

+32 2 509 0074

[john.blakemore@hweu.net](mailto:john.blakemore@hweu.net)