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3 Group's comments on the ERG/ IRG Work Programme 2007

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Introduction

This paper sets out the response of the 3 Group ("*the 3 Group*") businesses in Europe to the ERG's consultation on its 2007 Work Programme.

The 3 Group is part of the Hutchison Whampoa Limited (HWL) telecommunications division, and operates under the '3' brand in the following EU Member States: Austria, Denmark, Ireland, Italy, Sweden and the UK. The HWL telecoms division, comprising the 3 Group and Hutchison Telecommunications International, is the first global 3G operator, with 3G licenses in 10 countries[1]. Our 3G services were first rolled out in March 2003. The HWL Group had more than 13.5 million 3G customers globally and 11.5 million in Europe as of 23 August 2006. The 3 Group is one of the fastest growing telecoms businesses in Europe.

Summary

The ERG's draft 2007 Work Programme identifies the review of the regulatory framework as its core issue for 2007. While there is a role for the ERG to advise the Commission on legislative changes, the ERG should not become distracted by policy-making at the expense of improving the implementation of existing regulation. The 3 Group in its response to the review of the regulatory framework identified important areas where regulation is not working and where guidance from the Commission and the ERG on proper implementation of the framework is urgently required.

The 3 Group identifies the following topics for the ERG's 2007 Work Programme:

- **Mobile termination rates**: There is no consistency in the circumstances in which regulators require asymmetric termination charges, nor in the extent of asymmetries and their duration. The 3 Group is pleased to see that the ERG has included a project on mobile termination rates, including an examination of symmetry and asymmetry, but is, at the same time, concerned that regulators may proceed with market reviews without a harmonised approach unless the ERG work is progressed with utmost speed and priority.

- **Mobile number portability**: There is a variety of practices over porting times, routing of calls and porting charges, some of which work to the detriment of consumers. The ERG should examine mobile number portability and set out its view of current best practice.

- **Converged and bundled services**: The 3 Group notes that the ERG has included a project on convergence. The ERG should undertake a study to identify possible competition concerns arising from these services and propose appropriate regulatory measures to monitor and prevent anti-competitive use of converged and bundled services.

- **Convergence of broadcast and telecoms regulation**: The ERG should examine broadcasting and telecoms regulation, and their interaction, to ensure they are consistent and do not lead to competitive distortions. The ERG should also examine access to content, since this is likely to become a source of competition between operators.

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[1] As well as the 6 EU Member States listed above, HWL has 3G licences in Australia, Hong Kong, Israel, and Norway.

- **3G roll-out obligations**: The ERG should undertake a study of best practice in relation to ensuring that 3G roll-out obligations are met, to ensure that the benefits of rapid deployment of 3G mobile broadband can be achieved.

- **Anti competitive effects of on net calls**: The 3 Group is concerned by the lack of proper regulatory intervention to address the harmful effects of incumbents offering free on-net calls. The 3 Group urges ERG to undertake a study of the remedies that should be applied.

MOBILE TERMINATION RATES

The 3 Group is pleased to see the ERG has included in its work programme a study on mobile termination rate regulation. There is no consistency across the EU as to the appropriate mobile call termination rates, neither in terms of level nor in terms of whether there should be symmetry or asymmetry.

The appropriateness of asymmetric termination rates for mobile operators, to reflect objective cost differences, is something that the ERG should pay particular attention to. The Commission has accepted in two cases higher termination rates for the newer entrants, in Belgium and in France. In the Article 7 letter to ARCEP, the Commission says that '*in certain exceptional cases, an asymmetry might be justified by objective cost differences which are outside the control of the operators concerned, for instance owing to cost differences between the operation of a GSM900 network and a DCS1800 network or to substantial differences in the date of market entry*'. The Commission made similar comments to the Belgian regulator.

It is clear then that the Commission accepts that where there are objective cost differences, there should be different termination rates. Despite this, some national regulators have imposed symmetric mobile call termination rates on all operators. In Sweden, PTS has imposed termination rates on 3 Sweden that will mean it will have the same rates as all other operators from 1 July 2007 (0.54 SKR, about 5.8 cents). In Austria, 3 Austria will be required to charge the same rate as the other operators (6.79 cents) from 1 January 2009.

The 3 Group agrees with the Commission that objective cost differences justify asymmetric termination rates. Such objective differences extend beyond the effects of different spectrum allocations. Indeed, where regulators fail to allow for cost differences in their termination rates, they risk harming competition. The 3 Group submitted research in response to the review of the regulatory framework, which shows that the approach of those regulators that are imposing equal termination rates on all operators is wrong and damaging to competition between mobile operators. The key points of that research are:

- There are considerable economies of scale in operating a mobile network. This means that new entrant operators will have higher costs until they reach a similar scale to the incumbent operators.

- First mover advantages are large and so it takes a long time for market shares to converge. On average, market share gains for the new entrant are around 1 – 2% per year. This means it takes 10 to 20 years to reach a market share of 20%.

- Imposing equal call termination rates on operators with different costs discriminates against the newer entrant (since it has higher costs because of a lack of scale) and harms its ability to compete.

The 3 Group would be pleased to discuss this study further with the ERG.

An ERG study should examine the following aspects:

- The extent to which there are efficiently incurred cost differences arising from (i) different dates of market entry; (ii) the use of different spectrum bands; and (iii) traffic imbalances.

- The appropriate degree of asymmetry and over what period rates should converge. This should examine the period over which market shares can be expected to converge.

The ERG should put this activity at the top of its list of priorities. Market reviews of mobile call termination have been completed and more are currently underway. Unless this activity is completed as a matter of urgency, it will be too late to have an impact on ensuring harmonisation.

MOBILE NUMBER PORTABILITY

Mobile Number Portability (MNP) is a vital tool for enabling competition between mobile operators. It is essential that MNP works effectively. Yet there are a variety of solutions in the EU, with different porting times, different methods of routing calls and different charges. The 3 Group has identified the following problems with some porting systems, which work to the detriment of customers and competition:

- **Porting times**. Best practice for completing a port should be set at within 2 hours of a customer requesting it. This is technically feasible and available in some Member States and should be the basic service level requirement for porting. Yet in some countries porting times are much longer – days, and in some cases over a week. It is simply unacceptable to force some EU customers to wait days to be able to switch mobile service provider and keep their number, when other customers can switch in hours.

- **Routing of calls to ported numbers**. All porting should be based on direct routing of calls to a ported number. This the only way to ensure that the donor network is no longer involved in the provision of services as required by Article 30 Universal Service Directive, which states that subscribers must be able to retain their numbers *'independently of the undertaking providing the service'*. Porting systems that use call forwarding are not independent of the donor network. Furthermore they are inefficient in routing and impose unnecessary costs on operators.

- **Porting charges**. Porting charges should not exceed the direct costs of porting incurred by the donor network. Donor networks should not be allowed to levy excessive porting charges at the expense of customers and recipient networks. In practice, high porting charges act as a deterrent to porting and an additional cost to the recipient network

The ERG should undertake a comparative study to document the different systems in the EU. It should then look at the impact of the different systems on porting and customer switching. Based on that analysis the ERG should propose 'best practice' for MNP.

CONVERGED AND BUNDLED SERVICES

The 3 Group notes that the ERG has included a project on convergence in its draft Work Programme. There is a pressing need for this study given the examples of bundled and converged services already in the market. The 3 Group gave examples of converged services in Austria, Sweden and the UK in its response to the Commission's review of the regulatory framework. These are repeated at the Annex to this response.

On the one hand, converged services may confer consumer benefits. To the extent that consumers value these services, they should be seen as a welcome development. However, converged services also provide fixed incumbents opportunities to leverage their dominance into the mobile market or other neighbouring markets, to the detriment of competition there. Convergence provides incumbents with the possibility of creating services that other operators cannot replicate or cannot replicate profitably.

The task for regulators is to determine which services are replicable and which involve an anti-competitive cross-subsidy. The problem for competitors and regulators, if they do not have the information, is that it can be difficult to make that determination.

The ERG should undertake a study to identify the current extent of converged and bundled services and likely future developments. The study should identify possible competition concerns arising from these services both at the retail and the wholesale level. It should then describe the measures regulators should take to monitor and prevent anti-competitive use of converged and bundled services.

The 3 Group recommends that those measures should include sufficient transparency to expose instances of cross-subsidy or margin squeeze, and to address the information asymmetry. Transparency will need to be accompanied by remedies to ensure that appropriate wholesale inputs are available on a non-discriminatory basis.

CONVERGENCE OF BROADCAST AND TELECOMS REGULATION

The 3 Group is pleased to see that the ERG is intending to examine the processes of convergence. Broadcasting and telecoms services are increasingly being provided by the same companies. To ensure competitive neutrality, it is important that all service providers are subject to the same regulations, which are imposed in a competitively neutral way.

In addition, as telecoms operators offer broadcasting services, they will become subject to broadcasting regulation. It is important to examine the interaction of the two sets of regulation to ensure they are consistent and that the overall burden of regulation is appropriate.

As the ERG identifies in the draft work programme, the question of access to content will become an important one as operators increasingly compete on the content they offer. The ERG should examine the competitive aspects and possible role of regulators in ensuring that content, and in particular premium content, does not become a tool to distort competition.

3G ROLL-OUT OBLIGATIONS

The 3G spectrum licences awarded to mobile operators typically contain roll-out obligations. These obligations specify that operators should roll-out their networks to cover a certain percentage of the population by a certain date.

The obligations ensure that 3G is rolled out such that customers can take advantage of the new technology. There are significant positive network externality benefits from having widely available 3G, as well as promoting wider industry economies of scale in network and handset costs. As such, the enforcement of such obligations is also important to ensure that competition from new 3G only networks can continue to develop. The ERG should consider best practice on ensuring how such roll out obligations can be effectively enforced.

ANTI-COMPETITIVE EFFECTS OF ON-NET CALLS

As identified in the report by Cave, Stumpf and Valletti,[2] on-net calls can be harmful to competition and might require intervention, especially if the operators not are equally placed. The 3 Group is experiencing this as a major barrier to entry and expansion. The offering of on-net calls has become a powerful instrument for incumbent operators to maintain their stronghold over the market. The 3 Group concurs with the conclusion of the report that *ex* ante regulation is better suited than *ex post* regulation for addressing these anti-competitive problems, and therefore urges ERG to undertake a study of the proper remedies that should be applied and of the common principles for the circumstances in which these remedies should be implemented.

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[2] A review of certain markets included in the Commission's Recommendation on Relevant Markets subject to ex ante Regulation. An independent report by Martin Cave, Ulrich Stumpf, Tommaso Valletti, July 2006.

ANNEX: EXAMPLES OF CONVERGED AND BUNDLED SERVICES

Example 1: Fixed-Mobile broadband offer in Austria

Telekom Austria offers a service that allows the subscriber to download up to 800 MB per month through a fixed ADSL connection and up to 300 MB per month through a mobile (2G or 3G) connection. The monthly charge for this offer is €29.90 for the first year, and €39.90 thereafter. Since Telekom Austria's fixed ADSL connection for 800 MB costs €29.90 each month, this bundled offer effectively gives the mobile data for free for the first year and then for €10 per month. This is a discount of €19 per month relative to Mobilkom's mobile broadband 300 MB service, which as a stand-alone service costs €19 per month for the first year and then €29 per month.

Example 2: Bundled pricing in Sweden

TeliaSonera offered residential customers of its fixed business calls to all fixed numbers and Telia mobile numbers in Sweden for a monthly fee of 74 SEK (about €8.10). Calls to other mobiles were charged at 1.10 – 1.99 SEK per minute. A set up charge of 0.69 SEK is added to each call. Telia has in excess of 99% market share in fixed residential lines and is a major mobile operator. Despite a complaint by H3G, the Swedish Competition Authority declined to take action. One of the reasons cited was the uncertainty of using competition law to deal with cases of 'leveraging' of a dominant position.

Example 3: Fixed-Mobile telephone in the UK

In 2005, BT, the UK's incumbent fixed line telecommunications provider and supplier of 81.4% of all UK residential exchange lines, launched BT Fusion, a seamless fixed-mobile convergent product. BT Fusion uses a specially designed phone that operates as a mobile phone on a mobile network, but uses Bluetooth technology to connect to the fixed line network while at home. As BT Fusion customers are required either to have or to purchase a BT fixed line **and** a BT Broadband connection, the product enables BT to leverage its market power in residential analogue exchange line services and wholesale broadband market into the mobile call termination market.