

ERG/IRG Work Programme 2007

Chairmen's Introduction

On behalf of the European Regulators Group (ERG), we have great pleasure in presenting the ERG Work Programme for 2007.

2006 represents a milestone in the recent history of the ERG. The newly lively industry and market dynamics, the kick-off of several legislative processes which are bound to impact the regulatory environment in the years to come, the increasing expectations of all market players for top-quality and timely deliverables: all of these factors have produced a paradigm shift in the way the ERG works, both in terms of a substantial increase in the efforts of Members (both individually and collectively), and in terms of a clear shift of the ERG's focus from general sectoral issues to concentrating on the hottest topics under discussion at European level.

ERG has shown that it is able to meet these challenges, and it appears that its efforts have also increased the ERG's credibility as a major repository of regulatory knowledge across Europe, as well as its visibility in the institutional debate.

2007 will be even more crucial in this respect. In order to meet the forthcoming challenges, the ERG has decided to focus its Work Programme for 2007 on a few key priority areas, which are likely to be the focus of industry and regulatory interest over the next year. The Work Programme for 2007 is therefore built on the following three major topics:

Regulatory challenges: the ERG will seek to continue to be at the forefront of the evolution of regulatory thinking and processes at the European level.

1. Harmonisation: the ERG will seek to boost harmonisation among its members and effectively contribute to the development of the single market. This will be pursued by identifying key priority areas for harmonisation, and effectively sharing regulatory best practices.
2. Innovation: the ERG will seek to address new issues driven by technological developments that are currently changing the electronic communications markets.

As usual, comments and suggestions made by stakeholders during the public consultation have been very helpful and have been taken into account in finalising the 2007 Work Programme. Overall, the consultation has shown broad agreement from stakeholders with the general approach to the 2007 Work Programme and with the three lines of action identified. Some suggestions for additional areas to be investigated (mainly in relation to harmonisation) have been taken on board in the final Work Programme. Some other comments made in relation to detailed proposals for the development of particular Work Programme items, will be evaluated by the responsible Project Teams.

All stakeholders have expressed their appreciation of the good practice adopted so far by the ERG in terms of transparency, and have requested that the ERG continue to operate in this way. In this respect, the 2007 Chairman commits himself and the ERG as a whole to closely follow these established good practices.

Furthermore, and also based on the experiences of 2006, in order to improve the Group's efficiency and its timeliness for the delivery of the Work Programme, the responsibility for each item of the Work Programme will be assigned to a specific Project Team.

In order to improve the ERG's efficiency in delivering the Work Programme (especially in respect of harmonisation) the ERG will devote specific attention to the level and organisation of its resources. An efficient organisation, mutual assistance among members and information-sharing systems is also envisaged as contributing to the fulfilment of the ERG's Work Programme and mission..

Finally, it is worth noting that, as usual, the draft Work Programme 2007 is intended to be a joint ERG/IRG effort.

Kip Meek
Chairman 2006

Roberto Viola
Chairman 2007

Major themes for 2007

I. Regulatory Challenges

The Review of the Electronic Communications Framework (ECF) will be the core issue in 2007 and a major source of input for the Work Programme 2007. Procedural and institutional issues, as well as policy and regulatory aspects will continue to be closely investigated by ERG/IRG.

It is expected that draft legislative proposals will be tabled in the first half of 2007 to amend the regulatory framework. At the same time, a revised version of the Recommendation on relevant markets (2003/311/EC) will be published for adoption and entry into force. The revision of the Recommendation on rules of procedure in Art 7 FD (2003/561/EC) and of the Commission guidelines on market analysis and the assessment of significant market power (2002/C 165/03) are also expected to start within 2007.

The publication of the legislative proposals by the European Commission will end the first phase of the review process. The next phase are the negotiations of the legislative texts by the European Parliament and Council.

With regard to the Regulation on international roaming (not part of the Review) the discussion at the European Parliament and Council on the proposal issued by the Commission in July is expected to continue at least through the first half 2007.

Early on in 2007, the Commission is also expected to publish a Green Paper on Universal Service

1) Overview of Review 2006 work items (Background)

During last summer, the Commission unveiled its proposals for the Review¹. Legislative proposals are expected for the first half of 2007. The Commission's proposals have been developed alongside few major areas:

- A first main area of proposed change is to reduce the procedural burden associated with the reviews of markets susceptible to *ex ante* regulation.
- Another main area for change would aim to consolidate the internal market.
- A third area for proposed change is the application of a common EU approach to spectrum management which is less restrictive and more responsive to increasing demands for this critical resource and to rapid technological progresses².
- Other topics covered by the Commission proposals, namely, consumer protection and security are becoming increasingly more important due to the sophistication of the electronic communications markets. They will certainly attract a significant amount of time and resources from NRAs side.

2) Date Milestone

The provisional 2007 timetable for the Review is as follows:

- 1Q 2007: adoption of a Communication reporting on the public consultation on the revision of the regulatory framework.
- 1st half 2007: adoption of Proposals for amending the existing Regulatory Framework.
- 2007-2009: political agreement in the Council and the Parliament on the revised Regulatory Framework.
- 2009-2010: entry into force of the new Regulatory Framework.

Other regulatory processes include:

- The International roaming regulation
- Green Paper on Universal Service

¹ Communication COM(2006)334, Working document on proposed changes SEC (2006) 816, Impact Assessment SEC(2006)817.

² While it can be noted that the topics in the third area are largely out of the current ERG practice, it is also worth pointing out that these topics are not outside the competences of many amongst the regulators within the ERG. Thus they will impinge on the overall workload of NRAs for the future.

3) Work Programme 2007 and the Review

The ERG welcomes the Review at this time and will endeavour to ensure that the Regulatory Framework is adjusted where necessary in order to effectively deliver and according to its objectives.

In February 2006, in response to the Commission Call for input, the ERG/IRG delivered its [initial vision](#) of the key issues at stake in the Review. In October 2006, ERG/IRG has then delivered its [response](#) on the consultation launched by the Commission in June 2006.

The ERG mandate to advise and assist the Commission will last until, in the case of the Review, when the power of legislative initiative has been exercised by the Commission itself. At that stage, ERG will no longer be requested to provide advice and opinions on final legislative proposals issued by the Commission.

On the other hand, monitoring of legislative processes and investigations, and impact analysis of the legislation in place are of utmost interest to NRAs. Such lines of activity would therefore continue within the IRG side.

The timing and deliverables of ERG/IRG will be dictated by the timescale of the Review. The following timing will be therefore predictably adjusted during 2007, according to the state of play of processes, in order to ensure a timely response of the Group at any single stage of development.

The following deliverables are proposed:

1a) Response to proposed legislation: This will be the general I/ERG view on proposed legislation by the Commission

Deliverable: Give advice to the Commission in relation to the legislative proposals, up to their finalisation in the European Parliament and Council. Following adoption of Commission's proposals, analysis of the legislative process, including expert opinions.

Deadline: continuous

Consultation: No

1b) The changes in legislation will also have implications for the application of the legislation by NRAs and processes (e.g. authorisation regime, spectrum regulation etc.,) and will be analyzed by ERG.

Deliverable: ERG Report

Deadline: Q4/2007

Consultation: No

2) Functioning of the Art. 7 FD process (changes on the level of the Directives and/or possible modifications of the Art.7 FD-Recommendation on Rules of procedure).

Deliverable: ERG Opinion (upon request from the Commission) on the Draft revised version of the procedural Recommendation

Deadline: Q2 2007, pending start of proceeding
Consultation: No

3) Revision of the Recommendation on relevant markets and consequences thereof, with particular emphasis on the transitional provisions and call origination (including access to directory services)

Deliverable: ERG Opinion (on the request of the Commission).
Following adoption, ERG Report.
Deadline: Q3 2007
Consultation: No

4) SMP assessment methodologies (changes on the level of the Directives and/or possible modifications of Commission's Guidelines and their impact on NRAs' market review activities)

Deliverable: ERG Opinion on the draft revised version of the SMP Guidelines (on the request of the Commission).
Deadline: Q2, pending start of proceeding
Consultation: No

5) Consumer protection, net cost and USO financing, enforcement and technological neutrality, numbering, network neutrality and integrity in the context of the Universal Service Directive.

Deliverable: ERG Opinion (on the request of the Commission). Detailed reply to Commission's Consultation Documents and proposed legislation
Deadline: Q2 2007, pending publication of the Green Paper on USO
Consultation: No

6) Implementation of the proposed Regulation on International Roaming.

Deliverable: ERG Report on technical and regulatory aspects of the proposed regulation.
Deadline: Q3 2007
Consultation: No

II. Harmonization

Harmonisation is a clear mission for the ERG (see ERG Decision, Article 3); all of the ERG initiatives, over the years, have been specifically targeted to improve harmonization and to disseminate best regulatory practices across Europe. Several requests towards greater harmonization emerge also from stakeholders. Moreover, harmonization is bound to be a major issue within the Review process and it is expected to address the Commission proposals for amendments, especially on Article 7 FD.

During 2007, the ERG will further develop work undertaken in 2006 to deliver clear and concrete input towards harmonization; the Work Programme for 2007 will therefore devote specific attention to this end. The ERG believes that effective and targeted harmonization is the best way to work towards the Framework's single market goals. The Work Programme, with the

valuable contribution by stakeholders within the consultation process, identifies key areas where a common approach might significantly help deliver benefits of a single market for electronic communications products and services. In these areas, in order to complement its existing Common Position on regulatory remedies, the ERG will provide practical examples of regulatory options developing guidance dealing with the choice of remedies.

The following priority areas have been identified:

- “Wholesale broadband access” (incl. naked DSL), building up on work undertaken in 2006;
- “Local Loop Unbundling implementation rules”, including update of existing Principles of Best Practices and Implementation on LLU, Key Performance Indicators etc.;
- “VoIP”, both in terms of interconnection (also taking stock of carry over activities on IP-IC) and horizontal issues of retail services provision;
- “Wholesale Leased Lines”, including PPCs and alternative provision technologies (Ethernet leased lines);
- Mobile Termination Rates regulation³;
- “Fixed termination rates” (with a specific focus on symmetry⁴);
- “Regulatory Accounting Systems to be used for the price regulation of different wholesale services” (based on the existing report on accounting regulation in practice);
- “Transparency and information for consumers”;

ERG will continue to develop “best practice indicators” against which the results of regulation in terms of competitive levels can be measured, taking into account national circumstances. Moreover, ERG recognises the need of developing systems for the monitoring of the effective application of guidance by ERG members. Activities on these areas will be put forward during 2007. In this context, E/IRG will establish a data base of documents that are useful for benchmarking, information sharing etc.

Deliverable: Common positions on regulatory models and identified best practices
Deadline: Q2 2007: Interim Reports analysing different regulatory models in place for different items, identifying those who best achieve the aim of effective and proportionate regulation, suggesting them as best practice across ERG members.

Q4 2007: Final Common Position suggesting best practices on different items.
 (based on a thorough evidence-based analysis of the agreed indicators).

Consultation: Yes

³ In several comment's letter to NRAs notifications, The Commission has indicated its view on the symmetry of MTR and has suggested that a common work between NRAs could be lead on cost modelling. Given this context, a Common Position will identify:

- identification of cross-border effects resulting from different average rates in different Member States (addressing the question of why/to which extent MTR harmonization is needed?);
- Report on MTR regulation and asymmetric/symmetric rates (reasons for, calculation elements of, transitional or lasting differences etc.);
- When considering a convergence to symmetric MTRs, what relevant target level has to be considered, and via which costing method? Which reasonable timescale can be considered to reach symmetry?

⁴ As in the case of MTRs, the Commission has requested ERG to work on a harmonised cost model for determining termination rates of efficient operators is concerned. The correct calculation of termination rates of alternative operators is at this moment a debated topic at European level. Therefore, for harmonization purposes, it would be advisable to identify a coherent approach and follow a common path to determine termination tariffs.

III. New issues / Innovation

1) **NGN's** deployment and its related regulatory impact will be investigated in 2007. While the revised regulatory framework is expected to come fully into force by 2009-2010, NRAs have already been facing NGNs regulatory challenges, therefore clear and timely guidelines for a harmonised regulatory approach on this issue are needed.

The recent fast technological developments and the actual market trends anticipate the successful strategy of the earlier introduction of Next Generation Network where the evolution of former separate services and networks are going towards a converged platform which will be able to provide different mobile or fixed, voice or data services via the same platform (possibly implying changing market borders). The development of this also means a challenge for the individual NRAs in order to find the balance between the different national market development trends or actual situations and the necessary harmonized way in regulating in order to promote competition.

After some first-hand experiences in the early implementation of NGN and in between the review process of the regulatory framework this is the right time to:

- list and describe the potential technical, economical and legal problems which could continue to exist in an NGN environment;
- to investigate blurring of boundaries between access and core networks, and its regulatory impacts;
- further work on the practicalities of duct sharing.

Depending on the outcome of the consultation on the IP-IC draft document, there may be a need to continue the work in this closely related area.

Deliverable: CP on NGN regulatory principles (based on the Report on NGN)

Deadline: Q3 (Report) Q4 (Common Position)

Consultation: Yes

2) ERG will consider the processes of **convergence** and the development towards a multi-play communications market as a topic for 2007. Convergence also impacts the relationship between communications and broadcasting markets (mobile-TV). Access to content (i.e. issues in distribution and conditional access to content, not content regulation, which falls outside the scope of the framework), net-neutrality, interoperability, bundling of broadband services (flat-rate, triple and quadruple play offers) and consumer protection issues could be successfully investigated by ERG WGs and PTs.

Major topics include:

- access to networks;
- access to content (distribution issues, such as Intellectual property right, Digital Rights Management, Interoperability, conditional access, are becoming more and more relevant in the provision of bundled or value added services, often dictating the actual market conditions beyond the relevance of the traditional market analyses;
- bundling of broadband services (flat-rate, triple and quadruple play offers) and related consumer protection issues.

Deliverable: Report/CP
Deadline: Q3 2007
Consultation: Yes

IV. Carry-over from WP 2006

A number of WP 2006 items might not be finalized by the end of 2006 and must therefore be carried over. The intention is to finalize all carry-over items by Q1 2007.

The following items of the WP 2006 are carry-over items:

- IP-IC Report;
- NGN Report;
- BB market competition Rep.;
- BB bundling, quality, pricing from a consumer perspective Rep.;
- REM CP on
 - WBA;
 - WLA;
- PIBs on WACC

V. Ongoing activities / Regular Reporting (*Second Category: regular and second priority work*)

The Group will continue to benchmark mobile termination and SMS rates and to regularly publish an update a snapshot of mobile termination rates across the countries represented in the ERG.

The Group will continue to publish its report on “Accounting regulation in practice” once a year.

The ERG will continue to act as a forum where NRAs can collect and publish data and share experiences on implementation of the regulatory framework.

Also, in case the WG/PT have resources left after having worked on the priority areas as outlined under I. – III. they can pick up their own topics of self interest.