



COMMENTS ON THE ERG WORK PROGRAMME FOR 2007

Telefónica welcomes the opportunity to comment on the ERG/IRG Work Programme for 2007, and appreciates that the effort started last year in focussing the Work Programme on a set of priority issues continues to be the core attribute and aim of the ERG WP. Telefónica hopes that these comments will prove useful and be taken into consideration in the final approval of the document.

The following comments have been structured into two sections. The first section covers Telefónica's views on general aspects related to the Work Programme, primarily focusing on ways that maximize the contribution of the Work Programme to the ERG's proper operation. In the second section Telefónica focuses on more specific issues raised in the consultation document.

1.- GENERAL REMARKS

There is plenty of room to improve dialogue with industry and providing 'useful' transparency for stakeholders

While recognising the achievements made throughout 2006 in terms of enhanced dialogue with industry stakeholders and in terms of transparency, Telefónica still considers that there is room for improvement in ERG transparency.

The **coexistence of the ERG and the IRG** does not contribute to stakeholder confidence in the transparency of ERG activities. Clearly, over the past few years it has proved to be a contentious issue since the IRG has been generally perceived to be the mechanism to circumvent ERG rules and procedures. The set up outlined in the draft WP submitted for consultation suggest that this will continue to be the case. While recognising that the WP 2007 leaves less room for IRG operations compared those envisaged for the ERG, Telefónica still considers that the IRG has no role within the procedures established by the current regulatory framework and calls for an end to the current mix of duties which only leads to confusion amongst stakeholders.

Telefónica notes also that several work streams, specially those related to the Review of the Regulatory framework are not going to be publicly consulted. This is a clear set back for stakeholders' aspirations in terms of improved ERG transparency.

In this respect, Telefónica encourage the ERG to reconsider this particular aspect and to seek ways to further improve dialogue with stakeholders. In particular, it would be very helpful to let the industry know the ways in which the ERG is organised to undertake the work planned, e.g. by including a map of the working groups and project teams that will be doing the work, as well as their mandate and membership. These measures would strongly and substantially contribute to enhancing the transparency of the ERG Work Programme in a way that is truly useful to industry.

Also, Telefónica would like to encourage the ERG to seek ways to enhance **co-operation and participation from industry**. Going beyond the exercises of public consultations - always necessary but not sufficient - Telefónica would like to suggest **a more free-flowing and natural dialogue, as well as closer co-operation between the ERG and the electronic communications industry**. Telefónica believes that the creation of mixed working groups between the ERG and the industry representatives on the main subjects of the WP and/or workshops that allow to put together different views should also be promoted.

Another suggestion would be to allow sector representatives to take part and have a voice within ERG meetings. In this way, the sector and the associations representing the various interest groups can provide their knowledge and expertise on the debates in order to better understand the reality of the market and possible alternatives regarding specific policy aspects, thus enhancing the quality of the work being carried out within the ERG.

Last but not least, the timeframe given for consultations can be improved since they are usually too short. Latest consultations have been launched in packages and overlapping with other European Commission consultations. The NGN and IP interconnection workshop held in June was convened in too short a period of time to prepare adequate contributions to the exercise.

2.- SPECIFIC ASPECTS

In addition to the aforementioned general comments, Telefónica would also wish to make the following specific comments regarding the work items proposed for 2007.

2.1. Review of the Regulatory Framework

This section raises several comments:

- (i) it lacks from appropriate transparency and consultation,
- (ii) its aim is difficult to understand, specially item 1b)
- (iii) the ERG may contribute to the overall Review debate in a different way

We address the above concerns in turn:

Telefónica notes that this is the only section in the entire WP in which no single work stream is going to be subject to public consultation.

Also, Telefónica also notes that item “1a) response to proposed legislation” is the one that has been reserved for IRG as opposed to ERG and that its aim is to “give advice to the Commission” on a continuous basis up to the finalisation of legislative debate in the Council and European Parliament. This is disconcerting since Telefónica can not understand what kind of advice can be given to the Commission by the IRG at a time when the legislative proposals are being discussed within the relevant European Legislative bodies. This is even more disconcerting if we consider that “advice to the Commission” is envisaged as something to be devised behind closed doors while at the same time NRAs have regular duties to advise national governments represented within the Council.

Topic 1.b) refers to the analysis of the implications of the changes in legislation. Bearing in mind that changes in Legislation are only foreseen to take place as of 2009, it is hard to understand what legislative changes are going to be the subject of this work stream during 2007. In addition,

no consultation is envisaged. The same comment applies to work item 2b) concerning the Review of the Recommendation on relevant markets.

However, Telefónica believes that ERG may have a different and very meaningful role to play in order to contribute to the debate of the Review. In Telefónica's view, one of the conclusion that emerge from the Review debate being held during 2006 is the still insufficient understanding of the relationships between different types of regulatory approaches and its resulting impacts on investment decision by market players. That requires further investigation and Telefónica believes this is an area in which ERG may contribute to raise overall knowledge in a number of ways: (i) by supporting independent and impartial studies (made by recognised academia and independent bodies, etc.) that further deepen the understanding of the issues at stake and (ii) by bringing into the debate all interested parties. Telefónica would like to suggest the ERG take this alternative course of action as opposed to devoting resources to work on matters with unclear goals.

Regarding the proposed Regulation on International Roaming, item number 4 of this section, the reasons to envisage a need for "a report on technical and regulatory aspects of the proposed regulation" appears to be unclear to Telefónica and requires clarification. If the reason to support this work item is that the ERG feels that the proposed Regulation may be subject to different interpretations and/or because it sees a potential need for seeking common understanding for its implementation, we believe that it will be all the more important to have proper consultation with stakeholders.

2.2. Harmonisation / Best Practice

Telefónica welcomes the ERG aim to describe "best practice indicators" against which the result of regulation can be measured. However, Telefónica would suggest that instead of measuring the results of regulation "in terms of competitive levels" this measurement needs to be broaden and be expressed "in terms of consumer welfare". Telefónica would encourage the ERG not to confine the analysis to the traditional static/structural indicators, such as price falls and/or number of players, which are unable to capture the broader picture, i.e. including proper assessments of market development, growth, as well as actual benefits to consumers (e.g. innovative services available to consumers, etc.) derived from different types of competition.

In this regard, it would be crucially important to analyse the extent of consumer choice in terms of quality, innovative services, etc. Telefónica would also suggest that the analysis not be confined to Europe but also attempt to understand the outcomes of policies pursued in other regions of the world.

Telefónica is convinced that this kind of analysis, including in particular the appraisal of the benefits and the costs, would help to raise awareness and enrich current understanding of the enablers and disablers brought about by different regulatory options, including deregulation. Only then it would be useful to embark in a broader debate about the extent, speed, type and conditions under which regulatory harmonisation is beneficial to consumers.

2.3. New Issues/innovation

Telefónica can only express concern about the approach outlined within the working programme when it comes to NGNs. In particular, focusing on "the potential technical, economic and legal problems which could continue to exist in an NGN environment" rings all the bells of an interventionist attitude towards these developments.

The move towards NGNs entails fundamental changes in technology and business models that still needs to be devised by market players. Therefore, Telefónica would encourage ERG to take a “wait and see” attitude in order not to pre-empt market outcomes. Premature positions about potential pitfalls or market failures can only have the effect of freezing innovative solutions that can not be even imagined nowadays.

3.- CONCLUDING REMARKS

Telefónica welcomes the improvements achieved during 2006 when it comes to transparency and dialogue with market players and encourages the ERG to continue along these lines, and to enhance the clarity and transparency of the information that is of greatest importance to industry stakeholders, by, in particular setting out the objectives sought for each item of the Work Programme.

At this point, Telefónica would like to address the concept of ‘useful’ transparency in practice. From a stakeholders perspective, it is vital to have meaningful possibilities to participate and contribute to the debates that will take place during the coming year. This can be enhanced in a number of different ways: public consultations, workshop, mixed ERG-industry groups, etc.

The Work Programme does not shed sufficient light on the activities foreseen, thus making difficult for stakeholders to provide substantial and useful comments to the work the ERG will undertake. Examples of this in the Work Programme include the topic of NGNs and Convergence. Indeed, both issues can significantly impact on the current electronic communications market and policy, but at this stage where stakeholders are being consulted on the Work Programme, industry remains unaware of the substance, policy direction and the reasons behind the ERG including these topics in its Work Programme. Indeed, Telefónica is particularly concerned about the incentives for the ERG to engage in premature actions that can only have the effect of pre-empting effective market-driven outcomes.

Finally, Telefónica would like to underline its willingness to contribute and co-operate with the ERG on all the activities scheduled for the Work Programme, with the aim of constructively engaging in activities that truly contribute to the successful development of new services, innovation and growth of the entire electronic communications market.

Brussels, 13 November 2006