Report of the Consultation on the Draft I/ERG WP 2009 (17 Oct – 7 Nov 08)

I/ERG received in total 10 contributions from stakeholders in the public consultation on the Draft IRG/ERG Work Programme 2009. The following summaries of responses focus on comments regarding which work items ERG should include and in what manner ERG should approach them over the next year. While some substantive policy arguments were offered by stakeholders, the summary of those are beyond the scope of this consultation report.

CON 1 British Telecom (BT)

British Telecom (BT) asserts the need to analyse the different market characteristics of business and residential customers; ERG is urged to conduct analysis of wholesale local connectivity markets for business customers that is separate and apart from analysis of retail customer markets. In terms of the Framework Review, BT believes ERG should concentrate on achieving effective and consistent implementation of remedies, particularly in relation to cross-border pan-European business services. As for NGN/NGA, BT outlines general guiding principles for policy making, and also suggests that ERG focus on developing pro-competition proposals that maximise regulatory certainty beyond individual market review periods, that ERG create guidelines on migration plans, and that ERG provide opportunity for industry consultation. Additionally, BT urges ERG to focus on the need for rigorous analysis and consistency in application of sub-national market definitions and remedies. BT also asserts that ERG should continue to monitor Fixed/Mobile convergence, as well as broader telecoms/media convergence. Finally, BT urges ERG to take a more active role in comparing national regulatory approaches and promoting best practices.

CON 2 XX - **CONFIDENTIAL**

Overall, XX requests that ERG include Directory Enquiry services ("DQ") in its 2009 Work Programme. XX asserts that it is vital that the ERG, and individual NRAs, monitor and ensure that origination and billing and collection services are made available in IP interconnection under reasonable conditions. XX also urges ERG to look at the implications of fixed-mobile convergence for DQ services and the comprehensiveness of subscriber databases. In terms of consumer empowerment, XX urges ERG to address the impact of VoIP for universal access to DQ services. Additionally, XX would like ERG to review the impact of excessive origination prices set by mobile network operators on consumers, and conduct analysis of mechanisms aimed at solving this issue at wholesale level. Finally, XX requests that ERG review the implementation of DQ liberalization with particular attention to three key issues (data, network, and numbering access) and establishment of benchmark practices with particular focus on new Member State markets.

CON 3 Voice on the Net Coalition Europe (VON, members incl.: iBasis, Intel, Google, Microsoft, Rebtel, Skype and Voxbone)

Overall, the Voice on the Net Coalition (VON) asserts that VoIP issues lack adequate attention in ERG's Work Programme 2009. In regards to the framework review, VON would like to see more opportunities for stakeholder input and greater transparency in the decision making process. As for responding to emerging challenges in the market, VON encourages ERG to concentrate on enabling innovation in the market. Furthermore, VON warns against ERG splitting up the work items of infrastructure and content as IP-packet models tend to blur the lines between the two. Additionally, VON asks ERG to put more emphasis on how operators will migrate networks to ensure the transition to NGN does not create unnecessary disruptions. VON also suggests that ERG hold a broader debate on bundled offerings rather than merely publish a Report without consultation. Furthermore, VON suggests that ERG publish bundle related guidelines for NRAs to ensure harmonisation in Europe. VON also makes the argument that NRAs should regulate services according to consumer expectations and perception rather than simply applying legacy categories to them. Finally, VON encourages ERG to address the issue of consumer empowerment and VoIP in a much more complete manner, by also addressing issues such as the right of a consumer to freely choose the number(s) it wishes to use in a single market, their right to install the VoIP applications of their choice on their handheld devices and to use these applications at leisure, their right to benefit from a sufficient quality of service to use such applications, etc.

CON 4 Vodafone

Vodafone views the development of a common approach to active wholesale NGA products to be one of the most critical work items for ERG. Vodafone also asserts that ERG's current guidance (in the Remedies document) is inadequate on the issue of whether (or rather, in what specific circumstances) on-net/off-net retail price differentials inhibit competition and what, if anything, regulators should do about it. In terms of ERG's Framework Review relating to network quality of service and other "net neutrality" matters, Vodafone urges ERG to aim to provide clear and practical principles rather than ambiguous ones. As for NGN charging mechanisms, Vodafone supports alternative interconnection charging models, but finds the emphasis on the migration to IP and the reference to Bill and Keep to be limited, and as a result argues that a more open-ended framing of the topic could produce a better output. Vodafone also asserts that ULL pricing is critical to broadband competition and requests that ERG develop an EU-wide access network efficiency study to provide comparative benchmarking data to inform NRAs' ULL pricing decisions. Finally, Vodafone notes that while ERG is now better at soliciting input from non-NRA interests, the process of developing ERG positions still remains relatively impenetrable, and as a result, they request greater transparency with the ERG decision making process and ERG's exchanges with the Commission.

CON 5 Telecom Italia

Telecom Italia states that it would like to have more opportunities for public consultation throughout 2009, including in response to the adoption of any deliverable related to harmonization. Telecom Italia also holds the view that in terms of the new institutional set up of an ERG successor, the current status of the revision process is still uncertain and the evaluation of an ERG position paper should first verify the final decision adopted by Parliament second reading. Furthermore, Telecom Italia argues that as there is uncertainty of legal revision and that because access to content is linked with development and innovation, a regulatory intervention in regards to institutional design of an ERG successor is premature. Additionally, as the institutional final agreement between Council and Parliament on the burden of proof for the application of functional separation is still under assessment, Telecom Italia thinks ERG should tailor the Work Programme on the basis of the final decision from the Codecision process.

Telecom Italia also thinks that ERG should address the gradation of remedies in regards to NGN. Additionally, Telecom Italia suggests that ERG conduct an in-depth assessment of the market failure of the termination regime in force that reviews a costs and benefits analysis of the impact of closing down the current business model and the possibility of imposing the new billing structure. Telecom Italia questions the appropriateness of making a consultation on Bill and Keep, an issue not yet included in the new framework review. Finally, in terms of consumer empowerment, Telecom Italia does not view the closer examination of consumer protection issues from an ex-ante regulatory perspective to be a priority.

CON 6 European Competitive Telecommunications Association (ECTA)

The European Competitive Telecommunications Association (ECTA) asserts that business service markets have distinct characteristics from consumer markets, and as a result requests jointly with INTUG and EVUA that ERG add the issue of business connectivity markets to the Work Programme 2009. More specifically, they would like a Common Position on wholesale local connectivity markets that both stresses the need for NRAs to analyse business and retail markets separately, as well as provides guidance to members on appropriate remedies.

ECTA also suggests that the Framework Review have a greater focus on competition aspects and regulatory objectives that affect the toolbox and operation of each NRA. Additionally, ECTA would like updated WLA/WBA best practice regulatory guidelines that reflect NGA developments. As for NGA ladder specifications, ECTA urges ERG to give more attention to fibre unbundling issues. ECTA also urges ERG to provide guidance on how to ensure uniformity of approach and regulatory tools to address the problem of anticompetitive behaviour by incumbents to foreclose retail markets with regard to bundles (triple/quadruple play offers). Finally, ECTA thinks it is important for NRAs to continue monitoring markets that have been removed from the list of relevant markets and ensure a proper transition from sector specific regulation to competition law.

CON 7 3G Hutchison (3 Group)

Overall, the 3 Group encourages ERG to further address termination rate regulation, fixed-mobile convergence, spectrum regulation, and the sharing of best practices. As for mobile termination rates, the 3 Group views further ERG work in this area as a priority. The 3 Group urges ERG to set a policy in the short term to deal with the competition distortions from high (that is, above cost) termination rates, to define a new wholesale charging mechanism for the medium term, and to propose a policy on termination rates for the period after 2011. In terms of fixed mobile convergence, the 3 Group asserts that a clear policy on converged and bundled services is overdue, particularly in the area of bundled fixed-mobile products offered by some incumbent fixed operators. As a result, 3 Group requests immediate action by national regulators. Additionally, the 3 Group would like opportunity for operators to comment on ERG's planned report on fixed-mobile convergence and margin squeeze in bundles. In terms of spectrum regulation, 3 Group suggests that ERG look at how spectrum redistribution could be effected and whether any further obligations (such as mandatory access to network infrastructure) should be attached to refarmed spectrum. The 3 Group also requests that ERG look at best practice in mobile number portability and the length of customer contract terms. Finally, the 3 Group urges ERG to do more to improve the timeliness and quality of its own work product.

CON 8 Business Operators Alliance (BOA, submitted by AT&T, supported by Global Crossing, C&W)

The Business Operators Alliance (Alliance) proposes that ERG add the new priority of addressing the regulatory authorisations and compliance obligations that apply to pan-European providers of services to business customers. The Alliance asserts that Global Telecommunications Services (GTS) providers encounter the unnecessarily onerous barrier of complying with the individual authorisation requirements of each Member State's regulatory regime to provide pan-European service in the Single Market. As a result, the Alliance suggests that ERG create a working group to review regulations related to Global Telecommunications Services (GTS) and other cross-border services and prepare recommendations for harmonization across Member States. They would like the review to focus on streamlining authorisation arrangements and keeping compliance obligations to a minimum. Additionally, the Alliance would like to see a re-examination of the policies behind the concept of a Closed User Groups exemption from service authorisation, with appropriate modifications to become aligned with the GTS definition. Finally, the Alliance supports the consultation response submitted by ECTA, EVUA and INTUG regarding the formulation of a Common Position on analyzing business and retail markets separately.

CON 9 Cable Europe

Cable Europe offers their policy positions on telecommunications regulation generally, as well as on Next Generation Networks, Geographic Aspects of Market Analysis, and Convergence. Additionally, Cable Europe requests that ERG provide a greater amount of time for consultation responses, and that extra time be given during holiday periods. Further, Cable Europe noted that it would like to be involved in the ERG work on telecom and media convergence, and therefore would like to know the current status of the ERG discussions on this topic. Finally, Cable Europe urges ERG to open a consultation process on telecom/media convergence before any Common Position/Report is reached.

CON 10 European Telecommunications Network Operators' Association (ETNO)

The European Telecommunications Network Operators' Association (ETNO) requests that ERG act in the spirit of ERG's own rules of procedure and offer adequate opportunity for public consultation on documents with material impact on regulatory policy. As a result, ETNO asks that if the document on regulatory measures for NGA is intended for publication, that public consultation be sought even though it is foreseen as a report in the draft WP. Additionally, ETNO asks for opportunity for public consultation on Convergence and the future design of ERG's successor Group. ETNO's view is that issuing a "report" instead of a CP does not change the need for broad stakeholder participation on vital regulatory policy issues.

As for cooperation with RSPG, ETNO urges ERG to fully take into account the substitution possibilities of wireless infrastructures both in the market definition and in the market power and remedies analysis under ex-ante economic regulation. In terms of Convergence, ETNO requests further clarification on ERG's proposed scope of analysis. Additionally, ETNO argues that the WP should avoid making substantive statements that may preclude future outcomes of ERG work. ETNO is particularly interested in the work regarding harmonisation and how to take account of national circumstances.

I/ERG Reaction

The I/ERG concludes that while some respondents would put more emphasis on some of the items, overall the stakeholders are fine with the priorities and WP topics as identified by ERG. As 3 submissions suggested that ERG looks more deeply into business services markets, I/ERG will add this item to its WP 2009. In ERG's view the CP on symmetry of FTR and symmetry of MTR (ERG (07) 83) dealt already with the issue of on-net/off-net price differentials on. Also a number of other suggestions (work on WBA/WLA to include NGA aspects, bundles, transition from sector specific regulation to competition law) are covered wholly (or at least partly). ERG thinks that the proposal to create a working group to address global telecommunications services provision is beyond its remit. Finally, ERG notes that the most respondents asked ERG to provide more opportunities for public consultation throughout the 2009 programme year. ERG wishes to reassure stakeholders that all Draft CPs will be consulted upon.