

The ERG-IRG Work Programme 2005

Chairmen's introduction

The Lisbon European Council of 23 and 24 March 2000 highlighted the potential for growth, competitiveness and job creation of the shift to a digital, knowledge-based economy. In particular, it emphasized the importance for Europe's businesses and citizens of access to an inexpensive, world-class communications infrastructure and a wide range of services. The propagation of competition on the markets for electronic communication networks and services was regarded as one major element in this transformation. This eventually led to the adoption of the regulatory framework of 2002 (hereafter "the Regulatory Framework").

The Regulatory Framework places much weight on the National Regulatory Authorities (NRAs) with regards to a consistent execution of the provisions of the Regulatory Framework. It lays down tasks of National Regulatory Authorities and establishes a set of procedures to ensure the harmonized application of the regulatory framework throughout the Community. The necessity of a coordinated approach taken by the NRAs is highlighted by the ERG Decision of 29 July 2002, amended 16 September 2004, which established the European Regulators Group to provide an interface for advising and assisting the Commission in the electronic communications field and in particular as described in Art. 2 of the ERG Decision:

"The role of the Group shall be to advise and assist the Commission in consolidating the internal market for electronic communications networks and services.

The Group shall provide an interface between national regulatory authorities and the Commission in such a way as to contribute to the development of the internal market and to the consistent application in all Member States of the regulatory framework for electronic communications networks and services."

This includes the obligation of the NRAs (Art 7.2 Framework Directive) to "seek to agree on the types of instruments and remedies best suited to address particular types of situations in the market place."

These legal provisions form the basis of the institutionalized cooperation of the NRAs of the electronic communication networks and services field. The general policy objectives and the regulatory principles of Art 8 FD should be purported to "ensure the development of consistent regulatory practice and the consistent application" of the Regulatory Framework.

The Independent Regulators Group (IRG) was established in 1997 as an informal group of European National Telecommunications Regulatory Authorities (NRAs). The broad objective of IRG is to share experience and exchange points of view on issues of common interest amongst its members. The members of the two organisations are almost identical and there is considerable overlap between the fundamental targets of their operations. To provide clarity and transparency, ERG and IRG have agreed to adopt a common Work Programme 2005, which in detail should give an account of the activities planned, the organisation to which the deliverables will be attributed and a provisional time schedule for the deliverables.

The scope of the Regulatory Framework covers the whole field of electronic communication networks and services although excluding the regulation of content. Therefore, NRAs have to cooperate in an institutionalized way on a multitude of different topics. This led to the

adoption of an ambitious ERG-IRG Work Programme for 2004. The major items of this Work Programme – the Common Positions on remedies and bitstream access and the Opinion on the Commission's Recommendation on Accounting separation and cost accounting – have been delivered in the course of the year. While much has been achieved, it became obvious that not all items of the Work Programme 2004 could be dealt with adequately. There are several reasons for that, one of them being the resource constraint of the NRAs. The resources of the NRAs were viewed too optimistically when the WP 2004 was discussed and adopted. With one more year of experience, the Work Programme 2005 will still cover the complete scope required by the Regulatory Framework but will be more focused on those topics which are regarded as core priorities.

The exact dates of delivery of the work items will be decided in the course of a planning procedure after the public consultation, taking its results into account. They will be published as part of the adopted version of the ERG-IRG Work Programme 2005

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The Group undertook extensive internal consultations to identify those problem areas within the Group's scope which carry highest priorities for the work of NRAs and serve the purpose of ERG as laid down in European legislation. The discussions at the last Plenary Meeting of ERG, 2 and 3 December 2004 in Brussels clarified these issues further. It became obvious to consider three different types of ERG activities.

The first category comprises work items with a well-defined topic and clear deliverables derived from major common concerns of the NRAs. These items are likely to result in Common Positions of ERG, describing the regulatory approach of ERG to a certain regulatory topic. The ERG Common Position on Remedies (ERG (03) 30rev1) is an example of this type of work. These first-category items are at the top of the list in regulators' minds and there is a clear need to find common approaches regarding these issues.

The second category of work items relate to legal requirements of the European Commission to adopt certain documents. In these cases ERG will give an Opinion to the Commission. The ERG Opinion on the Recommendation on Accounting Separation and Regulatory Accounting is an example of this type of work items.

The third category comprises all activities of the Group which support its mission and the successful execution of the Work Programme. This is the basic work that has to be done to arrive at a high quality output as well as to achieve an effective and efficient cooperation of the NRAs and the Commission. These efforts include the whole realm of practical cooperation, data gathering, exchange of experiences, discussions between specialists etc., but also mere administrative activities. This work should result in better collective understanding of the regulatory issues. It may result in reports or Principles of Implementation and Best Practice (PIBs) to be used in the daily work of NRAs. It consumes a significant amount of resources, is essential for the success of the Group and therefore has to be taken into account.

The discussion process led to a short list of first category items. The list comprises only items where a coordinated approach of Members is likely to create strong positive effects with regards to the goals of the Regulatory Framework and the obligation of NRAs to cooperate. Taking into account the fast development of the markets for electronic communication networks and services, ERG plans a midterm review of the Work Programme 2005. This review will allow for adjustments of the Work Programme with respect to new topics and prioritization of existing topics.

First-category Items

a) Report on the broadband market

Work on this report with analysis of the wholesale broadband market situation (market 12 in the Commission's Recommendation on relevant markets) was started in 2003. The results will inter alia be used as material for the review of the Common Position on remedies. The rapid growth of broadband access penetration enables new IP-based business models and services. The currently most prominent such new service is voice over IP (VoIP). Topics such as the competitive effects on broadband access provision of VoIP service competition and "naked DSL"/unbundled bitstream access will be examined.

Deliverable: Report

b) Voice over IP

Broadband access is undoubtedly one of the key parameters for the success of the Lisbon Strategy. In continuation of the work done in 2004, the Group will concentrate on the observation and analysis of the relevant markets. The development of IP-based services - prominently Voice over IP (VoIP) - as well as the emergence of a critical mass of broadband customers in many EU Member States requires a coordinated regulatory approach to this type of new services. Therefore, the ERG will continue its work in this area and plans to adopt an ERG Common Position on VoIP. The work on this Common Position started already in 2004 and will be carried on into 2005. While a working document was presented at the December 2004 Plenary Meeting of ERG, the final version of the Common Position is scheduled for May 2005. The final document will assess the evolution of VoIP and the related policy consequences in the short and in the long term. Short-term issues will cover the common regulatory approach to urgent questions like access to emergency calls and numbering. The work is based on the common understanding that market entry should be facilitated while at the same time preserving customer protection. Lenient regulation of small new entrants will have to be explored. This clearly reflects the regulatory principles and aims of the Framework directive. The longer term issues related to a common regulatory approach will focus in particular on VoIP's effects on fixed-line competition and on the regulatory questions that relate to Next Generation Networks, including VoIP-Interconnection (IP-IP as well as IP-PSTN).

Deliverable: Common Position on regulatory aspects of voice over IP

c) Report on experiences with market definition and market analysis and applied remedies

The market analysis process including the application of regulatory remedies is of the highest importance in the practical implementation of the current regulatory framework. The report will be a comparative generic study of results and experiences of work with the market analysis process including a comparative analysis of notifications according to Article 7 of the Framework Directive. The report will also examine the links between outcomes of market analyses and remedies applied. The report's conclusions will be used as input to the Opinion on a revision of the Recommendation on relevant markets and to the updated Common Position on Remedies, as appropriate.

Deliverable: Report

d) Further development of the ERG Common Position on the application of remedies

A later review of the ERG Common Position on the approach to Appropriate remedies in the new regulatory framework was already foreseen in the 2004 Work Programme and in the remedies document itself. However, due to limited collective experience with market analysis this item has been postponed. Depending on the analysis, the Common Position will be updated and developed in the light of practical experience obtained from the market reviews carried out by the NRAs and the effects of remedies imposed on the market situation. Specifically, the following items will be examined in depth:

1. Regulation of different operators in the same relevant market and in termination markets. The aim is to provide guidance and legal certainty in cases where operators have SMP in the same relevant market or in “neighbouring” termination markets. This has special relevance for wholesale mobile termination markets.
2. Criteria for the assessment of replicability: This core concept of the Common Position on the application of Remedies has to be further developed to allow a more concrete analysis of the implementation of the
3. “Ladder of investment” concept.
4. Non-price related discrimination by SMP operators.
5. Regulation of SMP operators related to emerging markets: While ERG has expressed that emerging markets should in principle not be regulated, this sub-item refers to a situation where a market, emerging or not, has been defined and an SMP operator has been identified for which remedies are considered that affect competition on an emerging market.

As with work on the first version of the Common Position on remedies, close cooperation will be sought with the Commission Services.

Deliverables: a) Working documents on 1-5
b) Updated version of the ERG Common Position on remedies

e) ERG Common Positions on wholesale international roaming

The work started in 2004 will be carried on into 2005. The documents to be delivered will provide a framework for joint efforts to reduce potentially excessive international roaming charges. The outcome will to a significant degree depend on data received from the joint questionnaire sent out in December 2004. The close cooperation with Commission Services in this matter will continue.

Deliverables: a) Common Position on the market definition of wholesale international roaming
b) Common Position on the need for regulation of wholesale international roaming
c) Report with proposal for joint further action in the field of international roaming

Second-category Items

As follows from the description above, some work items can be expected to be triggered by legal obligations of the European Commission. These second category items are:

f) ERG Opinion on the revision of the Recommendation on Relevant Product and Services Markets

According to recital (7) of the Commission Decision establishing the European Regulators Group, the Group will serve as a body for reflection, debate and advice to the Commission in the revision of the Recommendation on Relevant products and services markets. The Commission has announced that it will review the Recommendation in late 2005. ERG will strive to work closely with the Commission in this matter. In this context, the Group will examine the accuracy and appropriateness of markets in the Recommendation as well as possible additional markets. Criteria for the definition and regulation of emerging markets will be examined in the annex to the Opinion on the revision of the Recommendation on relevant markets.

Deliverable: ERG Opinion on the need for revision of the Recommendation on Relevant Product and Services Markets, including an annex comparable to the Recommendation's *Explanatory memorandum*.

g) ERG Opinion on the Commission consultation on a revision of the scope of Universal Service

The Commission has announced that it plans a revision of the scope of the Universal Service provisions in the Universal Service Directive in accordance with its Articles 15 and 38. ERG will give an Opinion on practical implementation and competition aspects of a Commission proposal.

Deliverable: ERG Opinion

h) ERG Opinion on the application of Art. 5.1 AD

According to Art. 5.1 NRAs shall be able to impose, to the extent that it is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end users, including in justified cases the obligation to interconnect their networks where this not already the case. The Group will provide the Commission with its opinion on Art. 5.1 AD and its practical scope on request by the Commission.

Deliverable: ERG Opinion

Third-category Work

The Group will continue to benchmark mobile termination rates and to publish a regularly update of the IRG snapshot of MTR. Furthermore the Group will establish principles of implementation and best practice (PIBs) in the area of price control, i.e. retail minus methods and PIBs in the field of cost accounting.

Although the Retail Minus methodology to control wholesale prices is used in some Member States there is no common understanding on its practical implementation. The purpose of the IRG PIBs on Retail Minus is to define a clear set of principles that can be used by NRAs when imposing this kind of price control. The IRG PIBs on current cost accounting will be developed in order to share experiences and to avoid difficulties encountered with the conversion from HCA to CCA.. The PIBs on CCA will take into account the new Recommendation on Cost Accounting and Accounting Separation.

An ERG report on common problems and possible solutions in relation to price transparency etc., i.e. transparency of prices in the presence of number portability, cf. also recital 41 of the USD (2002/22/EC).

In addition, there is a general need for NRAs to collect, share and publish data in order to be able to deliver the items in the Work Programme.

Call for Comments on the 2005 ERG-IRG Work Programme

As with the Work Programme 2004, the members of the European Regulators Group have decided to consult the Draft Work Programme 2005 with interested parties.

As it is clear that the resources of the national regulatory authorities are limited, and in view of the remaining items of the 2004 Work Programme that will need to be finalized in 2005, strict prioritisation is necessary. The Work Programme will be amended as necessary due to the course of events over the year. The dates for the deliverables relate to the draft versions to be released for public consultation.

Stakeholders participating in the consultation are asked to comment on the draft Work Programme .Responses should be sent to the ERG Secretariat via e-mail (erg-secretariat@cec.eu.int) no later than 17 January 2005. There will be a public hearing on the draft Work Programme 2005 on 14 January 2005. The exact date and location will be published on the ERG website well in advance.