

# ECTA's Input to the ERG-IRG Work Programme 2005

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## 1. Introduction

The European Competitive Telecommunications Association (ECTA) is the leading voice of the electronic communications industry in Europe, representing some 150 different organisations and companies.

ECTA welcomes the opportunity to comment on the joint Work Programme of the European Regulators Group (ERG) and the Independent Regulators Group (IRG) for 2005 and looks forward to working with both organisations in order to achieve the aim of a more harmonised and effective regulatory environment throughout the enlarged EU.

ECTA believes that the importance of effective regulation of the electronic communications sector is key for the achievement of Europe's wider goals embodied in the Lisbon Agenda. The recently published **Kok report** makes a clear recommendation to electronic communication policymakers:

"the regulatory framework for electronic communications adopted in 2002 should be fully implemented and strictly enforced, so that competition is more effective in driving down prices for consumers and businesses. This demands closer cooperation between the European Commission, national competition authorities and national regulatory authorities."

ECTA endorses this recommendation wholeheartedly and trusts that the comments below will help the ERG and IRG to focus on the critical new regulatory framework (NRF) implementation elements to deliver the benefits for consumers and users that are critical to Europe's competitiveness.

## 2. Specific Remarks

To achieve the above aims, ECTA believes that the most important challenge is to effectively implement the NRF. ECTA broadly welcomes the action areas identified in the draft Work Programme, but we wish to offer some comments on some of the specific points, and to provide some other issues that we believe also need attention.

**Broadband market:** ECTA concurs with the ERG plans to address the need for "naked DSL/unbundled bitstream" as this will be a critical product to ensure that consumers not only in urban areas (that can expect to be offered LLU-based services in due course) but also in rural areas have a choice of VoIP-based service providers to choose from.

**Voice over IP.** ECTA welcomes the attention given by the ERG to this important topic. ECTA has commented previously about defensive incumbent bundling practices and the uncertainty created by the possible regulation of call termination for operators from the moment they enter the market. ECTA welcomes the ERG's intention to explore "lenient regulation for small new entrants" and would recall the Commission's analysis of call termination in the explanatory memorandum to the Relevant Markets Recommendation, which states:

"Such a market definition - call termination on individual networks - does not automatically mean that every network operator has significant market power; this depends on the degree of any countervailing buyer power and other factors potentially limiting that market power. Small networks will normally face some degree of buyer power that will limit greatly the associated market power. Absent any regulatory rules on interconnection, a small network may have very little market power relative to a larger one in respect of call termination. The existence of a regulatory requirement to negotiate interconnection in order to ensure end-to-end connectivity (as required by the regulatory framework) redresses this imbalance of market power. However, such a regulatory requirement would not endorse any attempt by a small network to set excessive termination charges. Consequently, there is still likely to be an imbalance of market power between large and small networks because it would be easier for a large network than a small network to initiate the step of raising call termination charges and would be more difficult for a small network to resist a move by a large network to lower termination charges."

The consultation document also identifies IP-interconnect as needing further attention. Whilst ECTA believes that regulators should be cautious in applying regulation in such a fluid environment where new entrants have been the primary innovators, nonetheless we believe that interconnection needs consideration, particularly where there is potential for market foreclosure by operators who are able to leverage their existing market power.

**Remedies paper:** ECTA looks forward to working with the ERG on the re-analysis of the Remedies Paper. While the increased experience of regulators and market players does need to be taken into account, ECTA does not believe that radical reform of the document is needed. The discussion of replicability and emerging markets remains pertinent and provides the necessary legal certainty in order to invest in developing new and innovative services. ECTA also believes that attention needs to be paid to the design of a consistent margin squeeze test under the NRF and ECTA will be submitting more detailed comments on this topic later this year.

**Fast and effective appeals procedures.** In some countries, notably Germany, the length of appeal procedures has rendered the regulatory process ineffectual. Member States should give serious consideration to the use of tribunals with deadlines for reaching conclusions. Indeed, the Commission's 10<sup>th</sup> Implementation Report noted that the appeals process in Hungary, Poland and Sweden were all a cause for concern, specifically:

"In Hungary, it remains to be seen whether the practice of limiting the right of appeal to those who were parties to the particular procedure concerned would raise concerns in view of the wider rights of appeal for all affected parties provided for by the new regulatory framework."

"In Poland, a large proportion of the decisions of the NRA has been overturned following an appeal against them, as a result of administrative and substantive deficiencies in the decisions."

"In Sweden, the Commission services are examining concerns regarding the right of appeal, since it appears that unless the decision is directly addressed to a certain party, the latter cannot appeal against it even if it is affected by it."

**Ensure equivalence of access/non-discrimination.** The effectiveness of regulatory obligations continues to be held back through lack of equivalence of treatment (in non-price such as migration terms and service level agreements (SLAs) as well as price terms) between competing operators and incumbents' linked retail providers. This is a detailed, but important issue, where the development of best practice by the European Regulators Group followed by Commission guidance, may be helpful to ensure effective implementation of Article 10(2) of the Access and Interconnection Directive.

**Next Generation Networks (NGNs)** work needs to begin to identify the non-replicable control points on future networks so that all players have a clear understanding from the outset that regulators intend to ensure that the benefits of competition and competitive pressures will be maintained for users and consumers into the future. Otherwise there is a danger that wide choice of alternative network operators for both wholesale and retail services provision could be inhibited.

**Market analysis questionnaires: harmonisation of among ERG/IRG members.** ECTA would urge the ERG and IRG to consider the establishment of harmonised questionnaires for all forthcoming questionnaires in order to help bring about harmonised regulation across the EU: The recent cooperation on international roaming clearly set the appropriate precedent in this respect.

ECTA concurs with the findings of the Dutch Presidency of the EU that **radio spectrum regulation** is currently an important issue. Whilst recognising that national ministries, for the most part, remain in charge of frequencies, ECTA would like the ERG to consider a more direct approach to applying competitive principles to frequency policy and regulation.

**Directory Enquiry (DQ) Services.** ECTA notes that the IRG was tasked to provide an analysis of the supply and pricing conditions for the development of a competitive Directory Services Market on last year's agenda, but no further action was apparently taken. Given that liberalisation in many of the EU-25 Member States has yet to begin, ECTA would call on the IRG to include this work as part of the 2005 programme.

### 3. Conclusion

ECTA recognises the need to set priorities in such a complex sector as electronic communications and hopes that serious consideration will be given to the priorities highlighted above to ensure that the electronic

communications sector makes a strong significant contribution to the achievement of the Lisbon goals and European competitiveness.