

ERG Annual Report 2004

Introduction by the Chairman

This annual report leads you through the activities of ERG in 2004 during my chairmanship. To me, 2004 was characterised by a number of important challenges.

One of them was undoubtedly the very ambitious Work Programme. In previous years a lot of energy was devoted to organisational issues related to the creation of the Group. This year ERG was able to concentrate on the content of the work program and to give all priority to discuss the issues. I believe that a number of important results were reached, in areas such as promoting broadband access, addressing the high cost of mobile call termination and agreeing a common approach to remedies to be applied under the new regulatory framework.

Broadband deployment is at the core of the Lisbon agenda and in April the Group adopted a Common position on bit stream access, (a wholesale product allowing competitive provision of broadband internet access to end users). A coherent approach for the regulation of mobile termination tariffs was also developed and integrated into the text of the Common Position on Remedies.

The Common Position on “Remedies” formed an extremely important part of the work in ERG in 2004. A public hearing organised in January already showed that the interest of the sector was enormous. In the meantime the Remedies paper has become an important point of reference for our work to impose remedies on operators that continue to have significant market power. With this achievement ERG has proved that it can bundle expertise and experience to produce results of high quality.

Another important highlight was the review of the 1998 EC Recommendation on cost accounting and accounting separation and the approval of an Opinion on the revision of the Recommendation, including a technical annex with relevant and detailed guidance on the practical implementation. The Commission’s new Recommendation will be based on the Group’s Opinion.

Some other important items demanded a lot of preparatory work in 2004 but will not be finalised until 2005. In this category there are the joint action on Wholesale International Roaming and the VoIP issues. ERG also followed closely notifications that NRAs sent to the Commission under Art 7 of the Framework directive, and discussed how to deal with them. More particularly, ERG decided on an early warning system with regard to the so-called second phase procedures as a first step in their co-ordination efforts.

A very positive evolution was the increasing and deepened cooperation with the Commission Services. It has become visible that the EC and the NRAs in the ERG are partners, often with the same objectives. This good cooperation was extremely useful and productive with regard to the remedies paper, and towards the end of the year with regard to WIR and the VoIP Common Position.

In 2004 the Group also sought to ensure that its actions take place in a more transparent manner. The ERG organised an increasing number of public consultations, for instance on the

Remedies paper, the Draft Opinion on the recommendation on cost accounting, and the work program. The number of responses received has demonstrated the readiness of sector players to contribute to the work of the ERG.

With regard to the external relations, ERG has a fruitful cooperation with the FCC. Keeping good relations with fellow regulators from over the Atlantic is important and has revitalised the dialogue that will continue also in the future. Also relations with REGULATEL were strengthened and cooperation will continue into 2005.

This year was also marked by the inclusion of a large group of new EU member states and therefore of full ERG members. It has been proved already that the new membership is a great gain for the activities of ERG.

Finally the Commission Decision establishing the ERG decision was revised in September. The revised Decision contains a list of all NRAs who are members of the Group.

I conclude by thanking my predecessor, Prof. Jens Arnbak of OPTA for all his support and by wishing my successor, Mr. Jorgen Andersen of NITA success in 2005.

Eric van Heesvelde
Chairman of ERG in 2004

Execution of the 2004 Work Programme

This part of the ERG Annual Report 2004 provides an overview of the results of the work of ERG in the light of the ERG/IRG Work Programme 2004,¹ which contained the following major topics:

Implementation of the Regulatory Framework of 2002 (the RF)

- *Application of appropriate remedies in the RF and related topics*
- *Significant Market Power*
- *Revision of the Commission Recommendation on Relevant Markets*
- *Commission Decision on Transnational Markets*

Mobile Markets

- *International Roaming*
- *Mobile Termination Rates*

Fixed Networks

- *Bitstream Access*
- *VoIP*

Regulatory Accounting

- *Commission Recommendation on Accounting Separation and Regulatory Accounting*

ERG dealt with all work items of the ERG/IRG Work Programme 2004 assigned to ERG. With the exception of wholesale international roaming, an addition to the Bitstream Access document and VoIP, all major work items in the ERG Work Programme have been delivered. Detailed information will be given below. Each work item will be discussed separately and in detail. As can clearly be seen from ERG documents, the cooperation between ERG and the Commission Services was very productive. Many issues and work items were discussed extensively between the ERG and the Commission, be it at working level or at the plenary meetings at the level of the Heads of the NRAs.

Implementation of the Regulatory Framework of 2002

Remedies

The Common ERG Position on the Approach to Appropriate Remedies in the New Regulatory Framework (the “remedies” document)², incorporating the results of the public consultation, was finalised in the first quarter of 2004, and adopted at the ERG Plenary in London, April 1 and 2, 2004. The “remedies” document can be regarded as one of the major achievements to date of the ERG. It covers the basic principles of the application of the provisions of the regulatory framework in different relevant markets and in the presence of different market failures. It offers guidance to NRAs for a consistent and harmonized application of the regulatory framework allowing them to react on national circumstances properly, thereby providing clarity and certainty for market players and investors thereby fostering the development of the single market for electronic communication networks and services.

¹ ERG (04) 03.

² ERG (03) 30 rev1.

Significant market power (SMP)

A revised working document on the concept of SMP³ was presented at the ERG Meeting of December 2 and 3 2004. This working document is a revised version of an earlier document⁴ published on the ERG website. The document now includes more detailed economic explanations for some of the criteria and incorporates the experience of NRAs' application of the criteria. The document was subject to a public consultation in December 2004 and January 2005.

Commission Recommendation on relevant markets

According to recital (21) of the Commission's Recommendation on relevant products and services markets, the European Commission will review the need for any update of the Recommendation by June 30 2004. 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. ERG strongly advised the EC not to revise the Recommendation before the NRAs have gained significant experience with that task. Following a press release of Commissioners Liikanen and Monti in June 2004, announcing that the review of the Recommendation would not be launched before the end of 2005, work of ERG on this item was postponed.

Transnational Markets

ERG has postponed its work on Transnational Markets, since the Commission did not start the preparations for a Decision on this subject. Therefore no opinion was requested from ERG.

Mobile Markets

Regarding the mobile sector, areas of special priority for ERG in 2004 were termination tariffs and wholesale international roaming.

Wholesale international roaming

ERG produced a series of reports as indicated in the Work Programme 2004 on the concept of wholesale international roaming, which will be used as input for future work. Following the Commission's statement of objections regarding the alleged abuse of dominant positions in the United Kingdom, the key factors for the definition of international wholesale markets are clear. As a consequence all ERG members decided at the December plenary to launch a coordinated data gathering exercise on 10 December 2004, to allow a consistent market definition and market analysis of the international wholesale market in all Member States. A smaller subgroup of NRAs will engage in a closer cooperation on the issue of wholesale international roaming.

Mobile termination tariffs

The transition to a regulatory regime where it is supposed that the subscribers to a network constitute the termination market for this network requires significant changes in the

³ ERG (03) 09rev1.

⁴ ERG (03) 09.

regulatory practice in many member states. A coherent approach for the regulation of mobile termination tariffs was developed and integrated into the text of the Common Position on Remedies.

Fixed Networks

Bitstream access

Broadband deployment is at the core of the Lisbon agenda of the European Union to become the most dynamic knowledge based economic area of the world. Taking this into account, the work on the Common Position on Bitstream Access⁵ has been finalised, integrating the results of the public consultation of the “remedies” document. Furthermore, a document on bitstream access in cable-TV networks has been produced. ERG agreed to include parts of this document into the Common Position on Bitstream Access. The process of integration is still underway. This is expected to be finalised in the first quarter of 2005. A public consultation on the addition is envisaged.

Voice over IP

The speedy implementation and market success of VoIP required a timely and adequate reaction of ERG with regards to the regulatory questions around VoIP. Therefore, at the occasion of the plenary meeting in Nicosia, 23 – 24 September 2004, ERG decided to change its Work Programme in order to prioritize the already ongoing work on VoIP issues. ERG decided to develop a document on VoIP in cooperation with the Commission. While the adoption of a Common Statement is expected for February 2005 focusing on numbering, number portability and access to emergency services, other more fundamental issues have been identified that will be addressed during the course of 2005.

Regulatory Accounting

Already in 2003, ERG started joint work with the Commission on a review of its Recommendation from 1998⁶ on accounting separation and cost accounting, in order to bring it in line with the requirements of the new framework. ERG produced in close cooperation with the Commission an Opinion on the revision of the Commission Recommendation on Accounting separation and cost accounting. This Opinion and its Annex will serve as a basis for the Commission’s proposed Recommendation on regulatory accounting systems applied by notified operators in the electronic communication markets.⁷

Other issues

The various other topics mentioned in the WP 2004 have been dealt with by the Plenary of December 2 and 3, 2004. Groundwork has been done for creating a framework for measuring the state and intensity of regulation and evaluating its effectiveness. The work undertaken so far, however, shows that the amount of work needed to achieve usable results are not in proportion to NRAs’ views on the item’s priority. The Group therefore agreed not to carry out any further work on this issue. Work has also been undertaken regarding the application of different remedies to operators in the same market or termination markets. As a number of NRAs have not completed the relevant market reviews, there is insufficient evidence so far to

⁵ ERG (03) 33.

⁶ Commission Recommendation 98/322/EC, 08.04.1998, Part 2.

⁷ COCOM 04-70.

identify any trends. ERG noted that the European Commission has proposed asymmetric regulation in the mobile sector as one of its priorities for a review of the Common Position on Remedies, and decided that further work on the remit should be carried out in that context. The remit for a common approach to the application of Article 5 of the Access Directive, possibly produced in cooperation with Commission Services, has been examined. Some initial findings have been made regarding NRAs powers to fine.

Organizational development:

The development of ERG as an organisation was characterized by the accession of the ten new Member states by 1 May 2004, the revision of the Commission Decision establishing the European Regulators Group and by the deepened and broadened collaboration with the Commission services.

Accession

By 1 May 2004, the status of the 10 new Member states changed from observers to members of ERG. ERG has now 25 members, while the EFTA countries as well as Bulgaria and Romania are observers to ERG. The highly welcome integration of the ten new member states and the two new observers went smoothly for the organisation. The new members were already part of the network for a couple of years and contributed to the work of ERG already in the past on an equal footing.

Revision of the Commission Decision establishing the European Regulators Group

The European Commission amended its Decision⁸ establishing the European Regulators Group for Electronic Communications Networks and Services Commission on 14 September 2004.⁹ The most important change occurred by the clarification of the membership question. The amended decision makes it clear that there is only one member per country and this member is the organisation listed in the Annex. In practice this makes clear that only the independent regulators, dealing with the day to day surveillance of the markets for electronic communication networks and services are represented in that advisory group.

Cooperation with the Commission services

As mentioned earlier in this report the cooperation between ERG and the Commission proved to be advantageous for both parties. Given the role of ERG to advise and assist the Commission in all areas of the completion of the single European market for electronic communication networks and services, the NRAs have a strong interest in close cooperation with the Commission to successfully perform in this task. The Commission in return has a strong interest in close cooperation with the NRAs to ensure a harmonized implementation of the regulatory framework. This mutual interest led to a fruitful cooperation in the process of the preparation of several key documents of the ERG and the Commission.

⁸ Decision 2002/627/EC.

⁹ Decision 2004/641/EC.

Resources

As a follow-up to the analysis of the Annual report 2003, the ERG Secretariat collected data on the resources of NRA's devoted to work in ERG. The collected data consists of work hours and funds spent for ERG purposes, including participation and preparation of meetings, travel time and costs, preparatory subject matter work etc.

There were 25 NRAs reporting to the Secretariat, three of them not on financial resources.

The aggregate data show a dramatic increase of the involvement of NRAs into the work of ERG. In total approximately 66 000 work hours were spent on ERG work, which is approximately 40 fully employed persons, excluding the ERG Secretariat.

Not only the total sum of work hours reported has increased. The individual commitment grew considerably to 2760 work hours per NRA, which is slightly less than a doubling of the work devoted since last year.

The same picture emerges with regards to financial expenditure. The total expenditure reported amounts to €710.000, which is on average €33.000 per NRA throughout 2004.

Annex: Plenary meetings and activities of the Chair and Secretary**ERG Plenary meetings**

<i>Date</i>	<i>Place</i>
January 29 - 30	Brussels
April 1 - 2	London
June 16 - 17	Luxemburg
September 23 - 24	Nicosia
December 2 - 3	Brussels

ERG/IRG-activities by the Chairman and the Secretary

The activities of the chairperson and the ERG Secretary are listed in chronological order. The date, type of activity and topic of the activities are displayed.

Activities of the Chairman:**JANUARY****07/01/2004**

Visit OPTA: Transfer Chairmanship IRG/ERG
Venue: The Hague

14/01/2004

Public Hearing on the ERG-IRG Work Programme
Venue: European Commission, Brussels

26/01/2004

Public Hearing on the remedies document
Venue: European Commission, Brussels

29-30/01/2004

Chairing IRG/ERG Plenary Meeting
Venue: Brussels

MARCH**09/03/04**

Meeting Mr. Kurth (+ Mr. Colasanti, Mr. Otruba)
Venue: Bonn

16/03/04

Meeting Mad. Wagener (+ Prof. Otruba)

Venue: ILR Luxemburg

23-24/03/04

50th annual meeting of European Cable Communications Association (ECCA)

Venue: Barcelona

28-30/03/2004

EURO CPR Conference - ENCIP

Venue: Barcelona

APRIL

01-02/04/2004

Chairing IRG/ERG Plenary Meeting

Venue: London

22/04/2004

Meeting Siemens

Venue: BIPT Brussels

MAY

06/05/2004

Tijd Telecom Top

Venue: Genval

11/05/2004

Guest Lecture LL.M. Communications Law K.U. Leuven

Venue: Leuven

11/05/2004

European Telecommunications Platform « Innovations »

Venue: Brussels

12/05/2004

Meeting OFCOM, PTS Sweden and Mr. Otruba

Venue: Brussels

26-27/05/2004

7th Annual International Conference on Economics of Infrastructures

Venue: Delft

JUNE

16-17/06/2004

Chairing IRG/ERG Plenary Meeting

Venue: Luxemburg

JULY

12/07/2004

Meeting J.A. Andersen, Mr. Colasanti, Mr. Otruba
Venue: Brussels

SEPTEMBER

06-07/09/2004

ITS Conference
Venue: Berlin

08/09/2004

FITCE Congress
Venue: Gent

23-24/09/2004

Chairing IRG/ERG Plenary Meeting
Venue: Cyprus

OCTOBER

28-29/09/2004

EIPA Seminar
Venue: Maastricht

NOVEMBER

18/11/2004

Meeting J.A. Andersen
Venue: Brussels

DECEMBER

02-03/12/2004

Chairing IRG/ERG Plenary Meeting
Venue: Brussels

14/12/2004

Meeting Regulatel, A. Groebel, G. Pouillon
Signing Declaration

Presentations of the Secretary:

24/2/2004

ETP - ERG WORK on Remedies Presentation and the Plenary
Venue: Brussels

15/3/2004

ECTA - Presentation of the ERG work programme 2004
Venue: Brussels

22/4/2004

Ljubljana Round Table – Presentation on regulation of mobile termination under the new Regulatory Framework

Venue: Ljubljana

2/6/2004

ITU Conference - Presentation of ERG and the ERG work programme 2004

Venue: Oslo

11/10/2004

VAT Forum – Harmonisation of the Telecom Regulation in the EU

Venue: Vienna

4/12/2004

Presentation of the draft 2005 Work Programme for the ITU Second Regional Associations' Conference

Venue: Geneva.

16/12/2004

Presentation on European VoIP issues, ISPA Belgium, December 16 2004
Brussels