

BEREC Work Programme 2010

Comment from the International Telecommunications Users Group (INTUG)

Summary

INTUG generally welcomes the BEREC work programme for 2010, but believes as stated in its response to the ERG Draft Programme, that significant prioritisation will be needed. INTUG is keen to maintain involvement in determining these priorities, and in discussing with BEREC the key individual items. This submission focuses on the issues of most concern to business customers. It is consistent with the previous response, some of which is repeated for convenience. INTUG welcomes the acknowledgement by ERG, and now BEREC, that business customers' needs differ from those of domestic consumers, and therefore require separate market analysis, as the recent ERG survey has indicated.

Business Services Market (Ref 2.1) and Cross-Border Enforcement (Ref 2.3)

INTUG especially welcomes BEREC's plan to continue its investigation of competition in the business services market, and in particular wholesale regulation and international competition to ensure availability of access facilities on a fair and non-discriminatory basis.

Business customers need consistent seamless products and services, for fixed and for wireless markets, that operate efficiently and effectively across Member State borders. After a decade of liberalisation, competition has begun to stagnate, and in many cases reverse, with incumbents maintaining and increasing already dominant market shares. There is limited choice of suppliers for wholesale services on which competitive suppliers rely. In addition to BEREC's work, this needs a sectoral enquiry by DG Competition.

NGA and Charging Mechanisms (Ref 1.2), Functional Separation (Ref 3.2)

INTUG believes the imminent NGA recommendation is the most important regulation of 2010, and must be worded to ensure fair and non-discriminatory access to wholesale broadband services by competitive operators. The last draft recommendation contained completely unacceptable regulatory loopholes for incumbent infrastructure owners.

Business users are totally dependent on being able to build seamless international networks throughout the EU, and there is currently little or no competition in this market, leaving users very little or no choice, and in some cases no ability to obtain the services they require. The recently published clarification of State Aid Rules is most welcome. However, the need to stimulate private investment is of equal importance. Care must be taken to avoid creating further loopholes, and generating a bias in favour of incumbents. INTUG would like to see the encouragement of public and private investment in NGA placed at, or near the top of, BEREC's agenda, with frequent monitoring and reporting of Members States' policies and NRA achievements.

INTUG welcomes the addition of Functional Separation as an effective remedy option, which NRAs should not be reluctant to use, where there is evidence that competition does not exist and will not develop. Consideration of this remedy should not be confined to fixed networks - it could be effective for wireless operators in support of network sharing.

Future Charging Mechanisms (Ref 1.3) and Switching Providers (Ref 3.4)

The workstream addressing future charging mechanisms for NGN must take into account the overall economic impact of these on the cost of communications services to industry supply chains, which unavoidably have to use mixed supplier networks for end to end communications between third parties in commercial on line transactions. The imposition of exorbitant charges for inter-network transmission, whether at national or international level, and between both fixed and mobile networks, represents an unjustified tax on trade.

This argument is also relevant to the more general goal of easier switching of providers. Whilst involuntary user switching invoked by operators is clearly unacceptable, it should be possible for customers to switch provider for part or all of their network services without undue financial or service quality penalties during and after migration, arising from issues of interoperability and inter-network charges. This is relevant re termination rates below.

International Roaming (Ref 1.1) and Termination Rates (Ref 1.2/1.3)

INTUG welcomes BEREC's plan to monitor the much-needed extension to the scope and duration of Roaming Regulation. Alternatives to price regulation may eventually sustain a competitive internal market, but none have been found yet which will create competition. BEREC must ensure that its monitoring covers unintended consequences, which are already arising from reactive price increases in other areas, for example for roaming outside the EU, and for non-roaming international calls and SMS, where prices in some cases are now exceeding roaming prices, and even exceeding some national prices.

INTUG urges BEREC to address market failure in Fixed and Mobile Termination Rates, which continues to add unjustified cost for users. Co-ordination of glide paths in Member States, to reduce termination rates radically whilst achieving greater symmetry, should be accompanied by early planning for migration to alternative charging mechanisms for NGNs, for example Bill and Keep, to facilitate mixed service provider interoperability.

Network Neutrality (Ref 2.7)

INTUG welcomes BEREC's plans to issue a formal opinion on protecting all customers' abilities to access networks, applications and information, including for business use. This should include how best to enable fair priority diversification for business users.

This must include monitoring implementation of the agreed compromise text concerning remedial action in response to alleged illicit file sharing, to ensure that it is not interpreted by any Member State in a way which would place essential public or private business services at risk of operational disconnection. Protecting the legitimate concerns of owners of content IPR must not result in denial of the fundamental right of access to services.

Conformity with Common Positions and Geographic Differentiation (Ref 1.3)

INTUG stresses that one of BEREC's prime objectives is harmonisation of regulation and spectrum throughout the EU. Close oversight of consistent Framework transposition is a high priority for business users. Vigilance is particularly vital in monitoring conformity with the Common Positions on wholesale broadband, unbundled access and leased lines.

INTUG remains concerned that sub-national segmentation may result in an inconsistent environment of services, which are both regulated and unregulated within a Member State. This provides a major obstacle to establishing a competitive market in multi-site services.

Wireless Co-ordination and Harmonisation (Ref 2.4)

INTUG strongly supports the establishment of the newly created BEREC/RSPG working group. This should be used to increase opportunities for infrastructure sharing between mobile operators in order to improve coverage and service resilience for all mobile users, whilst reducing operator costs through better infrastructure utilisation. This is particularly relevant for investments in new wireless technologies. BEREC should seek to maximise overall EU economic and social welfare gains from the ex-analogue TV Digital Dividend.

INTUG believes that a valuable enabler of a single market would be pan-EU licensing and accreditation/approval to facilitate the establishment of multi-State services and operators. This would be eased by greater spectrum consistency in the wireless market, where there is very limited competition in international mobile services, and a lack of pan-EU MVNOs.

INTUG notes the disruptive introduction of the international version of Amazon's Kindle 2, with its attendant reliance on bespoke roaming agreements, and urges BEREC to monitor such developments closely, with the aim of encouraging such innovations as potential solutions to the absence of pan-EU MVNOs and national roaming agreements.

Universal Service Obligation (ref 2.5)

INTUG supports BEREC's plan to contribute to Commission proposals for changes to the scope and funding of the Universal Service Obligation, but has campaigned for many years for a more appropriate description which would be a Universal Access Obligation. The ITU Telecommunications Development Sector has already acknowledged this in its Question 7-2/1 on "Regulatory Policies on Universal Access to Broadband Services".

The description "Universal Service" has become associated with User Rights in the new Framework, whereas greater focus on the wealth-creating benefits of "Universal Access" correlates better with the aims of the NGA recommendation and broadband investment. This is what is needed by all customers, whether in the consumer mass market, or in the business market. A more widely defined Universal Access Obligation, extended to include genuinely high speed Broadband Access, which is operationally suitable for multi-media Internet usage, and essential for the growth of the EU IPTV industry, is long overdue.

Convergence and Bundling (ref 2.2)

INTUG agrees that convergence represents regulatory challenges. The same is true of service bundling when trying to define and analyse a market for dominance or competition. The OECD is addressing this challenge at global level, as it defines common bundles for benchmarking comparisons. BEREC must ensure that market analyses which involve convergence avoid invalid assumptions about equivalence and substitutability, which can lead to an incorrect assessment of the existence of competition. This has happened in Austria already, where wireless access was deemed sufficient for declaring a wholesale broadband market competitive, when wireless is not a substitute for business users.

Confidentiality

Nothing in this document is confidential. The contents may be considered as in the public domain, and available for distribution. They are based on regular consultation by INTUG with its member associations, and their members, of draft documents prior to submission.

Comments should be addressed to: **Nick White**, Executive Vice President
International Telecommunications Users Group (INTUG)
Nick.white@intug.org Tel: +44 20 8647 4858 Mobile: +44 77 1009 7638

About INTUG

The International Telecommunications Users Group (INTUG) represents the interests of business users of telecommunications globally. These include some of the world's largest financial institutions, car manufacturers, pharmaceutical companies, fast moving consumer goods enterprises, and retail and distribution companies. They also include small and medium enterprises, who are increasingly dependent on telecommunications services.

The INTUG community includes user associations in many large Member States, including Belgium, Denmark, France, Germany, Italy, Spain, the Netherlands, Sweden and the UK, and the multinational user group EVUA. Each represents public and private business customers of telecoms operators, both directly and indirectly through service providers. INTUG is an association established in the Netherlands, governed by an elected Board.

INTUG was established in 1974, with close links to user groups throughout the world, in countries as diverse as Australia, New Zealand, Hong Kong, India, Korea, Mexico, Sweden, Switzerland, and South Africa. INTUG also has a signed Memorandum of Understanding with the Commonwealth Telecommunications Organisation (CTO).

INTUG has permanent observer status at the ITU, participant status in APECTel and CITELE, and is an expert group within the OECD/CISP.

INTUG engages actively with the European Commission and Members of the European Parliament, and has made submissions to many EU regulatory consultations and events.