

## Conclusions of the Seventh Plenary of the European Regulators Group

**Date:** January 29 – January 30  
**Location:** Brussels.

### New Chairman

After the opening address by the new Chairman Eric van Heesvelde, the agenda (ERG (04) 01 rev1) was adopted.

### Information from the Commission

Cocom: Mr Langeheine reported that at the last meeting of Cocom in December there had been the usual tour de table on transposition (including accession countries) as well as an initial discussion on membership of the ERG, where Member States had expressed different positions. Other items on the agenda included leased lines and standardization. The next meeting of Cocom would be on 11 February. On the agenda is a discussion of the revised ERG decision, and proposals to create a subgroup on broadcasting and an expert group on standards.

Recommendation on PLC: Mr Langeheine recalled that a joint regulatory workshop on powerline communications had been held on 16 October 2003, where it was broadly agreed to permit that a gradual and controlled deployment of PLC, while closely monitoring their impact on radio services. A further regulatory workshop is planned for 11 March 2004 (tentative date; to be confirmed) to discuss a preliminary draft text of a Recommendation on PLC as well as standardisation issues.

Recommendation on leased lines: The Commission is working on a 2-part Recommendation on the provision of leased lines in the EU. Part 1 deals with major supply conditions for wholesale leased lines. Following a positive opinion in Cocom, the Recommendation is now also in the process of adoption by the Commission. Publication is expected February. Part 2 deals with pricing of wholesale leased line part circuits. At a meeting with Member State experts on 8 January, agreement was reached on the basic price data that needs to be gathered. The Commission will be submitting a request for information to Member States, and it is hoped to present a draft Recommendation to Cocom in April.

Update on Article 7-procedures: Mr Mensching reported on the experience gained during the nearly half a year of experience with the Article 7 notification procedures and the so far successful interaction between stakeholders. Particular reference was made to the recent cases. The Article 7 Task Forces have been confronted with situations in which NRAs indicated to them that they could not fulfil their obligations under the new EC framework since national legislation prohibited them from doing so. The clearest example so far has been the Finnish notification regarding mobile termination. The Commission in its letter of 17 December 2003 (case FI/2003/0031), encouraged NRAs to respect the primacy of EC law over national law.

The regulators expressed their concerns with setting aside national law without any infringement procedures being initiated or the Commission having previously indicated doubts about the correctness of the implementation of the Framework. The Commission expressed its understanding of NRAs' difficulties in this regard. It explained that there is an ongoing dialogue between the Commission and the Member States in the transposition process. It tries to bring attention to any concerns as soon as possible, but it cannot check draft legislation in a systematic way, and only to the extent that it is submitted to the Commission. The Commission informed that regarding the Finnish law, the Finnish ministry had already been contacted and that infringement procedures were being prepared. It promised to warn involved NRAs in the future with regard to transposition problems before these appear in a public document sent to the NRA.

Update on the revised ERG decision: The Commission informed that the revised decision will not say anything of the remit of the ERG. The draft decision does not attempt to define principles for who should be members, but refers to an annexed list of national regulatory authorities. The Commission intends to amend the ERG decision after discussion in the next Cocom.

### **ERG-IRG Work Programme and ERG annual report**

The Secretary reported on the results and conclusions of the consultation (ERG (04) 10) on the Work Programme (ERG (04) 03). The Secretariat received 10 contributions by industry groups and market parties. The hearing took place on January 14<sup>th</sup> in Brussels with 32 participants. The main conclusions from the consultation process were to add three additional items to the Work Programme. The priorities and the timetables in effect stayed unchanged. The participants asked for a higher degree of transparency concerning the relations between the ERG and IRG. The Work Programme was adopted with the following principal changes:

- Horizontal aspects of geographical market definition will be included in a report on market definition issues.
- The report on particular remedies topics will include preparations for setting up a framework for measuring the state and intensity of regulation and evaluating the effectiveness of regulation.
- There will be a report with a comparison of national appeal procedures.

The ERG and IRG secretariats will also make some other minor changes agreed at the meeting, whereafter the final document will be published on the ERG website. Further, the 2003 Annual Report was agreed upon. It, too, will be published on the ERG website.

### **Report to the ERG on the ERG Consultation on the FL-LRIC PIBs**

Annegret Groebel presented the written report (ERG (04) 02) on the consultation on the FL-LRIC PIBs. The ERG decided to transfer the work of the FL-LRIC PIBs to IRG with a final deadline as indicated in the Work Programme 2004.

### **Progress report on international roaming**

Britt-Marie Arne-Hellström of PTS gave an oral report on the draft work plan of the ERG work on international roaming. The first phase of the work will be presented at the ERG plenary in April 2004. Close co-operation with the commission service will be sought. The ERG will seek to agree on a common position on the regulation of wholesale international roaming markets by December 2004.

DG Fabio Colasanti, DG INFSO, stressed the importance of the work and the urgency of the matter. Juergen Mensching, Director in DG COMP, stressed that the Competition Directorate-General is giving priority to the ongoing investigation.

### **Information meeting with industry associations' representatives**

The Secretary gave a report on the information meeting with industry associations' representatives that preceded the hearing on remedies (ERG (04) 09). It was concluded that meetings of that type are of mutual advantage for the participating industry representatives and the ERG since they offer ERG an opportunity to present some questions in detail and to receive some early indications as to the reactions of the industry. The industry has the opportunity to pose specific questions and to indicate the general tone of their consultation responses.

### **Remedies**

After a presentation of the main issues that surfaced in the course of the consultation (ERG (04) 05), the ERG Secretary reported on the hearing which took place on the 26<sup>th</sup> of January (ERG (04) 06). ERG entered into a detailed discussion of the points raised by the industry. The following was concluded. In addition to a revised version of the Remedies document (ERG (03) 30) (the "Document") there should be a separate document which reflects the contributions to the consultation procedures. It should offer the reasons why certain points have been taken on board and why others have not. Strong participation of all national regulatory authorities in the finalisation of the document is expected. The goal remains to adopt a final version of the Document in April.

The final status of the Document should be a Common Position endorsed by the Commission services. There is consensus on the idea of the Joint Approach to remedies as a "living document". As reflected in the now adopted 2004 Work Programme, the first preparations for the further development of the Document will be undertaken in 2004.

The short time between the consultation and the ERG plenary has not allowed to indicate precisely the resulting changes. However, the following 12 topics have been identified as needing further attention.

- The basic structure of the document.

- The basic assumption of the three-step process according to the new regulatory framework.
- The relation to the 3 main objectives of Art. 8 FD.
- The principle of proportionality.
- The relation between Chapter 3 (Principles) and Chapter 4 (Mapping).
- Regulatory option appraisal.
- Ex-ante vs. ex-post.
- Emerging markets.
- The concept of the “ladder of infrastructure”.
- Fixed termination access and non-reciprocal termination charges for new entrants.
- “Soft regulation” for fixed and mobile newcomers/small operators.
- Total amount of regulation caused by the new framework.

The general points should be covered in a separate introductory chapter to give better orientation (explaining how the structure follows the logic of NRAs’ decision making process) and to provide for a clear statement of the underlying de-regulatory objectives of the EU package.

### **Revision of transparency rules**

The Secretariat proposed to introduce a higher degree of transparency by the use of specific document types, i.e. Common Positions, Opinions and Reports (ERG (04) 07) as well as the introduction of approval procedures for the plenary minutes (ERG (04) 08). ERG decided to integrate these proposals into a revised version of the Transparency Rules as in ERG (03) 05 rev1.

### **The ERG website**

The Secretary informed that the ERG website now offers an opportunity to subscribe to e-mail news which has been taken up by the public.

### **A.O.B.**

ERG agreed to invite the NRAs of Bulgaria and Romania as observers.

The revised meeting schedule was communicated, in which the date for the Luxemburg meeting has been changed to 16-17 June.