

## 19<sup>th</sup> Plenary Meeting of the European Regulators Group

Date and time: Bratislava  
7-8 Dec 2006

### Conclusions

#### Organisation of the Agenda

The agenda was structured in essentially three main parts as follows:

1. Items 3-7: regular business to be discussed and decisions expected.
2. Items 9-11: general items where ERG is simply asked to note updates or approve documents without detailed discussion.
3. Item 12- 15: discussion.

#### Agenda

- 1) Opening of the meeting and adoption of the agenda ERG (06) 55 Rev 3

The Plenary adopted the agenda

- 2) Information from the Chairman and the Secretary ERG (06) 56  
on meetings and other activities

The plenary noted significant meetings and activities conducted by Kip Meek as ERG Chair and Davide Gallino as ERG Secretariat. The ERG Chair for 2007 will be Roberto Viola, Secretary General, AGCOM (the Italian NRA).

- 3) Development of ERG (ERG Chair)

*a. development of ERG*

The Chair updated the Commission on the development of the ERG. In particular, to improve its operational efficiency and effectiveness, the ERG intends to establish a permanent, enhanced secretariat to support its work (and that of the Independent Regulators Group which also includes the EFTA countries and the accession countries). This is intended to support the ERG's commitment to regulatory disciplines adopted in Madeira in October 2006, and enable it to continue. The new arrangements should not be seen as adversarial to the Commission, and it will be necessary that the Commission endorse the project of strengthening the resources available to the ERG.

The 2007 Chair has been mandated to develop the organisation of this new structure, in agreement with the Commission.

*b. letter from Viviane Reding to the ERG chairs (2006 & 2007)*

The ERG Chair reported on a long discussion on the letter received by Commissioner VR, which contains a number of questions related to the Review of the Regulatory Framework, and how the ERG could be enhanced to better ensure consistency of regulation in the electronic communications sector. The final response to the Commission is due on 16 February 2007.

*c. Collaboration between NRAs (MCA)*

**Background**

Joseph Tabone (MCA) updated the Plenary on the recent developments on the 'Collaboration between NRAs' project. MCA has now put together a database that will help in identifying existing fields of expertise within NRAs

*The report was noted*

**4) 2006 Framework Review PT (ComReg)**

*a. Update from Commission*

**Background**

The Commission gave an update on the Framework Review, noting that more than 250 responses to the Review consultation had been received. The input showed overall support for market analysis streamlining, while support for an overhaul of the provisions under Article 7 FD and the Euro-regulator was less clear.

On Spectrum policy, the Commission noted that the discussion is now focussing on two items in particular: the need for a more flexible approach in the use of Spectrum and better coordination. In general, the aim is to refocus the discussion on spectrum from technical to economic issues.

*b. Next steps*

**Background**

Gary Healey (ComReg) gave a presentation on the key issues arising in the Review PT and the next steps.

The Plenary noted the report by the Commission and the PT

**5) Work Programme 2006 (Annegret Groebel, IRG Secretariat)**

**ERG (06) 27 Rev 3**

*a. WG Deadlines and Matrix (schedule)*

*b. Review of WP 2006*

**Background**

AG reported on the progress of the various projects in the 2006 Work Programme. The Plenary noted the report and agreed on the carry-over dates of various work items.

**6) Harmonisation and Remedies (REM PT)**

ERG (06) 57

*a. VoIP harmonisation (PTS)***Background**

Marianne Treschow and Chris Karsberg (PTS) presented the work carried out by PTS on VoIP Harmonisation, and some proposals to carry this work forward.

The presentation outlined three critical issues:

- numbering and number portability (starting with discrepancies in the assignment of geographic and non-geographic numbers to PATS and non PATS providers);
- access to emergency services including cross border issues; and
- consumer information.

The ensuing discussion pointed out the difficulties of a harmonised approach on the ground of identifiable best practices. The group decided to streamline work for 2007 by focussing on critical issues and inconsistent practices such as numbering management.

**7) SMP WG (OPTA)***a. Competition in oligopolistic markets*

ERG (06) 58

**Background**

Françoise Laforge (ARCEP) made a detailed presentation on the issue of competition in oligopolistic markets, pointing out the inadequacies of some current regulatory instruments when dealing with issues such as collusion, tight oligopoly and joint dominance. In general it was noted how difficult it is to tackle anti-competitive behaviour in such markets.

The Commission noted that oligopolistic markets (OM) are in some cases among the most competitive compared with other forms of markets. Clear criteria are necessary for the establishment of coordinated behaviour in oligopolistic markets. When trying to prove collective dominance in OM by excluding other explanations for the behaviour observed in the OM, handlers have often to do more [to prove their case] than otherwise.

The Commission noted that intervention might end in overregulation, and noted how difficult it is to demonstrate an anticompetitive outcome in some circumstances. There is a need to act if competition is not working, but also the need to be sure that there is market failure. Ex-ante regulation is for removing structural barriers to competition, so that the remaining problems should be addressed by competition law.

The Commission considered it worthwhile to inspect areas where problems are found. To improve market conditions, it would be appropriate to work on lock-in contracts, conditions of use, transparency.

KM (ERG Chair) noted that it was agreed that the SMP WG continue with work, broadening the context to discuss with NCAs and examining market analyses.

**8) MMWG (PTS)**

ERG (06) 59

*a. MTR Benchmark*

- i. MTR update snapshot (for publication)
- ii. In-depth benchmark (internal document)

**Background**

Marianne Treschow (PTS) presented the MTR updated ‘snapshot’ for publication. Heads were requested to discuss the way forward.

**Action Required by Plenary**

The snapshot for approved for publication. Heads commit to provide the data for 2006.

**9) EU WG (ANACOM/BNetzA)**

*a. Oral Interim Report on quality, pricing and bundling of broadband*

**Background**

AG (BnetzA) gave an update on the work done so far by the EU WG on the Report on quality, pricing and bundling of broadband.

The Plenary noted the report; a first draft of the document will be available mid January.

**10) RA WG (AGCOM)**

*a. Update on end of consultation for PIBs on WACC.*

**Background**

RV (AGCOM) presented the responses from the consultation on PIBs on WACC. The main request from respondents is to customise calculation of WACC using national data.

The Plenary noted the update and input to consultation.

**11) FN WG (BNetzA/ARCEP)**

*a. Oral update on end of consultation on the “BB competition market report”.*

**Background**

BNetzA presented the results of the consultation, for which 7 inputs were received so far.

*b. Presentation of ANACOM on access to ducts*

Conditions to access ducts in PTG, taking into account need to reduce costs and infrastructure duplications, especially in less developed areas, were illustrated.

**12) IP-IC/NGN PT (BNetzA)**

*a. ERG Interim report on NGN Regulatory principles and NGN access* **ERG (06) 43 Rev 1**

**Background**

BNetzA presented a short report on recent work in the PT on NGN access.

Heads pointed out the significance of the work and noted that it would be important to provide some regulatory principles for dealing with the issues at stake.

The discussions pointed out some critical questions which need an answer – how to balance the dual aims of promoting competition without discouraging investment in NGNs, with real infrastructure competition, without jeopardising existing competition. A main regulatory concern is evaluating the correct rate of return as the situation is very different now than the one where incumbents were investing in PSTN legacy networks, where demands were predictable.

The Commission noted that existing policies on the one hand favour infrastructure development and local loop unbundling, whilst on the other hand service competition is encouraged. It also noted that transport and service layers are discussed in the paper, and queried whether competition problems are now at transport layer in addition to the access level and if discussion should not be dealing with access to content issues.

In the discussion it was noted that in mature markets the required step to progress onto the investment ladder is pretty high, including investment in fiber optics etc. A wider analysis of regulatory implications of this economic constraint (opportunity costs) was needed. Also, when considering access in the context of ULL, investment cycles have to be defended as otherwise incentives to invest would de-facto be reduced. The need to defend quality of service was also underlined to steer development in a better way rather than just allowing for more competition.

The Commission concluded noting that there is no possibility to impose technology choices exists under current RF. It is equally not foreseen that access obligations will be cancelled, but NRAs should work with incumbents and new entrants to anticipate further access problems

**13) Work Programme 2007 (AGCOM)****ERG (06) 49 Rev 1**

*a. WP 2007*

**Summary of discussion**

RV (AGCOM) presented the WP 2007 which was approved. The three key issues in the WP 2007 are the Review, harmonisation and convergence.

**14) Lessons to be learned from Art 7 cases (OPTA)****Background**

Chris Fonteijn (OPTA) presented the results that came out of the court's ruling on OPTA decision for Market 16. The Enterprise board (Cbb) is the designated tribunal, which does not allow appeal.

OPTA will need to prepare a new decision in close cooperation with NCA.

The Commission noted that similar situations have risen in other countries. With regard to the three criteria test, better clarification will be provided for in the Review. Secondly, notwithstanding voluntary undertakings, consumer welfare has also to be taken into account.

**15) Information from the European Commission**

**ERG (06) 60**

The Commission reported on Article 7 FD cases, as well as on a recent COCOM meeting on 25 October 2006 in which broadband data were presented. DSL is increasing in importance, hence [to keep] regulation is important in order to also have service based competition. One data set examined interaction between LLU, bit stream and resale, showing that the ladder of investment works.

Pointed out two new Phase II cases - in Denmark (transit market) and in Poland (Retail calls dialled using a special number was excluded from market analysis notwithstanding 30% market share).

Noted that one operator lodged a lawsuit with regard to a letter of comment from the Commission, disputing legal value of (Commission) letters.

Reported that in Finland a competitor had a suit filed because another mobile operator was not found to have SMP, and the national court has asked the ECJ whether this application was admissible.

Draft new legal provisions in Germany which allow exemption on new markets will be subject to infringement procedures.

**16) Plenary meeting in 2007 - planning**

**ERG (06) 49 b**

No discussion.

**17) A.O.B.**

*a. Confidentiality of ERG documents (ERG Secretariat)*

**ERG (06) 61**

**Background**

The ERG Secretariat has received an application for access to documents ERG (06) 45 Report on mobile access and competition effects (inclusive of ERG (06) 45b Spectrum allocation and bottlenecks), and ERG (06) 47 Report on Market 18 analysis which were presented at the Madeira ERG Plenary for internal use only.

The initial application was rejected under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The decision was since appealed and Heads were asked to consider whether access should be granted or denied to these documents. Responsible working groups will be asked to provide, within a week, a clear response on the proposal to publish the document in full or partially amended.

*b. Meeting request from Asean Telecom Regulatory Council (ERG Secretariat) **ERG (06) 62***

The Plenary agreed to meet with the Asean Telecom Regulatory Council.

*c. others*

A Mini ERG plenary will take place in Rome on the 15 January 2007 to discuss the response to the Letter of Commissioner Reding.

On 14 December 2006, a public ERG Plenary Debriefing will take place in Bruxelles.

A press release on the ERG 19<sup>th</sup> Plenary will be agreed by written procedure and published.