

Conclusions of the 6th Plenary Meeting of the European Regulators Group (ERG) in Budapest, November 21 2003.

Report by the European Commission:

European Council on November 20: Several topics were covered during the discussion of on the State of the Sector, , including the 9th Implementation Report of the European Commission, the UK-France Content Initiative, and roll out of 3G networks.

The Council took note of the Commission's Report on the Implementation of the EU Electronic Communications Regulatory Package

[SEC(2003) 1342] (9th Implementation Report). In introducing the Report, Commissioner Liikanen stressed the need for independence of NRAs (National Regulatory Authorities) and reconfirmed that these should have full powers as foreseen in the Directives. The market analyses should be started as soon as possible.

The Council generally welcomed the FR/UK Content initiative. Regarding 3G, some delegations spoke in favour of adapting the license requirements, but others came out against this, so that there was no common opinion.

Review of the Recommendation on relevant Markets: It is expected by the Commission Services that Commissioners Liikanen and Monti will stick to the June 2004 date for a revision, and the markets for mobile access and call origination and for transit are likely to be dropped. Several members of the ERG strongly advised against a revision of the Recommendation at this early stage of the implementation.

Art. 7 Notification update: The Commission reported very positive and encouraging results to date. There were 28 pre-notification meetings with 11 Member States, 6 letters by the Commission with comments, and one on incomplete notification, (which has now been completed). Furthermore a solution for very small markets ("de minimis approach") was proposed in one of the comments letters.

Remedies:

As introduction for the discussion, Mr. Scott of the EC presented a discussion note from the Remedies Steering Group (ERG (03) 31) which concentrated on three underlying issues of the draft paper on a joint ERG/EC approach on remedies (ERG (03) 30): transparency, replicability and emerging markets. The ERG highly welcomed the remedies paper. The discussion following this introduction covered these fundamental questions and focused on some special points: harmonization or discretion, or "harmonized discretion", the role of regulators with respect to small market players, innovation, investment, emerging markets, access and pricing of access services in situations of natural monopolies, the role of competition law and competition authorities in the process of decision making on remedies and the fundamental goals of liberalisation.

In response to a question about assessing the sufficiency of competition law when deciding on remedies, Mr. Langeheine of the EC stated that for markets in the Recommendation [on relevant markets], the sufficiency of competition law has been examined beforehand, and that the Commission is not in favour of going through this again on a case by case basis [in Article 7 notifications]".

ERG decided to publish ERG (03) 30 on its website and to subject it to further consultation of market parties as well as to continue the internal discussion of the major issues. The consultation should be started as soon as possible and should allow for written comments as well as for a public hearing. It should be introduced by a cover letter to the remedies paper, which will be drafted by the remedies steering group. Final approval of the document is envisaged for the second session of the ERG in 2004.

Common Position on Bitstream access:

The Common Position on Bitstream Access was adopted as an interim document, to be finalized after the consultation on the remedies paper (ERG (03) 30). The Common Position will be published on the website of ERG with an explanatory note.

Common approach towards mobile termination – progress report

Principles of Implementation and Best Practise (PIBs) on the application of remedies in the mobile voice call termination market have been adopted by IRG and will be published on the IRG website.

2004 ERG/IRG Work Programme

ERG decided to prepare and to consult on a joint work programme of ERG and IRG. Document ERG (03) 36 will be adjusted by the ERG and the IRG secretariats to remove ambiguities and to clearly describe the deliverables of ERG and IRG respectively. The revised document will be published on the ERG website. Interested parties will be invited to comment on it in a public hearing in January 2004.

Annual Report ERG 2003

A draft Annual report of ERG will be published on the ERG website and will be part of the consultation of the 2004 Work Programme.

New structure and timetable of plenary meetings

Document ERG (03) 37 containing the calendar for ERG meetings in 2004 was adopted. It might be necessary to consider an alternative date for the meeting in June 2004. An extra plenary in February dedicated to the finalization of the remedies paper (ERG (03) 30) was discussed but not fixed. The calendar will be published on the ERG website.

Approval of A items

The proposed A items were approved with the following considerations:

The Report on Universal Service designation (ERG (03) 38) will be published on the ERG website.

A first version of the ERG FL-LRIC PIBs, incorporating the results of the previous consultation, will be prepared for the January 2004 plenary (ERG 7).

Any other business

Membership issues: Mr. Colasanti reported that the Commission envisages consulting Member States and then revising the ERG Decision to clarify the membership issue in the first quarter of 2004. He confirmed that the current ERG decision allowed NRAs from Romania and Bulgaria to participate as observers in the ERG.

The Chairman said that requests from the Romanian and the Bulgarian NRAs will be processed in 2004.