

Conclusions of the twelfth plenary of the European Regulators Group

Date: February 10 – 11, 2004
Location: Brussels

Work Programme 2005

The Secretary presented the stakeholders' responses in the public consultation and the final proposed Work Programme (ERG (05) 04), taking into account the responses in the consultation. The wide acceptance among stakeholders for a more focused work in 2005 was acknowledged. The consultation document was adopted for publication. The WP 2005 document was adopted as the Group's Work Programme with minor adjustments. It will be clarified in the Work Programme that Common Guidance/Position on Voice over IP will be produced. Separately an initial identification of regulatory approaches for the implementation of next-generation networks will be envisaged. The scope and scale of the 2005 Work Programme will be reviewed in the May plenary meeting.

The organisation of the work for 2005 was also agreed. The work with deliverables of the Work Programme will be undertaken in working groups/project teams with a Head responsible for each main work item. The mode of operation and expected outcomes of projects are described in individual project requirement documents, which are non-public working documents.

Bernd Langeheine of the Commission clarified that the main work on the revision of the Recommendation on relevant markets, in which the ERG would be involved, will be undertaken in 2006 and that the Commission will only make a general call for input towards the end of 2005.

The Group agreed to start the process regarding WP 2006 at the May plenary meeting.

Regulatory aspects of Voice over IP (VoIP)

Rauni Hagman of FICORA (Finland) presented a draft *Common Statement* for Voice over IP regulatory approaches (ERG (05) 12). The Common Statement is a re-worked version of the draft document tabled at ERG11 which at that point was deemed not to be final. It explains the overall objectives – to encourage innovation and new services for the consumers – shared within the Group and by the Commission. It also clarifies the Group's position on numbering rights and obligations and access to emergency services.

The Group agreed to publish the *Common Statement*, subject to minor changes agreed at the meeting, in addition to continuing to work with the Voice over IP-related issues that have been identified for the 2005 Work Programme. The review in May will include an examination into whether there are further issues related to Voice over IP which need to be addressed.

Wholesale international roaming (WIR)

Roberto Viola of AGCOM presented a progress report of the WIR project (ERG (05) 14). After ERG11 at the end of 2004, 29 Members¹ and observers sent a joint market data questionnaire to operators in their respective countries. The general deadline was 21 January, 2005. Harmonised clarifications of questions from operators were provided as appropriate. Requests for extensions of deadlines were coordinated as far as possible. An inventory of the answers received has been undertaken. The team is committed to complying with the deadlines. The close cooperation with the Commission will be continued as before.

Angel Tradacete Cocera of the Commission's DG Competition informed the Group of its statements of objections communicated February 10, 2005 to Vodafone and T-Mobile. The statements concern the alleged abuse of dominant positions in the markets for wholesale international roaming on their respective own networks in Germany.

Wholesale broadband markets

RegTP (Germany) presented the document ERG (04) 19rev1. The document is a draft text for an addition of a cable network access chapter to the Common Position on wholesale bitstream access (ERG (03) 33rev1). The document does not deal with market definition and SMP designation. It investigates the technical possibility of providing a BSA product via cable networks and imposing wholesale access obligations on SMP cable network operators on the remedy stage of the market review. The Group approved the document with a minor change for a public consultation foreseen between the 18th of February and the 4th of April. A final decision, including the format of integration of its contents into the Common Position on wholesale bitstream access, is foreseen at the next plenary meeting in May, taking into account comments of the stakeholders in the public consultation.

The Bled seminar

The Group agreed to hold the foreseen special one-day seminar in the afternoon of the 26th and in the morning of 27th of May in conjunction with ERG13 in Bled. It was agreed to discuss common future regulatory challenges with a handful of specific, clearly defined sub-items such as challenges related to the development of broadband/VoIP/next-generation networks. The seminar will be open for Members and regular observers of the ERG only.

¹ RegTP of Germany and CMT of Spain did not send questionnaires as they had recently started a similar project according to the new regulatory framework.

Appointment of 2006 Chairperson

Kip Meek, Senior Partner of Ofcom in the United Kingdom, was appointed Chairman for 2006 by an unanimous decision.

Collective dominance issues

John Doherty of ComReg (Ireland) briefed the Group on the first notification pursuant to Article 7 of the Framework Directive made on the basis of a finding of collective (joint) dominance on which the Commission expressed itself. The notification of December 10, 2004 concerns the Irish market for wholesale mobile access and call origination. The main points of reasoning behind the finding of collective dominance and the proposed remedies were explained. On the 20th of January 2005, the Commission issued a letter of comments on the ComReg notification. Bernd Langeheine of the Commission explained the main points of reasoning in its comments letter. The ensuing discussion focused on concerns of some regulators as to the burden of proof in collective dominance cases.

Information from the European Commission

The Commission provided information on the following.

Cocom: The Commission reported on the items of substance on the agenda of the Cocom meeting of 15 December 2004.

Report on Art. 7-notifications: The paper ERG (05) 15, a report with updated statistics on proposed measures notified by NRAs according to Article 7 of the Framework Directive and resulting Commission activities, was presented by Angel Tradacete Cocera . Notably, the notification from Ofcom regarding broadcasting transmission services was withdrawn insofar as it related to the finding of collective dominance in the market for “managed transmission services” provided to broadcasters and digital multiplexes. In reference to a case concerning the wholesale market for unbundled access, the Commission emphasized that any maintaining, withdrawing or modifying of current regulation needs to be based on a market analysis in accordance with Article 16 FD. Further, it was reiterated that in two of the three cases where the NRA concerned had to withdraw its notified draft measure subsequent to the Commission’s veto decision, the Commission expects re-notification of the results of the revised market analyses within a reasonable period of time from now.

European freephone services: The Commission reported on its work with harmonised European freephone services. In particular, it seeks to reserve in all Member States the 116 number range for harmonised European freephone services with significant public interest. An analysis document has been prepared that identifies the barriers to

cross-border freephone services. The Commission proposes to take up the issue for discussion, based on the findings of the document, at the plenary meeting in May.

Draft Commission Recommendation on Accounting separation and cost accounting:

The Commission informed the Group of the status of work with the finalisation of the Recommendation. A meeting was held on January 12 between Commission and ERG experts to clarify why some changes and additions have been made in the Recommendation text as compared with the ERG Opinion. There were concerns of several members of the Group that the link between the Recommendation and the ERG Opinion is missing in the Recommendation draft tabled at Cocom. These concerns focused in particular on the treatment of the annex to the ERG opinion in the Recommendation text.

The Commission proposed not to table the draft recommendation at the next COCOM meeting, but rather have another meeting with ERG experts after February 22 - the deadline date for the Commission inter-service consultation – to find a solution to the concerns. It was also agreed within the Group that the roles of ERG and the Commission as well as the expected outcomes in any future co-operations that may lead to official documents of the Commission should be clearly defined. This will be reflected in a document to be produced by the Secretary.

Response to the FCC NoI on mobile termination rate: The Commission informed of the contents of its letter in the “reply comments” phase of the FCC Notice of Inquiry on foreign mobile termination rates. The deadline for replies in this phase is February 14, 2005. The Commission letter will describe the market development, the new regulatory regime and actions already taken by regulators.

Follow-up on the facilitation of mobile payments/the e-money Directive consultation/ Commission guidance on e-money and mobile payments: The Commission reported on the publication by DG MARKT (Internal market) of a guidance note on e-money and mobile operators, following the consultation held earlier this year.

Annual Report 2004

The 2004 Chairman Eric Van Heesvelde of BIPT (Belgium) gave an outline of the proposed final version of the 2004 Annual Report (ERG (05) 16). The Group adopted the Report subject to minor adjustments. It will be published, submitted to the Commission and forwarded to the European Parliament as laid down in the ERG Decision.

Invitation to the Turkish regulatory authority

Following the decision of the Council of the European Union on December 17, 2004 to invite Turkey to begin EU accession negotiations and with reference to Article 5,

paragraph 5 of the ERG Decision,² the Group decided to invite the Head of the TA, Telekomunikasyon Kurumu (TK), as observer from the next plenary meeting onwards.

A.O.B.

Marianne Treschow of PTS briefed the Group on the court proceedings in Sweden related to the regulation of market 12 (wholesale broadband access), and market 16 (mobile termination) where administrative courts have stayed the Agency's decisions on remedies. The Commission stated that the problem of court delays and interim measures in member states is a very serious one and will be taken up in the review of the Framework Directive. It encouraged NRAs to keep the Commission and the Group informed of similar problems in the future. Several other Members informed the plenary that they were already experiencing such problems.

The plenary decided to publish the following documents, subject to agreed adjustments where applicable:

- ERG (05) 01 – revised ERG12 agenda
- ERG (05) 03 – WP consultation results
- ERG (05) 04 – 2005 WP
- ERG (05) 12 – Common statement on VoIP
- ERG (04) 19rev1 – Cable BSA addition to BSA Common Position
- ERG (05) 15 – Commission update on Art7-procedures (statistics)
- ERG (05) 16 – ERG Annual Report 2004

The next plenary meeting will take place in Bled, Slovenia from the 25th to the 27th of May 2005.

² Commission Decision 2002/627/EC, Article 5, paragraph 5: *Experts from EEA States that are not members of the European Union and those States that are candidates for accession to the European Union may participate as observers in the Group.*