



ERG Opinions on Regulatory Principles of NGA and on Functional Separation

Today Roberto Viola, the Chairman of the ERG handed over the **ERG Opinion on Regulatory Principles of NGA** requested by Commissioner Viviane Reding in her letter dated 30 April 2007 in order to enable the Commission to draw upon the Opinion for the upcoming proposals on the Review of the ECNS Regulatory Framework.

The introduction of Next Generation Networks (NGN), leading to a multi-service network for audio (including voice), video (including TV) and data, as well as new plans and investment in next generation access (NGA) sets the communications sector on the verge of a new era.

Creating competitive markets for electronic communications services within and across Member States as well as incentivising efficient infrastructure investment, promoting innovation and thereby maximizing benefits for consumers constitute the main objectives of the Framework. Furthermore the balance between service and infrastructure competition (ladder of investment) taking into account the existence of other infrastructure (e.g. cable) needs to be considered in light of the dynamics caused by NGA roll-out.

As new plans and investments in NGA networks are gaining momentum in several Member States, the ERG considers that this is the correct moment to prospectively analyse the developments in this area. As long as competitive conditions have not changed the roll-out of NGAs does not provide an opportunity to roll back regulation on existing services. Also, given the pace of recent developments differing across and within Member States, regulators need rapidly to define common regulatory principles and set clear and detailed guidance in order to positively affect the competitive nature of the (access) markets and efficient investment in general.

In this document the impact of NGA deployment on the scope of regulation and the way in which regulatory principles may need to be adapted was analysed. The overall conclusion of the document is that the regulatory approach based on the existing ECNS Regulatory Framework can be considered fundamentally sound. Subject to adjustments the principles remain suitable and allow NRAs to deal with the regulatory challenges posed by the roll-out of NGA.

In parallel, an **ERG Opinion on Functional Separation** has also been delivered to the Commission. The Opinion follows and elaborates upon the proposals on Functional Separation submitted by the ERG to the Commission, as part of the consultation on the review of the Regulatory Framework launched in June 2006. The Opinion goes further by providing a definition of Functional Separation and a detailed description of its components; it argues that these components should be considered in a dynamic fashion.

In the Opinion the ERG states that the introduction of Functional Separation as an evidence-based remedy will improve the effectiveness of the existing framework.

The Opinion provides an explanation of the supporting reasons to introduce Functional Separation in the European regulatory framework: functional separation seeks to ensure full equivalence of access to key wholesale products, acting as a complementary remedy to traditional wholesale non-discrimination remedies.

The Opinion says that Functional Separation arrangements have to be flexible enough and periodically reviewed in light of technology and market developments.

It is clarified that Functional Separation does not imply any legal break-up of the vertical integrated operator and that should not be confused with a “structural separation” option.

In line with the principle of proportionality, Functional Separation can be introduced by National Regulators only after a thorough cost-benefit analysis. National Regulators will need to base their decision on completed market reviews covering the full range of the wholesale markets; as in some cases, the strengthening of the non-discrimination obligation might be sufficient to address the competitive issues.

Finally, the degree and the design of separation proposed in national markets should be carefully tailored to national circumstances: Functional Separation will not be a “one size fits all” solution.

The Opinion reports also on the UK’s positive experience so far - highlighting the benefits for competitors and consumers, as well as on incentives to invest - and recalls the ongoing discussion taking place in other Member States (Sweden and Italy).

The ERG hopes that the two Opinions will prove useful for the Commission when drafting its legislative proposals.

The full text of the ERG opinions is available on the ERG web site.

NOTES FOR EDITORS

The European Regulators Group (ERG) was created to act as an advisory group to help the European Commission develop the internal market for electronic communications and services and ensure the consistent application of the regulatory Framework.

The ERG takes into account in its work the objectives given to NRAs in Article 8 of the Framework Directive (2002/21/EC) to promote competition, contribute to the development of the internal market and promote the interests of EU citizens.

The ERG consists of European National Regulatory Authorities (NRAs). Its full members are the twenty-seven EU Member States whilst the four EFTA States (Switzerland, Norway, Iceland and Liechtenstein) and three EU Accession/Candidate States (Turkey, Croatia and Former Yugoslavian Republic of Macedonia) participate as observers.

CONTACT

ERG Secretariat

erg-secretariat@ec.europa.eu

+32 (0)2 295 6462