

ERG Work Programme 2003

Preface

The European Commission decided to establish the European Regulators Group (ERG) in July 2002. ERG is composed of the heads of the National Regulatory Authorities (NRAs) in charge of the day-to-day implementation of the European electronic communications and services legislation. Within ERG, the NRAs and the European Commission work together on issues that need a harmonised approach. The year 2003 will be the first full year of activity for ERG (inaugural meeting took place in October 2002).

In some cases, ERG builds on previous work of the IRG (Independent Regulators Group, the informal co-operation forum of 29 European regulators that has been operative since 1997). In those cases, reference within the work programme is made to already existing IRG work.

This Work Programme lays down the focal points for the work of ERG in 2003. The items identified in this ERG 2003 work programme need to respond to the demands presented by the new regulatory framework, which is to be completely transposed into national laws by the end of July 2003. In particular, special priority is given to issues relating to the definition of relevant markets, market analysis and application of remedies. The work should especially concentrate on those cases where there is a risk of divergence that would cause harm to competition in the European Market.

ERG will also need to deal with establishing the consultation procedures as provided for in article 7 of the Framework Directive, which obliges NRAs to consult among themselves and with the European Commission about most of their decisions.

Other specific issues, such as ‘international roaming’ or ‘mobile call termination’, although not specifically included in the issue of general implementation of the new regulatory framework, still need to be addressed at the European level.

The items included in the ERG Work Programme respond to (1) the need, as experienced by IRG¹ in the past years, to address some regulatory issues at the European level, (2) the input from third parties as received during the consultation period, and (3) the specific requests made by the European Commission, as ERG is an advisory body to such institution.

The work programme should be understood as a dynamic document. It is open to modification in order to respond to market needs and requests for advice from the European Commission. The ERG work programme will address any issue relating to the implementation of the electronic communications networks and services regulatory framework, including access to broadcasting infrastructure.

Some of the items contained in the ERG 2003 work programme are also part of IRG work programme. ERG is at the moment functioning in a provisional manner. At the moment, all ERG members are also IRG members. No duplication of resources allocated to the two different Groups is desirable. For these reasons, NRAs that are

both members of IRG and ERG decided to use already existing IRG Working Groups to deliver the work programme. Therefore, in general, IRG working groups will be carrying out the necessary work to deliver work programme items that are included in both IRG and ERG work programmes. To provide clarity, in those cases where ERG issues are also within IRG work programme, this has been indicated.

Listed below are the main items that ERG will need to be working on during 2003. There are a number of inter-related subjects and it is, therefore, advised to read the whole document rather than only individual chapters.

❖ **Implementation of the new framework**

The new European regulatory framework for electronic communications is to be transposed into national laws by 24 July 2003. Very important work has to be done before that date. The new regulatory framework bases regulation on the position of undertakings in the market place. For this reason, work related to market definition, market analysis and designation of dominance is of the utmost importance, especially where divergence would harm competition in the European market.

Furthermore, the new framework provides for a higher degree of flexibility when applying ex ante rules. For this reason, it would benefit the EU internal market, if ERG focuses on a deep analysis and a common position on how to approach regulation if divergence occurs and the risk of a negative impact on competition in the European market arises.

Finally, the new framework introduces new procedural arrangements that deserve full attention within the Work Programme. Specifically, the Article 7 of the Framework Directive would require the design of procedural arrangements to ensure efficient use of resources at the national regulators. Requirements such as the application of transparency, confidentiality, efficiency, and thoroughness need to find a balance.

1. Market definition and analysis of competition (IRG)

Given the final decision on the list of relevant markets, with regard to analysis of competition in the relevant markets, ERG intends to develop a handbook on market reviews. The development of an adequate methodology and common understanding on the procedure are key to a more harmonised application of the new European rules:

In support of the implementation of the new Regulatory Framework, and especially the designation of SMP, collection and analysis of relevant market data is a key to understand the level of competition and the developments within the market place. In the past, IRG had agreed to a selection of parameters for market data collection and to the interpretation of such parameters.

Taking into account the new regulatory framework, this list of indicators will need to be revised/reviewed and limited according to the needs of the market place and the needs and functions of the NRAs under the new regulatory framework. There is a clear need to understanding the market trends and also need to get the data for analysis of competition.

The goal would be to draw conclusions on the developments of the markets throughout ERG countries and, where possible, on the effects of regulatory practices.

ERG aims at determining a harmonised set of parameters to be applied when analysing markets. This set of parameters will be laid down in a handbook for market analysis.

According to the Framework Directive, the Commission will issue a decision on transnational markets. The members of ERG will provide the Commission with advise

when drafting the decision, on the basis of their experience with the national market definitions and market analyses procedures.

2. Designation of Significant Market Players (IRG)

Under the new framework the concept of SMP is not as concrete as the one provided under the current regime. It provides for a high degree of flexibility. This means that a common understanding among ERG members on how to interpret and apply this concept will be required to avoid too divergent applications that could hinder the development of the EU internal market. ERG will work on a common position on the implementation of the concept of SMP.

3. Approach to regulation – application of remedies (IRG)

The new framework provides for a higher degree of flexibility when applying ex ante rules. For this reason, it would be to the benefit of the EU internal market that ERG focuses on a thorough analysis and, ideally, a common position on how to approach regulation. In particular a common approach towards remedies, on a horizontal basis, such as cost orientation, transparency and quality standards should be developed, while subsequently could be focussed on a harmonised approach for application of those developed remedies on a specific market.

In addition to the development of a common approach towards remedies applicable to SMP players, some other specific issues have already been identified by ERG, notably:

- Application of the regulatory framework to emerging markets/services
- Application of the regulatory framework to non-dominant players
- Application of must-carry rules and third party access to cable TV networks
- Analysis of existence of margin squeeze, and appropriate remedies

4. Institutional and procedural issues (IRG)

- Consultation procedure

Article 7 of the Framework Directive requires the design of procedural arrangements to ensure efficient use at the national regulators resources. ERG should work with the European Commission to establish an efficient and workable mechanism for more consistency between national regulatory practices. Here, it is important to keep the right balance between contributing to the harmonisation of the internal market while recognising national specificity, and the need to respond quickly to a very dynamic market place. These mechanisms should be laid down in rules of procedure for NRA-Commission consultations.

❖ Mobile Market

Although the new regulatory framework points towards technological neutrality, there is enough degree of specificity of the mobile sector to justify a separate chapter for it within the ERG work programme.

In the past, both the IRG and the Commission have been active in this area, working on issues such as mobile termination price regulation, international roaming and analysis of access regimes. Furthermore, 3G development has been on the agenda through 2002. ERG will continue work on 3G in 2003 and provide inputs, when deemed appropriate to the European Commission, in order to foster the deployment of UMTS while preserving competition conditions.

1. Termination tariffs (IRG)

According to the Commission and some European organisations/associations, the level of the termination tariffs cannot be justified in terms of actual costs of the service provided. Any sign of lack of competition in this area should be addressed by the regulators. Furthermore, excessive differences between mobile termination tariffs may result in negative effects for the European internal market. For these reasons, a common approach towards mobile termination tariffs of SMP operators is appropriate and reasonable. Such an approach should seek to find ways to remove harmful effects of divergent regulation. A common approach towards mobile termination will be worked on and the application of the different remedies set out in the Directives will be investigated.

2. International Roaming (IRG)

The prices of international roaming are still very high and often non-transparent. The old regime has proven to be an unsuitable basis for regulatory action, due to market definition, different competencies and the prohibition to exchange confidential information among some regulators. This will change under the new framework. Since end users do not benefit from action taken by the NRA in their own country, it is necessary for regulators to take joint action. ERG can play an important role in taking the next step and striving for transparent and cost-related prices in the market for international roaming.

Joint action between ERG members will be implemented, where legally and practically possible. An action programme will be developed as a means for NRAs to co-ordinate their actions on this issue.

❖ Fixed Networks – Broadband issues

ERG considers the implementation of effective competition within the local segment a clear priority of its work programme. Different technologies and ways to improve competition in this area will be considered and addressed. More specifically, the development of competition in broadband access so that the development of broadband services is fostered, is key in the ERG work programme.

1. Broadband access (IRG)

Broadband deployment is high on the European political agenda. ERG intends to carry out a comparison of the regulatory policies at the national level and decide whether a common perspective/practice/initiative would be necessary and possible.

Although special attention will be drawn to bitstream access, ERG work in this area will consider all appropriate technologies that allow broadband access to ‘Information-society’ type services. For this, it is important to follow-up the development and implementation in the market place of different technologies. Measures to identify and deal with margin squeeze will be investigated.

2. Unbundling of the local loop (ULL) (IRG)

The ULL PIBs of IRG, first adopted in November 2000, were subsequently updated to respond to market needs and new developments. IRG has also announced to continue to assess the effective implementation of the existing PIBs and consider what further amendments would be necessary, if any. ERG will benefit from these activities and common positions in this area are therefore foreseen.

NRAs have been involved throughout 2002 in enforcing the obligations arising from the ULL regulation. There is improvement in the regulatory situation in Member States. However, ERG needs to continue to monitor effective implementation of ULL and will react to any needs in the market place. Special attention will be drawn to the application of cost-orientation and the principle of non-discrimination in that respect.

3. Leased lines (IRG)

Prices and delivery times of leased lines, including interconnection leased lines, are recurrent issues at the EU level. The European Commission as well as Industry and Users associations, have focused a major part of their work on this area. During 2002, many regulators have adopted regulatory measures to ensure proper wholesale offers for leased lines, in some cases including interconnection of leased lines, in the reference interconnection offers. Service level agreements and penalties in case of delays in deliveries have also been adopted. ERG will monitor effective application of adopted measures and assess non-discrimination and cost-orientation.

❖ Regulatory Accounting (IRG)

Cost Accounting methods applied across Europe would seem to be in line with EU recommendations. However, there is still considerable work to be done with regard to the verification and certification of accounts by NRAs.

The NRAs will carry out a thorough analysis of the different accounting methods that are used by its members considering the advantages and disadvantages of each method and will adopt, if necessary, a common position on the issue.

In 2002, IRG adopted PIBs on accounting separation and LRIC. IRG has announced further work on this issue, aiming at reviewing and if necessary amending these PIBs. This work will form the basis of an ERG common position on this issue.

❖ **Consumer issues**

The designation mechanisms for the operators that are obliged to deliver the universal service obligations as well as the funding systems of the Universal Service, can be very different per Member State. This may cause barriers to the internal market. Therefore, ERG needs to analyse these issues and find solutions to the problems that occur in this respect (IRG).

Connected with the issue of Universal Service obligations, is the issue of network security and continuity of networks. Several cases across the EU have shown that continuity and security is of the utmost importance for consumers, as well as for competing operators. On a national level, different approaches exist to handle this issue. The European Commission has asked the ERG to analyse these different approaches and advise the Commission on a standard procedure to be applied in these circumstances.

❖ **Network Infrastructure Sharing (NIS)**

In the market situation as it stands today, market parties are looking to minimise their costs. Especially when building new infrastructure (notably for UMTS-networks), they are keen to share network infrastructure for that reason. Although NRAs have been monitoring this issue, to this date and due to existing different national legislations, there has been no common exercise by NRAs in addressing this issue. The European Commission believes that ERG should work in this area. Specificities of the scope of the work are expected from the Commission.

❖ **Spectrum trading**

Spectrum trading, in this stage, is largely an issue that is in the agenda of the member States, rather than the NRAs'. Thus, discussions on this issue mostly take place in the Spectrum Group. At the same time, NRAs are also involved in this, but at the implementation level. The European Commission has asked the ERG to do work in this area. Specificities of the scope of the work are expected from the Commission.

❖ **Telephone requirements for deaf and hard of hearing people**

The European Commission has committed ERG before the Communications Committee to work on this issue. Concrete specifications on the scope of the work in this area are expected from the Commission.