

Dear Professor Otruba,

20 January 2004

Re: ERG Work Programme 2004

ECTA would like to congratulate the ERG-IRG on its joint work programme for 2004 which we believe covers most of the issues that need to be addressed in order for the new regulatory framework to succeed.

I would like to take this opportunity to reiterate a couple of points that we made at the Hearing on 14th January:-

In the past NRAs have tended to under utilise accounting separation as a remedy. We note that there is a work package devoted to this issue. We would like to endorse this activity and for the ERG to ensure that resources are deployed in relation to this remedy. Accounting separation needs to be pursued vigorously if cost-orientation or non-discrimination remedies are not to be rendered empty vessels. We believe that an important first step would be for the ERG or the Commission to repeat the study that was undertaken for the Commission by Andersen in 2002. This would show how far each SMP operator is from having workable accounting separation and cost-orientation remedies.. A new report should also establish a glidepath to bring each SMP operator's system up to the level necessary and would start from the basis of the SMP operator's existing information systems¹. No doubt the ERG would receive protests that this remedy is incredibly expensive and time consuming. I would suggest that the ERG asks consulting accountants to provide estimates. ECTA has already done this – the cost would be low and the timeframe under six months.

A major impediment to effective regulatory regimes lies in areas outside of the control of the independent NRAs. We think it would be useful for national legislators and the Commission if the ERG would publish the following:-

- an analysis of where national legislators have not provided the independent NRA with the full discretion to pursue the objectives of the new regulatory regime; and
- an analysis of what would constitute a best practice appeals system

We would also like to emphasise that we think that the work done by the ERG with respect to price squeeze in Annex 1 of the ERG remedies paper is of very high quality. It would be worth developing some of the points discussed in the annex in further detail and considering producing the conclusions as a stand alone “ERG Common Position”.

Kind regards

Yours sincerely,

Andy Tarrant

Director of Regulatory Affairs, ECTA

¹ The Andersen's partner who prepared this previous document is now at Deloitte's and is still actively engaged in considering these issues. His contact address is jegustin@deloitte.com