

IRG/ERG Work Program 2008

Chairmen's Introduction

According to the good practice of the recent years, the Work Program of the Chair of the IRG/ERG for 2008 (hereafter WP 2008) was subject to public consultation with the stakeholders.

WP 2008 was last discussed and agreed at the Plenary of the IRG/ERG in Rome on 6th and 7th December, and it contains the main considerations and expected outputs from the IRG/ERG in 2008.

The oral hearing took place on the 20th of November in Brussels. The role of the public consultation was to increase transparency and to provide us with the possibility to receive feedback from stakeholders about our current and planned activities for 2008.

The comments given by the participants in the public consultation have been taken into account and proved to be very useful and supportive of our goals. In general, there was a broad agreement from the stakeholders that WP 2008 captures the most important issues to be tackled next year. Therefore, along the lines of the planned work of IRG/ERG, some suggestions were taken on board when finalising the text. Others will be carefully examined by the respective Project Teams.

In particular, there seems to be a general agreement that there is still some work to do concerning the creation of an open and competitive single electronic communications market with special regard to evolving pan-European services. Several contributions suggested that the IRG/ERG, when focusing on the Review process, should also consider that business users represent an important part of the market. In addition, a significant part of the opinions received welcomed the increasing transparency of the IRG/ERG, yet still emphasized that the IRG/ERG should provide the stakeholders with more adequate deadlines during the consultations. In order to achieve the above the Group will focus on the achievement of ever consistent regulatory outcomes in 2008 and improved engagement with the respective parties.

Overall, the stakeholders expressed their interest in, and urged the IRG/ERG to examine further, the following issues: harmonization of remedies; geographical aspects of market analysis; fixed and mobile termination rates; monitoring of existing Common Positions and identifying Best Practices; and finally, the convergence of existing and new services. Following the previous years' practice these will be assigned to the responsible Working Groups in order to efficiently contribute to the development of best quality deliveries by the IRG/ERG.

Chair 2007

Chair 2008

Background

1./ From a global perspective the liberalization of electronic communications services in the EU has so far been a success story. Consumers have spent approximately one third less on communications services in 2006 than ten years ago¹ and now have access to a considerably wider range of services. However, problematic issues remain concerning the EU's competitiveness' weight on the global palette resulting in positive improvements in services and lower prices for consumers in the EU.

As part of the Lisbon strategy the Commission had proposed in June 2005 the i2010 initiative laying down broad policy orientation to promote an open and competitive digital economy. Both the creation of the Single European Information Space and the completion of an open single market for electronic communications services were prioritized in order to boost the EU's growth and job-creation potential and encourage innovation in communications services and networks in Europe. In 2008 the IRG/ERG will therefore, within the given responsibility and by the application of the available regulatory instruments, have to focus its work on the contribution to the achievement of the single European market for electronic communication services by identifying priority areas for regulatory involvement in a forward-looking manner for consumers, services, providers and innovation.

Irrespective of the remarkable results and evident consumer benefits, ICT investments in the EU remain determinedly relatively low. The values concerning strategic services have shifted in the converged markets in the last couple of years. Broadband internet, mobile voice, VoIP services and IP gained higher importance - broadband is the fastest growing segment of the electronic communications sector in the EU - and the attention has intensified for media, content and convergent services. Moreover, industry movements and product innovations drive new forms of competition which call for an immediate and a possibly new regulatory approach. Consequently, there is an apparent need for harmonized and/or revised regulation for converged electronic communications services. The provision of cross-border services, network and service neutrality, Next Generation Network [NGN] developments, emerging wireless technologies, new forms of content provision and competition in bundled services also call for innovative application and/or slight amendment of the basically sound regulatory framework.

The protection of consumers is of utmost importance, therefore the quality of services with respect to the convergence of digital and online content, and emerging pan-European markets – with special respect to disabled and elderly people's capabilities – need to be fine-tuned. The protection of consumers should be further strengthened and service availability for consumers across Europe should be broadened. The ERG is also aware of the fact that as the retail price packages and schemes have become more and more complex, it is increasingly difficult for consumers to make informed decisions when choosing the provider or the service offer, or when adopting certain consumption behavior. The ERG will look at the ways to achieve a more coherent approach in respect of price transparency for consumers.

It is also evident from the past that in order to reply to future challenges *ex ante*, regulation is still required with a sound market-based approach.

2./ The regulatory performance of Europe has improved over the last few years, but in order to further increase regulatory certainty and predictability for market participants, the

¹ See the Annex to the *Evaluation of the performance of network industries providing services of general economic interest – 2006 Report*, Commission Staff Working Paper SEC(2007) 1024.

cooperation between National Regulatory Authorities will need to be intensified further in the future in order to overcome possible regulatory uncertainties

In the past, as the first step of the cooperation between the national authorities was the establishment of Independent Regulators Group in 1997. The results achieved by the IRG have shown the importance of this type of cooperation. The European Regulators Group was established by the new Framework in 2003 as an advisory body to the European Commission. In the last year, the IRG/ERG worked together and achieved considerable results in the field of harmonization.

Parallel to the Review process, in October 2006, the Madeira declaration was the first sign, that institutional background is necessary for such collaboration in order to achieve better cooperation between NRAs. The recent establishment of the Chair Secretariat provides us with the possibility of better cooperation and oversight of our work. In 2008, we need to develop further the internal working practices and to give greater transparency to our achievements (e.g. creation of a new website, better communication, etc.) All these internal improvements are resource intensive tasks and have high priority, but represent the less perceptible part of our Work Program during the preparatory phase to the outside world in 2008. As a follow-up of this improvement of our cooperation, NRAs need to consider the possibility of institutionalizing the current cooperation based on voluntary contribution.

In November, the European Commission published the proposal of the institutional changes – by the creation of the European Electronic Communications Market Authority - affecting the cooperation of NRAs. The aim of this proposal, as it was repeatedly stated by the Commission during the Review process, is to achieve a better regulatory environment – with special regard to competition and investment – at European level. The WP 2008 intends to make sure that our voice is heard regarding every bit of the reform and that the contributions are taking into account at the highest level.

Therefore, our work in 2008 will also focus on the formulation and articulation of the group's common view on governance issues for best representation of the group's interests.

3./ Contributing to the achievement of better harmonization remains a clear mission for the IRG/ERG. This is to be done by fine-tuning national practices while providing the national authorities with sufficient independence, and also, by meeting the requests of the stakeholders and their interest's groups. In 2008, some carry over items about practical harmonization measures at highest priority level need to be finalized, the previous results need to be updated and to be monitored. It is also necessary to explore the possibility of new scope for acting together to achieve better harmonization following the theoretical considerations of the harmonization. By way of example, the Group will study the special circumstances regarding the fix and mobile termination rates, and will examine the emerging issues on data roaming. The Group also sees that there is a growing need to examine the possibilities of giving guidance on geographical aspects of market analysis regarding the market definition and the remedies implementation in the different Member states. The ERG's aim is to establish guidance on the adjustment of regulation and on the assessment of remedies where the geographical zones may reflect different levels of competition in Europe.

4./ According to the above considerations, the Work Program 2008 indicates the framework and the provisional timing of the planned outputs of the IRG/ ERG for the year 2008.

The future deliveries in principal depend on the actual achievements of the WP 2007. To ensure consistency and continuity, nearly every item that is planned on the agenda for 2008 is related to items in the previous work program and therefore follows a synchronized bottom-up and top-down approach.

The key issues are split into several areas. The first relates to the *review process*, the second area is designed to achieve *better harmonization*, the items in the third intend to respond the *innovations* on various markets.

Deliveries

1. Framework review

The main item in this section is the ERG's approach to the legislative proposals on the revision of the Directives of the electronic communications regulatory framework, as presented by the Commission on the basis of the timing presented in the section 4./ of the previous part.

1.1. Response to the Commission's legislative proposals

ERG should make itself heard in relation to the revised market analysis procedure, formulated approach on remedies, the convergence phenomena – including the modification of definitions - and also, in relation to an enhanced consumer protection. The delivery of common views is of utmost importance because the proposed changes to the framework will have implications on the application of existing legislation by NRAs.

It is also important that the ERG makes its voice heard concerning specific proposals of the Commission, especially the possible introduction of functional separation as a complementary remedy and the proposal to grant the Commission with veto power regarding the remedies notified by the NRAs.

The outcome and timing of such instruments by the ERG depend on the timing of the Commission's proposals, however, in order to achieve the best result and for the ERG to have its voice heard, it is wise to be able to provide the ERG's opinion within one quarter after the Commission's publication of the legislative proposals. This requires enhanced cooperation within the Group and dedicated engagement from the NRAs.

<u>Deliverable:</u>	ERG opinion where appropriate in relation to the legislative proposal
<u>Deadline:</u>	2 nd quarter of 2008 (or as expected)
<u>Consultation:</u>	No

1.2. Opinions on specific topics

The ERG also needs to reserve resources in order to fulfil requests of the Commission of ERG opinions on specific topics articulated in high-level pre-legislative papers. For the moment it seems that this will be restricted to the Commission's Green paper on Universal Services.

<u>Deliverable:</u>	ERG Opinion (on request of the Commission)
<u>Deadline:</u>	2 nd quarter of 2008 (or as expected).
<u>Consultation:</u>	No

1.3. Expert views

After publishing the detailed legislative proposal, ERG needs to be ready to formulate expert view on specific topics with respect to the development of the debate during the co-decision procedure between the Council and Parliament. This type of experience had already occurred during the legislative procedure of the roaming regulation in 2006-2007, and highly appreciated by the respective decision making bodies.

Deliverable: ERG's professional expert view where appropriate
Deadline: Continuous
Consultation: No

1.4. Response to the revision of soft law

Closely related to the review process, the entry into force of the new soft legislation is planned for early 2008.

In relation to this, the ERG plans to achieve consensus on the harmonized application of the new soft legislation, namely

- a./ guidance on the application of the three criteria test, and on the handling of transitory period topics related to the basis of the new Recommendation on the relevant markets as soon as possible, and
- b./ related emerging issues which require immediate reflection or guidance, and
- c./ an other candidate subject matter can be a common view on the planned new SMP Guidelines by no later than the third quarter of 2008.

In addition, the strategic importance of pointed and well-prepared deliveries is to support and to voice standpoints of the NRAs as a group, and show consistency to the outside world, including the Commission.

Deliverable: ERG opinion
Deadline: 2nd and 3rd quarter of 2008 (or as expected)
Consultation: No

2. Further harmonization of the internal market

It is astute to follow the previous years' good practice and present deliveries in the form of ERG opinion, ERG report or ERG common position. The main themes in relation to better harmonization and the insistent creation of the single European market for electronic communications require the ERG to present its view on different topics:

2.1. Common Positions

As a continuation of the work started at the end of 2006 and further developed in 2007, the ERG needs to develop Common Positions on best practice on remedies imposed for specific markets and/or for specific generic issues. The aim of this CPs is to complete the Remedies Common Position developed in 2004 by ERG, but at the same time to assist to achieve more focused decision by the NRAs.

The ERG accordingly, will contribute to the minimization of the segmentation of divergent national practices which may well be in conflict with the idea of the establishment of single European electronic communications market.

A Common Position consists of three different, but well-defined parts: objective, description of competition problem and the condition of applicable remedies. In addition to the concrete Common Positions, the ERG needs to explore the possibility to develop more sophisticated theoretical bases for this exercise.

In the field of this activity, the ERG needs to consult the stakeholders about the draft Common Positions before finalising it. The Group's intent is to give stakeholders enough time to contribute efficiently to the development of best applicable Common Positions.

When an NRA assigns the obligations of an SMP player - taking into account the national circumstances - the obligations should correspond to the Common Positions, in accordance with our commitments in Madeira in 2006, and the ERG should be able to closely monitor the application of the Common Positions.

Since the adoption and the monitoring of Common Positions is a time consuming exercise, the ERG would like to continue its work in 2008 as follows:

- a.) monitoring the published Common Positions on Wholesale Line Access and Wholesale Broadband Access in 2007, and develop Common Positions on relevant regulatory models;
- b.) finalise the Common Position on wholesale leased line markets, after public consultation and start the monitoring of the application of this Common Position;
- c.) present the initial Common Position on the remedies of the termination markets including the relation between cost-based prices and the possible application of symmetrical and/or asymmetrical conditions, including rates, between the different fixed and different mobile operators within a country.

<u>Deliverable:</u>	ERG Common Positions
<u>Deadline:</u>	2 nd quarter of 2008
<u>Consultation:</u>	Yes

2.2. Monitoring, Benchmarking activities

The self-committed monitoring activities will follow the previous year's various activities of the ERG – mobile voice and data termination rates applied accounting regulation, LLU and broadband development – and should contribute to the achievement of the better harmonization.

In 2008, ERG will follow this data collection exercises.

<u>Deliverable:</u>	ERG Reports, Snapshot, etc.
<u>Deadline:</u>	Continuous
<u>Consultation:</u>	No

2.3. Article 7 Expert Reports

As a consequence of the success of the NRAs' voluntary commitment to assist the decision in the second phase procedure of the Framework Directive's Article 7, it was decided to set-up automatically a team in order to draft the independent expert report during every second phase procedure. The establishment of the relevant team, the study of the details of the case and draft the report, including recommendations, within maximum 60 days is a quite challenging and at the same time very resource intensive exercise for the experts of the NRAs.

This work item is related to the second phase procedures initiated by the EU Commission in 2008.

Deliverable: Expert Report of Article 7-Expert Team
Deadline: automatically, in every second phase case
Consultation: No

2.4. Roaming regulation

As a result of the adoption of the 717/2007/EC regulation on roaming, and taking into account of trans-European aspect of roaming, it is necessary to coordinate the regular data collection and monitoring exercises of the NRAs on the legal basis of various articles of this Regulation.

During the planned revision of the roaming regulation by the EU, the ERG needs to position itself to be the first to be consulted for technical expertise and input of NRAs.

Deliverable: ERG Report
Deadline: 2nd and 4th quarter of 2008.
Consultation: No

3. Response to emerging challenges on the market

Within and also in parallel to the process framework review, it is inevitable that emerging and challenging issues driven by innovation on the market will have to be faced.

3.1. Future regulatory policies

Based on the previous year's experiences, before the development of common positions in specific regulatory topics, the first step is to monitor the national market development in the early phase of innovation. After having studied the mainstreams of future market trends, the ERG can start the work on the evaluation of the regulatory situation and makes recommendations as to how to deal with new challenges. After the adoption of any common positions by the ERG, the group needs to regularly review and indicate some more topics to investigate in the future to achieve better harmonization.

Some key topics of the future market innovation were signaled by the Commission and the ERG was asked to give advice on different topics in 2007. Taking into account the long term effect on the market of such common positions, the ERG is always looking forward to the outcomes of the public consultation with the stakeholders. Furthermore, in order to achieve the best possible outcome, the Group intends to work together on a regular basis with all the parties involved in the decision making procedure.

3.1.1. Convergence

In the field of convergence, the ERG aims to continue the work started in 2007. The first concrete output of the work can be to the presentation of a Report around the first months of the next year.

Deliverable: ERG Report
Deadline: 2nd quarter of 2008
Consultation: No

3.1.2. IP related challenges

In the field of (Vo)IP development and regulatory challenges, the ERG also started the work in 2007 in order to develop high-level policy paper. The first concrete output of the work can also be the presentation of an ERG Report in early 2008.

Deliverable: ERG Report
Deadline: 1st quarter of 2008
Consultation: No

3.1.3. Next Generation Networks

In the field of the Next Generation Networks, the ERG published - after considering the result of the public consultation with the stakeholders - an ERG Opinion on regulatory principles of NGA in October 2007. Since this work mainly focused on the access side of the new generation networks, a further look at NGN core and IP interconnection related issues is necessary. The IP-IC Report - published in March 2007 –will be developed into an ERG Common Position, including reflections on NGN costs.

Deliverable: ERG Common Position
Deadline: 3rd quarter of 2008
Consultation: Yes

3.2. Cooperation with other regulatory bodies

As part of the contribution to the single market harmonization, the WP 2008 suggests to explore the area where closer cooperation and/or joint project on specific topics with other regulatory bodies can contribute to development of electronic communications market and regulation.

In order to define the way of closer cooperation with other relevant regulatory bodies, ERG proposed a joint meeting with the other parties in 2007 and 2008.

In October 2007, ERG invited EPRA to develop common understanding with the content regulators on the convergent market situation.

In February 2008, the ERG and the RSPG will have a joint meeting in order to further develop the possibilities for the two organizations to work together in the future.

On the basis of these joint meetings, ERG hopes to be able to identify the areas which can be the subject of further joint action with the relevant other bodies.