

ERG-IRG Work Programme 2004

Preface

The Independent Regulators Group (IRG) was established in 1997 as an informal group of European National Telecommunications Regulatory Authorities (NRAs). The broad objective of IRG is to share experience and exchange points of view on issues of common interest amongst its members.

The European Regulators Group (ERG) was established by the Commission Decision (2002 OJ L 200/38) of July 20, 2002. It comprises the heads of the NRAs within the EU. The European Commission is not a member, but has a right to participate at ERG meetings. ERG's role is to advise and assist the Commission in consolidating the internal market for electronic communication networks and services. The Group aims to provide an interface between national regulatory authorities and the Commission, in order to contribute to the development of the internal market and to the consistent application in all Member States of the regulatory framework.

The members of the two organisations are almost identical and there is considerable overlap between the fundamental targets of their operations. The main difference at the organisational level is the presence of the European Commission in ERG and a separate secretariat of ERG. The issues covered by ERG are significantly narrower than those covered by IRG and can be regarded as a subset of the issues of IRG. To provide clarity and transparency, IRG and ERG have agreed to adopt a common Work Programme 2004, which in detail should give an account of the activities planned, the organisation to which the deliverables will be attributed and a provisional time schedule for the deliverables.

A number of IRG working groups will be mandated to address and produce the 2004 deliverables of both IRG and ERG. All ERG deliverables, as the Work Programme itself, will be subject to public consultation procedures.

The Work Programme 2004 will be subject to any amendments necessary due to the course of events over the year. The dates for the deliverables relate to the draft versions to be released for public consultation. The Work Programme is structured as follows. The programme starts with a description of the topics and the associated deliverables. The broad topics are:

- Implementation of the New Regulatory Framework
- Mobile Markets
- Fixed Networks –Broadband
- Regulatory accounting
- Consumer Issues

Each area covers a variety of individual targets and deliverables for both IRG and ERG. The deliverables for ERG concentrate on the Implementation of the New Framework. However, there are still some substantial, non-horizontal topics to be covered by ERG, which strongly relate to specific questions of the other areas mentioned and will consequently be listed there.

PART I: TOPICS and DELIVERABLES

A) Implementation of the New Regulatory Framework

The practical implementation by the national regulatory authorities of the new regulatory framework remains the activity with the highest priority in 2004.

Report on experiences with market definition and market analysis (IRG)

Continued monitoring and analysis of market developments in member states will be undertaken and, where possible, the effects of regulatory practices will be assessed. A comparative analysis of market definitions and SMP-designations will also be carried out on the basis of regular updates and the material of the Commission resulting from notification procedures according to Art. 7 FD.

Deliverable: Report to IRG including a comparative analysis of Article 7 FD notification procedures regarding market definition and SMP designation

Deadline: Plenary in September 2004

Report on special topics in market definition (IRG)

IRG will develop a document containing an overview of closely related markets within the sector, according to the criteria of par. 85 of the Commission Guidelines on Market Analysis, (2002/C 165/03, "SMP-guidelines") in the context of leveraging. This document will also include a theoretical section on horizontal and vertical market segmentation. Both topics are relevant to determine the position of an undertaking in the market. The question is to what degree, attempts of market parties towards market segmentation, could result in an effective segmentation of one specific market into two or more new markets. Furthermore, work will be performed on the definition of the relevant markets for leased lines listed in the Recommendation on relevant markets, to identify which services are included in the trunk and the terminating segments. Attention will also be given in the report as to how the National Regulatory Authorities should understand the three criteria, defined by the Commission, that need to be in place before ex-ante regulation of a market could be considered appropriate. The definition of broadcasting markets also merits special attention.

Deliverable: Report to IRG on special topics in market definition

Deadline: Plenary in June 2004

Common position on the concept of significant market power (SMP) (ERG)

There is already an ERG working paper (ERG (03) 09) on the concept of SMP. The goal is to arrive at a Common ERG Position on SMP designation. Further work will be done on the theoretical implications of the SMP-criteria as set out in § 78 and 97 of the SMP-guidelines. Specific attention will be given to the theoretical economic

background, and its practical implications on market analysis in the new regulatory framework. The IRG report on a comparative analysis of Article 7 notification procedures regarding market definition and SMP designation will be an important input. This work will be integrated with ERG (03) 09 and the final product will be adopted as a Common ERG Position on SMP designation.

Deliverable: Common ERG Position on SMP designation

Deadline: Plenary in September 2004

Commission's Recommendation on relevant markets (ERG)

According to paragraph (21) of the Commission's Recommendation on relevant products and services markets, the European Commission has to investigate the necessity of a revision of this Recommendation until June 30 2004. According to recital (7) of the Commission Decision establishing the European Regulators Group, the Group will serve as a body for reflection, debate and advice to the Commission in the revision of the Recommendation on Relevant products and services markets. The ERG will provide the Commission with a Common Position on the need for a revision of the Recommendation.

Deliverable: Common ERG Position on the need for revision of the Recommendation on Relevant Product and Services Markets.

Deadline: In time before the Commission concludes its investigation

Transnational markets (ERG)

According to Article 15.4 of the FD, the Commission may adopt a Decision identifying transnational markets. Again, according to recital (7) of the Commission Decision establishing the European Regulators Group, ERG will prepare a Common Position after preparation of a report on an industry survey/questionnaire on transnational market issues and a parallel NRA survey.

Deliverables: a) Report to ERG on transnational markets
b) Common ERG Position on transnational markets

Deadlines: As requested

Remedies (ERG)

The Joint ERG-Commission Document on Appropriate Remedies in the New Regulatory Framework (the "remedies" document, ERG (03) 30) will be finalised in the first quarter of 2004, incorporating the results of the public consultation. This document will subsequently need to be developed in two ways:

- 1) *Generally*, in the light of practical experience obtained from the market reviews carried out by the national regulators, and
- 2) *specifically* regarding particular areas that were not comprehensively addressed in the remedies document, such as:

- Legal and economic analysis of the application of remedies to different operators in the same relevant market;
- Legal and economic analysis of the application of Article 5.1 of the Access Directive;
- Legal and economic analysis of transnational effects of regulation and possible harmful divergence;
- Development of criteria for the suitability of the application of ex-ante vs. ex-post remedies, particularly in the context of emerging markets;
- Creation of incentives for compliant behaviour of regulated operators;

These topics will be addressed in a report to the ERG as a preparatory document for development, at a later time, of ERG (03) 30.

Deliverables: a) Final version of ERG (03) 30: Joint ERG-Commission Document on Appropriate Remedies in the New Regulatory Framework
b) Reports to ERG addressing particular areas concerning remedies

Deadlines: a) Plenary in April 2004
b) Plenary in December 2004

B) Mobile Markets

Regarding the mobile sector, areas of special priority in 2004 are termination tariffs and international roaming. The 3G rollout in the EU will be carefully monitored. Whenever appropriate, opinions will be given in order to foster the deployment of UMTS under competitive conditions.

Mobile Termination tariffs (IRG, high priority)

According to the European Commission and some European organisations/associations, the level of the termination tariffs still cannot be justified in terms of actual costs of the service provided. The regulators should address any sign of lack of competition in this area. One of the primary objectives is to produce a benchmark of mobile termination tariffs that will support the decision making of individual NRAs with respect to mobile termination tariffs. Special attention will be given to the construction and explanation of the indicators used in the benchmarks.

Deliverable: IRG-Benchmark of Mobile Termination Tariffs

Deadline: Plenary in April 2004

International Roaming (ERG and IRG, high priority)

In 2004, work will be focused on a common view on the market for international roaming services and the development of a Common Position on International Roaming including a joint action plan. The legal, economic and practical potential for joint efforts to reduce excessive international roaming charges will be investigated

and a framework for the effective enforcement of international roaming regulation will be developed.

Co-ordination with the Commission is envisaged regarding the ERG deliverables. The outcome of the Commission's sector inquiry into mobile roaming charges, if available in time, as well as the NRAs' market reviews and the Joint Working Document on Remedies will be taken into account. The work will start immediately. Competencies of NRAs regarding International Roaming may differ. For that reason, not all ERG members may be able to endorse a common position.

IRG deliverables: Report to IRG, including an analysis of costs and prices for end-users as well as an analysis of the transparency level of prices for end-users.

Deadline: Plenary in December 2004

ERG deliverables: Common ERG Positions on:
a) The concept of international roaming (definition)
b) A common approach towards regulation of international roaming, if possible
c) A proposal for a joint action plan

Deadline: Plenary in December 2004

C) Fixed Networks – Broadband issues

The promotion of effective competition in the local loop and the development of competing broadband services are priorities for the 2004 work programme.

Broadband access (ERG and IRG, high priority)

Broadband deployment is high on the European political agenda. Taking this into account, the work started earlier will be continued. The Interim Common Position on Bitstream Access (ERG (03) 33) will be updated according to the results of the public consultation of Document ERG (03) 30 (the “remedies” document).

Building on the work done so far, regulatory policies in the broadband area in member states will be compared, and the development of broadband access competition in different countries will be monitored. Special attention will be given to the impact of bitstream access products. However, work in this area will consider all different alternative technologies that allow broadband access to information society type services. The position of cable infrastructure with regards to the wholesale broadband access market, as well as the deployment of other technologies for broadband services, will be monitored. Price structures for different wholesale and retail broadband services will be analysed.

Furthermore, demand side factors and other factors influencing the market situation and the development of broadband rollout will be considered. Government subsidies and the potential availability of Structural Funds of the European Commission for

broadband roll-out, especially of broadband infrastructure in rural/remote areas as well as initiatives to promote fibre roll-out in metropolitan areas, are considered important factors and will therefore be studied.

ERG deliverable: a) Finalised Common ERG Position on bitstream access, based on the interim document ERG (03) 33

Deadline: Plenary in April 2004 (in parallel with the Remedies paper)

IRG deliverables: b) Report to IRG on the implementation of bitstream access
c) Report to IRG including an analysis of broadband markets situation in terms of penetration and competition

Deadline: Plenary in June 2004

Fixed Termination Tariffs (IRG)

Under the New Regulatory Framework any operator, offering local access, could be declared as having SMP in its terminating network. A report on obligations imposed on non-incumbent operators based on research on the different regulatory practices and their economic consequences will be developed. A major question will be the applicability of the principle of reciprocity to fixed termination tariffs.

Deliverable: IRG report on fixed termination pricing systems

Deadline: Plenary in September 2004

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 part of their work on this area. Many regulators have already adopted regulatory measures to ensure proper wholesale offers for leased lines. In some cases interconnection leased lines are included in the reference interconnection offers. Service level agreements and penalties in case of delays in deliveries have also been adopted.

The effective application of measures will be monitored and the application of non-discrimination and cost-orientation obligations will be assessed. A study of price control measures, as a helpful tool for comparisons, will be made. Key indicators for a benchmark will be developed, as the comparison of prices of leased lines is difficult.

Deliverable: Report to IRG, including a Benchmark of key indicators of wholesale leased lines conditions and assessment of the SL-squeeze with the help of key performance indicators (KPIs)

Deadline: Plenary December 2004

Next Generation Networks / Internet (VoIP)

The impact of Next Generation Networks and new services delivered via them will be monitored. Especially the changes of traffic flows as well as possible regulatory questions resulting from new services (e.g. VoIP) offered by these networks will constitute the main areas of a report to IRG.

Deliverable: Report to IRG on NGN
Deadline: Plenary December 2004

D) Regulatory accounting

Cost accounting and accounting separation (ERG and IRG)

As decided by ERG in its session of September 21, ERG will start joint work with the Commission on a review of its Recommendation from 1998 (Commission Recommendation 98/322/EC, 08.04.1998, Part 2) on cost accounting and accounting separation, in order to bring it in line with the requirements of the new framework.

Deliverables: a) Draft of a new Recommendation on CA & AS (ERG)
b) Review of the PIBs on AS (IRG)
Deadline: Plenary April 2004

Completion of FL-LRIC PIBs (ERG and IRG)

The ongoing review of the existing IRG PIBs on FL-LRIC will continue. The revised PIBs will take into account the results of the 2003 consultation, as well as the outcome of the review of the Recommendation on cost accounting and accounting separation.

Deliverables: a) Report to the ERG on the ERG FL-LRIC Consultation
b) Update of the IRG PIBs on FL-LRIC
Deadline: Plenary January 2004

Report on regulatory accounting in practice - methods and evaluation (IRG)

A comparative analysis of different wholesale price control methods and different costing methodologies will be made, with a focus on their usefulness for price control obligations. Stocktaking of different existing methods will be made complemented by a study on their application in practice by different national regulatory authorities. A comparative assessment of the methods' impacts and usefulness as regulatory tools will be made. Whereas the ongoing review of the Commission's Recommendation on Cost Accounting and Accounting Separation focuses on regulatory accounting, this exercise will look into different methods such as, for example, bottom-up models. The analysis of the different costing methods and their application for price control regulation is planned to cover all types of networks and modes of access.

Deliverable: Report to IRG on Regulatory accounting in practice: methods and evaluation
Deadline: Plenary December 2004

E) Consumer issues

Directory Enquiry Services (IRG)

An analysis of the supply and pricing conditions for the development of a competitive Directory Services Market will focus on the terms for the provision of information by operators and other associated issues such as the construction of comprehensive DQ information, service quality and data protection.

Deliverable: Report to IRG of DES pricing and supply conditions
Deadline: Plenary June 2004

USO designation and costing methodology (IRG)

Common principles for calculating the net cost of universal service obligations will be developed. They will be based on the guidelines for calculation of net cost provided in Annex IV, Part B, of the EU Directive on Universal Services, for assessing the possible indirect benefits to an undertaking from its position as provider of universal service. A report will include

- a broad review of developments with respect to any new universal service costing activities of NRAs,
- outline of possible options for assessing “unfair burden”,
- outline of options with respect to determining “intangible benefits”,
- review of possible options for assessing the “net cost” of US obligations.

Deliverable: Report to IRG on USO designation and costing methodology
Deadline: Plenary December 2004

PIBs on quality of service (IRG)

IRG-PIBs on quality of service will be developed. With full recognition of existing ETSI standards, they will focus on (1) the method of publication, (2) frequency of publication, (3) parameters most relevant to consumers, (4) additional requirements on USO operators, (5) setting QoS performance targets, and (6) range of operators who should publish data.

Deliverable: Report to IRG and PIBs on QoS
Deadline: Plenary September 2004

Regulation of retail tariffs and transparency for consumers (IRG)

A comparison of retail price regulation methods will be undertaken by IRG/ERG, mainly to be used as input of an evaluation of the remedies paper.

Deliverable: Report on retail price regulation methods

Deadline: December 2004