



ERG (08) 46 Broadband CP Conformity timetable final 081119

CONFORMITY WITH ERG COMMON POSITIONS FOR SMP REMEDIES IN BROADBAND MARKETS: TIMETABLE FOR REVIEW

In 2006, ERG adopted 2 common positions¹² (CPs) in respect of SMP remedies in the Wholesale Local Access and Wholesale Broadband Access Markets (now Markets 4 and 5 in the Commission Recommendation on relevant markets). A report³ on a subsequent exercise to assess the degree of conformity with those CPs was published in early 2008. This concluded that, despite the fact that many national decisions pre-dated the adoption of the CPs, the state of conformity was high in most member states of the EU/EEA.

The current exercise records NRA intentions to review remaining non-conformities. Responses were received from 26 of the 30 EU/EEA NRAs, together with responses in respect of Croatia, FYROM and Turkey. All stated that any such non-conformities would be considered during current or forthcoming Market Reviews, in most cases over the next few months. Absolute commitment to conformity in advance of the Market Review is not normally legally possible. However, continuing non-conformities are expected in only a few cases, based on specific national circumstances. A few NRAs were prepared to state that they did not currently expect any conformities.

The questions asked of NRAs were:

- (a) do you expect to address any conformity issues during your next national Market Reviews (Markets 4 and 5) or earlier?*
- (b) either way, when you expect to do this?*
- (c) any exceptions (e.g. because a segment of the market has been found not to have SMP)*

A table of answers is attached.

¹ http://www.erg.eu.int/doc/publications/erg_06_70_rev1_wla_cp_6_june_07.pdf

² http://www.erg.eu.int/doc/publications/erg_06_69rev1_wba_cp.pdf

³ http://www.erg.eu.int/doc/publications/erg_08_06_report_on_monitoring.pdf

ATTACHMENT: NRA PLANS TO REVIEW BROADBAND MARKETS

		ANSWER A	ANSWER B	ANSWER C
State	NRA	Occasion for review of any non-conformities	Expected timescale	Comments
Austria	RTR	yes, in the next market analysis (but we are currently not aware of any deviations)	By the end of 2008	Remedies for Market 5 have been differentiated by region, reflecting different competitive conditions. This has broadly the same effect as a Geographic segmentation of the market, which will be considered for the next Market Review. In any case, this could have repercussions on the infrastructure access market.
Belgium	BIPT	During the next market analyses for markets 4 and 5	Mid 2009	None foreseen
Bulgaria	CRC	The Bulgarian NRA (CRC) has just launched the first market review of the national markets of wholesale unbundled access and wholesale broadband access (Market 4 & 5). Within the analyses, we are going to take utmost account of the EU best practices, respectively the ERG CPs.	Notification to EC expected by the beginning of 2009.	Unknown at present
Croatia	CTA	In July, Croatia will adopt the new Act on Electronic Communications harmonised with 2003 framework. The first market analysis to be performed will be for broadband markets, in doing so the CTA will take the utmost account of the ERG common positions.		Unknown at present
Cyprus	OCECPR	During the next market analyses of	During 2008	None foreseen

		Markets 4 and 5		
Czech Republic	Czech Telecommunication Office	During the next market analysis	Market 5 Review completed Art 7 process successfully October 2008. Market 5 Review due in 2009	In the area of remedies certain variances can be expected, because there is very specific situation on BB market in Czech Republic (high share of Wifi and CATV technologies in retail market).
Denmark	NITA	Following the market reviews on market 4 and 5 NITA will take into account to which extent there are any conformity issues with the common positions. For the time being NITA is considering whether to include the conformity issues directly in the market decision	NITA expects to notify the draft market decisions before the end of 2008	Unknown at present
Estonia	Estonian Competition Authority	yes, during our next national Market Reviews we plan to assess conformity issues and take the ERG CPs into account during the reviews	In the first quarter of 2009	No exceptions foreseen at the moment
Finland	FICORA	FICORA's aim is to follow the provisions of the mutually agreed CP's during the national market reviews	We expect to notify the results of the review of M4 by the end of 2008 and M5 in early 2009	Unknown at present
France	ARCEP	ARCEP adopted its latest market analysis at the end of July 08. It is in complete conformity with the CPs.		None

Germany	BNetzA	<p>In answering the monitoring questionnaires from summer 2007, BNetzA had considered its regulatory decisions which had so far been issued to be fully consistent with the CPs regarding WLA and WBA. Since then BNetzA has approved the reference offers for WLA (20 December 2007) and WBA (8 April 2008) and has also for the first time approved the rates for the provision and lease of WBA-services (13 May 2008). From the point of view of BNetzA there are no material conformity issues left which need to be tackled in upcoming decisions.</p> <p>With regard to the market analysis of M5, BNetzA has just started with the evaluation of the collected market data</p>	Cf. Supra. Regarding the WLA reference offer the minimum period of validity expires on 28 February 2009, regarding the WBA reference offer on 30 April 2009	No
Greece	EETT	EETT is currently reviewing Markets 4 and 5. EETT considers addressing any conformity issues during this review and in particular the issues of bulk migration, stand alone DSL, economic space and QoS / advanced SLAs	Late 2008/ Early 2009	Unknown at present
Hungary	NHH	The new broadband market decision (which was adopted at the end of 2007) contains the last two CP elements which were	New broadband market (M4-5) analysis is	None foreseen

		<p>missing previously, namely the SLA details and migration process. The most important conformity issue which will we expect to raise during the next market review is our enhanced non-discrimination obligation. In the last review we named and added specific forms of behaviour which we think are discriminatory. Until the next review we have to analyse how successful it was, what are the implications of these obligations. Upon the experiences gained from the monitoring we may amend these parts of the non-discrimination obligation.</p>	<p>expected for the end of year 2009</p>	
Ireland	Comreg	<p>Next round of market reviews</p>	<p>Review for M4 due for completion December 2008 Consultation on Market 5 Review expected in Q1 2009</p>	<p>Unknown at present</p>
Italy	AGCOM	<p>During the next Market Review – but AGCOM unaware of material deviations bat present</p>	<p>Notification expected in mid 2009</p>	<p>None foreseen</p>
Lithuania	RRT	<p>Next Market Review</p>	<p>To be started in 2008</p>	<p>Unknown at present</p>

Macedonia (FYROM)	Agency for Electronic Communications	Next Market Review	End of 2008	Unknown at present
Malta	MCA	Market 5 recently found to have no SMP. Any conformity issues in Market 4 will be covered in the next Market Review	Mid 2009	Unknown at present
Netherlands	Opta	During current round of market reviews	January 2009	None foreseen. Any non-conformities with the CP's (if any) will be motivated extensively in the market analysis decisions
Norway	NPT	Any conformity issues will be addressed during the next review of Markets 4 and 5	Late 2008	No
Poland	UKE	Next Market Review	Not before beginning of 2009	Unknown at present
Portugal	Anacom	Next Market Review	During 2008	Some of the conformity issues might be dealt within specific decisions in the sequence of the obligations imposed in the market analysis
Romania	ANRCTI	Next Market Review	During 2008	Unknown at present
Slovak Republic	Teleoff	Last round of market analyses on market 5 was finished last year.	The Market 5 decision has been postponed by the court and is now being reviewed. Postponed decision has been aborted by the court. Issue is now	Unknown at present

		Second round of market analysis for Market 4 running	reviewed by the body of appeal.	
Slovenia	Apek	APEK has already imposed most conformity issues in last market analysis. APEK did not impose obligation related to bulk migration and periodicity of publication of KPIs, which will be considered in next round of market analysis (currently being conducted) or alternatively in supervision proceedings. In the fall of 2008, as part of the supervision process APEK imposed the obligation of stand-alone bitstream access on the SMP operator. As the SMP operator supplied this form of access to himself, this obligation was imposed as part of the already (in the market analysis) imposed obligation of non-discrimination. APEK intends to impose this obligation also in the next market analysis. In next market reviews APEK will probably impose obligation related to KPIs and compensations also on market 5.	Underway	Unknown at present
Spain	CMT	Next Market Review	By November 2008	Unknown at present
Sweden	PTS	Yes during our market reviews	During 2008	Unknown at present

Turkey	TA (Telecommunica tion Authority)	Yes, in the next market analysis	Mid 2009	Unknown at present
UK	Ofcom	Market 5 already completed in 2008.	Timescale for next Market 4 review not yet set	4 Geographic markets defined. No SMP found in "Market 1". SMP remedies applied in "Market 2", "market 3" and Hull area in conformity with ERG CP