



IRG/ERG Draft Work Programme 2010

Maximising the internal market in electronic communications and applying institutional change

Introduction

The IRG/ERG Draft Work Programme 2010 as set out below aims to build on the achievements in the work performed in 2009 and previous years while at the same time preparing for the challenges of 2010 and future years, including much anticipated legal and institutional changes.

This Draft IRG/ERG Work Programme 2010 was discussed and agreed at the ERG Plenary in Lucerne on 8th and 9th October, and it contains the main considerations and expected outputs from the IRG/ERG in 2010. In accordance with the practice of previous years, the IRG/ERG Work Programme is subject to public consultation with stakeholders.

Under the expected changes to the regulatory framework, BEREC will replace ERG early in 2010. BEREC will have a statutory duty to consult on its work programme. As this cannot be done until BEREC is brought into being, the proposed IRG/ERG Work Programme will provide the foundation for the eventual BEREC work programme.

The role of public consultation is to increase transparency and to provide us with valuable feedback from stakeholders. All comments from stakeholders are welcome and will be considered by the IRG/ERG.

The consultation period runs from **14th October to 6th November 2009**. Please send your comments to: erg-secretariat@ec.europa.eu. A public hearing on the Work Programme, open to all stakeholders, is scheduled for **4th November 2009** and will be held in Brussels.

Following consideration of stakeholders' views, the 2010 Work Programme will be adopted at the Plenary meeting to be held on 3rd and 4th December 2009 in Warsaw.

Matthias Kurth, BNetzA
Chair 2009

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Chair 2010

Background

When the IRG/ERG Work Programme for 2009 was initially prepared, there was an expectation that 2009 would see the conclusion of the review of the regulatory framework. As we know, discussions between the European Institutions are still ongoing but it is hoped that final decisions will be made before the end of this year.

In the expectation that there will be a successful outcome to those discussions, 2010 is therefore expected to see the beginning of the change from the current regulatory framework to the updated rules of the revised framework. Some measures will come into immediate effect, particularly the powers and responsibilities of the Commission, while others must await national transposition. The revised framework includes major institutional change with the immediate establishment of BEREC as the successor to ERG. BEREC will have enhanced powers and duties under the proposed new framework.

Under the new arrangements BEREC will have a statutory duty to consult on its work programme. As this cannot be done until BEREC is brought into being, it is expected that this proposed IRG/ERG Work Programme will provide the foundation for the eventual BEREC work programme.

Meanwhile despite the economic turndown, market developments are continuing, with changes in services offered to users arising from technological change, changes in the state of competition in individual markets and the need for investment in high-speed networks.

The Draft IRG/ERG Work Programme 2010 set out below tries to deal with the challenges described above and is therefore organised around the following priority areas:

- Harmonisation and benchmarking
- Forward-looking challenges
- Revised regulatory framework

Specific deliverables will depend on the actual outcome of the 2009 Work Programme. In practice, the majority of planned activities are a continuation of, or a follow-on from, the 2009 Work Programme, thereby ensuring consistency and continuity. The 2010 Work Programme anticipates that there will be agreement between the European Institutions on the revision to the regulatory framework by end 2009. As mentioned above, one of the features of the revised framework will be the establishment of BEREC as the successor to the ERG, supported by a full-time Office. Recruitment for and establishment of the Office, under the supervision of the NRAs, through the BEREC Board of Regulators, will be a major task. The establishment of the Office will provide professional and administrative support to the Work Programme.

The first priority area relates to continuing and expanding the ERG's programme of *further improving harmonisation*. The second area is designed to anticipate *emerging challenges* arising from market developments, while the third aims to directly implement or assist in implementing the expected *changes to the legal regulatory framework*.

1.Improving Harmonisation

1.1. International Roaming

In 2009, the Roaming Regulation 717/2007/EC was revised to extend its scope and duration. ERG will continue to monitor the implementation of the Regulation through preparing a report on its operation in Member States as requested by the Commission. Taking into account the 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 the Roaming Regulation. ERG has performed this task since the 2007 Regulation came into effect.

Deliverable: *ERG Report/ERG Opinion*
Consultation: *No*

Under the 2009 revision to the Roaming Regulation, the Commission is required to assess methods other than price regulation which could be used to create a competitive internal market for roaming. In doing so it is required to have regard to an independent analysis carried out by a body of European regulators. ERG will, on the basis of its analysis of data collected as part of the monitoring exercise, assess the continued need for regulation and analyse alternatives to price regulation.

Deliverable: *ERG Report/ERG Opinion*
Consultation: *No*

1.2. Next Generation Networks – Access

In May 2009 ERG published a report on the economic analysis of Next Generation Access¹ in light of developments, including on-going roll-out and the draft Commission Recommendation on NGA. An Annex to the report contained extensive information on actual and planned NGA roll-out in 22 countries. ERG plans to update this Annex during 2010 in order to continue to monitor developments and to inform possible further consideration of Next Generation Networks in 2011. ERG also plans, as part of this project, to consider the situation of Multi-Fibre networks.

Deliverable: *ERG Report*
Consultation: *No*

Implementation Issues related to the Commission Recommendation on NGA

The Commission conducted a second round of public consultation on Next Generation Access networks in July 2009 and the resulting Recommendation is expected to be published late 2009/early 2010. ERG participated in both public consultations and will, once the Recommendation is published, consider follow-up actions including how to address issues of standardisation and a definition of open access.

¹ ERG (09) 17 – Report on next Generation Access – Economic Analysis and Regulatory Principles

1.3. Conformity with ERG Common Positions

ERG is committed to a regular programme of monitoring of the conformity of national regulatory practices with its Common Positions, both as a tool for encouraging consistency in regulation across Europe and in order to keep the Common Positions relevant and up to date.

In 2010 ERG will review conformity with Common Positions on wholesale broadband access, wholesale unbundled access, and wholesale leased lines, and will consider practical implementation issues regarding geographic differentiation.

The above-mentioned Common Positions relating to wholesale access remedies are highly relevant to the question of the competitive supply of business services (see below). These exercises were originally expected to be conducted in 2009 but it became clear that it would be appropriate to take into account the lessons of ERG's work in this area. If the monitoring exercises lead to the conclusion that any Common Position needs to be updated, there would of course be a consultation on the relevant changes.

Deliverable: *ERG Reports*

Consultation: *No*

1.4. Benchmarking Activities

In 2010 ERG will continue to collect data to support the calculation of benchmarks on a range of indicators. ERG will also consider methodologies and continue to provide input where appropriate into external benchmarking development.

Deliverable: *ERG Reports, Snapshot, etc.*

Consultation: *No*

1.5. Regulatory Accounting

The Regulatory Accounting Report will continue to be updated regularly to assess the level of harmonisation achieved by NRAs.

To this end it will also investigate the extent to which further alignment among Member States might be achievable. This could include carrying out additional analysis of NRAs' regulatory accounting approaches in key wholesale markets, aiming in particular at identifying the rationale behind different price control methods and modelling choices, taking into account that some parameters are set at different values, generally for reasons related to national circumstances. Subject to our findings, this could be the basis for the development of more consistent regulatory approaches across the internal market.

The pricing/costing issues raised by NGA wholesale products (in particular duct access, but also dark fibre) will be analysed in more detail from a cost accounting perspective. The proposals regarding costing principles made in the Commission's Draft Recommendation on NGA will be analysed in detail for their implications on pricing.

Deliverable: *ERG Report.*

Consultation: *No*

2. Emerging Challenges

2.1. Business services market

In 2009, ERG accepted a proposal by ECTA, EVUA and INTUG to investigate the state of competition for the supply of communications services to large multi-site businesses. Those stakeholders argue that there is in practice a limited choice of supplier to this segment, in particular because of problems of availability and specification of wholesale services on which competitive suppliers would to some extent need to rely. Depending on the outcome of the investigation (which is expected in December 2009), ERG may continue this work in 2010.

2.2. Convergence

The development of new convergent networks and services raise new regulatory challenges. ERG will analyse new convergent services and consider if and how these may be subject to regulation as Electronic Communications Services under the regulatory framework. The work will focus initially on market developments, and then consider whether these developments require new regulatory instruments or adjustment of existing ones

Deliverable: *ERG Report.*

Consultation: *Yes*

2.3. Cross-border enforcement

Traditionally consumer protection issues in the electronic communications sector have been limited to within the consumer's own Member State borders, largely because service providers were based within the Member States, using national networks. However, new technology (especially the Internet) means that there is increasing scope for consumers to consume services provided from Member States other than their own. This has already created some new consumer protection challenges for NRAs.

It is expected that cross-border consumer protection challenges will increase as service providers are increasingly able to provide services to consumers outside their own national borders.

ERG began in 2009 to consider the scope of the problem and possible strategies to address these. This work will continue during 2010.

Deliverable: *ERG Report.*
Consultation: *No*

2.4. ERG-RSPG Co-operation

Starting from the very good work carried out in cooperation during 2009, the ERG and the Radio Spectrum Policy Group (RSPG) will maintain and further develop the newly created joint working group. This working group is focused on intertwined issues in market regulation and spectrum policy.

Spectrum management and market regulation increasingly impact on each other and also have a mutual dependence. The main drivers are, in particular, that

- the distinction between different access methods is becoming less important given that similar services can be provided over a number of different electronic communications platforms;
- there is growing convergence in infrastructure and services;
- the introduction of more flexible spectrum usage and the increased opportunities for trading spectrum usage rights are expected to reduce spectrum scarcity and lower barriers to entry. While this is expected to be beneficial for competition and promote innovation, it is important to ensure that the move to a more market-driven approach does not have negative consequences for competition in electronic communications services and networks, especially over the transitional period.

For the 2010 Work Programme some areas have been identified by ERG where further analysis may be beneficial. These are ERG's proposals and have not as yet been reviewed and agreed by RSPG.

The first workstream could be based on reporting on the possible effects on competition of electronic communications infrastructure sharing between wireless broadband operators, including spectrum sharing, noting that this may provide some scope for increasing the capacity of networks and addressing potential spectrum shortages.

A second workstream could be the continuation of the work on competition (transitional) issues including the impact of legacy spectrum distribution and how to avoid competition distortions between incumbent users and newcomers resulting from the transition to a liberalised spectrum management regime.

Deliverable: *ERG/RSPG Joint Reports*
Consultation: *No*

2.5. Future of Universal Service Obligation

In 2010, the Commission is expected to publish proposals for legislative changes to the scope and funding of the Universal Service Obligation. As part of the 2009 Work Programme, ERG has been examining issues surrounding Universal Service and this

work will continue. ERG will be in a position to contribute to the debate on all relevant aspects of the proposals.

2.6. Accessibility Services for disabled end-users

An issue related to Universal Service is the question of ensuring that disabled users have equivalent access to and choice of electronic communications services to that enjoyed by the majority of end-users. The revised Citizens' Rights Directive contains a provision which would empower NRAs to set requirements as a general obligation where this would be appropriate. Where such requirements are not set, Member States are required to take specific measures as part of the Universal Service Obligation.

ERG will review how accessibility services are currently provided, conduct a high-level analysis of the costs and benefits associated with different accessibility services and produce a report to facilitate consideration of the issues at the national level.

Deliverable: *ERG Report.*

Consultation: *Yes*

2.7 Net Neutrality

During 2010, the debate on enhancing net neutrality is likely to develop further. The revision to the regulatory framework will make important revisions to strengthen requirements in this area. ERG will contribute to this debate and examine issues which fall within the scope of the the electronic communications regulatory framework.

Deliverable: *ERG Report/ERG Opinion.*

Consultation: *No*

3. Changes to the legal regulatory framework

3.1. Transition from ERG to BEREC

The BEREC Regulation comes into effect 20 days after publication in the Official Journal. It is likely therefore that BEREC will come into being early in 2010. In the course of 2009 ERG has made a number of preparations in anticipation of an early adoption of the revised regulatory package, including the BEREC Regulation. When the Regulation comes into effect, a number of tasks must be undertaken including governance arrangements for BEREC in accordance with the Regulation and the establishment of the Office as a support to BEREC.

In addition, ERG will engage directly with the Commission on procedural issues related to some of the new provisions in the revised regulatory framework

Deliverable: *Timely establishment of BEREC in accordance with the Regulation, appointment of Administrative Manager and recruitment of staff for Office*

Consultation: *No*

3.2. Article 7 Expert Reports

As a consequence of the success of the IRG's voluntary commitment to assist its member NRAs upon request during the second phase procedure of the Framework Directive's Article 7, it was decided during 2007 that a team of independent experts would be set up automatically upon the launch of 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 a maximum of 60 days is quite a challenging and resource-intensive exercise for the experts of the NRAs.

When the new provisions of the Framework Directive become operative, BEREC will be responsible for delivering opinions under Art 7 and 7a. As part of the transition process from ERG to BEREC, ERG will set in motion arrangements to transform the existing procedure of considering Phase II cases to the procedures required to comply with the new provisions while noting that some aspects of the revised Framework Directive will not come into effect until the required date for national transposition.

Deliverable: *Expert Reports of Article 7 Expert Team*

3.6. Switching Providers

In 2009, ERG began to consider issues related to the ability of consumers to switch service providers, taking advantage of competition by selecting a service provider which best meets their needs in terms of price and range and quality of service. Issues of consumer protection also arise through the marketing process e.g. through "slamming". The ability of consumers to switch providers also has a direct bearing on the development of competition, as foreclosure of the market may result from customers being locked into contracts with existing suppliers for lengthy periods.

ERG will review the current experience of NRAs and identify key principles for facilitating switching and ensuring effective consumer protection in accordance with the new provisions in the draft Citizens' Rights Directive

Deliverable: *I/ERG report*

Consultation: *Yes*

Other issues

Some items in the ambitious work programme for 2009 may not be completed by December in which case they will be concluded early in 2010. During 2009, ERG published two reports dealing with margin squeeze issues from different angles². Arising from feedback from stakeholders, ERG will consider views on whether ERG should conduct further work on this issue during 2010.

²

http://erg.ec.europa.eu/doc/publications/2009/erg_09_07_report_on_the_discussion_of_the_application_of_margin_squeeze_tests_to_bundles.pdf and

http://erg.ec.europa.eu/doc/publications/erg_09_21_erg_report_on_price_consistency_in_upstream_bb_markets_090603.pdf