



Draft ERG Work Programme 2010: Comments from Skype

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Skype Communications sarl (hereafter ‘Skype’ www.skype.com) is an EU-based provider of peer-to-peer software applications that enable Skype users to communicate with other Skype users, and enabling, optionally and where possible, certain forms of communication with the subscribers of electronic communications networks and services.

Skype is grateful to the ERG for the opportunity to comment on its draft Work Programme. With the revision of the Electronic Communications regulatory framework and the creation of ‘BEREC’, 2010 is indeed an important transition year for all actors of the ICT value chain, which requires careful consideration by regulators not only of the impact on the telecommunications industry, but also on related industries such as software and information technology, and wider social and economic implications.

General remarks: the need to focus on consumer benefit


The ERG should prioritise and orientate its workstreams in relation to the value derived by consumers, businesses and administrations, i.e. by the wider society and economy , from the rise of the Internet and Next Generation Networks, rather than only on the economics of telecommunication networks.

On consistency and harmonization of regulation in particular, with the advent of BEREC European regulators have an opportunity to deliver societal and economic value to consumers, businesses and administrations in innovative ways by enabling further competition and innovation in the marketplace, in particular by encouraging the entry of new market players, hence providing more choice and lower costs. This could be done through improvements in spectrum (trading, re-use, further liberalization) which should provide alternative ways of providing services; harmonizing regulation and facilitating the cross-border provision of services across the whole of Europe, both for businesses services and for ECS provision to individuals; and lowering voice and data roaming prices at wholesale and retail levels. Also related would be the work around Network neutrality and the question of switching providers, together with considerations around new bottlenecks such as the competitive effects of bundling on the marketplace and the overall ICT value chain.

Driving this forward-looking and crucial agenda is well within the competence and reach of the ERG/BEREC regulators, and would demonstrate the Group’s leadership and vision, driving the Single Market while making significant progress for consumers, businesses and public administrations.

1. Improving Harmonisation

1.1. International Roaming



Skype would suggest that in monitoring the application of the revised Regulation 717/2007/EC, and in order to support the development of a more competitive situation that would positively affect roaming prices, NRAs should:

1. Pay particular attention to recital 49 which asks the Commission to “*consider the availability and quality of services which are an alternative to roaming (such as VoIP)*” and
2. Take appropriate action in relation to recital 40 which recommends that “*there should be no obstacles to the emergence of applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, Voice over Internet Protocol (VoIP) and Instant Messaging services*”.
3. Prerequisites for the above becoming a realistic possibility include:
 - International wholesale data roaming fees should enable flat-rate or quasi-flat-rate retail mobile Internet roaming offers (this is not the case under the current Regulation, and prevents take-up), either through market mechanisms that have proven their effectiveness, or through amendment of the Regulation,
 - Putting an end to usage restrictions (be they contractual (including pricing) or technical in nature) which prevent or discourage the use of VoIP on mobile Internet connections, on the part of the mobile network operator or MVNO to whom the user subscribes, as well as on the part of roaming partners onto whose network the user is roaming.

1.2. Next Generation Networks – Access

Implementation Issues related to the Commission Recommendation on NGA

In following up the forthcoming Commission Recommendation, the ERG should look to not only define open access, but also to ensuring it. Further, a definition of ‘open access’ should not only cover its meaning for the infrastructure layer but also the services layer.

NGA is a key component for the development, adoption and use of information and communication technologies (ICT) in the economy and in society. Use of Internet content, applications and services on NGA networks in particular, is of strategic importance because of its ability to accelerate the contribution of these technologies and their applications to growth and innovation in all sectors of the economy and to social and regional cohesion. The ERG should actively support the widespread availability of broadband services based on NGA including unrestricted open access to the global Internet for all the European citizens as laid down in the Lisbon strategy and subsequent Communications.¹

¹ http://ec.europa.eu/information_society/eeurope/i2010/docs/future_internet/act_future_networks_internet_en.pdf



2. Emerging Challenges

2.1. Business services market

In relation to the supply of communications services to large multi-site businesses, some modifications were brought into the revised Electronic Communications Framework. In this perspective, the ERG could usefully clarify the notion of ‘limited notification’ introduced in relation to business services in the revised Telecoms package, and how it will be applied across the Single Market / by each NRA.

It is crucial that limited notification does not only present simplified and harmonized procedures for providers of business to business ECS, but also do not serve to reinforce the barriers to entry to this market by favouring already established market actors.

2.2. Convergence

1. Regulating with a trembling hand

With regard to convergence, it is crucial that the ERG analyzes new and innovative services with an open mind, and resist the easy temptation to simply choose to classify them all as Electronic Communications Services (ECS). It could put a massive brake on innovation and on the fulfillment of consumer needs and demand, whilst not serving actual and urgent public policy needs.


This complexity has been recognized explicitly by the European Parliament and Member States in the revision of the Electronic Communications Framework, where the definition of a Publicly Available Telephone Service has been specifically left unchanged. Indeed, PATS regulation should be reserved for those offering a close replacement to traditional retail telephone services where there is a risk of consumer confusion and a high level of protection is justified.

Recital 7 of the new Citizens’ Rights Directive recognises explicitly that PATS :
“is bidirectional, enabling both the parties to communicate. A service which does not fulfil all these conditions, such as for example a "click-through" application on a customer service website, is not a publicly available telephone service “.

While Art 2 (c) defines PATS as

“a service made available to the public for originating and receiving, directly or indirectly, national or national and international calls through a number or numbers in a national or international telephone numbering plan”.

2. Not shying away from new and complex challenges



One of the implications of convergence is the changing and complex competitive landscape, whereby the definition of a ‘Market’ should be challenged (such as when network operators bundle offerings and therefore operate across several markets, creating new competitive pressures), and new or consolidating bottlenecks to monitor, such as on retail broadband access where there are clear risks for those operators also active on the services layer, for instance, to abuse their control at the infrastructure layer to favour their own commercial interests at the services layer.

2.3. Cross-border enforcement


There are some significant cross-border issues which remain, such as ‘spam’ which several ERG members have been actively involved in tackling.

Another crucial issue is that the arbitrary degradation of Internet traffic by certain Internet Service Providers in some European countries can have negative impacts on consumers’ experience of the Internet across European borders, because of the way Internet traffic travels across borders. The ERG should actively take action against such abuses, in the interest of competition, consumer welfare and innovation, in line with the new Article 22.3 of the Citizens’ Rights Directive and with the Roaming Regulation in relation to removing obstacles to technologies and applications that may help reduce the high roaming charges paid by consumers.

Similarly, the wider availability of numbers is a provision of the Electronic Communications Framework which has not been adequately enforced so far, and this should be remedied as BEREK takes charge of improving consistency and harmonization within the EU. Article 10.4 of the revised Better Regulation directive stipulates that *“Member States shall support the harmonisation of specific numbers or numbering ranges within the Community where it promotes both the functioning of the internal market and the development of pan-European services. The Commission may take appropriate technical implementing measures on this matter.”* Further, the guidance provided by the European Commission in the Information and Consultation Document of 14 June 2004 on the treatment of Voice over Internet Protocol (VoIP) under the EU Regulatory Framework, specifically confirms in Section 7.1 that: *“Any undertaking providing or using electronic communication networks or services has the right to use numbers”*.

Experience (of a much wider community of interests than the Skype user community) demonstrates unequivocally that there is not only latent, but quite manifest, demand from end-users (large businesses, governmental authorities, small businesses and individual citizens) for:

- allocation of all types of numbers directly to end-users and to entities that are not providers of electronic communications networks or services; and
- allocation of numbers, including geographic numbers, outside of the traditional telephone zones or other boundaries, including on a trans-national basis.



Finally, the draft work programme mentions in relation to cross-border issues that “*cross-border consumer protection challenges will increase as service providers are increasingly able to provide services to consumers outside their own national borders*”: this sentence is rather unclear, because the service providers regulated by the ERG members are Electronic Communications Service Providers (ECS), who are normally obliged to be notified (or at least to comply with regulation) at national level. Therefore it would be useful for the ERG to clarify its thinking in this area, and also which “consumer protection challenges” are targeted.

Generally, what the ERG should work on and contribute to is for the European regulatory framework to enable cross-border, whole-of-Europe provision of content, applications and services (be they ECS or not), without the need for complying with 27 different sets of regulations. It should be possible to provide these from one Member State to another without increasing the regulatory burden, as currently already applies for e-commerce and audiovisual services.

2.4. ERG-RSPG Co-operation


It would be useful for all stakeholders to know how to engage and input into this discussion, for instance from the perspective of raising awareness of some of the innovative (re)uses of spectrum that can be made, including the potential of white spaces / open spectrum and spectrum trading.

Indeed, it should be a priority for ERG to address and encourage ubiquitous availability of affordable truly mobile access to the open Internet, being vital in order to sustain and foster individual and collective expression, effective e-government, and economic and social development in the EU.

2.7 Net Neutrality

The concept of Net Neutrality is ill-defined and defining it should be the first step in such work. Indeed, it means different things to different people, and therefore makes the job of regulators and policymakers difficult in assessing how best to respond to the actual challenges posed to competition, consumer welfare, and innovation by what some have referred to as ‘abuses of net neutrality principles’. It will be important for the ERG to rely on input from all relevant information society stakeholders (and not only telecommunications network operators) if it is to produce an informed, balanced and robust Report or Opinion on the question.

Arbitrary blocking, degradation and/or discrimination by network operators against a number of Internet access, services, applications and protocols – such as VoIP or peer-to-peer - are commonplace in Europe. In many European countries, the situation is exacerbated because all mobile network operators in the country prohibit or block access



or impose discriminatory additional retail tariffs, and/or because switching providers in case of dissatisfaction proves an overly challenging task for the user (see ERG draft work programme item 3.6 on the continuing problems with the ability of consumers to switch providers, continued concern over the limits of coverage for the mobile Internet in many European regions, and lack of genuine choice of ISPs for many European citizens).

It is crucial that the revised Telecoms Framework is implemented and acted upon by the Members of the ERG in a manner that is both harmonized, consistent, and tackles urgently the abuses to consumer choice online and to the ability of online innovators and SMEs to do business without artificial barriers.

3.6. Switching Providers

Numerous transparency requirements, existing or introduced in the revised Telecoms package, underlie the belief that a certain number of practices by network operators can be tolerated because Europe benefits from a competitive marketplace, where consumers are able to switch to another provider if they are not happy with the service they receive currently. This is an argument particularly prevalent in discussions around the open Internet / net neutrality, that is, the blocking, degradation or (price) discrimination affecting certain Internet content, applications and services, such as VoIP.

The continuing and serious problems encountered by consumers in switching providers, as underlined time and again by both regulators and consumer representative groups, points to the limits of this understanding.

The difficulty of switching providers should therefore be included in considering issues such as transparency requirements, convergence and competition, and net neutrality, among others.

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