Hutchison Whampoa (Europe) Limited
Contact: John Blakemore, Director of European Regulatory Affairs Hutchison 3G
Hutchison Europe Brussels Branch
Square de Meeus 35
1000 Brussels
T: + 32 2 509 0074

3 Group's response to the ERG's consultation on its 2008 work programme

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Introduction

This paper sets out the response of the 3 Group ("*the 3 Group*") businesses in Europe to the ERG's consultation on its work programme for 2008 (ERG 07 (65) Rev 1).

The 3 Group is part of Hutchison Whampoa Limited's telecoms division, and includes the following operating companies in the EU: Hutchison 3G Austria GmbH, Hi3G Denmark ApS, Hutchison 3G Ireland Limited, H3G Spa (Italy), Hi3G Access AB (Sweden) and Hutchison 3G UK Limited (together, H3G).

The HWL telecoms division, comprising the 3 Group and Hutchison Telecommunications International, is the first global 3G operator, with 3G licenses in 10 countries[1]. Our 3G services were first rolled out in March 2003. The HWL Group had close to 16 million 3G customers globally and more than 13 million in Europe as of 22 August 2007. The 3 Group is one of the fastest growing telecoms businesses in Europe.

Summary

The 3 Group identifies the following priorities for the ERG in 2008:

1. Mobile termination rates

2. Roaming regulation

3. Benchmarking of best practice to achieve harmonisation

1. Mobile termination rates

The ERG currently has a project team examining mobile termination rates (MTRs) and two aspects in particular: (i) the question of whether all operators in a Member State should have the same MTR (symmetry); and (ii) greater consistency between NRAs in their cost models.

Whilst these two aspects of the regulation of MTRs are important, the ERG should also be looking at the long term issues. This is especially so if the Commission intends to adopt a Recommendation on MTRs in 2008. Such a Recommendation is likely to remain extant for several years and risks cementing the status quo unless it is sufficiently forward-looking.

In this regard, the 3 Group has been undertaking work looking at how to remedy the problem of MTRs, which remains the main area for intervention in mobile markets. That MTRs are a problem requiring regulatory intervention is accepted. However, there is little debate on the appropriate long term solution to this problem. The work undertaken by the 3 Group shows clearly that the current approach to regulation of MTRs needs to change, first, because it is distorting competition and it creates a floor to retail pricing and, second, because it does not accommodate the future world of converged products.

The evidence of the competition distortions caused by MTRs is growing. MTRs are a deterrent to entry. This has long been understood by regulators. However the scale of that deterrence is now

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[1] Australia, Austria, Denmark, Hong Kong, Ireland, Israel, Italy, Norway, Sweden and the UK.

becoming better understood. MTRs support anti-competitive on-net pricing strategies. They lead to traffic (and financial) flows from small new entrants to large incumbent operators. They keep retail prices high and prevent the emergence of large (all network) bundles and flat rate tariffs.

Convergence is likely to be a growing issue as packet data becomes more and more prevalent on mobiles. The 3 Group already offers the 3 Skype phone offering unlimited Skype to Skype calls and has data offers that include unlimited instant messages. This serves to highlight the contrast with the circuit switched world where high termination charges for voice and SMS prevent similar offers. For this reason, MTRs are also a relevant topic for consideration by the ERG's project teams looking at convergence, IP related challenges and Next Generation Networks.

The ERG needs to be anticipating these problems and looking at the future remedies. The 3 Group would like to see a debate emerge at the EU level on the future direction and level of MTRs. It is not enough to say they should continue to go down. The ERG should take the lead in identifying the correct model for MTRs in the future.

The 3 Group has examined the question of MTRs and is proposing a move to much lower termination rates and possibly zero termination payments between mobile operators. This eliminates the problem of convergence since it corresponds to the peering and transit arrangements that prevail in the IP environment. Very low or zero termination rates also solve the on-net pricing problem. With low or zero MTRs the problem of margin squeeze that arises when on-net tariffs are below the termination charge is resolved. They facilitate lower (and simpler) retail prices and the emergence of flat rate tariffs. They are therefore good for competition and good for consumers.

2. Roaming regulation

The ERG should continue to monitor the implementation of the roaming regulation. The 3 Group has seen instances of some operators responding to the regulation by trying to recoup their lost revenues with price increases for other wholesale roaming charges, notably: (i) changing the charging interval from per second to per minute; (ii) increasing wholesale SMS and data roaming charges; and (iii) increasing wholesale roaming charges to non-EU operators.

Whilst none of these practices is prevented by the regulation, they do serve to show that the wholesale market, whether for voice or data, continues to display market failures that require regulatory intervention to resolve. If the markets were working competitively it would not be possible for operators to impose price increases (for example for SMS and data roaming).

The ERG should also contribute to the Commission's review of the roaming regulation and, in particular, to the consideration of regulating data roaming. Just as with voice prior to the roaming regulation, data roaming prices are high and often static. Headline prices of around €7 per MB are typical. In fact, as noted above, some operators have been able to impose increases in wholesale data roaming prices since the voice regulation came into force, which is a clear demonstration that the data market does not function competitively. The 3 Group believes there should be a cap on wholesale data roaming charges of 25 €cents per MB to enable cross-border data services to take-off. Even at this level, wholesale data roaming prices would be 40 times domestic <u>retail</u> data prices (taking 3 Austria's tariff of €19 for 3 GB per month) and so 25 €cents represents the maximum wholesale rate at which commercially viable cross-border data services can emerge.

3. Benchmarking of best practice

The ERG has an important role to play in improving harmonisation outside of the market review process. The 3 Group has previously identified mobile number portability as an area where the ERG could provide best practice guidance and offer assistance to those NRAs that have yet to implement a modern and effective MNP solution.

MNP is one such area, but there are others. For example, with the forthcoming Decision allowing UMTS to be deployed in the GSM bands the ERG should work together on best practice on how to deal with the competition issues that arise and how to implement refarming without distorting competition. Another example is the permitted subscription period for contract customers, which varies widely from Member State to Member State.