3 Group's response to the ERG's consultation on the IRG/ ERG Draft Work Programme 2009

The **3** Group believes there is an important role for the European Regulators Group (ERG) to develop and disseminate best practice in regulation. This should improve the quality of regulation, improve consistency and provide greater regulatory certainty. There is, however, a need to improve the quality of the ERG's Common Positions and the time taken to adopt them. The ERG's work on termination rates, for example, identified the problems but did not provide a clear solution and, instead, the Commission has had to act. The work on IP Interconnect started in 2006 and that on fixed-mobile convergence in 2007. In the meantime, competition distortions are arising and are not being dealt with by national regulators.

Overall, therefore, the **3** Group supports the work of the ERG and agrees with many of the activities identified for the 2009 Work Programme, but urges the ERG to do more to improve the timeliness and quality of its outputs.

The ERG notes that 2009 will be a year of transition and that market change is accelerating with convergence and investment in IP and high speed infrastructures. The ERG will have an important role in determining how regulation should adapt to deal with these changes. The ERG also has an important role to play in improving the quality of decisions taken by national regulatory authorities (NRAs). Convergence is likely to increase the complexity of regulation and will require NRAs to deploy a higher level of skill than hitherto. The **3** Group is concerned that not all NRAs will be able to meet this challenge.

In light of this, the **3** Group supports further work by the ERG in 2009 on the following topics:

1. Termination rate regulation.
2. Fixed-mobile convergence.
3. Spectrum regulation.
4. Sharing of best practice.

1. Termination rate regulation

The **3** Group supports further work by the ERG on mobile termination rates. There should be two aspects to this work: (i) setting a policy in the short term to deal with the competition distortions from high (that is, above cost) termination rates; and (ii) defining a new wholesale charging mechanism for the medium term.

The competition problems caused by high termination rates are now well known. The recent work of the ERG and the Commission has confirmed the disadvantages faced by smaller and new entrant operators when termination rates are above cost. The Commission's draft Recommendation offers a significant step forward in resolving these problems. However, as the **3** Group commented in its response to the consultation on the Recommendation, by requiring symmetry and in its definition of an efficient operator, it risks harming competition during the transition to lower termination rates.

The ERG's draft Work Programme identifies implementation of the Commission's Recommendation as an activity for 2009. The ERG should look at how to achieve the objectives of the Commission's Recommendation (termination rates based on the true incremental cost of termination) in a way that does not distort competition. The ERG should resolve questions such as: (i) should new entrants be subsidising incumbents? (ii) Should operators with market power be able to set on-net retail prices below their wholesale MTRs?

The Commission's draft Recommendation provides greater regulatory certainty for the period to the end of 2011. The ERG should now be proposing a policy on termination rates for the period after 2011. This is the role of the ERG's project on future charging mechanisms in the light of convergence of telecoms and the internet.

The **3** Group agrees with much of the ERG's statement on the regulatory principles of IP-IC/ NGN Core. Bill and Keep is likely to offer significant advantages for the future. It resolves the current competition distortions caused by high termination rates, it offers the prospect of less regulation of the mobile sector and it gives more flexibility in retail pricing. The **3** Group has already examined some of the 'further issues' identified by the ERG (such as the border for the bill and keep regime, SPAM and the impact on business models) and looks forward to sharing its ideas.

In terms of the timing of this work, this is a priority area. As well as the short term competition distortions caused by high termination rates, there is already evidence of the problems of having two interconnection regimes for converged services. One example of this is that many mobile operators block VoIP calls.

2. Fixed-mobile convergence

The **3** Group has previously raised concerns about bundled fixed-mobile products offered by some incumbent fixed operators. This bundling could distort competition by levering the dominant position of the fixed incumbent into potentially competitive mobile markets. It has been going on for some years now and yet national regulators have yet to respond. A clear policy on converged and bundled services is overdue. Action by national regulators is now urgently required.

The **3** Group is pleased to see that the ERG plans to publish reports in 2009Q1 on both fixed-mobile convergence and margin squeeze in bundles, but is disappointed that there will be no opportunity for operators to comment on that report. Without the contribution of market players, the ERG's report may not capture all of the aspects that are presently encountered.

3. Spectrum regulation

The **3** Group agrees that the ERG should plan to coordinate with the work of the RSPG. Spectrum is an essential resource for mobile networks and the way it is managed significantly influences the nature of competition. The **3** Group is especially concerned to ensure that refarming of 2G spectrum following the repeal of the GSM Directive is done in a way that does not harm competition. This will inevitably require a redistribution of spectrum to make sure all operators in a market have equal opportunities to spectrum for coverage and capacity. The ERG should look at how that redistribution should be effected and whether any further obligations (such as mandatory access to network infrastructure) should be attached to refarmed spectrum.

4. Sharing of best practice

The **3** Group asked the ERG to look at best practice in mobile number portability in response to the consultation on the ERG's 2008 Work Programme. It now seems that the ERG may examine this in 2009 under its 'consumer empowerment' activity, although the draft Work Programme is unclear on exactly what the ERG intends to do. Nevertheless, number portability is a topic that is ripe for sharing of best practice, since some NRAs have been able to implement porting in a few hours, whereas other NRAs struggle with one day porting.

The ERG also considers work on the length of contract terms. The **3** Group shares the ERG's concern that consumers should not be unduly locked in, thus preventing market fluidity. However, at the same time as ensuring customers are not locked in to contracts of unduly long duration, the ERG should also examine unduly short maximum contract periods. Denmark, for example, has a maximum contract duration of 6 months. Such a short maximum contract length can make switching difficult because operators are unable to amortise the costs of customer acquisition over the term of the contract. It can also mean consumers are denied attractive new offers. For example, 3 Sweden offers mobile broadband with a new laptop for 399 Kr per month (about €40) over a 24 month contract (the mobile broadband service without laptop costs 199 Kr per month). With a maximum contract length of 6 months, 3 Denmark cannot give customers attractive offers like these.

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