



EUROPEAN REGULATORS GROUP

ANNUAL REPORT 2005

Published February 2006

This document comprises a report made under Article 8 of the Commission Decision of 29 July 2002 (2002/627/EC) as set out in the Official Journal of the European Union

Contents

Chapter 1 : Introduction by the Chairman	2
Chapter 2 : Overview	4
Chapter 3 : Main activities	5
Chapter 4 : Organisational developments	9
Annex A : Meetings	10
Annex B : Information from the Chairman and the Secretary on activities in 2005	11

Chapter 1 : Introduction by the Chairman

During 2005, the European Regulators Group (ERG)¹ has continued to advise and support the European Commission on the implementation of the regulatory framework for electronic communications. The ERG dealt with a large number of significant issues during 2005 as set out in this report. I am pleased to note that the ERG has been able to substantially complete all the work planned for 2005. In this work, the ERG has fully taken into account the objectives of National Regulatory Authorities (NRAs) as set out in the Framework Directive², that is the need to promote competition, contribute to the development of the internal market and promote the interests of EU consumers.

The ERG has also been conscious of the need to enhance the transparency of its work and provide an opportunity for stakeholders to comment on and influence its work. Accordingly, the ERG has conducted a dialogue with key stakeholder groups during the year and held public hearings and consultations on the proposals and draft documents of the ERG before they were finalised.

The ERG is aware of the importance of creating the right conditions to encourage and safeguard investment in the electronic communications industry for the benefit of end users and the competitiveness of the EU economy as a whole whilst reducing unnecessary burdens on the industry. The ERG, therefore, welcomes the opportunity in 2006, afforded by the Commission's review of the regulatory framework, to contribute ideas to streamline and improve it whilst bearing in mind the need to encourage innovation and investment, promote competition and the interest of consumers.

Finally, I wish to convey my warm thanks to Mr. Eric Van Heesvelde (BIPT) and Mr. Kip Meek (OFCOM), both of whom have been vice chairmen of the ERG in 2005, for their valuable support during my chairmanship. I also want to wish my successor, Mr. Kip Meek every success in 2006.

Jørgen Abild Andersen
Chairman of the ERG, 2005

¹ The ERG consists of Heads of the National Regulatory Authorities (NRAs) of thirty-three European countries who work together to agree a harmonised approach to regulation in a number of key areas as set out in this report.

² Directive 2002/21/EC (Framework Directive)

Chapter 2 : Overview

The 2005 ERG Work Programme was published in February 2005 following both a written public consultation and public hearing. The Work Programme was designed to concentrate the ERG attention to priority areas where a coordinated approach by NRAs was most likely to make a strong positive contribution to the goals of the regulatory framework. The work was categorized according to priority. The highest category contained those work items with a well defined topic and clear deliverables linked to major issues.

The ERG identified international roaming, VoIP, broadband and remedies as the top priority areas for 2005. The ERG was concerned at the high cost of international roaming and in concert with the European Commission, the ERG has adopted a three-track approach. Firstly, the ERG agreed that all NRAs commence reviews of competitive conditions in the wholesale market for international roaming. Secondly, the ERG reviewed how to improve the transparency of roaming prices for consumers. Heads of each NRA agreed to establish national websites providing consumers with information on international roaming prices. These websites will complement the website on international roaming prices maintained by the European Commission. Thirdly, in its dealings with the mobile industry, the ERG has agreed to press for a decrease in retail roaming prices. International roaming will continue to be high priority of the ERG during 2006.

The ERG is committed to creating a regulatory environment where new VoIP services can flourish to the benefit of consumers. In 2005 the ERG adopted a Common Statement on VoIP which addresses specific barriers to market entry in order to ensure that European consumers get access to VoIP services on an informed basis. The ERG also published a number of documents reviewing the development of the broadband market.

An essential element of the regulatory framework is to impose remedies (obligations) on operators with dominant positions in markets which are not competitive. In 2004, the ERG agreed a Common Position which sets out a harmonised approach to the selection of remedies. In 2005, the ERG reviewed the Common Position based on the experience gained from implementing the regulatory framework so far and proposed a number of amendments. At the end of 2005, the proposed changes to the Common Position were being publicly consulted on.

Finally, the ERG has commenced working on Opinions relating to the Review of the Framework and the revision of the Recommendation on Relevant Product and Services Markets following the Commission's general request for comments in November 2005. They are expected to be completed at the beginning of February 2006.

Chapter 3 : Main Activities

The NRA Heads meet in plenary session four times a year where key items are discussed and harmonised positions agreed. The detailed work of the ERG is undertaken through expert Working Groups and Project Teams. They prepare draft positions for consideration by the Plenary in accordance with the Work Programme. The decisions of the ERG are then formalised in public documents.

The main activities of the ERG in 2005 are explained below.

A. Wholesale international roaming

- **Common Position on Wholesale International Roaming, ERG (05) 20 Rev 1**

1. The ERG agreed a common position on market definition and market analysis for the wholesale international roaming market. This gives guidance to NRAs to support them in conducting their market reviews in each individual Member State.

- **ERG Project Team Report on International Roaming Retail Tariff Transparency ERG (05) 43**

2. The ERG, using its initiative powers under Article 5 of the Commission Decision establishing the ERG³, undertook a review of the transparency of international roaming tariffs. A number of initiatives are identified in the report which should improve transparency by increasing consumer awareness of roaming tariffs and of comparability of tariffs and stressing that a choice of alternative roaming service provider is possible. The ERG also agreed that each NRA should immediately begin work to establish national websites containing relevant information on retail roaming tariffs and to individually investigate the legal/institutional feasibility of push/pull SMS services to inform incoming roaming customers on the relevant roaming tariffs in the visited country.

B. VoIP and Broadband markets

3. The ERG regard VoIP and broadband markets as important areas where an appropriate harmonised approach could prove helpful for the rapid development of competition. The ERG completed the following documents in 2005:

- **Common Statement on VoIP regulatory approaches, ERG (05) 12**

4. The ERG issued a Common Statement on VoIP which elaborated a common regulatory approach to VoIP services. This was published in early 2005 at a time when VoIP services were on the verge of a commercial breakthrough in Europe. The Common Statement constituted an understanding between NRAs of the need to address specific barriers to market entry of VoIP services in order to ensure that European consumers get access to VoIP services. At the same time, the Common Statement provided for a flexible approach to VoIP across Europe. Whilst this was

³ Commission Decision 2002/627/EC

appropriate for an early stage of development of VoIP, the ERG recognises that it needs to keep the situation under review. This has led to further work on VoIP being included in the 2006 Work Programme.

- **Broadband market competition internal report, ERG (05) 23**

5. This report examines competition in the wholesale broadband access market (Market 12 in the Commission's Recommendation on Relevant Markets) and its relationship to broadband penetration. The work was originally started in 2003 with an analysis and comparison of broadband market data with regard to penetration and the competitive situation both on the European as well as country level. The impact of regulatory intervention is analysed, based on thirteen country studies, and provisional conclusions are drawn in relation to potential regulatory strategies. The report should prove valuable to NRAs in their monitoring, comprehension and regulatory control of the broadband markets as it details the relation between different wholesale products and how operators migrate from one product to another (by climbing the rungs on the ladder of investment). An Annex to the report contains details of the individual country analyses.

- **Internal Working Document on VoIP, competitive effects, its impact on retail market analysis of NRAs and application of remedies, ERG (05) 41⁴**

6. This document examines how VoIP based telephony services relate to the analysis of the markets of fixed telephony (Markets 1-6 of the Recommendation on Relevant Markets) and possible regulatory actions regarding the application of remedies. It contributes to a common understanding among NRAs of the impact VoIP services may have on retail market competition. This should assist NRAs in finding a coherent approach towards how VoIP should be treated in the market analysis process, thus also providing higher regulatory certainty for the industry.

- **Working Document on Interconnection in the context of the migration towards IP networks: Overview and further questions, ERG (05) 47 rev1⁵**

7. This working document provides a first overview of the evolution of interconnection regimes towards IP based networks across Europe. The document presents some preliminary data provided by NRAs on a country-by-country basis. Furthermore, it identifies issues to be addressed by NRAs as a result of the stock taking exercise and underlines some questions which NRAs might explore further.

8. The document provides a useful point of reference for NRAs to address the challenges created by the migration from circuit switched networks to IP based networks on a national level. It also provides a common understanding of the terminology in the area of IP interconnection. The document will serve as a starting point for the work on IP interconnection in the 2006 Work Programme.

⁴ This document was prepared as an internal working document and contains commercially sensitive information; the document cannot, exceptionally, be published.

⁵ As above

- **Benchmark of LLU (full and shared) access prices (monthly, one-off), cost base/accounting methodology used, BSA prices and retail prices, ERG (05) 46⁶**

9. This document consist of a benchmark of LLU prices (both full unbundled and shared access) as well as the relevant cost base / accounting methodology. Monthly and one-off prices were benchmarked by reference to a single reporting date (1 July 2005). Also included in the report are Bitstream Access prices (for the main access points) and consumer line rentals. The document makes it possible for NRAs to compare national prices with the prices of LLU in other MS and thus evaluate a need for national actions in this area.

C. Market definition, market analysis and applied remedies

- **Report on Experiences with Market Definition, Market Analysis and Applied Remedies, ERG (05) 51**

10. In anticipation of the review of the regulatory framework, the ERG analysed the notifications of NRAs under Article 7 of the Framework Directive. The report covers what it considers the most important markets in the Commission Recommendation on Relevant Markets, that is Markets 10, 11, 12, 15 and 16.

11. The report describes the outcomes of the market reviews of these five key markets identifying, where possible, common problems and trends. In doing so, the report elaborates on market definition, market analysis and remedies imposed in all five markets and identifies differences in outcome and the reasons for them. In this way, stakeholders and NRAs get an overview of considerations made by the NRAs during the process of conducting their market analyses. The results of this study will be used as an input for the ERG's contributions to the Commission's review of the regulatory framework to be conducted during 2006.

- **Update of the ERG Common Position on the application of remedies, ERG (05) 70**

12. This Common Position sets out the agreed approach to selecting the appropriate remedies best suited to address specific issues in individual markets where there is a lack of effective competition. It is necessary that the Common Position be reviewed and refined in the light of experience in order to ensure a harmonised implementation of the New Regulatory Framework in Europe.

13. Subsequent reviews of the ERG Common Position were already foreseen in the document itself. The update was not intended to be a comprehensive rewrite but to cover selected areas as follows:

- Emerging markets
- Ladder of investment
- Coherent price regulation

⁶ As above

- Non-price discrimination
- Variations of remedies within a market or between termination markets
- Linkages between markets
- Removal of remedies

14. A public consultation on a draft of the proposed Update ended on 13 January 2006.

D. Other

- **Revised Common Position on wholesale bitstream access (includes a chapter on cable network access). ERG (03) 33 Rev2-**

15. The ERG revised its Common Position on Wholesale Bitstream Access, ERG (03) 33 rev1, by integrating a new chapter on wholesale bitstream access to cable networks. The revisions note that various technical solutions exist for cable operators to provide “bitstream” type services and that if cable network operators are found to have a dominant position, it follows from the principle of technological neutrality, that dominant PSTN and cable network operators must be treated in a similar way. Where appropriate, the Common Position might lead to enhanced harmonisation and, in a technology neutral regulatory environment, direct attention to broadband access via alternative types of infrastructure.

- **SMP Working Document, ERG (03) 09 Rev 3**

16. The SMP Working document promotes a common understanding of the interpretation and measurement of SMP indicators, trying to ensure that every criterion is understood and interpreted equally across member states. It, therefore, fosters legal certainty and predictability of the results of market analysis for NRAs as well as for operators. Following a review of the document and a public consultation, the ERG made a number of changes to the document in 2005.

- **Common position on EC Recommendation on Cost accounting and accounting separation, ERG (05) 29**

17. The ERG agreed this Common Position which provides guidance on how to implement the Commission Recommendation on accounting separation and cost accounting systems⁷ under the regulatory framework for electronic communications. The aim of this document is to set standards of process and procedure by which NRAs determine the compliance of regulated undertakings with the Recommendation and to guide these undertakings to design, specify, implement and operate fit for purpose cost accounting and accounting separation systems to meet regulatory obligations.

18. The content of this document is consistent with the Annex of the document ERG (04) 15rev1 (Opinion on the Revision of the Commission Recommendation on Accounting Separation and Cost Accounting), which had been published in 2004. The ERG Common Position will, in combination with the Commission Recommendation, facilitate the harmonisation of the cost accounting and

⁷ Commission Recommendation on accounting separation and cost accounting systems C (2005) 3480

accounting separation obligations in the different Member States and will be useful for the NRAs when implementing obligations in relation to Brussels new regulatory accounting systems under the regulatory framework.

Chapter 4 : Organisational developments

Two new observers

1. The ERG consists of full members (the twenty-five EU member States) and observers from EU Accession/ Candidate States and EEA States. In 2005, ERG welcomed two new observers to the Group. In February 2005, Turkey and, in October 2005, Croatia were granted status as observers to the ERG. Both countries are accession countries to the EU and as a consequence fulfil the required criteria to obtain ERG observer status.









The ERG secretariat

2. The ERG secretariat has been in place for almost two and a half years now and has played a useful role in preparing ERG meetings and promoting cooperation between National Regulators. In addition, it has proved a valuable link between European Regulators and the European Commission.

3. Given the fact that the ERG is now functioning effectively and that all cooperation mechanisms are fully in place, the decision was made to adapt the organisation of the secretariat. The ERG secretariat functions will from 2006 be integrated in the services of DG Information Society and Media.

Annex A : Meetings

The Group held four Plenary Meetings in 2005. The agendas and conclusions are available on the ERG's website. (The links in this table provide access to the agendas and conclusions of the meetings).

DATE	LOCATION	AGENDA	CONCLUSIONS
10-11 February	Brussels		
25-27 May	Bled		
22-23 September	Copenhagen		
24-25 November	Brussels		

ANNEX B

Information from the Chairman and the Secretary on Activities in 2005

A. Speeches and public appearances of the Chairman:

25.01. 2005: Meeting with ETNO regarding the draft Work Programme 2005. ETNO presented their input to the draft work programme 2005 which was also submitted to the ERG in written form.

13-14.04.2005: Presentation at the 12th CEPT conference

31.05.2005: Presentation on regulatory policy challenges at ETNO's annual conference in Brussels

08.06.2005: Presentation at the International Institute of Communications Annual Forum 2005, Brussels

17.06.2005: Meeting with ETNO (Brussels)

28.06.2005: Presentation at the WIK Conference 2005

29.06.2005: Meeting with ECTA (Brussels)

04.10.2005: Press conference of the DG INFSO Commissioner and the ERG Chair on the initiatives on roaming tariff transparency, Brussels

19.10.2005: Public hearing on the ERG WP 2006

10-11.11.2005: Next Generation Regulation Conference, Edinburgh

B. Speeches, public appearances and other activities of the ERG Secretariat:

04.03.2005: Luncheon with discussion on the future of competition in electronic communication markets, The Centre, Brussels

17.03.2005: Presentation on the NRF at the Vienna University of Economics and Business Administration

08.04.2005: Presentation at the VAT Workshop, participation in Workshop on future developments of the electronic communications sector in Austria

13.04.2005: Presentation on the Common Statement on VoIP regulatory approaches, Euroforum Conference, Zurich

- 29.04.2005: Presentation on the Remedies Document, WIK – Sabanci University Conference on: Creating Competition in Turkey
- 02.06.2005: Participation at a CEPS seminar in Brussels on regulatory challenges
- 07.06.2005: Speech at the ETP (European Telecom Platform) Meeting, Brussels
- 21.06.2005: Presentation of the ERG activities at the European Parliament's Committee on Industry, Research and Energy (ITRE-Committee), European Parliament, Brussels
- 11.07.2005: Meeting with Senator Stephen Conroy (Deputy Opposition leader in the Australian Senate) to discuss recent initiatives on non-discrimination and equal treatment in the EU in the field of electronic communications (Brussels).
- 20.07.2005: Meeting with the Egyptian regulator to discuss electronic communications regulatory topics (Brussels).
- 27.09.2005: Speech at the ETP (European Telecom Platform) Plenary, Brussels
- 27.09.2007: Presentation at the IIR Conference, Vienna
- 06.10.2005: Meeting with ECTA on NGN's and VoIP
- 27.10.2005: Communication Days, Biel/Bienne
- 01.12.2005: Presentation at the WIK Conference in Budapest on Regulatory Remedies