

Main outcomes of the 31st ERG Plenary

John Doherty, I/ERG Chair 2010

Brussels, 9 December 2009

The Warsaw Agenda at a glance

- **WP 2010**
- **Convergence – Report on the replicability of bundles**
- **Net neutrality discussion**
- **Remedies – Business services**
- **Remedies – Monitoring programme 2010**
- **International Roaming – Ongoing work**
- **Changes in 2010**

Work Programme 2010

- **Theme:**
Maximising internal market in electronic communications and applying institutional change
- **Priority areas:**
 - Harmonisation and benchmarking
 - Forward-looking challenges
 - Preparing for and applying revised framework
- **Build on WP of previous years**
- **Consultation on WP**
 - Public consultation 14 October – 6 November
 - Public Hearing 4 Nov
 - Adopted at December Plenary

Public Consultation

12 responses received:

- Cable Europe
 - SFR
 - CORNING
 - BT
 - ETNO
 - ECTA
 - INTUG
 - The Number
 - Telecom Italia
 - VON Europe
 - Skype EMEA
 - Fastweb
- General acceptance and approval by stakeholders of topics proposed.
 - Additional issues were raised - Not possible to accede to all requests
 - 2 additional items accepted and will be included
 - guidelines on how the new provisions on Functional Separation might be approached by NRAs, and
 - BEREC's policy regarding consultation with stakeholders.

Topics to be addressed in 2010

- International Roaming
- Next Generation Access
- Monitoring of conformity with ERG Common Positions
- Benchmarking
- Regulatory accounting harmonisation
- Business services
- Convergence and impact on regulation
- Cross-border enforcement
- Co-operation with RSPG
- Future of USO
- Accessibility for disabled end-users
- Net Neutrality
- Transition (ERG to BEREC) issues
- Functional Separation
- Article 7 Expert Reports
- Switching Providers

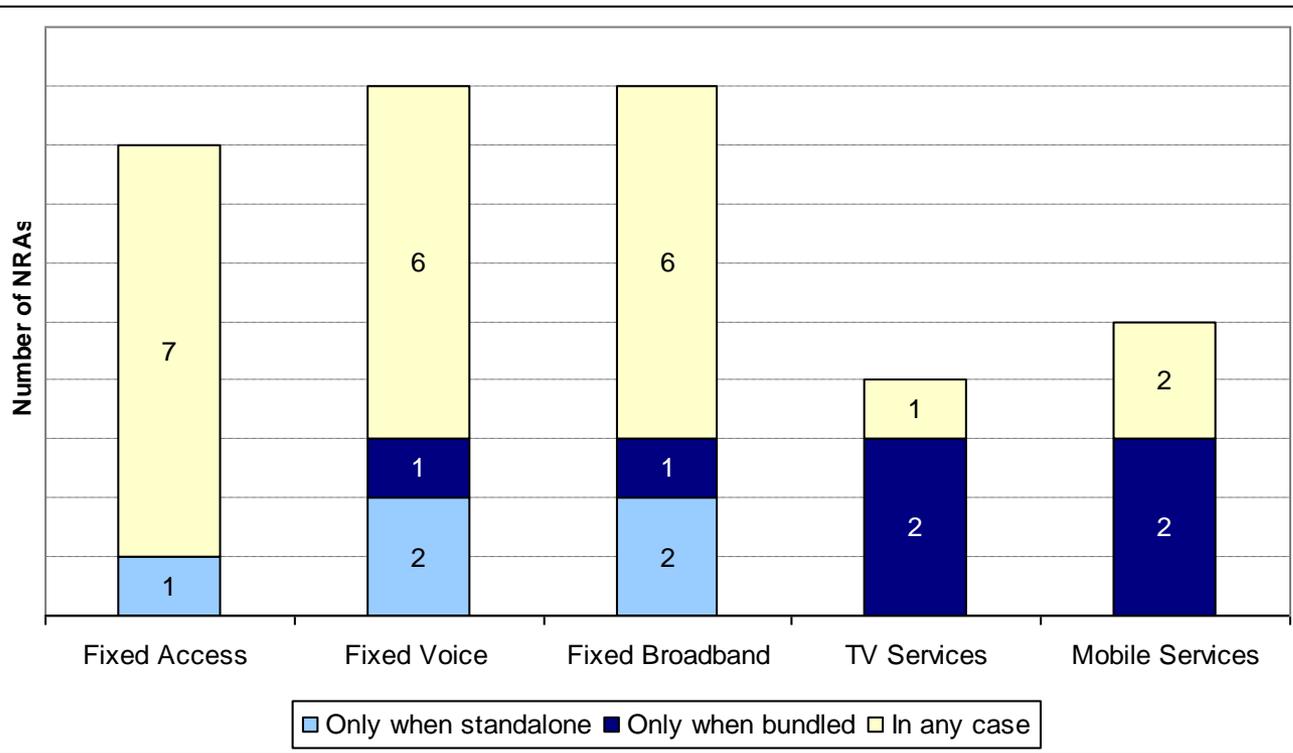
Report on the replicability of bundles – Aims

- Bundling is challenging current regulatory practices - in particular where ex ante obligations exist on some retail markets.
- Bundling is increasing as a characteristic of convergence
- Two perspectives on replicability: Economical and technical
 - Economical Perspective: “Report on discussion on the application of margin squeeze tests to bundles” (ERG (09) 07, March – 2009)
- • Technical Perspective: “Replicability of bundles from the perspective of the availability of wholesale inputs and access to content“ (current work)
 - Ex-ante vs. Ex-post intervention.
 - Methodology for replicability test.
 - Obligations to communicate offers and wholesale access obligation.
 - Competition problems and complaints.
 - Access to content

Scope of the work

- **Based on a comprehensive questionnaire sent to NRAs requesting information and opinion on the issues addressed (Summer 2009).**
- **Focus on the situation in Europe regarding technical replicability:**
 - **Different approaches and different contexts**
 - **The situation is still not mature enough to identify best practices.**
 - **Clarifications were needed for some parts of the questionnaire.**
 - **Document: aggregated information and national cases reviewed by each NRA.**

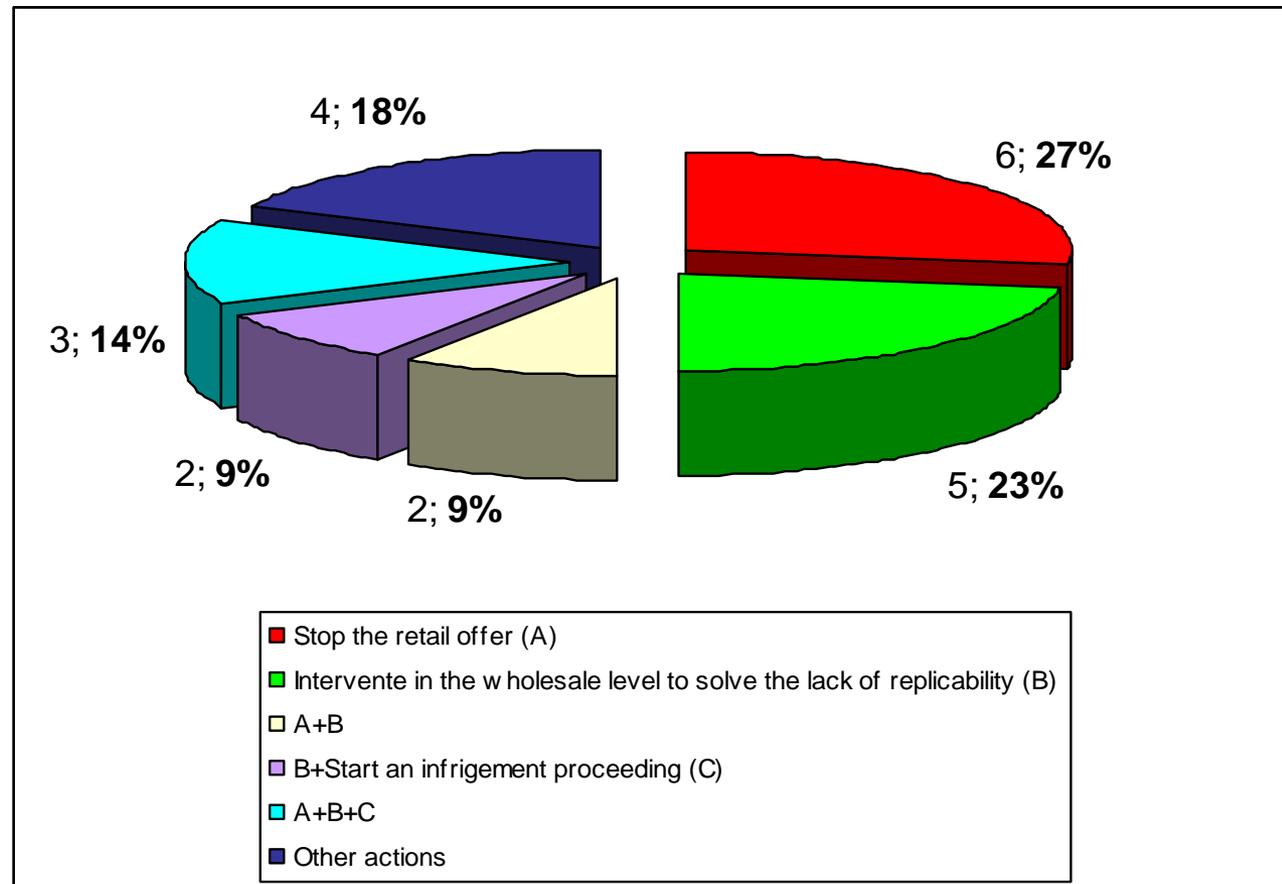
Overview of results Obligation to communicate retail offers



- Near half of the NRAs impose obligations to communicate retail offers.
- The obligations are mainly centred on offers including fixed access, voice and/or broadband.

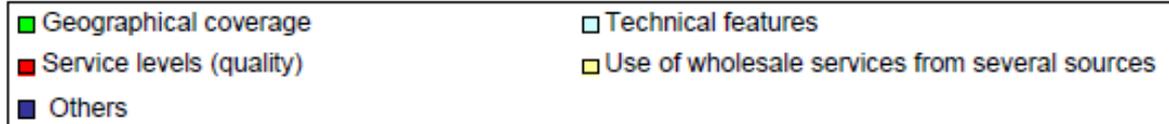
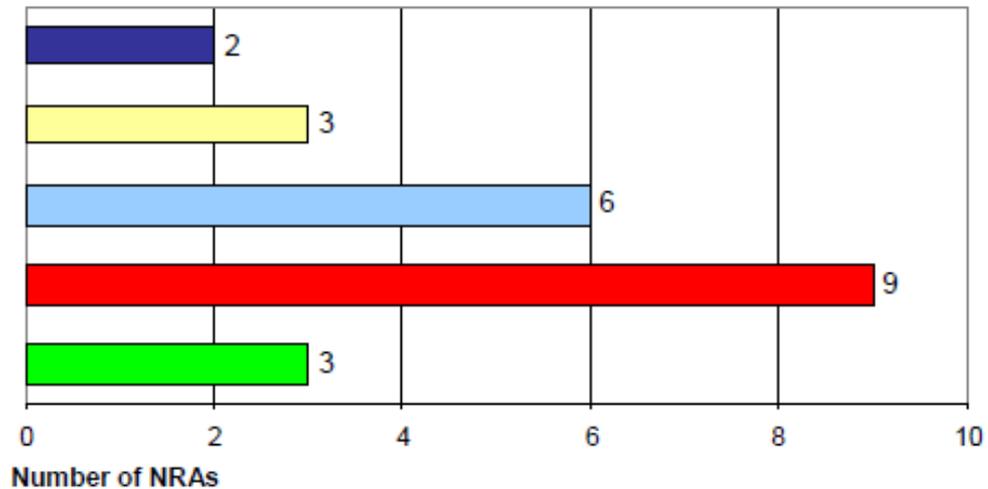
Overview of results Actions when the bundle is not replicable

- Most common interventions
- stopping the bundle
- and/or acting at the wholesale level to allow alternative operators to replicate the bundle.



Overview of results Competition problems

- Main competition problems identified:
- QoS of wholesale access services
- technical features.



Net neutrality discussion

- With continued innovation and greater convergence, the issue of whether and to what extent open Internet policy – also known as “net neutrality” should be implemented comes to the forefront for regulators.
- On 22nd Oct. 09 the FCC published its note on proposed rule making regarding 6 principles of net neutrality
- ERG discussed the “hot topic” and considered various perspectives on the issue
- The WP 2010 includes work on “Net neutrality”

Business Connectivity – Regulation of Wholesale Access Services – The issue

- Are “high end” business users well served in terms of good choice, quality, price?
- How do we characterise “high end” users?
 - No very clear line dividing their needs from those of other business users
 - ECTA/INTUG/EVUA recommended we focus on needs of multi-site large businesses
 - This is a fairly well defined segment and seems to provide a reasonable proxy

Needs of multi-site large businesses

- Need higher specification services than those aimed at the mass market
 - Some services are classically sold almost exclusively to businesses (leased lines, ISDN 30)
 - Others (DSL-based broadband connections) may have “standard” and “high end” variants
- Frequent preference for purchase of national network from single supplier
- Users in this segment tend to need “premium” SLAs – may or may not be available

Proposals for further work – market definition

- Worth further investigation of following aspects:
 - Case for product market segmentation to reflect differences between “high end” and “standard” needs
 - Practical considerations in defining market boundaries
 - Interaction between product and geographic market definition
- Ability to impose “high end” remedies in the context of an unsegmented market

Recommendation – choice of remedies

- NRAs recommended to commit to pay attention to competition in supply to high end customers in forthcoming Market Reviews in defining relevant markets and formulating SMP remedies
- Annex 1 to report sets out the rationale for various high-end remedies imposed on SMP operators

Monitoring of conformity with CPs

- Plan to monitor conformity with 3 ERG CPs on broadband and wholesale leased lines remedies delayed to take account of this report
- Monitoring exercises should now go ahead in 2010, taking into account lessons learned so far in this work on business connectivity

Next steps

- Take account of further work in 2010 Work programme
- Public consultation and hearing on report with a view to informing follow-up work
- Finalisation after evaluation of stakeholder comments

Monitoring Timetable 2010

Subject	Proposed timescale for monitoring
Update of Action Plan for conformity with CP on symmetry of termination rates ^[1]	In preparation. Publication planned in Q2 / 2010
Monitoring of conformity with Broadband CPs ^{[2],[3] [4]}	Start 1 st quarter 2010, after completion of current work item on Business Services. Publication planned 3 rd quarter of 2010.
Monitoring of conformity with Wholesale Leased Lines CP ^[5]	Start 1 st quarter 2010, after taking into consideration the work on business services. Publication planned 3 rd quarter of 2010.
Practical implementation issues regarding geographic differentiation (related to CP on geographic aspects of market analysis, ERG (08) 20) ^[6]	Planned for 2 nd half 2010 depending on the actual number of market reviews

^[1] ERG (07) 83 – Common Position on symmetry of fixed call termination rates and symmetry of mobile call termination rates

^[2] ERG (06) 70rev1 – Common position on Wholesale local access

^[3] ERG (06) 69rev1 – Common position on Wholesale broadband access

^[4] This work will take into consideration the Report on ERG Best Practices in Wholesale unbundled and Bitstream Access (ERG(07)53; and the work on Business services.

^[5] ERG (07) 54 – Common Position on Best Practice in Remedies Imposed as a Consequence of a Position of SMP in the Relevant Markets for Wholesale Leased lines

^[6] ERG (08) 20 Common Position on Geographic Aspects of Market Analysis (definition and remedies)

The Future of Roaming Regulation

- Commission interim report due by mid-2010 and final report by mid-2011
- Plenary 3 adopted a comprehensive work programme to allow ERG to make substantive input at each stage
- ERG working closely with Commission to avoid duplication
- Brief update on our work, particularly:
 - Initial analysis of Ad hoc questionnaires on compliance and unregulated tariffs
 - Data collection for Q2 – Q4 2009 underway; publication April 2010

Ad hoc Compliance Questionnaire

Assessed compliance with the amended Roaming Regulation to date:

- Eurotariff and Euro-SMS: implemented on time
- Welcome messages: nearly all operators could provide these on time
- 'Bill shock' protection measures for data: many operators cited technical difficulties. They are working on solutions and expect to comply on time
- Free deposit of voicemail messages: already offered by a significant number of operators. The rest expect to be compliant on time

Further analysis will inform ERG's submission to the Commission's interim review of the Regulation

Is Regulation Necessary after 2012?

- What does “competition” look like?
- Are we likely to achieve it without regulation?
 - Increased use of alternatives to roaming?
 - New services?
- Impact of regulation on wider market
- Some think regulation already too heavy
- Others think more would have been justified
- Consensus on necessity of this work module
- Work on these more long term issues ongoing

Changes in 2010

- John Doherty (ComReg) took over the Chairmanship for 2010 from Matthias Kurth (BNetzA)
- The ERG also approved a proposal to hold the inaugural meeting of BEREC as early as possible
- NRAs welcome the adoption of the Telecoms Package and the creation of BEREC which is under the full control of independent national regulators whose independence is strengthened
- ERG strongly supports the independence of NRAs as a prerequisite to effective regulation and has concerns about recent developments regarding some NRAs (see press release)

SUMMARY OF APPROVED DOCUMENTS

Documents approved for publication:

➤ IRG-ERG Work Programme 2010	ERG (09) 42rev1
➤ Report on the Draft WP 2010 consultation	ERG (09) 42b
➤ ERG Report on the replicability of bundles	ERG (09) 49
➤ Draft Report for consultation on Business services	ERG (09) 51
➤ Monitoring Programme 2010	ERG (09) 52
➤ ERG Press release	ERG (09) 56