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IEN · Dorotheenstrasse 54 · 10117 Berlin

ERG – European Regulators Group
Avenue de Beaulieu 33
B-1160 Brussels

To: ERG-Secretariat@ec.europa.eu

ERG Report on the regulation of access products necessary to deliver business connectivity services – ERG (09) 51

Comments from the Initiative of European Network Operators (IEN)

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IEN highly appreciates ERG's publication of the "ERG Report on the regulation of access products necessary to deliver business connectivity services". It represents an important step forward towards the understanding of the way in which the needs of business users diverge from those of domestic consumers of communications services.

In the following, IEN would like to give some comments from the view of a Germany based association of pan-European network operators whose business models mainly focus on "high-end" business customers. In addition, IEN would like to underline the importance of the ERG's future task to substantiate its findings by a clear conceptual framework. IEN gratefully acknowledges the granted deadline extension.

I. General remarks

IEN is convinced that the current report will support national governments and other stakeholders in understanding the different requirements and needs of the business customers markets. IEN members are dominantly focused on the provision of services for business customers who demand national or multinational service packages. Their demands can be considered as to what ERG describes as the "high-end" businesses.

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SITZ UND BÜRO

Dorotheenstrasse 54
10117 Berlin

GESCHÄFTSFÜHRER

RAin Malini Nanda

VORSTAND

Sabine Hennig
Dr. Jutta Merkt
Dr. Andreas Peya
Andreas Schweizer

KONTAKTE

Telefon +49 30 3253 8066
Telefax +49 30 3253 8067
info@ien-berlin.com
www.ien-berlin.com

Customers in this segment increasingly outsource their communications requirements to operators who can meet their requirements across a range of countries. They do not only request end-to-end connectivity but offers which include a vast, often complex variety of services or applications that run over customer specific networks. It is not uncommon that business customers outsource their entire telecommunication needs and ask for managed network management, maintenance and service. Customers often purchase by tendering the services they require to the market. Though this customer group might not be very large, they are however, very important in pointing the way towards future use of ICT. As such, IEN considers it as essential that NRAs and governments of the member states are aware of the way that businesses will use ICT in the future and moreover, the way the telecoms industry would seek to provide the underlying services. In recent years, IEN has constantly pointed out its concerns about the negligence in the regulation of the wholesale markets with regard to “high-end” business customers in meetings with the German Regulatory Authority, BNetzA and the Ministry of Economics. IEN is also aware about a number of complaints from its members addressed to BNetzA.

IEN fully supports the position of ERG that any ongoing lack of attention of this market segment will leave Europe behind in both the supply and exploitation of advanced ICT solutions. Despite from that IEN is convinced that supporting the needs of “high-end” business customers will strongly support the economic welfare in Europe.

IEN takes the view that this is particularly important with regard to Next Generation Access (NGA). New and efficient infrastructures can reduce the costs for telecommunications services and drive new types of services at the same time.

ERG has defined bottleneck infrastructures where wholesale services are not available or are not suitable as potential competition problems. We totally agree with this. It is essential for the growth of a competitive and inventive ICT sector that different types of operators should be able to compete over the new bottleneck infrastructure that will be created in an NGA environment. IEN is aware that some European NRAs focus on a regulatory model that allows a small number of infrastructure operators to supply passive network elements only to themselves and to each other without the existence of any wholesale service offered to competitors.

While this approach might be sufficient for the provision of services for private end customers, IEN is concerned that it does not support the provision of competitive VPNs, and as such, will be a serious entry barrier for providing high-end ICT services in Europe. Alternative providers would be unable to buy wholesale active access services over the bottleneck facilities at regulated rates and furthermore, could not justify the investment

per customer site that such passive products would require. In this context, ERG should also consider the NRAs' new duty to promote "efficient investment and innovation in new and enhanced infrastructures" (Article 8(5)d of the revised Framework Directive). The current lack of regulatory certainty regarding availability of business-grade access inputs is impeding investment in the virtual infrastructure layer. It is essential that NRAs ensure the consideration of these key investments rather than focusing only on investment in physical assets such as duct and fibre. Virtual Private Networks are increasingly required by high-end business customers as platforms for provision of B2B knowledge-based services, and the type of business process innovation which increases productivity and growth within the EU economy. As a consequence, ERG's findings in the current report should be carefully taken into consideration by the NRAs in all member states as an integral part of every future market analysis or remedies decision.

II. Remarks in detail

As stated before, IEN highly welcomes ERG's findings on page 4 that in order to serve "high end" businesses, wholesale products are needed which differ from those used to serve the mass market. Furthermore, it is essential for many corporate customers to buy their services on a national or even pan-European level, rather than purchasing the service separately in every European country. Contracting with only one pan-European supplier for telecommunications services would lead to economies of scale that result in a higher productivity of the customers' operations in Europe. Moreover, these customers will be in a much stronger position for demanding a bespoke solution that covers all the customers' needs.

1. Questionnaire 1

IEN would like to express its doubts that 18 NRAs claim not to have received any complaints regarding the provision of business services since their first market review. IEN and its members have constantly stressed their concerns about the lack of an efficient regulation for business customer services.

Especially the necessity to implement suitable remedies, including Ethernet and Bitstream services, was expressed in recent years and the narrow focus on residential broadband supply has been criticized. Alternative operators that provide services for business customers rely on QoS Bitstream Access in order to offer multi-sited high quality services and requested for the imposition of such access since 2004. However, in Germany the analyses of the former market 12 (market 5) and the imposition of remedies including the reference offer on ATM Bitstream Access undertaken by the NRA did take until August 2008 and as such, did not pay enough attention to the technological advance from ATM to

Ethernet based Bitstream due to extended review periods and the rapid technological advance inherent to the telecommunication sector. Additionally, the remedies decision did not deal with a great level of detail as reliable QoS parameters were not codified. Consequently, despite the existing need, hardly any operator made use of the offered product. In this context, IEN appreciates the current draft market analysis that focuses on a technical neutrality approach (Layer 2 Bitstream & Layer 3 Bitstream Access), but still criticizes a too poor focus on a timely implementation in draft remedies decision.

On a related note, IEN and its members pressed for Wholesale Line Rental (WLR) with regard to the needs of “high-end” business customers at the German NRA. However, the incumbent was not obliged to supply such a service on wholesale conditions. Though IEN agrees with the NRA that WLR is no complex service such as Ethernet Bitstream it is nevertheless one of the basic requirements for every enterprises network. IENs members’ customers normally demand various services to be delivered as one single package from one major supplier. As part of these networks, every customer demands ISDN-telephone lines to connect small branches or home-offices. Notwithstanding, the NRA neglected the needs of business customers and focused on residential users.

For the same reasons, IEN would also like to comment on the finding that there does not seem to have been a pressing or strong demand by operators for segmenting different markets or defining a specific business services market (page 8). IEN considers it as essential that the specific need of high-end business customers are explicitly taken into account. This could either be carried out by definitions of specific business service markets or in other ways. Though we agree that market separations might not always be necessary or practicably, IEN has always underlined that certain obligations and regulatory requirements are dispensable with regard to business customers. On the contrary, some remedies especially with focus on reference offers, some specifications are vital to enable business customer services. Therefore, IEN would like to stress that the regulatory focus should always be on the needs of the customers. NRAs should always choose the best approach to ensure that remedies decisions, especially with focus on reference offers, also cover the needs of business customers.

Besides, IEN would like to point out its ambiguity about ERG’s conclusions or thoughts on the issue of appropriate remedies for large businesses. The third sentence of the second paragraph of page 9 seems to be incomplete.

2. Questionnaire 2

IEN would like to stress the importance of ERG’s remarks concerning the lack of a merchant market (page 11). IEN is aware that network operators

frequently do not offer wholesale services to other operators even though those operators may compete in a completely different retail market segment.

Furthermore, IEN generally agrees that NRAs can sometimes achieve the same results in different ways, as it is the case by the different approach taken to the application of WLR as a remedy (page 11). However, IEN would like to point out that this diversity can in itself be a serious obstacle with regard to the provision of pan-European business services. Multi-national customers require similar solutions across all Member States. As such, if the NRA of a particular Member State decides against mandating WLR in response to national circumstances, the respective network operator must set up an alternative way of meeting its customer's requirements in this specific region. Though IEN acknowledges that national characteristics sometimes do justify different decisions, IEN urges ERG to be much less willing to accept national separations rather than focusing on the promotion of a harmonized pan-European ICT uptake.

With regard to Service Level Agreements IEN supports ERG's findings on page 12 as extremely important. In view of IEN alternative network operators often struggle with the conditions of the SLAs since they do not permit operators to get the same treatment as the SMP operator's own retail arm. It is vital for operators offering services to business customers to obtain wholesale conditions in SLAs since high-end customers often demand for contractual penalties (e.g. for delays in installation or services). As such, installation options or repair options are essential – especially business grade repair timescales need to be codified for which an appropriate fix time is regarded as the standard norm. Furthermore, upgrade options within product bandwidths and to other product sets and also the possibilities of migration or transfer of service must be granted to allow an alternative provider take over the service without service interruption or reinstallation. Additionally, live access to systems is needed in order to be able to view progress of an order and update the operator's own customers appropriately. Another significant point is the need for diversity of installation. Separate routes into a premise ensure alternative communication services in the event the primary source is affected.

IEN also appreciates the idea of measuring the real quality of an incumbent's network and drafting obligations on this basis instead of taking the figures delivered by the incumbent. As stated above, decisions of the NRAs should always be driven by the needs of (business-)customers.

III. Preliminary conclusions from the questionnaires

IEN shares the opinion that ERG should pay close attention to the special needs of "high-end" business end users in carrying out its planned monitoring exercises in relation to the common positions on remedies in the



relevant wholesale markets and that NRAs should use the analysis in Annex 1 as a starting point. In addition, IEN agrees on the fundamental policy question whether SMP players should be required to provide service that they do not wish to supply to themselves. In our view it is crucial that in case of the existence of a reasonable demand for a service the incumbent operator should be obliged to meet the demand. Otherwise, especially the goal of enabling the provision of pan-european ICT services basis could not be achieved.

ERG plans for future work

IEN appreciates ERG's plans for future work which is to be regarded as highly important and would like to offer its support if needed. Clear guidance and specific targets should set an orientation for NRAs and allow an evaluation of these efforts. In addition, IEN would like to underline its opinion that the ERG and now BEREC should also focus on further improvement of NRAs cooperation to increase the level of standardisation of wholesale services for business users.
