

NOTE BY EMERG CHAIR

TO BE PRESENTED DURING THE SENIOR OFFICIALS MEETING

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The origins of Euro-Mediterranean cooperation lie in the Barcelona Declaration where the leaders of the region agreed to work on the establishment of a free trade zone and for this purpose, to foster international cooperation and harmonization. In 2004, the Barcelona Process was complemented by the European Neighbourhood Policy providing a wider array of cooperation and integration options for its members. As part of this process the European Union funded projects for enhanced cooperation through its MEDA and ENPI finance mechanisms, part of which were the 'New Approaches to Telecommunications Policies' (NATP) projects, which took place over three phases starting 2002 to date. The NATP-2 project (2005-2008) culminated in the establishing of the Euro-Mediterranean Regulators Group (EMERG), which currently receives support from the European Commission through the NATP-3 project (2009-2013).

Aiming at facilitating and strengthening the cooperation in the field of electronic communications, among the Euro-Mediterranean region, EMERG is a group of regulators comprising both European and MENA borders, including the following members: Algeria, Austria, Cyprus, Egypt, France, Germany, Greece, Israel, Italy, Jordan, Lebanon, Malta, Morocco, Palestine, Portugal, Spain, Switzerland, Tunisia and Turkey.

EMERG is actually in its 5th year of existence and it aims at exploring the possibility to play a more dynamic role not only in the context of the exchange of sector expertise, but most of all in the approximation towards to the European regulatory framework and best practices among its Members. This will then contribute, at this particular region, to a more harmonized, stable and predictable regulatory framework and practice, which may contribute to the economic growth on both sides of the Mediterranean.

EMERG has then developed its activities aiming at boosting the Mediterranean cooperation mainly through the organization of several workshops, since 2009. There were workshops that

aimed at reaching conclusions and obtaining commitments with regard to achieving approximation in areas where the EMERG Plenary decided approximation should be pursued. Others were only aimed at enabling the exchange of information and the debate on some new and relevant topics.

Thus, some of the workshops, especially those held in 2011 and 2012, have generated recommendations on key important issues development of the information society for the wider Euro-Mediterranean region, namely on the following issues:

- Licensing regimes;
- Retail price regulation;
- Universal service;
- International Roaming; and
- Enhanced cooperation through EMERG.

On the top of these areas, EMERG members have agreed, as an umbrella recommendation, that there should be a true and engaged effort in order to reach the political commitment from the ministerial side for further implementation of announced improvements. On the other side, in those countries that have not yet initiated a completed approximation, it is expected that the intervenient parties shall commit to define a decision date and a reporting mechanism on the different technical subjects.

This said, it is now presented, in detail, the EMERG 2012 recommendations regarding the following areas:

Licensing regimes

The licensing policies in the MENA countries differ greatly from one another. However, it is possible to draft some guidelines tailored to the needs and specific situation of each participating Country. In general terms, it can be ideally included the MENA Countries (plus Turkey) in three main groups:

- Group A (Tunisia, Turkey and Israel): a general authorizations mechanism has been introduced (Turkey, Israel) or is being introduced (Tunisia) that no longer requires companies to apply for an individual market entry approval. This group of countries is in line with the EU framework (Turkey) or needs very few steps to be totally in line (Israel and Tunisia):

- **Israel:** There should be created an independent NRA in accordance with the requirements of art 9 of the Authorization Directive and -ideally- providing the NRA with the task to implement the licensing policy. The class licenses currently reserved to small operators should be extended to all operators who provide services which do not require scarce resources.
- **Tunisia:** There is an NRA (INTT), but the task to award the licenses is in the hands of the Government. Ideally, such task should be assigned to the INTT. In addition, the Decree determining the administrative, financial and technical criteria to issue authorizations should be adopted, and the declaration regime (currently reserved to small operators) should be extended to all operators who provide services which do not require scarce resources.
- Group B (Jordan, Egypt): a simplified type of licenses (class licenses) has been introduced and granted to small telecom operators whose business does not require scarce resources. Such licenses must be assigned by the institutions, but their requirements are lighter and they may be considered as a first step in an approximation towards a general authorization mechanism. This situation applies in Jordan and Egypt:
 - **Jordan:** TRC, the local NRA that is in charge of assigning the licenses, should first of all adopt this new -simplified- type of class license and then gradually extend it to all operators who provide services which do not require scarce resources. The next step will be the transformation of such simplified class license in a mere notification/declaration.
 - **Egypt:** the NTRA, the local NRA that is in charge of assigning the licenses, should make an effort to design a simplification of the class licenses for small operators, then slowly extend such simplified license to all operators who provide services which do not require scarce resources and, eventually, transform such simplified class license in a mere notification/declaration.
- Group C (Lebanon, Palestine, Morocco): the licensing framework is still based on individual licenses. Class licenses, if foreseen, are not implemented or implemented only in few cases. Some external support (EU Twinning projects, TAIEX, technical assistance projects) might help initiate a process of liberalization and approximation that might take a few years.
 - **Morocco:** The situation is in evolution. Until few months ago, it seemed that the Government and the ANRT, the local NRA, intended to align the licensing framework to the EU general authorization scheme. Recently, such intention

seems to have vanished. As a matter of fact, at the moment, the framework in Morocco does not allow class licenses and the authorities are not envisaging any simplification of the current regime.

- **Lebanon:** The political situation seems not to be in favour of an approximation: from its inception, in 2007, one of the main goals of TRA, the local NRA, was to prepare a licensing regulatory framework that would be in line with the Telecommunications Law (Law 431) as well as international best practice. Indeed, the regulation drafted by the TRA paved the way to the introduction of class licenses with the clear objective of approximating the Lebanese legal framework to that of the EU. However, the Minister of Telecommunications has so far blocked this licensing regulation based on administrative technicalities and it appears to have started to award licenses grounding its decisions on a 1959 law and other largely outdated regulations. How this situation will be resolved is currently unclear. This is of major importance for the Lebanese regulatory system, as both the possibilities for the TRA to enhance liberalization and provide a regulatory framework for the sector, and its financing, are directly connected to the licensing system.
- **Palestine:** Still there is no licensing framework. Due to the political situation, the legislative mechanism is paralyzed, making it impossible to adopt the legal framework for licensing. The Ministry of telecommunications declared its intention to follow the European Union approach in allowing every and any market entrant to access the market, granting a license for purely formal reasons (except in the case of the usage of scarce resources) and to move to a system of class licenses and general authorizations, but it admits it lacks the expertise and capacity to make the change and relies on external assistance to start the process.

Retail price regulation

Many EMERG countries already limit direct retail price regulation to SMP operators. There is an opportunity for those currently applying retail regulations to non-SMP operators to consider progressive relaxation or removal of the controls over time, as rules are reviewed and as markets become more competitive. It is clear that much remaining regulation of non-SMP retail prices is more lenient than SMP regulation. There is clear evidence that actual practice is converging towards the EU concept, but formal legislation is lagging behind in some cases. This anomaly should be addressed by updating the underlying legislation where required. In the

four main cases of divergence from EU practice, moves towards approximation are under consideration:

- In **Egypt**, the move towards notification (rather than requiring approval) for non-SMP operators;
- In **Morocco**, the expectation that ex-ante Retail regulation will be relaxed as markets become more competitive;
- In **Palestine**, new laws and draft regulations will more closely approximate EU practice, but these are not yet implemented yet;
- In **Tunisia**, the new Digital code will be more closely aligned with best practice than the current rules.

All NRAs will continue to apply certain retail conditions, especially price transparency for consumers, limits on contract conditions, and processes to facilitate choice and easy switching. These consumer protection measures may be necessary for a long time, but actual retail price setting should be left to operators in competitive markets.

Universal Service Obligations

There is a wide diversity in approaches to delivering universal service across the participating countries. The degree of diversity in relation to USO provision appeared to be more marked between the different countries than has been observed in relation to any of the other topics that have been covered in the EMERG/NATP Workshops. It is clear that a number of countries operate USO frameworks that are very different to the ones that have been implemented within EU Member states, pursuant to the Universal Service Directive. As it was explained by the European Commission representative at the Workshop, the European USO framework is one that aims to act as an effective 'safety net' to ensure that uneconomic regions and customer groups do not remain unserved while at the same time ensuring that market distortions are minimised. Seen in this light, it is clear that the frameworks that have been adopted by some of the non-EU EMERG countries do not have the same desirable properties and that some of these frameworks have the potential to be highly distortive. As a result, not only are these programmes not delivering universal service, they are also in danger of resulting in unintended negative outcomes by hampering new market entry and limiting the development of competition for basic and value-added services. Examples of shortcomings identified by the Workshop in the various USO frameworks included the following:

- USFs being used as an investment fund for public projects, with inflated charges for funding NRAs added to these funds (**Egypt, Morocco**);

- USO programmes targeted explicitly at operators and not at customers and services (**Israel**);
- Unbalanced retail charges being used as a means of funding inexpensive local access and calls (**Tunisia**);
- No specific programme for USO provision in place given the delay in issuing a sector policy and the absence of competition for fixed and mobile services (**Lebanon**).

Further, certain aspects of the approaches used for USO provision in non-EU countries could help to inform possible improvements in the EU framework. In particular, the framework in Jordan – whereby the net cost of USO provision may be established on an ex ante basis through market mechanisms – could facilitate the net cost calculation process. If it were, it could result in a lowering of the net cost of USOs across the EU and it would also avoid time-consuming and complicated outcomes to USO funding, such as that in Italy. So, the significant divergence in approaches and in outcomes relating to USO provision across the EMERG group of countries is not a desirable situation and there is merit in exploring how national frameworks might best be adapted to ensure that these divergences are minimised.

International Roaming

At this level, the only workshop that addressed this issue was an effort aiming at both exploring the reasons and assessing possible solutions as international roaming prices turned out to be a problem in most EMERG countries. In this regard, various measures were discussed - e.g. caps to prevent bill-shocks, transparency measures, regulation of the retail mark-up of the home operator. All these measures could actually be implemented without the governments of the EMERG countries having had to settle agreements with the EU or bilateral agreements. An agreement with the EU aiming to extend the EU Roaming Regulation for non-EU countries proved to be difficult because of the most favoured nation principle of the WTO. Nevertheless, the EU Commission was requested to list and investigate all legal requirements that would allow some sort of agreement with the non-EU EMERG countries.

The EMERG countries agreed that it is essential for each country to analyze if, given its interests and policies, it would seek to enter into any international roaming regulation agreement or not (where such agreement is possible). After this assessment, a decision on the merits of future cooperation on this issue would be enabled.

In line with this, the European Commission has already provided the following clarification: “Extending the EU roaming rules beyond the EU countries is a complex matter. In legal terms, the legal basis of EU's Roaming Regulation would need to be extended to external trade

articles of the TFEU. This however is not that simple to accommodate as there is a full array of trade policy obligations that would have direct implications on EU's roaming market and its regulation, in particular those stemming from the WTO obligations (one of them is the so called Most-Favoured-Nation principle). In theory, regarding the WTO members, roaming could be included in a broader agreement, compatible with GATS article V (such as Free Trade Agreements) which would then allow developing preferential roaming rates and conditions without falling under the Most-Favoured-Nation principle. However, even in this case, a conclusion of an agreement with a third country including provisions on roaming does not automatically mean that there would be legally enforceable rights and obligations on EU operators as there is no automatic direct effect of international agreements. It is of course possible that EU-based mobile operators choose, by means of commercially negotiated reciprocal arrangements with third country mobile operators, to extend the benefits of the regulation for their customers to cover their roaming on mobile networks in third countries". Further, the European Commission aims at creating "market conditions which allow deregulation of the roaming market. So, the Commission's proposal of 11 September 2013 on the single telecoms market reinforces this objective. The proposal includes provisions on roaming that aims to eliminate the need for price regulation of roaming rates, so that customers could roam within the EU as if they were using mobile services in their own countries. Thus the most attractive element for the third countries may no longer be there in a medium term".

Enhancing cooperation within MENA countries

Under this item and looking for opportunities for closer cooperation and peer coaching between the countries of the South Mediterranean themselves, it must be taken into account that there have been other subjects addressed at the EMERG workshops, namely NGN, cost accounting methodologies, number portability, net neutrality and network security, which proves the commitment to discuss and further develop cooperation in a wide range of areas. In all these areas, recommendations were addressed to all EMERG members, but the ones that were decided at the 2013 workshops still need to be presented and approved by the Plenary meeting, to be held early 2014. Finally, there are two other subjects that will be addressed in a workshop in early December (enforcement powers and judicial review) or which conclusions still need to be released (MVNOs).

Nevertheless, at this level, EMERG experts have, so far, agreed on the following recommendations:

Net Neutrality (NN)

The 2011 EMERG workshop pointed out the absence of a legal definition of NN, and the same turns out to be understood in different perspectives. It was pointed out that the structure of the market can be a guarantor of NN, but not letting stand the importance of the role of NRA, whose intervention must be balanced, aiming at enabling innovation and competition. In terms of traffic management by operators, it was stressed that there are obvious legitimate reasons to make the same, or who should evaluate and how, issues that matter to study further. The workshop lead to conclude on the three NN pillars which are competition, consumer protection (including by transparency and clarity of the information provided on the service) and designated "net freedoms" (privacy and freedom of expression).

Network Security

In most of the discussed cases during the 2011 workshop, malware and spam were already criminalized and penalized by the relevant national legal frameworks. It's noteworthy however that participating countries' experience differ as to the type of law which regulates the issue, and the relevant national entity which see to the implementation of law enforcement procedure. The European national examples have shown coherence with the general provisions stipulated within the general European framework. The national non-European examples however still show nascence in the establishment of a sound legal framework which could regulate the issue, such as the case of Lebanon. To that end, the issue of malware and spam acts as a common area of interest between European and non-European countries through which further cooperation can be planned in order to stress on the establishment of a sound relevant regulatory framework, in addition to the gaining of hands on experience on methods of this framework enforcement mechanisms.

NGN

During the workshop, it was noted that there are different approaches among EMERG members regarding NGN and access regulation. This is so considering not only the current and different regulatory frameworks but also due to political reasons that, in the end of the day, influence and determine the NGN deployment, also in view of the broadband targets for each member. Further, the discussion referred to the urban/rural areas dicotomy and to the net neutrality subject, as these two elements are linked to the NGA roll out development. From the European side, some members referred that they have followed the principle of the ladder of investment, by applying an access price regulation that recognizes investment risk in new

technologies and geographical differentiation of the competitive conditions. It was also mentioned the application of remedies such as cost orientation, price control obligation and non-discrimination principle, applied to operators when it comes to the deployment of NGN, bearing in mind the geographical differences among the territories. From a regulatory perspective, it was also mentioned the imposition of some measures to the significant market power operators, such as the implementation of reference offers for access to ducts and to poles. From the MENA regulators side, the main perspective is that there are many different stages when it comes to NGN's deployment. Finally, as this was one of the workshops aiming at discussing and exchanging information on NGN and access regulation, there were no specific recommendations agreed upon, although the European Commission and BEREC recommendations with regard to investment in NGN were taken as reference guidance for the future, when trying to ensure a climate that is conducive to new investments. In conclusion, the workshop participants took view of the divergences in both approaches and outcomes relating to NGN deployment and access regulation across EMERG members.

Cost accounting methodologies

During the workshop, it was noted that there are different approaches among EMERG members regarding Cost orientation methodologies in use not only for reasons of different legal pre-requirements but also it was noted that even between the member states of the EU there are a number of different approaches to that theme. Whereas most countries do carry out a market analysis, which leads to a designation of SMP-Operators, there were also seen mechanisms of automatic (legal) designations as well as situations of no competition at all. However a majority follows the path of a market analysis in order to identify possible SMP operators.

With regard to the cost model itself, also a lot of different varieties have been made visible including, benchmarking, replicability, Hybrid, Top-Down- and Bottomup models orientating on LRIC or LRAIC costs. A really remarkable exemption was discovered during the workshop about Switzerland, which follows an ex-post regulatory approach and requires access to copper only for a limited period of time. It was also clearly visible that there is a significant distinction in the regulatory approach towards fixed and mobile markets. The fixed markets are traditionally and historically less competitive, which leads to a regulatory accounting methodology approach of historic costs in a number of countries, but it was also noticed that most of these countries plan or have already paved the way towards a Bottom-up LRAICor Bottom-up-LRIC model. For the area of mobile networks a bigger majority already follow this cost model, however with some variations. About the cost based methodology a vast majority

of countries use Current cost Accounting; however (regional) benchmarking has also been analysed. On the verification process it seems that most NRA's follow a procedure of external auditing, by independent auditors or by appointment process through the NRA. In any case auditing through an independent auditor is very advisable for reasons to avoid any conflict of interest and to exclude all forms of prejudice. About specific regulation or tools for NGN networks and the access thereto, only a minority of NRA's have explicit regulatory tools and/or models. One reason for that could result from a differentiated picture of availability of NGN Networks or elements in the respective countries. Another reason for that may be found in the thought that NGN-Networks are seen as modern asset equivalents for traditional copper networks and should according to the NRA's who follow this approach, not require a different regulation. As this workshop showed a variety of regulatory approaches it opens at the same time an excellent opportunity to benchmark amongst the approaches and to compare what regulatory direction could be taken.

Further advice can definitely be won out of the Draft Recommendation on consistent non-discrimination obligations and costing methodologies to promote competition and enhance the broadband investment environment from the European Commission once it is available in its final version. Finally, as this was one of the workshops aiming at discussing and exchanging information on regulatory accounting and cost methodologies, there were no specific recommendations agreed upon, although the European Commission and BEREC recommendations were taken as reference guidance for the future. In conclusion, the workshop participants took view of the divergences into the various approaches and models as they are used relating to cost methodologies across EMERG members.

Number Portability (NP)

From the overall studies conducted on number portability within the framework of EMERG NP workshop, following observations and conclusions were made:

1. Revised EU legislative framework on NP sets new rules on various issues such as porting time, contractual obligations, compensation rules, sanctions against slamming/abuse etc. Member states should understand and transpose these rules on "consumer interest basis". For instance, for "one working day" rule, as there are of variety of porting procedures in the countries, it is concluded that this issue should be understood that subscriber request for porting should be met in the earliest possible time.
2. In the EU legislation, it is stated that "*direct charges to subscribers, if any, do not act as a disincentive for subscribers against changing service provider.*" It is noted that retail

prices applicable in the countries range from 0 to 30 Euro for Mobile Number Portability (MNP) and 50 Euro for Fixed Number Portability (FNP). Although it seems that 50 Euros is “disincentive” for customer for porting, it is not easy to make exact determination as it depends on country’s conditions.

3. EU directive includes compensation mechanism for delays and abuse in porting. On the other hand, currently there are very few examples in member states and participating countries to the workshop who apply mechanism for compensation (per number per day basis etc.). Therefore, detail studies may help EMERG members for adoption of proper compensation mechanism in case of delay or abuse.
4. From the presentations of the participating countries, answers received to the questionnaire and discussions held at the workshop, following conclusions can be drawn for successful NP implementation:
 - Consumer interest should be considered as the main priority in designing NP solution and setting the rules and procedures.
 - Central database solution with all call query option is the most preferred solution in many aspects.
 - Recipient led, simple, one-stop shop process with minimum amount of data for validation should be considered.
 - Regulatory rules should be clear and lead to sufficient level of monitoring of the process.
 - Rejection reasons should be limited and clearly defined.
 - No/less cost to subscriber for porting, shortest porting time with minimum level of loss of service are critical factors for success.
 - Good coordination between the stakeholders and NRA involvement when needed are important in managing the whole process.
 - Good level of preparatory activities before onset of NP and clear rules and procedure are the driving factor for success.
 - Effective sanctions and compensation procedures should be set and implementation practices should be monitored regularly.
5. Regarding the future issues on NP for participating countries, as majority of the countries already implemented NP solution, future issues are focused on improving the existing process as follows:
 - Adoption and/or optimisation of centralised solution;
 - Decreasing time limits (porting times, downtimes etc.) within the porting process;

- Improving the number porting process for smooth and reliable operation;
- Well functioning of the coordination within the all stakeholders;
- Modification of the existing system to adopt changing environment (NGN, IP based systems etc.);
- Implementation of fixed to mobile number portability;
- Enhancing number portability to M2M services.

Therefore, detail studies on these subjects could be considered for future area of the work for EMERG.