



# ISSUES PAPER ON THE PRELIMINARY FINDINGS OF THE SECTOR INQUIRY INTO NEW MEDIA (3G)

Comments submitted by Orange SA

## **INTRODUCTION**

Orange SA welcomes the opportunity to comment on the Issues Paper on the Preliminary Findings of the Sector Inquiry into New Media (3G) (hereafter, the "Issues Paper"). We believe the sector inquiry is a flexible way to ensure that mobile operators obtain competitive access to sports rights and develop innovative sports content services.

Orange has actively taken part in the sector inquiry process by responding to two Requests for Information sent by the European Commission in May and October 2004. Due to its presence in a number of EU and EFTA countries, the fact that it has obtained 3G licences in all Member States where it is active, and has already launched 3G services in France and the United Kingdom, we believe that Orange has vocation to fully participate to this process. Thus, in our capacity of pan-European mobile operator, we would like to submit the following comments to the Issues Paper.

### **I. MARKET DEFINITION**

Orange submits that 3G mobile handsets and pay TV platforms broadly offer different experiences, which should be viewed as complementary, rather than substitutable. Thus, we subscribe to the assessment of the Issues Paper that "TV and 3G content services therefore appear to be in separate markets" (Para. 22).

However, Orange is of the view that most of the restrictions to competition arising in the market for 3G mobile content services are caused by conducts and agreements taking place in the TV content services market.

### **II. LACK OF ACCESS TO SPORTS CONTENT & COVERAGE RESTRICTIONS**

Orange subscribes to the findings of the Issues Paper that "there are notable examples of sports for which the content has not been provided to mobile operators" (Para. 24). Indeed, we believe that the lack of competitive access to New Media sports rights is one of the main issues facing mobile operators.

We share the view of the Commission that indirect forms of access refusal often limit mobile operators' freedom to provide sports content. TV rights being significantly more valuable than mobile rights, the terms and conditions of mobile rights licensing agreements are generally directly affected by TV right licensing agreements. For instance, mobile rights are often 'put on hold' until TV rights are sold or mobile rights are sometimes merely shaped around the requirements laid out from TV rights. Thus, it is a matter of concern for Orange that TV right licensing agreements effectively determine the end product mobile operators can make available to end customers.

As far as restrictions of coverage are concerned, Orange subscribes to the assessment that "very substantial restrictions on coverage observed in relation to many events therefore do not seem to be proportionate" (Para. 37). However, Orange does not share the view that "some limited restrictions with regard to the length of transmission might not always raise difficulties given existing technical limitations" (Para. 37). Indeed, we are of the opinion that the restrictions with regard to the length and formats of the mobile clips are often not related to technical limitations but to the determination of right holders to maintain the value of TV rights. Such coverage restrictions impede the development of innovative services, and particularly of services based on new technologies.

### **III. CROSS-PLATFORM BUNDLING OF RIGHTS**

We believe that cross-platform bundling of rights could under certain circumstances be devised to restrict the access of mobile operators to sports rights.

In case of bundling of rights, it is in any event essential that mobile rights are not "warehoused" and that bundling is utilised in a beneficiary manner to create an effective and viable mobile content product.

### **CONCLUSION**

Considering the present level of the development of the technologies, Orange supports the preliminary findings of the sector inquiry. We submit that the main issues faced by mobile operators are the restrictions of access and coverage, and the cross-platform bundling of rights. Orange believes that the reason behind these restrictions is that TV rights have a significantly higher value and economic importance than mobile rights.