

Telecom Italia response to BEREC

Public Consultation on a proposed “Harmonized BEREC cooperation process” on cross border

Management of frauds and misuse

Art.28(2) Universal Service Directive

Introduction

Telecom Italia (hereinafter TI) welcomes the BEREC consultation on a proposed cooperation process amongst NRAs on the implementation of the provisions of art.28(2) of the Universal Service Directive. TI shares the common goal of providing consumers with the widest possible access to services across the EU and at the same time better protecting consumers from possible frauds or misuse that may result from such an open approach.

TI supports the BEREC proposed process in such that it aims at facilitating the communication process between the authorities involved, in support of their action and not are not in replacing or overlapping the national processes for tackling fraud and misuse.

The BEREC proposed process aiming at harmonizing the various contributions coming from the different NRAs at the international level would be extremely useful also in order to facilitate the application of processes already in place in Europe for the contrast of abuse updating Italian NRA's practises..

The scope of the present BEREC public consultation is summarized as follows:

Given that the dimension of the problem is rising and that it could impact on consumers' confidence and on service innovation BEREC would contribute to the effective management of the phenomena trough:

- (a) establishing a common understanding by NRAs of the terms fraud and misuse*
- (b) improving the cross border regulatory cooperation in the intervention by regulators and information sharing between NRAs*

It is TI's opinion that the proposal has very good merits, however the proposed process would need improvements to maximize the likelihood of success and therefore further work would be required. Given the experience that TI has gained in combating the phenomenon we hope our contribution will help in finalizing it.

The structure of the responses is based on the questions posed by the BEREC Report and other issues are raised which are, in different ways, linked to those.

Q1 Are there other incentives or issues that will impact end users and/or operators that should be considered by BEREC? If this is the case, please propose and explain such incentives or solutions.

- Numbering resource misuse is involved in a significant and increasing proportion of fraud incidents and the difficulty that TLC operators face in finding official and updated Numbering Plans makes it fertile ground for fraudsters to terminate frauds of the IRSF type. In fact, they often use numbers / unallocated number ranges (UNR) to terminate fraudulent calls. The involvement of international coordination bodies would facilitate telecoms operators' - particularly carriers' - task of correctly identifying both the type of numbering and the termination of calls on well-allocated number ranges. We therefore encourage BEREC to guarantee, at least at the European level, the provision of official, updated and consistent Numbering Plans and to act as intermediary with the other international bodies (e.g. ITU) for the supply of these Plans outside Europe.
- It would be of help if the process of cooperation between BEREC and NRAs should institutionalize a phase of sharing among all the NRAs of:
 - all the fraudulent and/or misusive behaviors known at the National and International level;
 - the corresponding enforcement actions, including contractual ones, implemented by several operators considered by type (fixed, mobile, transit, other);
 - the corresponding regulatory actions, also in terms of re-pricing of tariffs;
 - the effectiveness of enforcement actions used by different operators considered by type(fixed, mobile, transit, other).

Down line of the sharing, each NRA would have at its disposal a sufficient number of case studies, useful to help steering - in the event of a dispute, due to fraudulent and /or misusive behaviors - between national and non-national OLOs - towards those solutions already adopted by other countries that have been recognized as effective (e.g. in Italy AGCOM did not have a view on a phenomenon of abuse on reverse termination known by Ofcom and FCC).

- The cooperation process between BEREC and NRAs should also foresee the possibility to institutionalize, within the NRAs, direct and agile channels dedicated to fraud/misuse, in order to facilitate and speed up their mutual communication in the event of international phenomena that have an impact on several National realities. Particular attention should be devoted to NRAs with the largest number of cases. In this regard, it is important to emphasize that a behavior the most rigorous and aligned between the various NRAs would facilitate thwarting these phenomena. In fact, the typical behavior of a fraudster is to move as soon as it finds effective enforcement actions and perpetuate the damage towards some less protected user/operator; moreover, in case the same fraudster would find national realities in which the contrast is less sharp, it may damage more end-users and operators in those countries.
- As the fraudulent / misusive phenomena evolve, it is not sufficient to limit enforcement actions to block / suspension of services and / or payments, but in addition it is desirable to strengthen the security of services in order to protect customers and operators, or adopt hardware / software techniques of protection for certain services (e.g. in Italy the introduction of PIN numbers has been used to reach VAS numbers). It should be noted that in some cases the fraud takes place during the process of access to the service and therefore, in these cases, the block of payments is an ineffective contrast technique.
- Finally, the awareness of the NRAs is necessary in order to ensure a greater rigor in the documentation of traffic: especially at the international level, the absence of the caller ID or the presence of "dummy" information (e.g. 123456, etc.) are often detected.
- Telecom Italia, wants to highlight its particular knowledge of OLOs' behavior, with specific regard to fraudulent behavior and traffic crash that have been detected over the years. These information constitute a case study that could be fruitfully used in trade relations with those operators. The

supposable solution can be extended to any supplier operator that has experience of anomalous traffic towards national or international numbers and towards both geographic and non-geographic numbers and which has had the chance to express a grading on the basis of case studies associated to each customer operator. The aim could be to set better conditions reserved to those who have actively collaborated in combating illicit practices by implementing proper, transparent and collaborative procedures which are worthy of being contractually awarded. This solution would also be the bearer of a possible further evolution, namely the determination of a “guarantee fund” between the most virtuous operators, fund which could be capable of giving aid in case of difficulties faced by its members.

Q2 Are there other issues related to the provision that are not discussed in this section that should be considered by BEREC? Please give details about your suggestions.

- In Italy, in terms of self-regulation, several fixed and mobile operators, signed in 2010, following a trial period, the Memorandum of Understanding for the prevention and management of fraud and the Procedure for the management of the payments related to the wholesale traffic related to the fraudulent behaviours for calls to NNG (non-geographic numbers). The following are defined:
 - By way of example, and not limited to, a series of types of fraudulent phenomena, such as the intrusion by third parties on lines of unaware customers, the fraudulent subscription phenomena, those carried out by means of rechargeable products, of deceptive services and those inferred from abnormal characteristics in traffic;
 - The methods of communicating information;
 - The administration of payments and settlements related to calls to NNG.

The Memorandum (hereinafter referred as the Interoperator Protocol) was signed under the auspices of AGCOM, which, participates in the regular meetings of the Technical Committee. In this context, the possible intervention of the Authority is provided only at a later time and in case of disputes between operators arising out of the blocking of payments.

- The “Inter-operators procedure to combat frauds” (Interoperator Protocol), governs inter alia the communication protocol and the operations that the Parties must carry out in order to thwart fraud attempts put in place, to the detriment of customers of telecommunication services and / or the same service operators, with methods and traffic scenarios which require, for an effective enforcement, joint and coordinated operations between the network operators involved. BEREC should define similar rules also at the international level.
- As far as definitions are concerned the Interoperator Protocol on Frauds provides a non-exhaustive list of cases that have been officially considered fraud in Italy. Therefore, rather than a definition, it would be necessary to have a list of phenomena that fall within the general definition of fraud even if this is not accompanied by a certification, for example by a judicial authority. The comparison between all cases certified as fraud at the international level could definitely be profitable.
- In any event, it would be useful to describe what an anomaly is. In fact, when it is found, the anomaly is a symptom of the presence of a phenomenon that the competent authorities, non-technical, will eventually classify as fraud / misuse, once the underlying economic factors have been considered. As a general understanding the abnormality that characterizes a traffic defined as non-routine or abnormal can take infinite forms, not all predictable. The concept of abnormal

traffic, if not dropped in a traffic and business specific scenario, is, in fact, definable only “a contrario” by negation of the concept of ordinary traffic; e.g. an average call duration very different (much more or much less) than the typical average value is an anomaly; a temporal trend throughout the day which is too flat or too variable compared to what is normally observed in the network is also an “anomaly”. Anomalies are also calls which have all the same duration (e.g. AIT), a very high average telephone line occupation, etc.. What is ordinary is therefore definable in a unique way, while what is abnormal may take many forms, not predictable a priori and therefore definable only in an open way.

- Given the experience gained in Italy on fraud management on the basis of the abovementioned Interoperator Protocol, TI is eager to collaborate with BEREC presenting and discussing the functioning of the process implemented in Italy.

Q3 Do the responses received and presented by BEREC represent an accurate reflection of the situation as experienced by operators and end users across Europe? Are there further aspects that should be considered by BEREC?

- Overall TI deems that the responses presented by BEREC represent a fairly accurate reflection of situation experienced by operators although there are cases where the situation differs from what reported. This is the case for example in relation to the possibility to track the precise routing of an individual international call, which is not always possible to do even if it seems that all the feedbacks were positive.
- TI deems it fundamental to harmonize practices followed by all operators. In particular, it would be useful not only to extend to the international level the adoption of a protocol for sharing information in case of detection of a phenomenon, as the one already in use in Italy between national operators, but also to share the types of enforcement actions which have already been used in countries where the same type of fraud is found.

Q4 Do you consider the proposed process to constitute a practical and effective method for NRAs to cooperate with each other in order to implement the requirements of article 28 (2)? Please explain your view with any suggestions you may have.

- TI welcomes the process proposed by BEREC, provided that it takes place in parallel and not in replacement of the process that must take place – as a priority - between operators that have to maintain the right / duty to block payments in case of fraud.
- The proposed process allows a management which is considered indispensable for the contrast in case of fraud/misuse with an international impact but it should specify the detailed action/steps and the deadlines, because whilst this is a regulatory driven initiative, all of the work related to transit carriers identification will fall with operators and carriers (including multiple carrier businesses in different geographies and also parties outside of the EU). Timing is key and must be safeguarded: longer SLAs will increase the Operators financial exposure. In particular, the adoption of a protocol that identifies the activities with the correspondent persons in charge, timing SLA and information subject to exchange, is therefore indispensable. The coordination role of BEREC has an important role to play here.

- It is not clear from the BEREC proposal whether Operators are allowed to keep their ability to take actions and block number ranges identified as fraudulent or the NRA is the one in charge of such decisions.
- The proposal could be effective if all the regulatory authorities follow the same rules if one regulatory authority allows an Operator to withhold payment, then all regulatory authorities involved in the financial flow must apply the same ruling.

Q5 Are these initial thresholds for retail operators and transit operators set a realistic and practical level? Should other issues affecting whether NRAs initiate a case under this process be considered on a systematic, rather than ad hoc, basis? Please provide details on any proposals made.

- Overall TI notes that it appears a customer centric view document, while the greater impact is usually at operator's expenses. This is why thresholds based on customer invoices are not compliant with the most common detection methods.
- The concept of "threshold" is difficult to implement because experience shows that once known, the fraudster is able to modify the phenomenon so that to circumvent the threshold value (see the cases of fraud so-called "rain"). Rather it should be analyzed the individual case by comparing it with the standard behavior of an end-user (see the concept of anomaly mentioned in Q2).
- Although in BEREC consultation it is not clear whether the proposed threshold is calculated on wholesale or retail values, which may differ significantly, the guidelines adopted by TI's international carrier (Sparkle) already allow a tolerance threshold taking into account that in international relations the possibility of content misalignments in the account of the traffic exchanged between corresponds are normally admitted without causing formal disputes. These will not result in the suspension or recovery of payments in respect of the operators towards which the reported traffic has been produced (transit operators or assignees of relevant numbers), where the amount (or more cumulative amounts) does not exceed 5,000 euro for each fiscal year, with the exception of the intervention of a judicial authority. In those cases where the interruption of the chain of payments does not constitute obstacle to the achievement of the fraudulent objective and a co-responsibility of the operator (of transit or assignees of the relevant numbers) is not identifiable, the suspension or recovery of payments in respect of operators to which it is produced traffic denounced will not take place.
- On other issues, able to influence NRAs ability to initiate a case under this proposed process, TI is of the opinion that a basic definition of different fraud cases would be of big help. In Italy we experienced a strong benefit in combating these phenomena using a precise list of definitions, contained in the above mentioned "Interoperator Protocol", signed by all the main operators under the auspices of AGCOM in 2010.

Q6 Are there other types of clauses found in typical commercial interconnection or other agreements that might influence the ability of operators to withhold interconnection revenues when required to do so by an NRAs? Please provide details and examples of such agreements.

- As a general remark, TI would like to point out that in some cases the suspension of the payments chain has no effect on the suspension of the fraud, this should also be reflected in the consultation document. Interconnection contracts envisage the application of the Interoperators Protocol (see

Q2) where the block of payments is provided only for VAS services, case in which such action produces effective contrast to the fraud. In cases where the fraudster perpetrates fraud in access systems (as described above in response to Q5, last par.), the block of payments does not produce an effective contrast to the fraud: in these cases the intervention should concern the access systems, with the aim to strengthen their safety.

- IN TI's view it would be worth to take as a best practice and to expand the Interoperator Protocol to face the issue of international fraud and misuse; we also suggest to arrange specific clauses, diversifying contracts for each OLO where due account is taken to all the previous /pending litigation (criminal, civil and regulatory).
- In any case, it should be pointed out that in the international wholesale market it is not common to match clauses influencing the ability to withhold interconnection and or service fees when requested by an Authority, because, as correctly said by the BEREC, contracts may include operators that operate outside Member States and outside the jurisdiction of the relevant EU Directives. Anyway, in the international wholesale market (even in the EU) is commonly agreed that each operator takes its own risk; traffic anomalies are under the responsibility of each company that considers itself as responsible only for what is on his network.
- According to this common understanding, generally speaking no clauses at all are included in typical commercial interconnection agreements in relation to the considered frauds. In these cases, commercial pressures help to solve disputes.
- Finally, TI would like to emphasize that due to the lack of generally accepted practices or in absence of a regulatory decision, it is even difficult to negotiate the introduction in the contract of warnings clauses to suspend denounced (by the final client) "anomalous" traffic and related payments in order to avoid any possible involvement in criminal matters.. In these cases, it is usually requested a bilateral clause.

Commento [SLM1]: Questa affermazione sembra in contraddizione con quanto affermato sopra al bullet 3

**Q7 Are there other circumstances at which NRAs should consider intervention under article 28(2)?
Please give reasons for your response.**