

BEREC Report on Terminating Contracts and Switching Provider

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Executive Summary

The Body of European Regulators for Electronic Communications (“BEREC”) Strategy 2018-2020, set out “*Exploring new ways to boost consumer empowerment*” as one of its five strategic priorities. This focus on increasing consumer empowerment and engagement is to ensure consumers have the information and tools to make informed choices and engage effectively with the market.

BEREC’s strategy places end-users at the centre of its actions, which will allow it to build on already-completed consumer-related topics in its previous work programmes, including reports related to transparent and comparable tariffs, switching, contract information¹ and equivalence of access for end-users with disabilities.

In December 2018 BEREC published a draft report on terminating contracts and switching provider document reference BoR (18) 229. The draft report builds on previous BEREC work in this area, namely “BEREC report on best practices to facilitate consumer switching” (BoR (10) 34 Rev1), published in 2010. The draft BEREC report was launched for public consultation from 12 December 2018 to 18 January 2019 with the objective to gather stakeholders’ comments and observations on the content of the draft BEREC Report.

BEREC received 14 responses to the consultation of which one contribution was confidential and therefore not included in the following list of 13 stakeholders (in alphabetic order):

- 1 AVM GmbH (AVM)
- 2 BEUC, The European Consumer Organisation (BEUC)
- 3 Deutsche Telekom AG (DT)
- 4 Digital branch of the Confederation of Danish Industry (DI Digital)
- 5 DNA Plc (DNA)
- 6 European Competitive Telecommunications Association (ECTA)
- 7 Joint contribution ETNO and GSMA (ETNO/GSMA)
- 8 Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband, VZBV)
- 9 Laurynas Totoraitis -PhD Candidate Vilnius University, (Totoraitis)
- 10 Liberty Global B.V. (Liberty Global)
- 11 Microsoft
- 12 Tele2 AB (Tele2)
- 13 Vodafone Group

¹ An example is BEREC Report on contractual simplification BoR (18) 217) adopted on 6 December 2018

BEREC welcomes all contributions and thanks all stakeholders for their submissions. The contributions received from stakeholders will be published on the BEREC website except for the one that is CONFIDENTIAL.

It should be noted that most respondents to the public consultation, rather than focusing on measures that providers of electronic communications services (“ECS”) could initiate to reduce or remove barriers to switching, in their documents stressed that current measures and operators’ practices are sufficient to address the problems that may arise during the customer switching or terminating process. Therefore, for these operators, there is no reason to burden them with additional requirements.

Since the publication of the draft report for consultation BEREC notes that Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 established the European Electronic Communications Code (EECC) of which article 106 deals with “Provider switching and number portability”. The Directive establishes a harmonised framework for the regulation of electronic communications networks (“ECN”), ECS, associated facilities and associated services and certain aspects of terminal equipment. In the responses many stakeholders expressed an opinion that it would be premature to consider any further regulation in light of the recent adoption of the EECC however BEREC would like to restate that the Report being published sets out the processes currently in place, identifies the key factors and obstacles to switching and seeks a view in respect to bundles, improvements and any other barriers. BEREC is of the view that the telecommunications market, with its specific rules, must be regulated separately from other sectors. At national level the regulation will follow the harmonization principle defined in article 102 of the EECC. To note that in accordance with the new Code each MS has the ability to address some specific issues, foreseen in the Regulation that impacts their MS.

BEREC is now publishing a final report that draws upon the information provided by each NRA in response to a questionnaire issued by BEREC and by the comments and observations that were provided by the stakeholders that participated in the public consultation that followed the publication of the draft “BEREC Report on terminating contracts and switching provider” BoR(18) 229.

1. Introduction

Understanding barriers to consumer switching in ECS markets can aid National Regulatory Authorities (NRAs) and Member States² (MS) in their aims of protecting consumers and at the same time facilitate a competitive environment. The level of consumer switching activity is an important measure of competition in ECS markets. As ECS markets have matured, the pool of unattached potential customers has diminished, such that telecoms operators are attempting to increase their subscriber share by attracting the existing subscribers of other operators. Conversely, established providers with larger subscriber shares are incentivised to focus on the retention of existing subscribers, as well as the gaining of new ones, namely with the rollout of new networks.

According to the results of the European Commission's Consumer Markets Scoreboard 2018³, consumers found it particularly difficult to switch provider in 'telecoms' and 'banking services', with 'fixed telephone services', 'TV-subscriptions', 'mortgages', 'investment products, private personal pensions and securities' and 'internet provision' ranking at the bottom of the scale (i.e. the most difficult to switch). The services offered in the 'fixed telephone services' and 'TV-subscriptions' markets, where approximately 2 in 10 respondents find it difficult to switch provider, are often part of a bundle, which is likely to complicate the switching process.

Consumers have to weigh up various factors to determine barriers to switching (switching costs) and they may be discouraged from changing (switching) provider for a better contract if there are financial barriers or penalties for leaving contracts early the cost of which must be borne by the consumer. This impacts not only on the demand side but also potentially raise supply-side barriers as new entrants may be deterred from entering the market in the belief that it will be difficult to persuade consumers to switch from their existing provider.

Less explicit barriers, such as the uncertainty about the relative merits of different contracts, or the inconvenience associated with changing provider or the reliance on the ECS may result in reluctance to switch for fear of something going wrong in the process. Such barriers may all have the effect of decreasing switching activity. The ability to switch operator enables consumers to drive competition and ultimately ensures that a better quality of service is offered by Communication Providers⁴ (CPs) hoping to attract those consumers who are willing to exercise choice and to manage and retain the customers they already have.

The purpose as set out in the draft report was to consider the various factors that have an impact on terminating contracts and switching provider, which will serve to better inform both consumers and NRAs as they evaluate how they might maintain and enhance consumer awareness of their ability to exercise choice to seek the electronic communications products that best suit their preference and needs. Such factors include:

- The processes for changing provider, including number portability procedures;

² Member States (MS) is the generic term used throughout this report to include all countries, whose NRAs have responded to the BEREC questionnaire, regardless of the NRAs status with respect to BEREC (e.g. member or observer) or the country's status with respect to the EU (e.g. member, accession state or member of EEA/EFTA).

³ https://ec.europa.eu/info/sites/info/files/eujus15a-1816-i02_-_the_consumer_markets_scoreboard_2018_-_accessibility_final.pdf

⁴ As defined in the Glossary in Annex 1

- the identification of other matters that may facilitate or hinder switching, such as notice periods, data portability (e.g. user profiles), treatment of failures in the process, technical developments (e.g. e-SIM), early termination charges, contract durations, loss of service during the switching process will also be covered;
- switching between bundles (e.g. different legal frameworks of the elements included in a bundle such as electronic communication and audio-visual bundles or switching between heterogeneous bundles);
- the practicalities in switching of internet products; and
- the rules for termination of a contract, after or during the initial commitment period, such as the obligations that end-users might have in relation to the termination of such a contract in respect of financial compensations regarding special offers or terminal equipment.

The report represents the aggregate responses to the questionnaire received from the NRAs in 30 countries in addition to the contributions received from 14 Stakeholders.

2. Processes to facilitate switching and provide safeguards to consumers

This part of the report aims to explore the following topics in respect of each of the 9 categories of ECS as set out in Annex 3 (albeit that there is little information relating to NI-ICS in Section 2 of the report):

- the actions required by the consumer to initiate and complete a change of provider;
- the information the consumer needs to provide to the relevant ECS provider in order to validate and authorise the switching request;
- the interactions between the end-user and the Receiving Provider (“RP”) and / or Transferring Provider (“TP”);
- the interactions between the RP and the TP; and
- how long the overall switching and porting process should take from the time the consumer agrees to switch to a new provider and the time it takes for the new service to become active.

2.1. Information provision, validation and authorisation

NRAs were asked to indicate which party the consumer needs to contact in order to initiate their switch of provider and which party (or parties) is/are responsible for the switching process. The majority of NRAs indicate that the end-user is required to contact the RP in order to initiate the switch and that the rules surrounding switching are based on number portability requirements. In other words, for those services that are number based, it is the RP who predominantly has overall responsibility for co-ordinating the switching process, where this is accompanied with a request to port their number.

For Fixed and Mobile NB-ICS, each of the 30⁵ responding NRAs stated that the process to switch provider in their country only requires the consumer to contact the RP to initiate the process, where this is accompanied with a request to port their number to the RP. In other words, the switching process is RP led, when it also involves number porting. There are, however, qualifications to this general rule, for example those cited by PT, MT, NL and UK which are all included in Annex 4.

This requirement for consumers to contact the RP is reflected in Figure 1 below, where NRAs were asked what consumers needed to do if they wanted to cancel their contract with the TP and switch their ECS to another provider (RP). The results clearly indicate that submitting a request to the RP is the predominant response in respect of all categories of ECS, where a process is defined.

⁵ AT, BE, BG, CH, CY, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IE, IT, LT, LV, LU, MT, NO, NL, PL, PT, RO, RS, SE, SI, SK, TR.

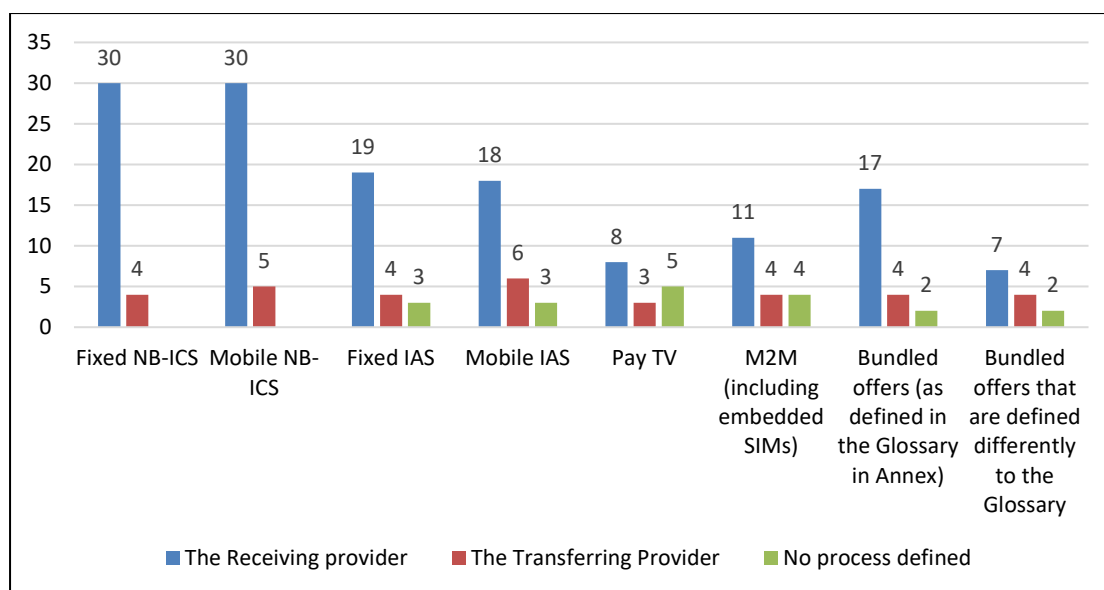


Figure 1: Which party does the end-user need to contact in order to initiate a switch of provider?

While not all NRAs provided responses in respect of all categories of ECS, the responses received also conclude that switching and portability processes are defined for number-based services that are included as part of a Bundled offer (as described in the Glossary). In this instance, 17⁶ NRAs have processes in their country, which require the RP to be responsible for the switching process, where this involves a porting request (noting the point above, as highlighted by the UK, that in some MS this may be dependent on switching ECS providers on the same technological platform for certain categories of ECS).

In the case of M2M services, Embedded SIMs (“eSIM”) enables switching without physical presence and the GSMA has defined an architecture and processes to remotely change SIM-profiles via OTA (over the air). For M2M communications services, the types of numbers used may vary depending on the service, the provider and/or MS. Whilst some M2M communication services (e.g. eCall) require number types in a similar manner to “traditional” Mobile NB-ICS (e.g. MSISDNs, IMSIs, etc.), others may only require specific numbers (e.g. IMSIs, etc.). Also, various MS have allocated specific number ranges for mobile NB-ICS which are distinct from number ranges which may be utilised for M2M communication services.

From the responses received, it can be inferred that generally, the RP leads the process in the case of “traditional” NB-ICS. NRAs responses to the question “*What must consumers do to cancel their contract with the Transferring Provider*” are summarised in Figure 2 below.

⁶ BE, CY, CZ, DE, EL, ES, FR, HR, HU, IE, IT, LU, MT, NL, RS, SE, SI

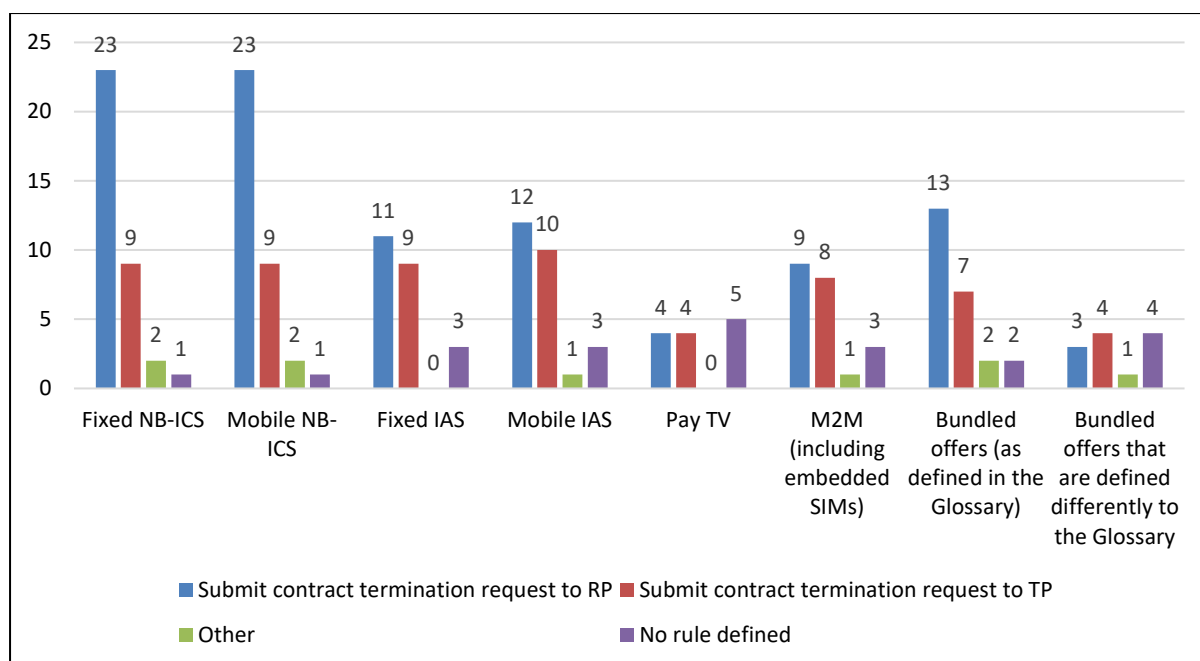


Figure 2: What consumers must do to cancel their contract with the Transferring Provider

NRAs were asked if there is a regulated customer validation process in their MS i.e. a process by which the consumer, and the consumer's request to switch provider, may be validated, perhaps by a third party other than the TP and the RP. 25⁷ NRAs responded that there is a regulated customer validation process in their country for Fixed NB-ICS and 24⁸ NRAs responded that such a process is established for Mobile NB-ICS in their MS (for both fixed and mobile NB-ICS in MT, PL and PT these rules only apply when the end-user requests number portability).

Although Mobile IAS utilises numbering resources, only 10⁹ NRAs stated that customer validation process exists for switching provider of such services in their MS, while 10¹⁰ NRAs stated that there was no customer validation process for such services 7¹¹ other NRAs stated that there is no rule defined (i.e. no regulated customer validation process) for such services. In a similar manner only 2¹² NRAs confirmed that they have a validation process for Pay TV. With regard to Bundled offers and the existence of a regulated customer validation process when switching, BEREC received a relevant comment from SI: "*There is a regulated customer validation process for bundles when they contain fixed or mobile voice services*".

To conclude, it can be inferred that a regulated customer validation process is deemed an important part of the switching process for both fixed and mobile number-based ECS.

⁷ AT, BE, CH, CY, CZ, DE, EE, EL, ES (only for contracts concluded by phone), FR, HU, HR, IE, IT, LT, LU, MT, NO, PL, PT, RO, RS, SK, SI, TR

⁸ AT, BE, CH, CY, CZ, DE, EE, EL, ES (only for contracts concluded by phone), FR, HR, HU, IE, IT, LT, LU, MT, NO, PL, PT, RO, RS, SK, SI.

⁹ CY, CZ, DE, ES, HR, IE, IT, NO, PL, RS.

¹⁰ BE, BG, CH, DK, EE, HU, LV, MT, NL SE.

¹¹ AT, FR, EL, LT, PT, RO, SI.

¹² HR, RS.

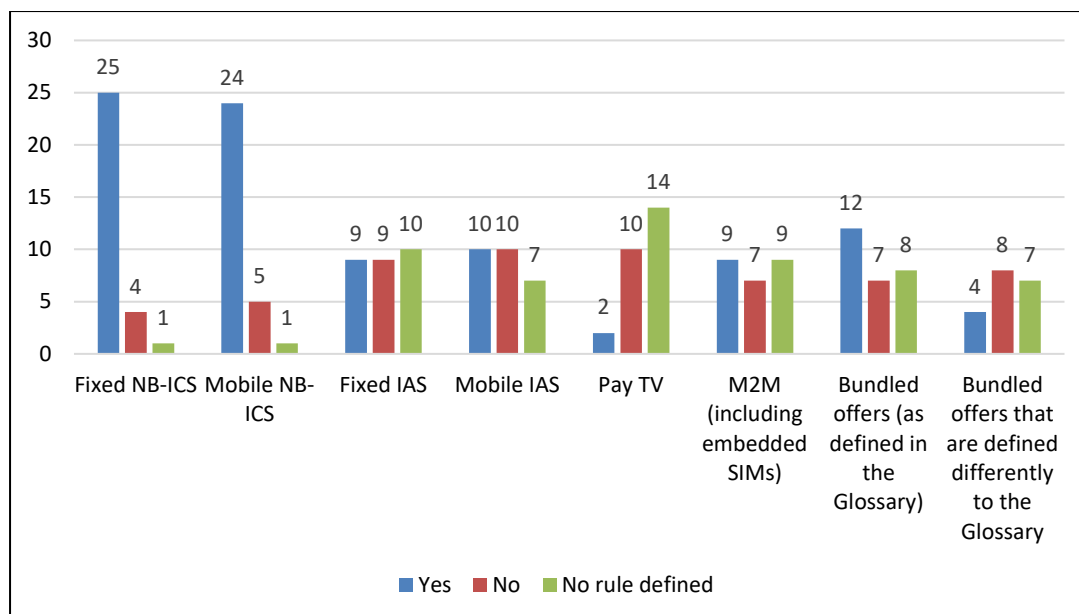


Figure 3: Responses to the question “Is there is a regulated customer validation process for these ECS” NRAs were asked to provide information regarding the means by which an end-user can request a change in provider for each ECS. Specifically, NRAs were asked if consumers could submit a request to switch provider either written (postal) request, voice contact, email, web form/site, SMS or at a Point of Sale/shop. The responses received from the NRAs indicate that there are a variety of methods by which a consumer can submit such a request (e.g. written (postal) request, voice contact, email, web form/site, SMS or at a Point of Sale/shop). In total, 20 NRAs¹³ state that there are other important details which are needed to ensure a valid switching request for Fixed NB-ICS, Mobile NB-ICS and Bundled offers (in MT, these rules are only applicable when the end-user requests number portability). These details include, but are not limited to, the following:

- customer identification¹⁴;
- customer address;
- details of the RP and / or TP;
- fixed line telephone number or MSISDN¹⁵;
- customer account number;
- a match of subscriber data between the old and the new contract; and
- the date of the requested transfer.

In the UK, when consumers switch fixed line telecommunications services and/or DSL broadband services within the Openreach or KCOM network, a further validation process

¹³ AT, BE, DE, EL, ES, FR, HU, IE, IT, LT, MT, NO, NL, PL, PT, RO, SK, SI, TR, UK.

¹⁴ For example, in Hungary, the end-user is required to complete an identification process which can be stipulated in the general terms and conditions of the subscriber's contract. In Spain, the switching request must come properly identified by the end user and with the end user's express consent.

¹⁵ Mobile Station International Subscriber Directory Number.

exists whereby there are rules requiring the RP to keep a direct record of consent for each contract entered into with a consumer for the provision of communications services – this must include the time, date and method by which consent was given. The record must be held for a minimum of 12 months and can be used to help deal with any queries or complaints. The rules do not set out what method of verification is required (e.g. phone, written etc.) and apply regardless of whether the consumer is porting their number or not. For these types of switches, the RP and TP must also both send letters (by post or, with the consumer’s agreement, electronically) informing the consumer about the switch. These letters are an important safeguard against slamming and inform consumers about the implications of switching (e.g. any early termination charges) so they can make an informed decision about whether to go ahead with the switch or stay with their existing provider. In a similar manner in PT, the TP is required to send a written notice informing the consumer of their obligations when terminating their contract – namely the early termination charges, when applicable – within 5 business days after receiving the consumer’s termination request (or 3 business days in case the request does not comply with the applicable procedure, in which case the TP must inform the end-user about what to do and how to correctly present their request).

Most NRAs indicate that a signature and / or PIN¹⁶ and / or PUK code¹⁷ is required when a consumer switches to a Fixed NB-ICS, Mobile NB-ICS, Fixed IAS, Mobile IAS and Bundled offer. The rules are less defined for Pay TV, M2M and NI-ICS, with a signature or some other form of data validation required to accompany the consumer’s request to switch.

NRAs were asked to indicate which party or body provides validation and authorisation to proceed with a request to switch provider. In relation to Fixed NB-ICS and Mobile NB-ICS, 22 responding NRAs indicate that the validation and authorisation is predominately provided by the RP¹⁸ and/or the TP¹⁹, with only 3 NRAs²⁰ indicating that a Third Party Validation Body (“TPVB”) processes consumer requests to switch (note: NRAs were permitted to select more than one validation body and most NRAs would appear not to have interpreted the interactions between TPs and RPs through via a central portability hub as being a TPVB, having regard for the number of NRAs, which indicated below that this is the predominant means of co-ordinating interaction between TPs and RPs in cases of switching Fixed NB-ICS and Mobile NB-ICS).

In the case of Fixed IAS, 11²¹ NRAs responded that validation and authorisation was provided by the RP and a further 10²² NRAs indicated this was provided by the TP. For Mobile IAS, 12²³ NRAs advised this was carried out by the RP and 10²⁴ NRAs indicated this was provided by the TP. 1 NRA²⁵ indicated that switching requests are processed by a TPVB in respect of Fixed IAS and similarly, 1 NRA²⁶ indicated that consumers’ requests are processed by a TPVB in respect of Mobile IAS. In NO, M2M-numbers are used for Mobile IAS and the same

¹⁶ Personal Identification Number.

¹⁷ Personal Unlocking Code.

¹⁸ AT, BG, CY, CZ, DE, DK, EE, EL, FR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, RO, RS, SK

¹⁹ BE, BG, CH, CZ, DE, EL, ES, FR, HR, HU, IE, IT, LT, LU, MT, PL, RO, RS, SK, SL, TR

²⁰ IT, NO and RS in respect of Fixed NB-ICS and CH, NO and RS in respect of Mobile NB-ICS

²¹ AT, CY, DE, DK, EE, HR, IE, IT, LU, NL, RS

²² DE, DK, ES, HR, IE, IT, LU, RS, SL, TR

²³ CY, CZ, DE, DK, EE, HR, IE, IT, LU, NL, PL, RS

²⁴ CZ, DE, ES, HR, IE, IT, LU, PL, RS, SL

²⁵ IT

²⁶ NO

obligation for portability and the same portability process for e.g. mobile numbers also applies to M2M-numbers.

Indeed, as illustrated in Figure 4 below, some NRAs indicated that there is no defined rule for Pay TV, M2M (including embedded SIMs), Bundled Offers (as defined in the Glossary) and Bundled Offers that are defined differently to the Glossary. Nonetheless, responding NRAs that indicated that rules exist confirmed that the validation and authorisation of customer's requests to switch for these categories of ECS are processed by both RPs and TPs, and by TPVBs to a much lesser extent.

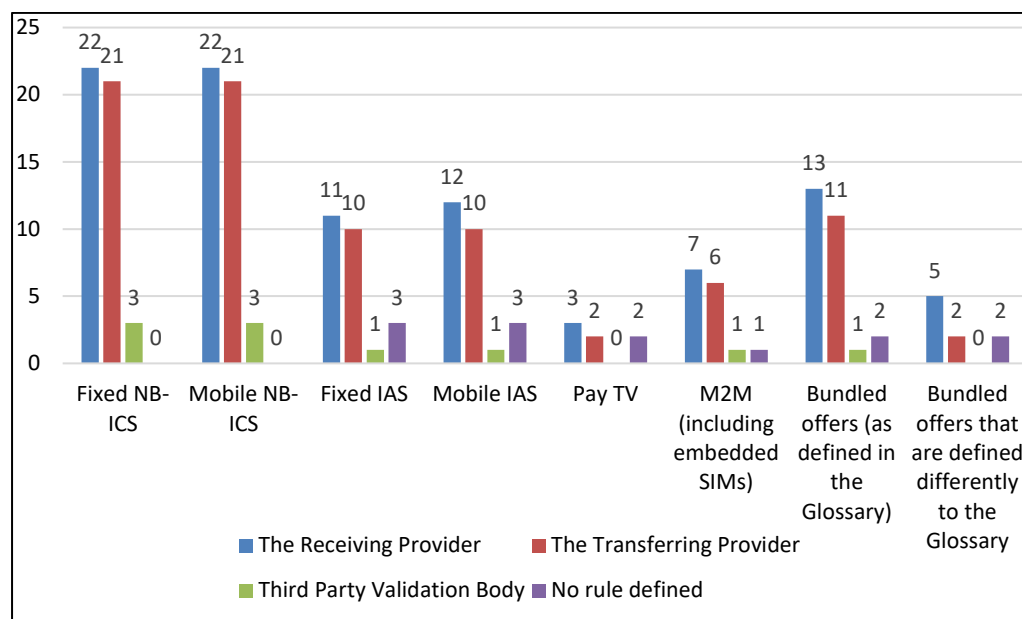


Figure 4: Which body provides the validation and authorisation of a consumers request to switch?

The majority of responding NRAs also confirmed that for Fixed NB-ICS, a TP and RP interact with each other through one single central portability hub in 24²⁷ MS. This also applies in 25²⁸ MS in respect of Mobile NB-ICS. In the case of Fixed IAS and Mobile IAS, 8²⁹ and 11³⁰ NRAs, respectively, indicated that there is interaction between the TP and RP in their MS, however, other NRAs did confirm that there would be no such interaction in a central portability hub.

Once the request to port the end-user's number is recorded into the central portability hub, or delivered to the TP, NRA's were asked to identify the possible grounds for refusing the switching or porting request during the validation process. NRAs identified the most common issues as follows:

- Incomplete or missing data;

²⁷ BE, CH, CY, CZ, DK, EE, EL, ES, FR, HR, HU, IE, LT, LU, NL, NO, PL, PT, RO, RS, SE, SK, SL, TR

²⁸ BE, CH, CY, CZ, DE, DK, EE, EL, ES, FR, HR, HU, IE, LT, LU, NL, NO, PL, PT, RO, RS, SE, SK, SL, TR

²⁹ CY, ES, HR, LU, NL, NO, SL, TR

³⁰ CY, CZ, DE, ES, HR, IE, LU, NL, NO, PL, SL

- Data mismatch;
- No contract with the end-user;
- PAC³¹ doesn't exist;
- 2 or more RPs trying to provision an ECS to same number on the same day;
- Technical deficiencies;
- Contract with TP not yet terminated; and
- Remaining end-user debt with TP (though this is not a factor that some NRAs consider can be used as a reason to stop the porting process).

Although in most MS, the end-user is informed that their request to switch will proceed, the requirement to do so is not necessarily defined as a rule. Where such rules exist, the manner by which the end-user is informed of the switch is not always stipulated (i.e. by phone call, SMS, email etc.). In practice, NRAs responded that the consumer is predominately informed about their request to switch providers, whether by the RP or by both the RP and the TP, as set out in Figure 5 below.

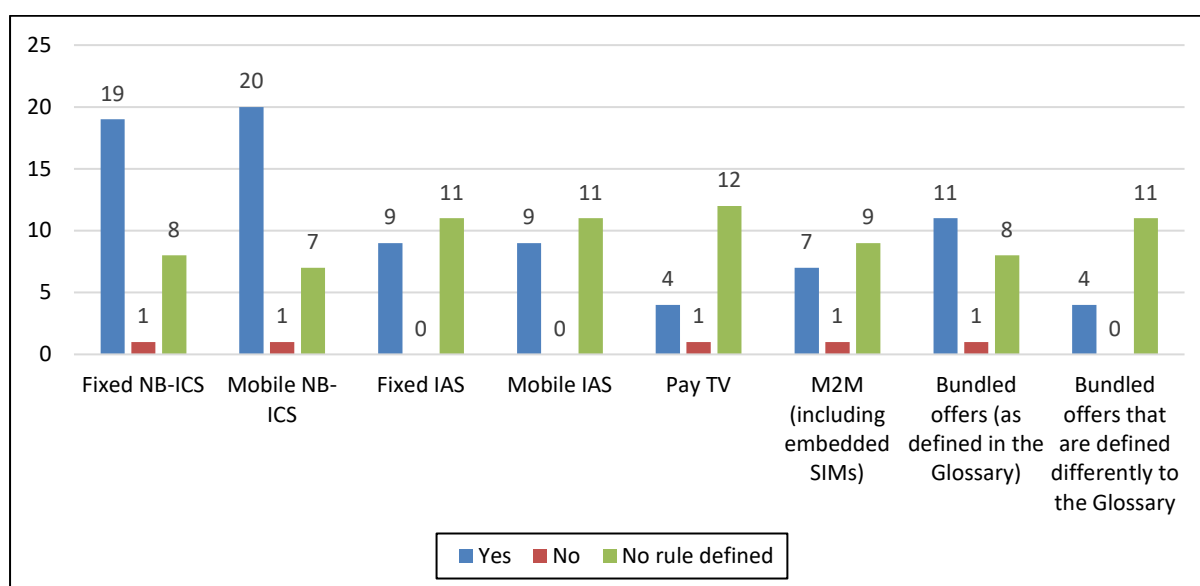


Figure 5: Whether the consumer is informed that their request to switch will proceed?

2.2. The length of the overall porting / switching process:

NRAs were asked to confirm how long the porting process takes within the switching process and to confirm how long the overall switching process should take, that is, the legally defined maximum length of time between the dates indicated in the end-user's agreement to enter the service with a new provider and the new service becoming active. 20³² NRAs indicate that there are some rules in place which state that the porting process within the overall switching

³¹ Porting Authorisation Code

³² AT, BG, BE, CH, CZ, DE, DK, ES, FR, IE, LT, LV, MT, NL, PL, PT, SE, SK, SL, UK

process for Fixed NB-ICS should take no more than 1 working day - in MT, this rule is only applicable when the end-user requests number portability, while in PT, by default the portability should be 1 working day, however there are some exceptions that extends the porting process up to 3 working days. In NL, the transition of a number should take place within 1 working day after the expiry of a consumer's contract, if the request is made more than 10 days before the expiration of the contract. This timeframe also extends to 20³³ NRAs in respect of Mobile NB-ICS (again in in MT, PT and NL, the specific member state rules for Fixed NB-ICS also apply to Mobile NB-ICS). However, the rules for the remaining categories of ECS are less defined as follows:

- 8³⁴ NRAs have rules in place for Fixed IAS, where the time can vary depending on the platform technology;
- 10³⁵ NRAs have rules in place for Mobile IAS; and
- 7³⁶ NRAs have rules in place for M2M.

In DE, the NRA confirmed that they have a requirement for each of the categories of ECS, which states that service may not be interrupted for more than one day. However, the length of time that the overall switching process can take is not regulated.

It can also be said that the individual components of the Bundled offer will determine whether or not there are rules in place for that particular consumer's bundle.

2.3. Response from Stakeholders to question 1 and BEREC comments:

BEREC has set out in BoR (19) 26 a summary of the responses from Stakeholders in respect to observations regarding the processes set out in Section 2 of the report.

³³ AT, BG, CH, CZ, DE, DK, ES, FR, IE, IT, LT, LU, LV, MT, NL, PL, PT, SE, SK, SL, UK.

³⁴ CY, DE, ES, HR, IT, LU, NL, TR, UK.

³⁵ CZ, CY, DE, EE, ES, IT, LU, LV, NL, NO, PL.

³⁶ CZ, DE, DK, EE, IT, NL, NO, PL.

3. Legislative and Regulatory Framework

This section offsets out the rules and regulations that are put in place in the MS to facilitate terminating contracts and switching between communications providers for each category of ECS (fixed NB-ICS, mobile NB-ICS, fixed IAS, mobile IAS, NI-ICS, Pay TV Broadcast and M2M)³⁷ or bundled service. The aim is to provide a high level summary and analysis of the different practices, decisions or legal requirements which apply in MS with regard to Switching, Contract matters, Contract termination, Charges and fees, Customer retention, Technical issues and Compensation. The aim is to assist MS in identifying best practice initiatives which may serve as an information guide to those NRAs seeking to take measures or introduce new initiatives that are intended to raise consumer awareness and to empower consumers' in making informed decisions about the services they purchase and the provider that they contract with.

3.1. Switching

Figure 6 below shows the number of MS that have practices, decisions or legal requirements concerned with aspects of switching, including: Third party validation process, Customer validation process, Misleading sales, Slamming, Switchover period, Remaining consumer debt with transferring provider and rules relating to the processing of over the air (OTA) eSIM profile changes (subscription management).

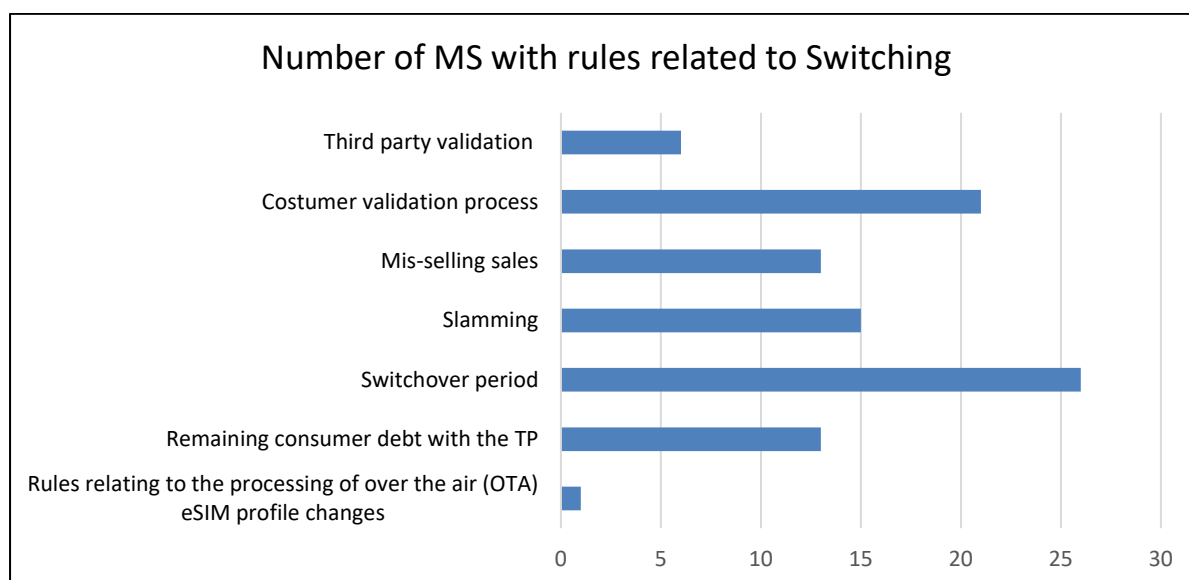


Figure 6: Number of MS with rules related to Switching

As mentioned above, the vast majority of countries do not have specific rules, processes or legal requirements regarding third party validation. According to the responses received, rules (practice, decision or legal requirement) for third party validation process exist only in 6 MS³⁸ and not in 23 other MS³⁹. In Italy, the wholesale division of the incumbent fixed line operator verifies the contractual and technical feasibility of the switching process, if the TP and RP are

³⁷ As defined in Glossary of terms.

³⁸ CH, CY, ES, IT, NO and RS.

³⁹ AT, BE, BG, CZ, DE, DK, EE, EL, FR, HU, IE, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK and UK.

interconnected with the incumbent's network. In Cyprus, Italy and Spain (only for contracts concluded by phone), the NRA applies conditions in respect of the third party validation process.

Regarding the customer validation process, in the vast majority of countries (21 MS⁴⁰) specific rules exist (in PT and MT the process is linked to a corresponding request from the consumer to port their number). In Switzerland, for example, those rules are determined with support from industry and, in the case of Mobile NB-ICS, prepaid customers have to confirm their request to switch provider by sending an SMS to a short code number.

There are rules regarding misleading sales that are directly related to switching in 12 MS⁴¹, while respondents to the questionnaire indicated that there are no rules in 14 MS⁴². In Bulgaria the TP, as well as its sales representatives, distributors and partners, are not allowed to contact the subscribers that have submitted a switching request and are also not permitted to discuss the benefits or disadvantages of switching or to suggest changes to terms and conditions of the customer's existing contract.

15 MS⁴³ have rules regarding slamming (in MT, this rule is only applicable when the end-user requests number portability ; in the UK, this rule is only applicable when a consumer switches within the incumbent's copper/fibre-to-the-cabinet platform, where the RP also uses this infrastructure), while 12 MS⁴⁴ do not have such rules. In BE, for instance, slamming is explicitly prohibited in the Telecommunications Act. In cases, of breach, the operator found guilty is obliged to refund the customer and to pay a compensation of 750 EUR to the "slammed" operator. PT does not have rules addressing slamming in general, but there is an obligation for the RP to compensate end-users when their number is ported without their consent, as well as an obligation to compensate the TP.

As seen in Figure 6 above, 26 MS⁴⁵ have rules regarding the switchover period (in PT and MT only when switching also involves number porting), while rules regarding remaining consumer debt with the TP exist in 15 MS⁴⁶ (in MT, this rule is only applicable when the end-user requests number portability). For example, in Ireland, the TP can "flag" that there is a debt associated with a consumer's account but the TP cannot block the transfer, as this would be considered a disincentive to switching in accordance with Article 30 of the US Directive (2002/22/EC). In such cases, the RP to whom the debt has been flagged can choose to either accept or reject the order.

As shown in Figure 6, out of 25 MS that responded to this question, only IT has rules relating to the processing of over the air (OTA) eSIM profile changes. These rules are applied with formal binding decision by the NRA and applies only to M2M services. Others MS either have no such rules or did not provide an answer to this question (5 MS⁴⁷).

⁴⁰ AT, BE, CH, CY, CZ, DE, EL, ES, FR, HR, HU, IE, LT, MT, NO, PL, PT, RS, SK, TR and UK.

⁴¹ AT, BE, ES, HR, DE, HU, IE, MT, NL, NO, SK and UK.

⁴² BG, CH, CZ, DK, EE, FR, IT, LT, LV, PL, PT, RO, SE and SI.

⁴³ BE, DE, EE, ES, FR, IE, IT, MT, NL, NO, PL, RO, SK, TR and UK.

⁴⁴ AT, BG, CH, CZ, DK, EL, HU, LT, LV, PT, SE and SI.

⁴⁵ AT, BG, CH, CY, CZ, EE, EL, ES, HR, HU, IE, IT, LT, LU, LV, MT, NO, PL, PT, RO, RS, SE, SI, SK and TR.

⁴⁶ AT, BE, DE, DK, EL, ES, FR, HU, IE, LT, LU, MT, NO, RO and RS.

⁴⁷ CY, EL, LV, RS and TR.

3.2. Contract matters

This sub-section focuses on the rules that exist in MS regarding the length of minimum and maximum contract periods, maximum or minimum permissible length of notice periods, rollover contracts, contract change notifications and if there are any rules regarding unfair terms and conditions in contracts, which relate to and affect switching only.

The results of the responses provided by NRAs to the questionnaire are set out in Figure 7 below.

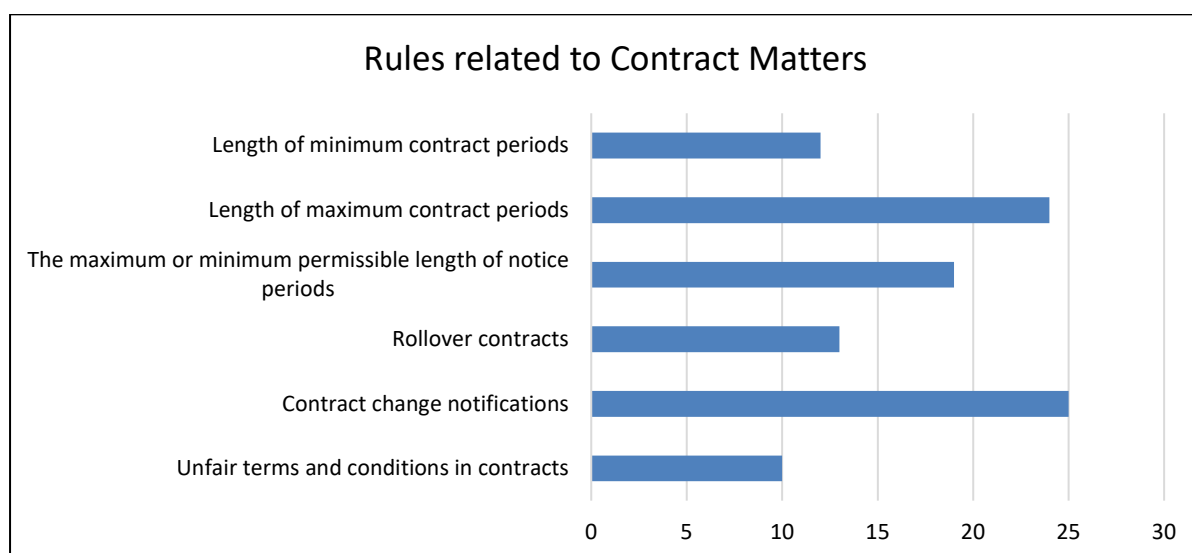


Figure 7: Number of MS in which rules apply to Contract Matters

12 MS⁴⁸ have rules regarding the length of minimum contract periods and on the other side, 25 MS⁴⁹ have rules regarding the maximum duration of contract periods, with only 2 MS (CH and RO) citing there are no rules relating to this matter.

Furthermore, 19 MS⁵⁰ have rules regarding the maximum or minimum permissible length of notice periods, i.e. the notice period that a consumer must give their supplier before they can bring their contract to an end. There are no such rules in EL, NO, PL, PT, RO, SI and CH. 5 MS⁵¹ did not provide an answer regarding these rules.

It is noteworthy that in ES sectoral legislation sets up a general consumer right to terminate their ECS contracts if they notify their CP at least 2 business days in advance. Also, in HR there are rules, codified in national legislation, which stipulate that for mobile NB-ICS the notice period is 1 day and for fixed NB-ICS it is 12 days. In a similar manner in HU, national law provides that consumers may terminate a contract of indefinite duration with immediate effect i.e. there is no minimum notice period for such contracts.

More than half of the NRAs that responded to the question on rollover contracts stated that in their 13 MS⁵² there are rules pertaining to such rollover contracts. For example, in BG rollover

⁴⁸ AT, DE, EL, ES, IE, IT, LV, PL, RO, RS, SK and UK.

⁴⁹ AT, BE, BG, CY, CZ, DE, DK, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, SE, SI, SK and UK.

⁵⁰ AT, BE, BG, CZ, DE, DK, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, SE, SK and UK.

⁵¹ CY, EE, LU, RS and TR.

⁵² AT, BE, BG, CZ, DE, ES, FR, HU, IE, MT, NL, PL and UK.

contracts are forbidden by law and a fixed-term contract may be renewed only with the explicit written consent of the subscriber regarding the renewal conditions. Where such consent is missing the contract shall be transformed after its expiration into a permanent contract (without term) having the same conditions. The subscriber shall be entitled to terminate the permanent contract with one month notice without owing stipulated damages. In DE the maximum duration for rollover contracts cannot exceed 12 months.

As shown in Figure 7 above, the majority of MS (26 MS⁵³) have rules regarding contract change notifications, while the NRA from DE and CH indicated that there are no such rules in their MS.

In total 10 of the responding NRAs stated that in their MS⁵⁴ there are rules regarding unfair terms and conditions in contracts, which related to and affect switching only (in MT, this rule is only applicable when the end-user requests number portability).

3.3. Contract termination, charges and fees

Contract termination is a right of every consumer and NRAs were asked about any specific requirements that apply in their MS for terminating contracts. 21 MS⁵⁵ have specific requirements that apply for terminating contracts (e.g. the need to present a written/signed request and/or specific documents through specific channels or phone a dedicated number). 6 responding NRAs indicated that no such specific requirements apply for terminating contracts in their MS⁵⁶.

It is important for consumers to be able to terminate their contracts in a timely manner without incurring any unknown or unnecessary costs. Some MS have rules regarding charges and fees that can be applied to the consumers, who are terminating their contract, as illustrated in Figure 8 below.

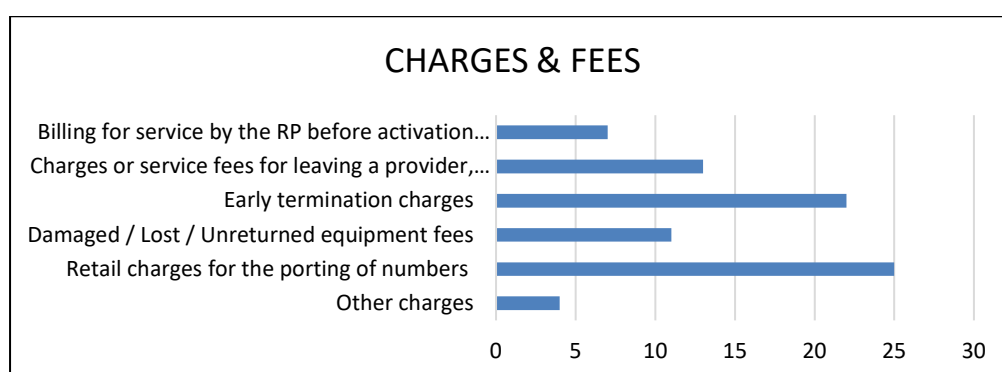


Figure 8; Number of MS in which rules relating to fees associated with contract termination apply

⁵³ AT, BE, BG, CY, CZ, DK, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK and UK.

⁵⁴ AT, BE, CZ, IE, LV, MT, NL, PL, RO and SK.

⁵⁵ AT, BE, BG, CZ, DE, DK, ES, HR, HU, IE, IT, LT, LV, NL, NO, PL, PT, RS, SI, SK and UK.

⁵⁶ CH, EL, FR, MT, RO and SE.

18 MS⁵⁷ have no specific rules regarding billing for service by the RP before activation date, while such rules exist in ES, HU, IE, MT, NL, RS, and UK.

In 13 MS⁵⁸ there are rules which relate to charges or service fees that the consumer may incur for leaving a provider, even when the consumer is outside of their minimum contract period, while there are no such rules in 13 MS⁵⁹. However, if the consumer terminates their contract before the minimum duration has expired, there are rules in 22 MS⁶⁰ regarding early termination charges, which apply. There are no such rules in AT, CH, DK, NO and SE.

It is noteworthy that in BG, the Bulgarian Commission for Consumers Protection has taken actions to limit the amount of penalties that a consumer may incur for early termination of mobile service contracts. The Bulgarian Commission ordered that the maximum amount of the penalty for early termination of the contract cannot exceed three times the amount of the consumer's monthly subscription charges for term contracts at their standard rate without discounts. In a similar manner, in FR national legislation provides that when a contract imposes a term of more than 12 months, and if the consumer terminates his contract after the initial period of 12 months but is still within the overall contract period, then they should not have to pay more than a quarter of the remaining periodic charges for the duration of the contract period. Moreover, the responding NRAs indicated that there are practices, decisions or legal requirements, which apply in 11 MS⁶¹ regarding damaged / lost / unreturned equipment fees, while there are no such rules in 16 MS⁶².

There are rules concerning the retail charges for porting of numbers (i.e. charges that the consumer must pay) in 25 MS⁶³, while no such rules apply in HR, IT and LV.

- In FR, for example, the TP cannot charge the consumer for porting their number, however, the TP can bill the RP for the porting process (respecting cost-orientation) and the RP can bill the end-user a reasonable price for porting their number;
- In PT, according to the ANACOM's Number Portability Regulation, TPs and RPs may impose retail prices for the porting of numbers, as long as they do not act as a disincentive for subscribers, who wish to benefit from portability. In practice most CPs do not charge their customers for porting their numbers or when they do it they usually offer it in promotional campaigns. CPs can charge customers for porting numbers, when the customers do not have a contract with a loyalty period; and
- In PL, the rule provides that a subscriber cannot be charged any fees for porting an assigned number.

In FR, national law establishes that providers have to refund the consumers their deposit for equipment in a 10-day period after the contract termination (after the restitution of the equipment). In PT there are established rules on how much service providers can charge for unlocking terminal equipment. In RO, the TP cannot make the payment of additional charges

⁵⁷ AT, BE, BG, CH, CZ, DE, DK, EL, FR, HR, IT, LT, NO, PL, PT, RO, SE and SI.

⁵⁸ AT, BE, DE, DK, ES, FR, IE, IT, MT, NL, PL, RS and SI.

⁵⁹ BG, CH, CZ, EL, HR, HU, LT, LV, NO, PT, RO, SE and UK.

⁶⁰ BE, BG, CY, CZ, DE, EL, ES, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, RO, SI, SK and UK.

⁶¹ CZ, DE, EL, IE, LT, LV, NL, PL, RO, RS and SK.

⁶² AT, BE, BG, CH, DK, ES, FR, HR, HU, IT, MT, NO, PT, SE, SI and UK.

⁶³ AT, BE, BG, CH, CZ, DE, DK, EL, ES, FR, HU, IE, LT, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK, TR and UK.

by the consumer a condition, which determines that the number portability process proceeds. In RS, upon the completion of the number portability procedure, the RP shall pay a fee 1,000 RSD (8.45 EUR) to the TP, except in cases where there is a request for full-unbundled access to the local loop (fee up to 500.00 RSD (4.23 EUR)).

3.4. Customer retention

Rules relating to TPs save / Win-back practices apply in 14 MS⁶⁴ (in MT, this rule is only applicable when the end-user requests number portability), while 14 MS⁶⁵ have no such rules. In EL, for example, for bundled offers, providers may offer discounts in order to retain the customer. On the contrary, in IT and in MT it is prohibited for the TP to contact the consumer during the switching process.

In ES, the majority of mobile operators arranged a voluntary Code on best practices to regulate retention practices during the switching process (e.g. TP can attempt to contact transferring consumers, through one SMS with a specific text or with a maximum of 5 calls).

3.5. Technical issues

During the switching process, there can be some failures with providing services to consumers. This sub-section presents the practices in MS regarding technical issues that may arise during switchover period.

Responding NRAs indicate that in 20 MS⁶⁶ rules regarding technical service failures / losses during or as a result of switching apply (in PT and MT, this only applies when the end-user also requests to port their number). There are no such rules in BE, CH, DK, HU, LV, LT and PL.

Rules regarding delays in porting by the TP apply in 21 MS⁶⁷ (in PT, this only applies when the end-user also requests to port their number) but not in 6 other MS (AT, CH, CY, DK, LT and PL).

It should be mentioned that **ECTA** in its contribution to the public consultation noted that the costs of number portability and switching support systems vary immensely between MS. According to **ECTA**, substantial efficiency gains are possible by identifying the most efficient systems from a techno-economic perspective. Sharing systems between MS could also be another option to consider in certain circumstances.

Similarly, **Tele 2** in its contribution proposes the following requirements in order to enable switching processes and contribute to competition and consumer welfare:

- Portability should be led by the receiving provider, functioning as a one-stop shop;
- Processes should be automated and standardized;

⁶⁴ AT, CZ, DE, EL, ES, FR, IE, IT, MT, NL, NO, SK, TR and UK.

⁶⁵ BE, BG, CH, CY, DK, HR, HU, LT, LV, PL, PT, RO, SE and SI.

⁶⁶ AT, BG, CY, CZ, DE, EL, ES, FR, HR, IE, IT, MT, NO, PT, RO, RS, SE, SI, TR and UK.

⁶⁷ BE, BG, CZ, DE, EL, ES, FR, HR, HU, IE, IT, MT, NO, PT, RO, RS, SE, SI, SK, TR and UK.

- Rejection of a request should be motivated, and the transferring provider should be liable for undue rejection;
- Mobile number portability should be executed as soon as possible, but at the latest within 24 hours of a request made by the receiving provider; and
- All operators should be obliged to provide transparent information to their customers about number portability.

3.6. Compensation

The final questions in this section of the questionnaire related to any practices, decisions or legal requirements regarding compensation for loss of service during switchover, compensation for delay in porting or any other compensation mechanism.

As seen in Figure 9 below, rules regarding compensation for loss of service during switchover, apply in 14 MS⁶⁸ (in PT, this only applies when the end-user also requests to port their number). For example in HR end-users receive compensation of 35 EUR per day until the service is connected. In NO loss of service should not exceed one working day, while in CZ in case of the loss of service due to technical reasons the CP is obliged to rectify the failure and to adequately compensate for the failure by lowering the price to the consumer. In DE, the TP providing the service in case of a switching process can only ask for 50 % of the remuneration agreed upon in the contract beforehand in the case of a delay or service disruption – note; this is not an automatic liability regardless of negligence or fault and furthermore, general civil law obligations and rights for compensation apply.

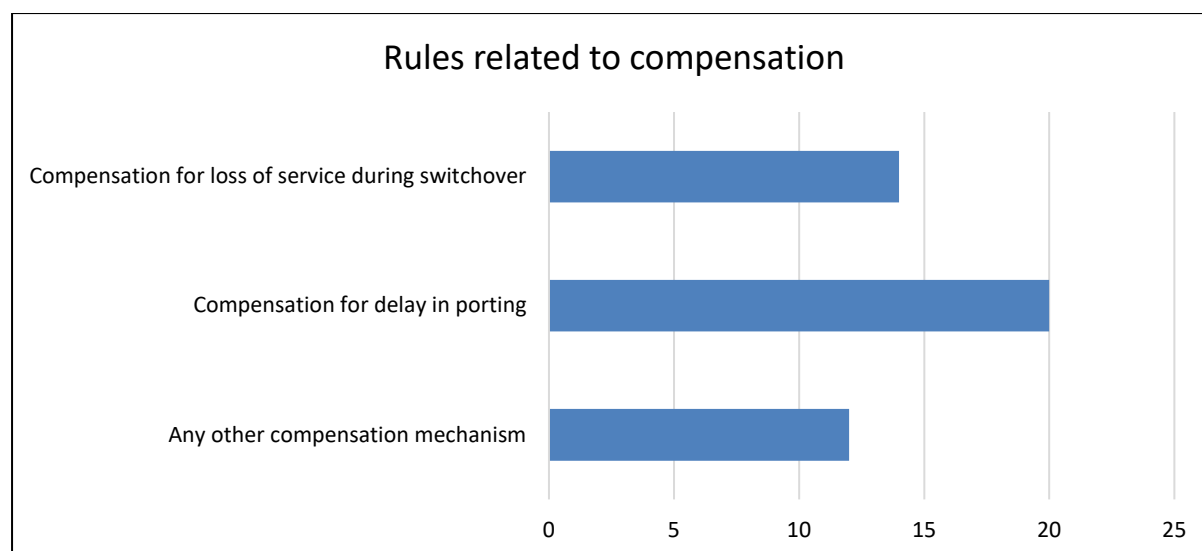


Figure 9: Number of MS in which rules related to compensation of consumers apply

Significantly more MS have rules regarding compensation for a delay in porting; in PT, this only applies when the end-user also requests to port their number. Such rules are applied in 20 MS⁶⁹. In HU, for example, in cases of delay in number portability the RP or TP shall pay a penalty 5000 HUF (15.53 EUR) per ported number to the subscriber. In IT there is 6 EUR

⁶⁸ CY, CZ, DE, DK, EL, ES, FR, HR, IT, LV, NO, PT, RS and SE.

⁶⁹ BE, CY, CZ, DE, DK, EL, ES, FR, HR, HU, IT, LV, MT, NO, PL, PT, RS, SE, SK and UK.

compensation per day in the case of a complete interruption of the service and 1.5 EUR per day in case of a delay in porting.

In BE, the rules require that consumers receive 3 EUR per day of delay per number and legal persons 5 EUR. Further, the provider has to pay 10 EUR for each missed appointment with the technician, which is not attributable to the consumer.

12 responding NRAs have also indicated that in their MS⁷⁰ there are other compensation mechanisms that apply (in MT, this rule is only applicable when the end-user requests number portability). In EL a consumer is entitled to compensation, if:

- they are switched to another provider without explicit consent;
- a number portability request is cancelled without their explicit consent;
- the TP rejects the number portability request for an invalid reason; and
- the consumer files a request in time to cancel the number portability request but the portability procedure is completed against his will.

In addition, in SK in case the number is ported against the will of subscriber the compensation is at least 20 EUR and the maximum is 100 EUR. In a similar manner, in PT, the RP must pay the consumer compensation of 20 EUR per number that was ported without their consent, for each day that it stays unduly ported, up to a maximum of 5.000 EUR per portability request.

3.7. Response from Stakeholders to question 2:

BEREC has set out in BoR (19) 26 a summary of the responses from Stakeholders in respect to observations regarding the rules in place in the MS to facilitate termination of service and switching as set out in Section 3 of the report.

⁷⁰ BE, CY, DK, EL, IE, IT, LV, MT, NO, PL, PT and SK.

4. Obstacles to switching provider

One of the aims of this report is to identify the biggest factors that might inhibit consumers from switching their ECS provider. However, as a result of the increasing complexity of contracts with the increase of bundled services (double, triple and quad-play service, for example), NRAs were asked to consider a non-exhaustive list of 19 factors and to **indicate the four most significant issues**, which, in their experience, represent the biggest obstacles in their MS to switching between communications providers **for each of the nine categories of ECS as set out in Annex 3**.

4.1. Fixed Number-Based Interpersonal Communications Services

With respect to fixed NB-ICS, amongst the 19 identified obstacles, the four most significant issues for the 30 responding NRAs are:

- contractual obstacles, which have the effect of discouraging switching, or which create disputes between the consumer and TP due to the consumer's intention to switch;
- actions by the TP to hinder/burden the switching decision by the customer;
- lack of consumer information; and
- offer/technology availability.

As seen in Figure 10, of the 30 responses to the questionnaire, 15 NRAs⁷¹ indicated that in their experience, contractual obstacles is among one of the most significant issues, which might inhibit consumers from switching their fixed NB-ICS provider. 10 of the responding NRAs⁷² indicated that the actions of the TP to inhibit or discourage switching is an obstacle to the well-functioning of the switching in their MS. 9 NRAs⁷³ indicated that a lack of consumer information, (e.g. lack of consumer awareness of the switching process, lack of tariff transparency and lack of price comparison information) is a factor restraining the switching process. Finally, among the 30 responses, 9 responding NRAs⁷⁴ consider the availability (or lack thereof) of alternative offer/technology (e.g. the option of a cable platform may not be available) as among the most significant issues which might present an obstacle to switching.

MT and LT point out that termination fees discourage consumers from switching. PL adds that provider's bankruptcy could be an obstacle for a functional porting process. IE specifies that the main driver for consumers to switch NB-ICS provider is price.

⁷¹ AT, BG, CH, CZ, DE, FR, IT, LT, LV, MT, NL, PL, RO, RS, SK.

⁷² CZ, EE, EL, ES, FR, HR, IE, IT, NO, RS.

⁷³ AT, DE, FR, HR, HU, IE, IT, LV, NO.

⁷⁴ AT, CZ, DK, HU, LV, PL, RO, SK, SI.

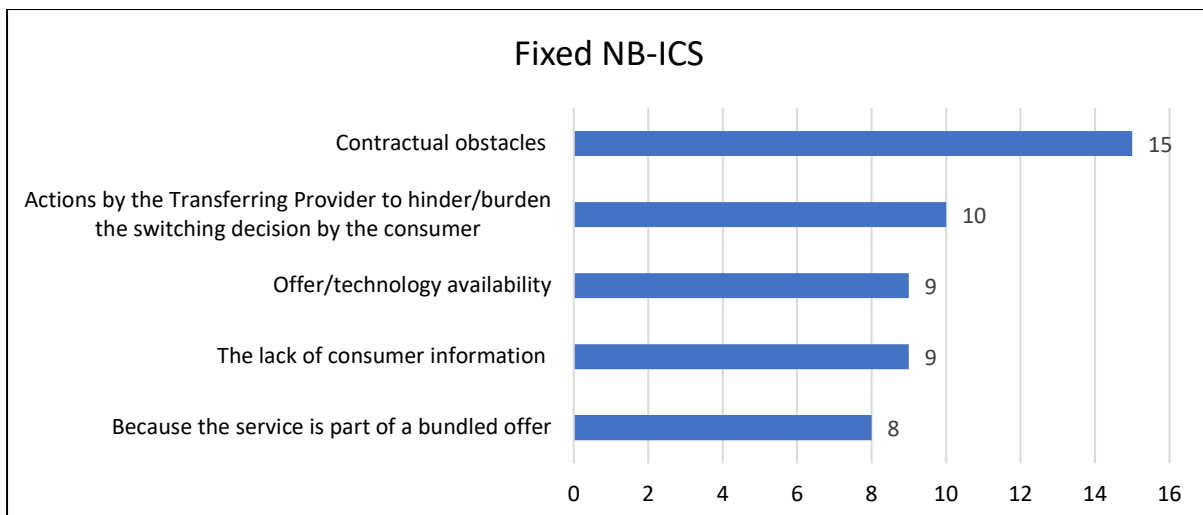


Figure 10: Number of NRAs who identified the most significant factors inhibiting switching of fixed NB-ICS

The NRAs were further asked about specific “sub-elements” included in the broader term of “contractual obstacles”. Based on the 14 responses received, Figure 11 below sets out the greater detail, with long minimum contract duration being considered clearly the most common factor that most inhibits consumers from switching their NB-ICS provider.

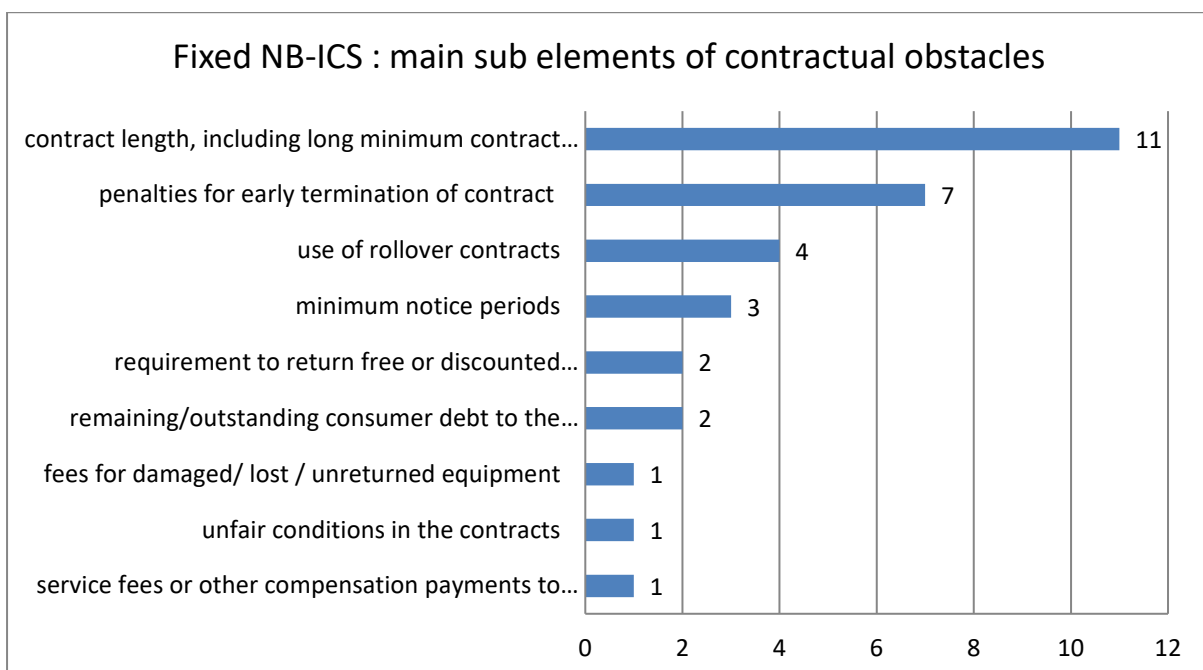


Figure 11: Contractual factors which inhibit switching NB-ICS provider

4.2. Mobile Number Based Interpersonal Communications Services

NRAs were asked to indicate the 4 most significant issues, which in their experience, represent the biggest obstacles to switching between communications providers for Mobile NB-ICS from among a list of 14 specific issues.

As seen in Figure 12, of the 30 received responses to the questionnaire, the 4 biggest obstacles indicated by the NRAs in relation with Mobile NB-ICS, from among 14 specific issues, were:

- actions taken by the TP to hinder/burden the switching decision by the consumer one of the two biggest obstacles, for 14⁷⁵ NRAs;
- contractual obstacles that have the effect of discouraging switching, or which create disputes between the consumer and the TP due to the consumer's intention to switch, applies to 14⁷⁶ NRAs;
- the service is a part of a bundle, for 10⁷⁷ NRAs;
- offer/technology availability, for 9⁷⁸ NRAs.

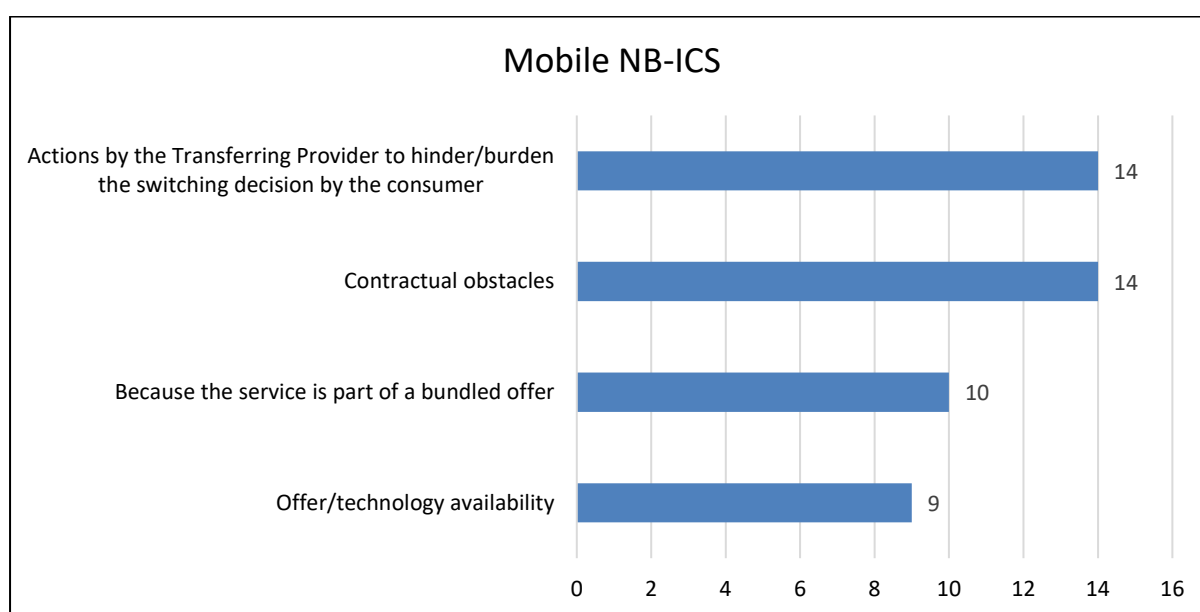


Figure 12: Number of NRAs who identified the most significant factors inhibiting switching of mobile NB-ICS provider

While “actions by the TP” was indicated as among the most prevalent of factors, NRAs identified the following issues as sub-topics within this broad category heading as being significant factors to inhibit consumers from switching their mobile NB-ICS provider:

- activities to save or retain the consumer and prevent them from switching before or during the process, for 11⁷⁹ NRAs;

⁷⁵ AT, CZ, DE, EE, EL, ES, FR, HR, IE, IT, NO, RO, RS, SK.

⁷⁶ AT, BG, CH, CZ, DE, IT, LT, MT, NL, PL, RO, RS, SK, SI.

⁷⁷ BG, CH, DK, LT, MT, NL, PL, RO, SE, SI.

⁷⁸ CZ, DK, FR, HR, HU, LV, PL, RO, SI.

⁷⁹ CZ, DE, EE, EL, ES, IE, NO, RO, RS, SK, UK.

- win-back practices after the switching process, including data protection considerations - using information about former consumers to target marketing, for 5⁸⁰ NRAs;
- not providing the consumer with the authentication code needed to switch, for 3⁸¹ NRAs;
- designating specific requirements for terminating contracts, for 3⁸² NRAs; and
- prescribing the method by which the TP specifies how the consumer must cancel the contract i.e. by phone, in writing with original signature, by email, etc...., for 2⁸³ NRAs.

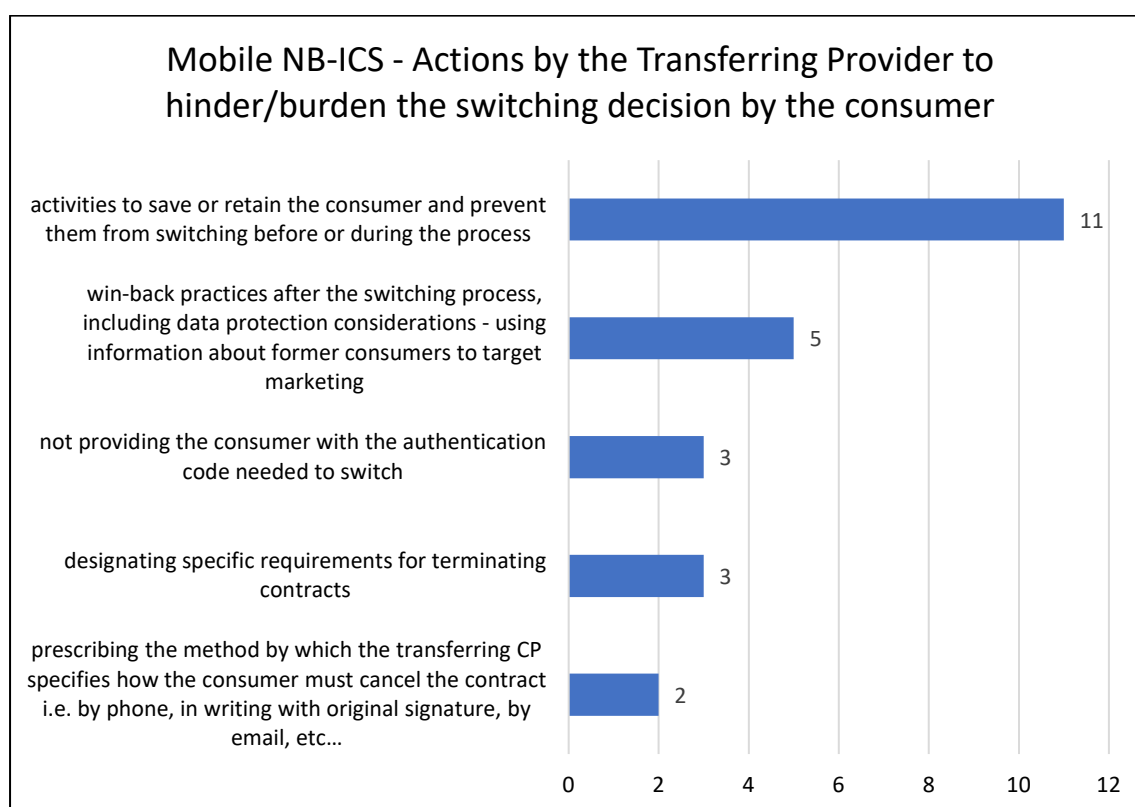


Figure 13: Number of NRAs who identified a sub-topic of Actions by the TP as a significant factor

In addition, some NRAs commented or suggested other factors that might also inhibit consumers from switching their mobile NB-ICS provider:

- FR pointed out that billing problems can happen, but it does not seem to discourage consumers from switching. RS noted that sometimes the RP bills the whole month instead of the period starting from the date of switching:
- IE highlighted the “CP’s requirements for consumers to provide 30 days’ notice to terminate a contract on foot a contract change notification” (i.e. consumers that wished to terminate their contract as a result of the CP changing the terms of the consumer’s initial contract were required to serve a minimum notice period of 30 days before their contract was terminated), illustrating it with a case where a provider was using that notice period to dis-incentivize consumers from switching (not honouring the contractual terms related

⁸⁰ EL, HR, IT, NO, RO.

⁸¹ AT, FR, RS.

⁸² ES, IE, RS.

⁸³ IE, RS.

to cancellations by post or email, forcing consumers to call a phone number that was not always available), which was contrary to regulation: and

- PL adds that a provider's bankruptcy could be an obstacle for a functional porting process.

4.3. Fixed Internet Access Services

As shown in Figure 14, amongst 19 identified obstacles, the most significant issues indicated by the 30 responding NRAs are:

- offer/technology availability;
- contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and TP due to the consumer's intention to switch;
- the lack of consumer information; and
- technical issues or other deficiencies within the switching process and the service being part of a bundled offer.

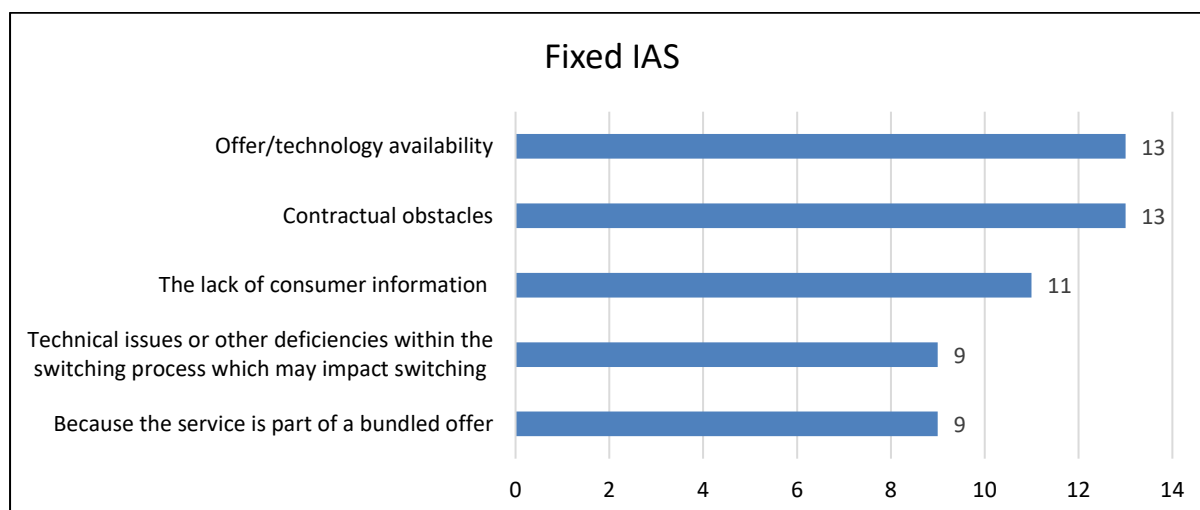


Figure 14: Number of NRAs who identified the most significant factors inhibiting switching of fixed IAS. 13 NRAs⁸⁴ have indicated that the (lack of) availability of the offer or the technology is frequently among the most significant issues inhibiting consumers from switching their fixed-IAS provider. 11 of the 13 NRAs stated that “technology being unavailable (e.g. fibre)” was a significant factor, while 8 of the 13 NRAs stated that “bad network coverage (very few providers or poor quality of service), was, in their experience, a significant factor that inhibits switching their fixed-IAS provider.

13 responding NRAs⁸⁵ indicated that contractual obstacles as an important issue to the well-functioning of switching in their country.

⁸⁴ AT, DE, DK, FR, HR, HU, IT, LV, PL, RO, SK, SI, TR.

⁸⁵ AT, CH, DE, IT, LV, MT, NO, NL, PL, RO, RS, SK, SI.

The third most frequent important issue, according to NRAs responses, is the lack of consumer information: 11 responding NRAs⁸⁶ consider this category as an obstacle to switching.

Then, among the 30 responses to the questionnaire, 9 NRAs⁸⁷ indicated that technical issues were an important obstacle. Also, the service being part of a bundle was mentioned in 9 cases⁸⁸.

In SE, the NRA highlighted that the administrative burden can restrain consumers from switching.

Another important barrier to switching is the requirement to replace the Wi-Fi router. As noted by **AVM**, today's Wi-Fi routers give connectivity to many Wi-Fi devices.⁸⁹ The requirement to replace the Wi-Fi router forces the end user to reconfigure all devices in the home network. Typical users might be daunted by the technical trouble and therefore avoid switching the provider at all.⁹⁰

4.4. Mobile Internet Access Services

As seen in Figure 15 the 4 most significant issues which, in the NRAs' experience, represent the biggest obstacles to switching between communications providers for mobile IAS among a list of 14 issues, were:

- Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and TP due to the consumer's intention to switch, for 12⁹¹ NRAs;
- Offer/technology availability, for 10⁹² NRAs;
- Actions by the TP to hinder/burden the switching decision by the consumer, for 7⁹³ NRAs; and
- The lack of consumer information, for 7⁹⁴ NRAs.

⁸⁶ BE, DE, DK, ES, FR, HR, IT, LV, SI, TR, IE.

⁸⁷ BE, DE, FR, IT, NO, PL, RS, TR, IE.

⁸⁸ CH, DK, FR, MT, NL, NO, PL, SI, TR

⁸⁹ Like smartphones, computers, printers, speakers, TV sets and smart home devices.

⁹⁰ According to AVM, this issue could be addressed by an appropriate regulatory definition of the Network Termination Point (see EECC Rec (19) and Art 2 (9)) being the (electrically or optically passive) connector to the local loop (EECC Art 2 (30)) the end user is free to choose a WiFi router product that interoperates with the networks irrespective of the service provider. Thus switching the provider does not require the end user to also change the terminal equipment. The end user is free to source this terminal equipment either from the service provider or from the EU single market.

⁹¹ AT, CH, CZ, DE, IT, LV, MT, NL, PL, RO, RS, SK.

⁹² CZ, DE, DK, FR, HU, IT, LV, PL, RO, SI.

⁹³ CZ, DE, HR, IE, IT, RS, SK.

⁹⁴ BE, DE, HR, IE, IT, LV, NO.

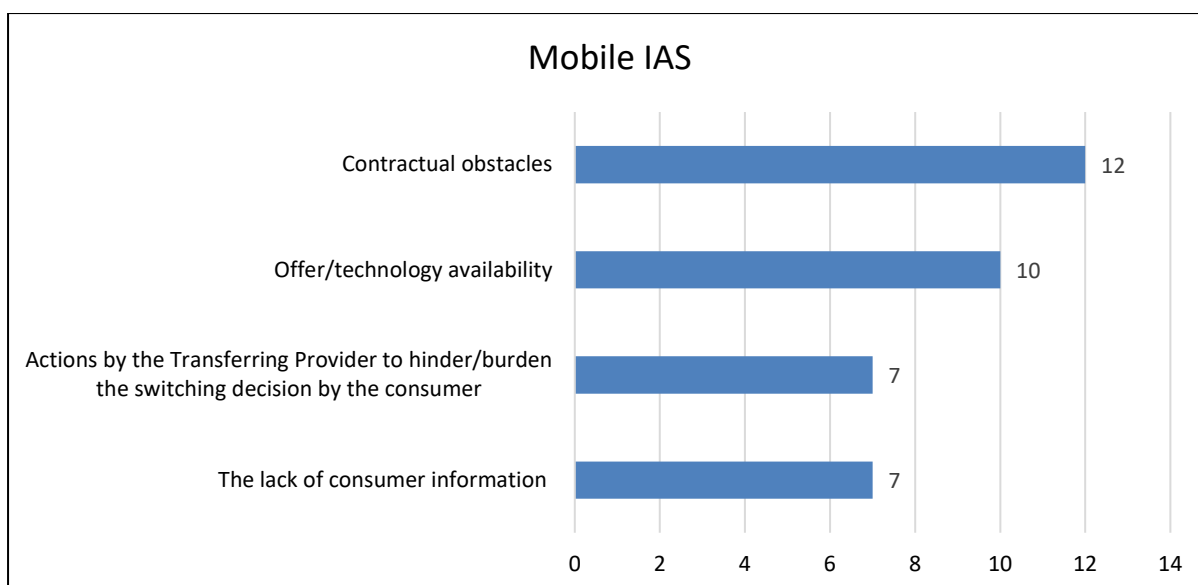


Figure 15: Number of NRAs who identified the most significant factors inhibiting switching of mobile IAS

As shown in Figure 15, for the issue indicated as the most prevalent, NRAs identified the following sub-topics as being significant inhibitors, within the broader heading of “contractual obstacles”:

- contract length, including long minimum contract periods, for 9⁹⁵ NRAs;
- requirement to return free or discounted equipment, for 5⁹⁶ NRAs;
- penalties for early termination of contract, for 6⁹⁷ NRAs;
- use of rollover contracts, for 4⁹⁸ NRAs;
- minimum notice periods, for 3⁹⁹ NRAs;
- remaining/outstanding consumer debt to the TP, for 2¹⁰⁰ NRAs;
- fees for damaged/ lost / unreturned equipment, for 2¹⁰¹ NRAs;
- unfair conditions in the contracts, for 1¹⁰² NRA; and
- service fees or other compensation payments to the TP, 1¹⁰³ NRA.

⁹⁵ AT, CH, CZ, DE, NL, PL, RO, RS, SK.

⁹⁶ CH, IT, LV, PL, RS.

⁹⁷ CH, CZ, LV, MT, NL, RO.

⁹⁸ AT, DE, NL, SK.

⁹⁹ DE, PL, SK.

¹⁰⁰ PL, RS.

¹⁰¹ PL, RS.

¹⁰² SK.

¹⁰³ CZ.

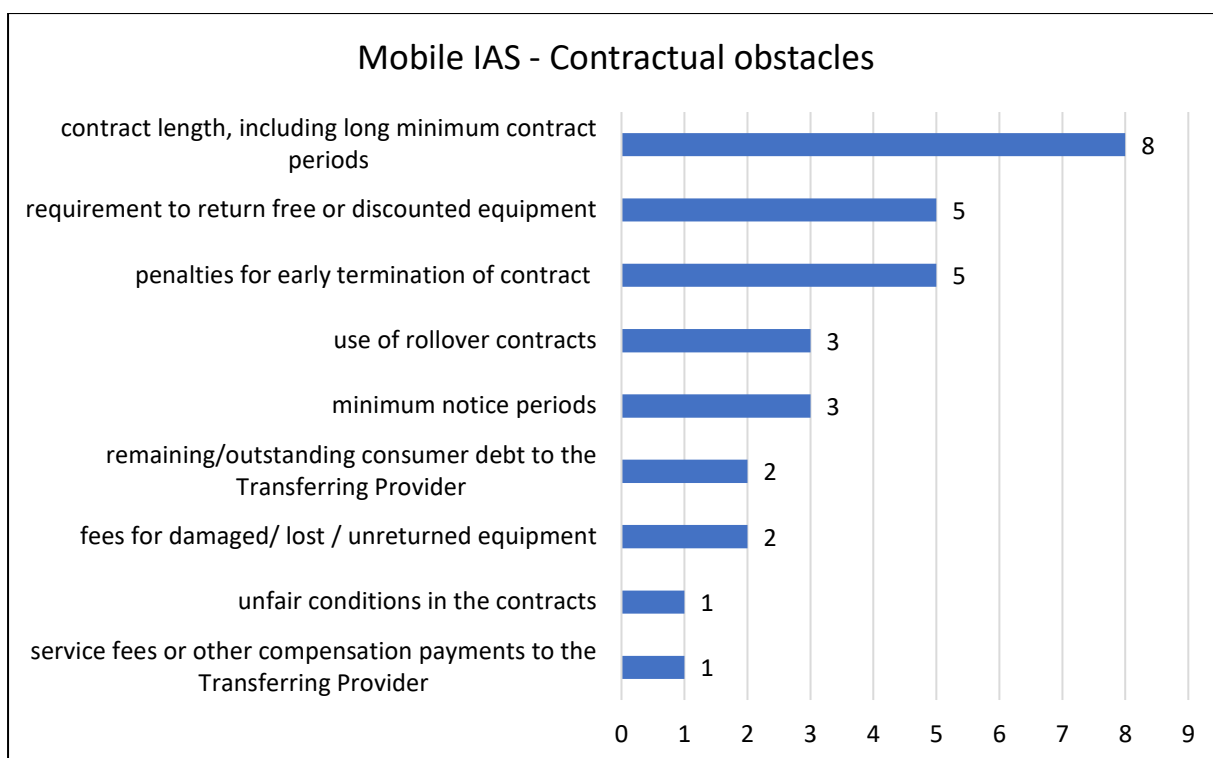


Figure 16: Number of NRAs that identified a significant sub-topic of within the broad heading “Contractual obstacles”

4.5. Other services

4.5.1. Number Independent Interpersonal Communications Services

The number of submissions received for obstacles that block the switching of an NI-ICS is small. In total, only 6 NRAs¹⁰⁴ considered there are obstacles that could hinder/block switching from one provider of NI-ICS to another. 3 NRAs¹⁰⁵ mentioned the availability of offers/technology as a reason for not changing the providers. In addition, technical issues or other deficiencies within the switching process and contractual obstacles were mentioned by the same 2 NRAs¹⁰⁶. 1 NRA considers that network effects can be a strong deterrent for switching due to the lack of interoperability of these services.

Although only 10 of the categories of obstacles out of the 19 identified in the questionnaire were applicable to NI-ICS, a large number of respondents did not mention any obstacles in respect of NI-ICS and so there is a perception that NI-ICS are sufficiently flexible to facilitate a change in provider without any hindrance or perhaps the result was merely due to insufficient data in this area.

¹⁰⁴BE, ES, HU, PL, SL and RS

¹⁰⁵ HU, PL and, SL.

¹⁰⁶ PL and, RS.

4.5.2. Pay TV Broadcast

As shown in Figure 17, of the 11 potential obstacles which may make it difficult for consumers to switch provider in respect of Pay TV Broadcast, the following were determined to be the most significant:

- Contractual obstacles, that have the effect of discouraging switching, or which create disputes between the consumer and TP, were identified as the most significant issue by 9 NRAs¹⁰⁷;
- The service being part of a bundle constitutes the second most significant obstacle. 7 NRAs¹⁰⁸ classified this issue among those preventing consumers to change their Pay TV provider;
- The availability (or lack thereof) of offers in their area or of the latest technology was cited by 5 NRAs¹⁰⁹ as an important issue when consumers consider switching to other Pay TV providers; and
- Also, NRAs cited obstacles resulting from a switch of infrastructure¹¹⁰ and technical issues or other deficiencies within the switching process¹¹¹.

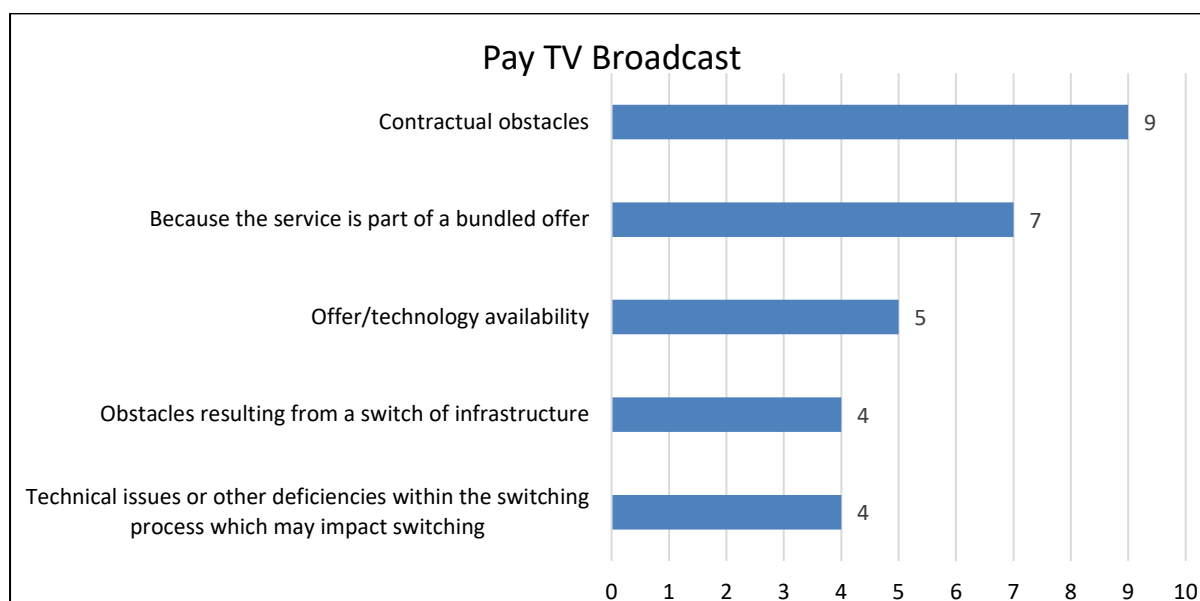


Figure 17: Number of NRAs who identified the most significant factors inhibiting switching of Pay TV

There are other obstacles which could arise from the national legislative framework and these should also be considered. For example, **Deutsche Telekom** observes that tenants in Germany are tied to a specific cable network provider. In most cases the landlord has already

¹⁰⁷ DE, LV, MT, NO, NL, PL, RO, RS, SK.

¹⁰⁸ DK, MT, NO, NL, PL, RO, CH.

¹⁰⁹ DK, HU, LV, PL, SL.

¹¹⁰ DK, MT, RS, SK.

¹¹¹ BE, NO, PL, RS.

concluded a contract with the cable network operator for the delivery of the TV signal (the so-called "Nebenkostenprivileg). Tenants are then permanently bound to this network operator and cannot terminate the cable TV service contract because the service is bundled to the apartment. Alternative and innovative TV services, such as IPTV or WebTV, can only be used if consumers are willing to pay for both services (e.g. cable TV and IPTV) which, according to Deutsche telecom result to be almost identical.¹¹²

The contract length, including long minimum contract periods (5 NRAs¹¹³), appears to be the most important issue, that could prevent end-users from switching. Other barriers include the requirement to return free or discounted equipment (4NRAs¹¹⁴) or the penalties for the early termination of contract (3 NRAs¹¹⁵).

One NRA (BE) argued that the requirement "Receiving CP providers (i.e. RP) bespoke equipment" under "Issues relating to the portability of end users equipment" is also relevant for switching digital TV provider, e.g. replacing set-top-box or CI+ card.

4.5.3. M2M

Only 7 NRAs¹¹⁶ identified switching obstacles in the case of M2M, and the most significant obstacle related to the availability of offer/technology as referenced by CZ, HU, PL and SI.

Denmark has recently approved a legislation for assigning numbering resources to public authorities and companies which uses M2M-communication in their execution of tasks. The rules ensure that public authorities and companies can switch operator without changing SIM-card and ensure competition in the market (avoid lock-in effect).

Other important obstacles identified by NRAs include the actions by the TP to hinder/burden the switching decision by the consumer as mentioned by CZ and NO. Contractual obstacles which have the effect of discouraging switching, or which create disputes between the consumer and the TP due to the consumer's intention to switch was mentioned by CZ and PL. Issues relating to the changing of SIM cards was cited by CH and NO.

4.5.4. Bundled offers as defined in the Glossary

19 responding NRAs¹¹⁷ identified factors/obstacles that can inhibit switching in the case of bundled offers (as defined in the Glossary), the most important being shown in Figure 18 below.

- For "Contractual obstacles, which have the effect of discouraging switching or which create disputes between the consumer and TP due to the consumer's intention to switch",

¹¹² In order to safeguard consumer rights and to create fair competition for end users, Deutsche Telecom proposes to abolish the 'Nebenkostenpriv-ileg'.

¹¹³ DE, PL, RO, RS, SK.

¹¹⁴ LV, NO, PL, RS.

¹¹⁵ LV, MT, RO.

¹¹⁶ BE, CH, CZ, HU, NO, PL and SI.

¹¹⁷ BE, CZ, DE, DK, EL, ES, FR, HR, IE, IT, LV, MT, NO, PL, PT, RO, RS, SI and SK.

identified by 8 NRAs¹¹⁸, also had contract length, including long minimum contract periods as the most of often-mentioned factor by CZ, DE, PL, RO and SK;

- For “actions by the Transferring Provider in order to hinder/burden the switching decision by the consumer” identified by 8 NRAs¹¹⁹, the activities to save or retain the consumer and prevent them from switching before or during the switching process was the most frequently mentioned by CZ, DE, EL, ES, IE and PT; and
- In “the lack of consumer information” category of obstacles identified by 8 NRAs¹²⁰, the most important aspect is the lack of consumer awareness of the switching process, mentioned by BE, ES, HR and IE.

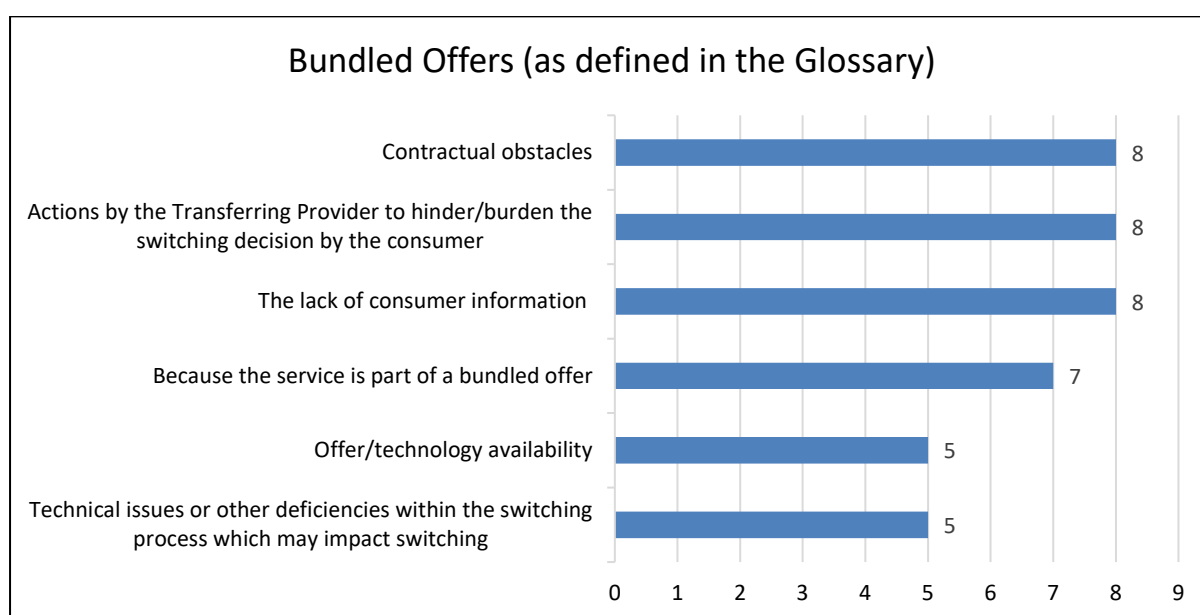


Figure 18: Number of NRAs who identified the most significant factors inhibiting switching of Bundled Products as defined in the Glossary (Annex)

4.5.5. Bundled Offers that are defined differently to the Glossary

12 NRAs¹²¹ identified switching obstacles in the case of bundled offers that are defined differently to that in the Glossary. The most important obstacle is the availability of offers and technologies mentioned by CZ, HU, PL and SI. Other important categories of obstacles identified are:

- the lack of consumer information mentioned by ES, HR and LV;
- actions by the TP to hinder/burden the switching decision by the consumer mentioned by CZ, ES and HR;

¹¹⁸ CZ, DE, IT, MT, PL, PT, RO and SK.

¹¹⁹ CZ, DE, EL, ES, HR, IE, IT and PT.

¹²⁰ BE, ES, HR, IE, IT, LV, NO and PT.

¹²¹ BE, CH, CZ, ES, FR, HR, HU, LV, PL, RS, SI and SK.

- at least one service being part of a bundled offer mentioned by ES, FR and PL;
- contractual obstacles that have the effect of discouraging switching or which create disputes between the consumer and TP due to the consumer's intention to switch was mentioned by CZ, PL and SK;
- technical issues or other deficiencies within the switching process which may impact switching was referenced by CH and PL;
- the current provider's services and reputation vs the alternative provider's offers and reputation was mentioned by BE and CH; and
- obstacles resulting from a switch of infrastructure was noted by RS and SK.

Three specific categories of obstacles were mentioned once by NRAs:

- irresponsible or misleading sales and marketing activity by the RP (HR);
- difficulties arising from the number porting process (RS), and
- issues relating to the portability of end users equipment (SK).

4.6. Response from Stakeholders to question 3, 4 and 5:

BEREC has set out in BoR (19) 26 a summary of the responses from Stakeholders in respect to observations regarding the processes set out in Section 4 of the report and proposed solutions and barriers which require NRA focus.

5. Suggestions to Improve the switching Process

A few stakeholders in their contributions proposed some solutions to improve and speed up the switching process. It must be however noted that, as already mentioned elsewhere, most respondents, rather than focusing on measures that can be introduced to reduce or remove barriers to switching, in their documents, stressed that current measures and operators' practices are sufficient to address the problems that may arise during the customer switching.

One interesting remark came from **AVM** which noted that when switching provider, end users are forced to also switch the Wi-Fi router, which can be a barrier to switching given its technical complexity and the need to re-configure all the devices connected to the router. For this reason **AVM** proposed to mention this issue as an additional source of barrier to switching that could be resolved by an appropriate regulatory definition of the Network Termination Point.

Annex 1 – Glossary

Given the technical nature of some of the issues involved in this report, the following glossary of terms and phrases used to describe different aspects of switching applies:

- **Electronic communications service:** (ECS) means a service normally provided for remuneration via electronic communications networks, which encompasses 'internet access service' as defined in Article 2(2) of Regulation (EU) 2015/2120; and/or 'interpersonal communications service'; and/or services consisting wholly or mainly in the conveyance of signals such as transmission services used for the provision of machine-to-machine services and for broadcasting, but excludes services providing, or exercising editorial control over, content transmitted using electronic communications networks and services.
- **Interpersonal communications service:** (ICS) means a service normally provided for remuneration that enables direct interpersonal and interactive exchange of information via electronic communications networks between a finite number of persons, whereby the persons initiating or participating in the communication determine its recipient(s); it does not include services which enable interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service.
- **Number-based interpersonal communications service:** (NB-ICS) means an interpersonal communications service which connects with publicly assigned numbering resources, i.e. a number or numbers in national or international telephone numbering plans, or by enabling communication with a number or numbers in national or international telephone numbering plans.
- **Number-independent interpersonal communications service:** (NI-ICS) means an interpersonal communications service which does not connect with publicly assigned numbering resources, i.e. a number or numbers in national or international telephone numbering plans, or by enabling communication with a number or numbers in national or international numbering plans.
- **Switching:** for the purpose of this questionnaire, switching means the act carried out by a consumer to move their individual ECS or bundled offers from one communications provider to another.
- **Bundled offers:** For the purpose of this questionnaire, a bundled offer is an offer which includes:
 - two or more ECS (e.g. fixed line voice or broadband and mobile services), or
 - one or more ECS together with:
 - one or more devices or pieces of equipment (e.g. set-top box, router Wi-Fi, tablet, smartphone, etc.), or
 - one or more services other than ECS (e.g. technical support beyond general customer services such as technical maintenance and software upgrades).

as one combined offering, at a joint price.

(This definition of 'bundled offers' is based on the provisions of Article 100 of the EEC. However, it is understood that in some MS 'bundled offers' may be defined differently and for that reason appropriate accommodation has been made in the report, which facilitated NRAs to respond to the questionnaire.)

- **Communications Provider:** (CP) communications provider for the purpose of this questionnaire is a provider of an electronic communications service.
- **Consumer:** any natural person who uses or requests a publicly available electronic communications service for purpose which are outside his or her trade, business or profession.
- **Customer Validation Process:** the process by which the consumer, and the consumer's request to switch provider, may be validated, perhaps by a third party other than the transferring provider and the receiving provider. It is noted that such practices may not exist in all MS.
- **Early Termination Charge:** every charge imposed on consumers in order to terminate the contract before the end of any Minimum Contract Period and should be taken to include, for example, termination or switching fees, the reimbursement of discounts enjoyed, the payment (one-off payment) of residual instalments of devices (in particular for the bundled offers).
- **Receiving Provider (RP):** CP to whom the consumer is transferring at least one of their ECS.
- **Transferring Provider (TP):** CP from whom the consumer is transferring.
- **Authorisation Code:** a unique code that a consumer obtains from the Transferring Provider (TP) and gives to the receiving provider (RP) which allows the service to be transferred from an existing service provider seamlessly and with little or no disruption of service.
- **Minimum contract period (MiCP):** a minimum (fixed-term) contractual period set at the start of a contract (often for 12 to 18 months, sometimes up to 36 months), which the consumer cannot terminate the contract without incurring an early termination charge.
- **Maximum contract period (MxCP):** a maximum (fixed term) contractual period that a CP is permitted to have with a consumer.
- **Mis-selling:** sales and marketing activities that can work against the interests of both consumers and competition, which can include the provision of false and/or misleading information (for example, about potential savings or promising offers or gifts which do not actually exist) applying unacceptable pressure to change CPs, such as refusing to leave until the consumer signs, or using threatening or otherwise intimidating behaviour.
- **Rollover contract:** automatically renewable contracts where consumers sign up to an initial minimum contract period (MiCP) and the contract is then automatically renewed at

the end of each MiCP unless the consumer explicitly opts out. Once the consumer is in a MiCP, they can only cancel their contract if they pay an early termination charge.

- **Save / win-back:** means marketing activity which is undertaken by the transferring CP during the switchover period in an attempt to persuade the consumer not to switch to a new CP or after the switching period in an attempt to recover the consumer.
- **Slamming:** where a consumer is switched from one provider to another without the express knowledge and consent of that consumer.
- **Switchover period:** the period between the date indicated in consumer's agreement to enter into service with a new CP and the new service becoming active.
- **Third Party Validation:** where the consumer's request to switch is validated by a third party before the switch can happen.

Annex 2 - Country Abbreviations

AL	Albania	MT	Malta
AT	Austria	NL	The Netherlands
BE	Belgium	NO	Norway
BG	Bulgaria	PL	Poland
CH	Switzerland	PT	Portugal
CY	Cyprus	RO	Romania
CZ	Czech Republic	RS	Serbia
DE	Germany	SE	Sweden
DK	Denmark	SI	Slovenia
EE	Estonia	SK	Slovakia
EL	Greece	TR	Turkey
ES	Spain	UK	United Kingdom
FI	Finland		
FR	France		
HR	Croatia		
HU	Hungary		
IE	Ireland		
IS	Iceland		
IT	Italy		
LI	Liechtenstein		
LT	Lithuania		
LU	Luxembourg		
LV	Latvia		
ME	Montenegro		
FYROM	Macedonia		

Annex 3 – Categories of ECS

The report focuses on 9 categories of ECS as follows:

- Fixed NB-ICS¹²² (Fixed voice)
- Mobile NB-ICS¹²³ (Mobile Voice)
- Fixed IAS¹²⁴ (Fixed Broadband)
- Mobile IAS (Mobile Broadband)
- NI-ICS¹²⁵ (OTT services)
- Pay TV (Broadcast)
- M2M¹²⁶ (including M2M with embedded SIMs)
- Bundled offers (as defined in the Glossary)
- Bundled offers that are defined by the MS differently to the Glossary.

¹²² The term “Interpersonal Communications Services is defined in Article 2(5) of the European Electronic Communications Code (EECC) as currently drafted before the text is finally settled.

¹²³ “NB-ICS” represents Number-Based Interpersonal Communications Services, as defined in Article 2(6) of the EECC as currently drafted before the text is finally settled

¹²⁴ “IAS” represents Internet Access Services as defined in Article 2(2) of Regulation 2015/2120.

¹²⁵ “NI-ICS” represent Number-Independent Interpersonal Communications Services defined in Article 2(7) of the EECC (as currently drafted before the final text has been settled).

¹²⁶ “M2M” represents machine-to-machine electronic communications services.

Annex 4 –Additional notes to RP switching led process

- In PT this rule is only applied when the end-user requests number portability, whereas if a consumer, who wants to change providers of Fixed or Mobile NB-ICS but does not wish to keep the same number(s), then they must contact both the TP to cancel their existing service(s) as well as contacting the RP to arrange the new service(s);
- In MT this rule is only applied when the end-user requests number portability, whereby, the consumer requesting to port their number for Fixed NB-ICS is only required to contact the RP to initiate the process even if the RP and TP do not make use of the same platform. In the event that the customer uses “customer premises equipment” (CPE) or extension wiring that is rented from the TP, then the customer must agree as part of the porting application that the TP may send technicians to the customer's premises in order to recover this property after porting has taken place; and
- In NL, a number of providers of a public ECS have made self-regulatory agreements. For example, if desired, the RP can take responsibility of the switch. Consumers can make use of a switching service for internet services or packages with internet as well as fixed telephony and packages including television services. Mobile telephony is also part of the switching service if mobile telephony is offered and purchased in the bundle and if the consumer requests number retention. In all other cases, the consumer has to cancel their services with the TP.

However, in the UK, in the case of Fixed NB-ICS (Fixed voice) and Fixed IAS (Fixed Broadband), this process depends on the consumer switching to a provider on the same infrastructure platform, i.e. incumbent's copper/fibre-to-the-cabinet platform, where the RP also uses this infrastructure. If the consumer is switching their ECS products to and/or from providers that use different platforms or technologies (e.g. moving from a provider using the incumbent's copper/fibre-to-the-cabinet platform to a cable operator's platform), then the consumer needs to contact both the TP to cancel their service(s) on their existing platform as well as contacting the RP to arrange the start of their new service(s) and, in the UK this is not a regulated process. Also, currently in the UK for Mobile NB-ICS, the consumer has to contact the TP to cancel / switch, and then separately contact the RP to set up a new service. However, from 1 July 2019 new rules will come into force enabling consumers to send a free text message to their TP when they want to switch – they then would receive a unique code by text to pass on to the RP who will arrange the switch within one working day.