

Response to BEREC Public Consultation BoR (10) 34 'Draft BEREC report on best practices to facilitate switching'

General remarks

ECTA welcomes the opportunity to comment on the Draft BEREC report on best practices to facilitate switching.

We very much welcome the form and substance of this draft BEREC report, and in particular the 6 specific sets of best practices that are put forward, addressing a set of issues which is evidently of immediate and great relevance and importance.

ECTA has always considered that the switching process constitutes a critical factor for the existence of competitive markets, and aiming to achieve competitive markets is a core objective for ECTA and its members. Although there have undoubtedly been positive steps towards simplification of switching over the past several years, there remains an acute need for considerable improvement.

We encourage BEREC to rapidly adopt final explicit best practice guidance for its members, given that this will undoubtedly contribute to enhancing competition, improving the customer experience, resulting in overall increased welfare.

We use the terminology 'customer experience' in the paragraph above specifically to denote that these matters are relevant not only to individual consumers, but also to businesses (of any size, be they small or large, local, regional, national, or pan-European) as well as public administrations as purchasers of electronic communications services. In fact, one of our main comments on this consultation is that, prior to final adoption by the Board, the report should be amended to make it clear that larger professional purchasers should (as much as individual consumers) be entitled to benefit from more streamlined operator switching processes and contractual improvements.

Detailed comments

In this response, we do not answer each of the consultation questions individually, given that the ECTA position is very clear: we wholeheartedly support the best practice principles identified in the draft report, and we request each of these proposals to be formalised as soon as possible.

We put forward the following points, in support of the draft BEREC report.

Length of switching times

One of the main factors hindering customers (consumers but also businesses and administrations) from switching from one operator to another operator (and in particular from incumbents who enjoy high net present value on their customers due to long customer lifetimes, as opposed to competitors who hope to retain the customers that they convinced to switch based on superior service and better pricing) has been switching times.

Long switching times are due to several factors, which mostly derive from unduly complex wholesale-level activation processes in each incumbent's organisation, insufficiently detailed/tight regulation of wholesale SLAs (for activation, migration, transfer) and insufficiently determined monitoring by NRAs of compliance with rules that are already in existence. These concerns relate in particular to switching processes that include number portability and/or local loop unbundling.

Database entry matching

Dissatisfaction by end-users of all types considering or actually trying to switch to a competing service provider (not only individual consumers, but also businesses and administrations) in several countries is often driven by problems occurring in the switching process, some of these processes being unduly bureaucratic, using extreme validation criteria, etc. As is stated above, number portability and/or local loop unbundling are key areas for serious concern, where, too often, minimal variances in address data or other minimally different customer identification data leads to rejection of wholesale activation, migration, and transfer orders.

ECTA believes that the simplification of the validation process prior to switching, the minimization of the service cancellation documentation, would result in faster portability and switching processes, fewer burdens on all end-users, and consequently in improving the switching experience. This issue has been damaging competition since day 1, and remains a damaging problem to this day. Drastic action by NRAs is needed to put an end to this issue.

The local loop unbundling process has been a constant source of dissatisfaction in the switching experience, particularly regarding the timeframes and uncertainties over service continuity. Although these timings have been reduced in several Member States over time, in most countries these are still too long and discouraging and there remains room for drastic time reductions, especially wherever the incumbent operators provide the same services to their end-users in a much shorter period of time (indeed some incumbents, notably in Germany and in Italy, have actually explicitly invoked, in their advertising, faster delivery and migration). This is a key example of the need to genuinely enforce full equivalence.

Contractual obstacles

Regulatory or legislative interventions in Early Termination Charges and Minimum Contract Periods (MCP) should be approached carefully, since some of the service benefits provided by competitors to end-users are only possible with MCP and should

also take account of the fact that MCP are in most cases (competitors typically having far lower net present value on customers than incumbents) essential to cover sunk costs related to competitors' infrastructure investments and other costs such as marketing or distribution costs.

Discriminatory upgrade/switching processes

The existence of different processes and rules for service/bundle upgrades/changes between incumbent operators' self-supply and competing operators for service activation and deactivation, as well as upgrades, including easy addition of new elements to incumbent bundles, compared to complex technical and contractual switching of bundle elements to competitors, is overburdening end-users with bureaucracy and complex processes, which overwhelmingly advantage incumbent operators. Indeed, processes clearly have advantaged for the past several years, and continue to advantage, incumbent operators, discouraging end-users from switching away from incumbents.

ECTA and its members are convinced that processes and rules should be simplified and universal (i.e. not different between incumbents and competitors), and that regulation should ensure full equivalence in upgrade/switching for any end-user. Also, information on switching processes should be readily and broadly publicised within materials communicated (by ALL operators) to customers, including a clear message for the end-user that switching can confidently be undertaken.

Confirmation of cancellation, by any means: telephone call, e-mail, etc. should – by regulation – be recognised as proof of the decision of the end-user to change from one operator to another, especially where no existing/remaining contractual commitments from the customer exist.

Technical issues that impact switching, and related wholesale charges that directly affect the end-user

In addition to the technical issues identified in the draft report, which we explicitly ALL support and demand fast-track resolution of, further technical issues, and as a priority those relating to local loop unbundling, require additional regulatory action. Our suggestions for additional regulatory action are summarised below:

- We have already mentioned database entry matching issues above, and we confirm that this is a key element, due for belated radical improvement in numerous EU Member States.
- Complex line installation processes that require technical (including on-site) interventions from both the incumbent operator and the alternative operator, most of the times requiring the end-user's presence in each case, hamper competition, and need to be improved.
- High, and in ECTA's view not properly justified, line 'installation' and 'activation' wholesale fees applied by dominant operators, have a significant impact on end-user' total retail prices, specifically affecting the end-users' switching decision.

Synchronisation of LLU (and all relevant other wholesale inputs) with number portability

ECTA and its members find it disturbing that this issue needs reiteration. However, the fact of the matter is that number portability is still not synchronised with all relevant other wholesale inputs in several Member States. This is an issue that has been identified long ago, and needs final resolution, given that it is an evident inhibitor of switching. We therefore demand that this be identified explicitly as a short-term priority action for all NRAs, not only as an (evidently overall) principle, but also as a technical supervision priority for NRAs, including supervision of day-to-day technical 'failures'/'rejections'.

Any failures in these processes result in service interruption for customers (individuals, businesses and administrations) and have impacts on switching customers' satisfaction, perception of the service provided by the alternative operators, etc.

E-Mail and web/equivalent hosting - forwarding

ECTA supports measures facilitating end-users switching to competing operators. This includes initiatives to enable smooth transition of e-mail and web hosting and related identification. We note that Belgium has just recently adopted a law to do just that, which should be added to the final Report as best-practice.

On-Net/Off-Net

ECTA explicitly welcomes the fact that the draft Report identifies differences between (mobile) on-net and off-net retail prices as a major distortion of competition. We have been arguing for literally a decade that this is a structural problem, and that implementation is favouring incumbent subsidiary MNOs in particular. At present, there is no evidence that even the most aggressive MTR glide-paths adopted by NRAs (Belgium 29 June 2010. Netherlands 7 July 2010) are even beginning to solve this problem (incumbent subsidiary MNOs are in fact benefiting from assumptions). Therefore, enforcement of real non-discrimination remains absolutely needed, particularly given that truly cost-based MTRs remain hypothetical (at least until 2013) and hence cannot be accepted as a 'solution'.