



The Number Comments on BEREC Draft Work Programme 2012

4 November 2012

The Number welcomes the opportunity to comment on the Draft BEREC Work Programme for 2012 (hereafter “WP 2012”).

As an opening remark, the Number regrets that the WP2012 document no longer lists if deliverables on work streams will be open to consultation or not, as this would increase transparency for stakeholders. We also hope that the structure between ‘Core Topics’ and ‘Further Topics’ used in this WP does not imply in any way that the deliverables listed under the ‘Further Topics’ section are any less important to the stakeholders affected by them.

We refer you for more details to our responses below, classified by order of importance to us.

A. ITEM 4.6: ACCESS TO SPECIAL RATES SERVICES

The Number fully agrees with the continued work being proposed by BEREC on this topic. We would like to remind BEREC that the inclusion of this item on BEREC’s Work Programme was supported not only by The Number but by other important stakeholders, as reflected in BEREC’s Report of the consultation on the draft Work Programme 2011 BEREC Board, which states on page 7:

‘BT, Cable Europe and ECTA support BEREC’s initiative. Cable Europe suggests more concretely that BEREC’s assessment should be sufficient comprehensive and incorporate the entire value chain. At least in the UK the originating provider has no alternative option’.¹

If any doubts were expressed, they came from a set of interests that would likely be affected in a negative manner by such a work stream, ETNO’s members including in general companies that have both fixed and mobile operations that benefit from the current state of play as regards VAS origination:

¹ BEREC report of the consultation on the draft Work Programme 2011, BoR (10) 43 Rev1b.



'ETNO is of the opinion that the draft WP does not convey a clear message of the problem identified and the state of competition. BEREC should transparently state the reason for including this item and list the problems encountered'.²

The Number therefore considers that BEREC's conclusion as presented and agreed by its Board still remains valid, namely that *'BEREC is glad to see so much support for this issue. Other comments, such as ETNO's on the problem identification, will be taken into account in the actual work, but do not lead to the need to change the Work Programme'.³*

We also would like to remind BEREC that the specific issue as it affected directory services was already on the ERG's Work Programme of 2007 under the heading *'3) Revision of the Recommendation on relevant markets and consequences thereof, with particular emphasis on the transitional provisions and call origination (including access to directory services)'⁴*, yet has never materialised so far in a concrete deliverable.

Looking at the potential actual deliverable and objective, we understand BEREC's statement that *'as the evaluation is still on going, it remains to determine whether or not there are competition problems regarding these originating services or not and if so to give guidance on how to address these problems'*. We would however suggest that the guidance given be as detailed as possible and **set common objectives in terms of outcome**, should a common approach be too difficult to identify in light of the diverging legal frameworks in the different member states.

Such common objectives could relate, in the case of directory services, to the ability for service providers to set their price, to the objective of ensuring that mobile origination charges to non-geographic numbers become aligned with mobile origination charges to geographic numbers, etc. The way in which these objectives would then be reached in each member state could differ depending on the tools available to NRAs and on the legal framework, but the outcome for service providers and consumers would be coherent, an element that is crucial to a company like The Number which is active on a pan-European basis.

B. ITEM 4.7: Cross-border and demand side related issues

It is unclear to The Number if the report on the cross border accessibility of numbers included as part of the BEREC work programme for 2011⁵ will be delivered in 2011 and hence is not mentioned for the WP2012. In light of the questionnaire circulated by BEREC recently on this topic and the likelihood of identifying issues in this space, we consider

² Idem.

³ Idem.

⁴ ERG/IRG Work Programme 2007, ERG (07) 01, p.3. Retrieved at http://erg.eu.int/doc/work_prog_2007/erg_07_01_work_programme_2007.pdf.

⁵ See http://erg.eu.int/doc/berec/bor_10_43_1.pdf.



that this work stream should remain on the WP 2012, and possibly go further than a mere Report on the identified issues.

The Number still considers that in this area and looking at the enforcement of Art 28 USD, **NRAs should be given the power to not only mandate operators to block numbers but also to open them on their networks, especially when it comes to mobile operators.**

This is particularly true when looking at directory services, as Art 25 (4) of the Universal Service Directive as revised in 2009 stipulates that *“Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State by voice call or SMS, and shall take measures to ensure such access in accordance with **Article 28.**”*

We therefore consider that BEREC’s work stream on art. 28 USD should encompass this requirement of Art 25 (4) in a proactive manner as:

- In some Member States, whilst mobile operators give access to their own directory services’ numbers to their users roaming across Europe, they do not allow competitors’ directory services to do so, thereby not giving choice to their users.
- This blocking has NO technical justification and can easily be removed as Mobile operators manage their numbering plans as “private plans”. A mobile phone can therefore easily identify a subscriber’s home country to enable directory services to be enabled when roaming.
- Even where a number is not blocked technically by an access operator, the prohibitive charges imposed on end-users (which are not under the control of a directory service provider) can have the same effect by scaring people from using non-geographic numbers. Such abusive charges should hence be equally prohibited and addressed as a form of blocking by NRAs. Such an interpretation was notably adopted by OPTA, the Dutch NRA, and is considered a best practice by The Number.

Measures are hence necessary to permit existing national DQ services to be accessed across internal EU borders (whether in interconnection or in roaming) and for DQ providers to be able to control and set their own transparent prices.

The Number encourages BEREC and its members to ensure that the transposition of Article 28 combined with Article 25 of the USD clearly sets out that NRAs have the power to mandate the **‘blocking and un-blocking’** of numbers. Un-blocking should be especially considered when it is motivated by commercial discrimination, as is often the case with directory numbers on mobile networks, where the shortcode of the mobile operator remains accessible cross-border whilst those of its competitors are blocked.



BEREC should specifically ensure that all NRAs enable DQ providers (whether themselves directly as public communications network operators or indirectly via transit operators who manage interconnection for them) **to have their numbers “opened up” (or that NRAs have the powers to mandate operators to open these numbers)** in cross-border interconnection and in roaming agreements in order to permit end users from any Member State, or traveling to any Member State, to access their services.

In practice, this would mean that users travelling abroad in Europe with their mobile telephone (business users, elderly users, and persons who have difficulty using foreign languages or who simply are unaware of what local DQ services are available, how to access them and at what price) would enjoy the huge benefit of being able to obtain local directory (and other enhanced) information from a live operator back home in their own native language at a price they know and understand.

Moreover, the need for this power for NRAs to be able to mandate operators to ‘open’ numbers is equally true from a national (i.e. non cross border perspective) perspective, in the context of telcos switching from copper to IP networks.

This is illustrated currently in the UK, where the incumbent operator BT is moving from one technology (voice over legacy PSTN) to another (managed VoIP/VOB) in a manner which is restricting consumer choice and restricting competition more on the new technology, through the a discriminatory use of number ‘opening’.

Consumers cannot use BT’s managed VoB service (BT Broadband Talk) to access services such as 118118 (the most called phone number in the UK and the market leading Directory Enquiries service) that are available via traditional PSTN calls on BT’s network. Only 118500, BT’s own Directory Enquiries (DQ) service is available for customers of BT Broadband Talk. BT asserts that they are open to commercial negotiations, but in practice only propose outrageous charges o their VoB lines that are over 15 times the level of charges today levied by BT for their customers to call 118118 from traditional landline services, despite VoB services typically having lower running costs than traditional networks.

This is another typical case where an NRA should be able to step in and mandate the opening of all DQ numbers on a access bottleneck operator’s lines, regardless of the underlying technology used by the network.

C. ITEM 3.5: Network Neutrality

Based on its own experience in the VAS market characterized by abuses by bottleneck access operators combined with a lack of tools for NRAs to effectively intervene, The Number urges BEREC to make its first and foremost priority its ‘Discrimination report’, as it intends to ‘ex-



amine further that the NRAs have regulatory remedies available to address potential discrimination issues, with a link to the quality of service issue above’.

We refer you for more details on our views relating to net neutrality to our contribution to the consultation run simultaneously to this one regarding BEREC’s proposed Draft Guidelines on Net neutrality and Transparency.

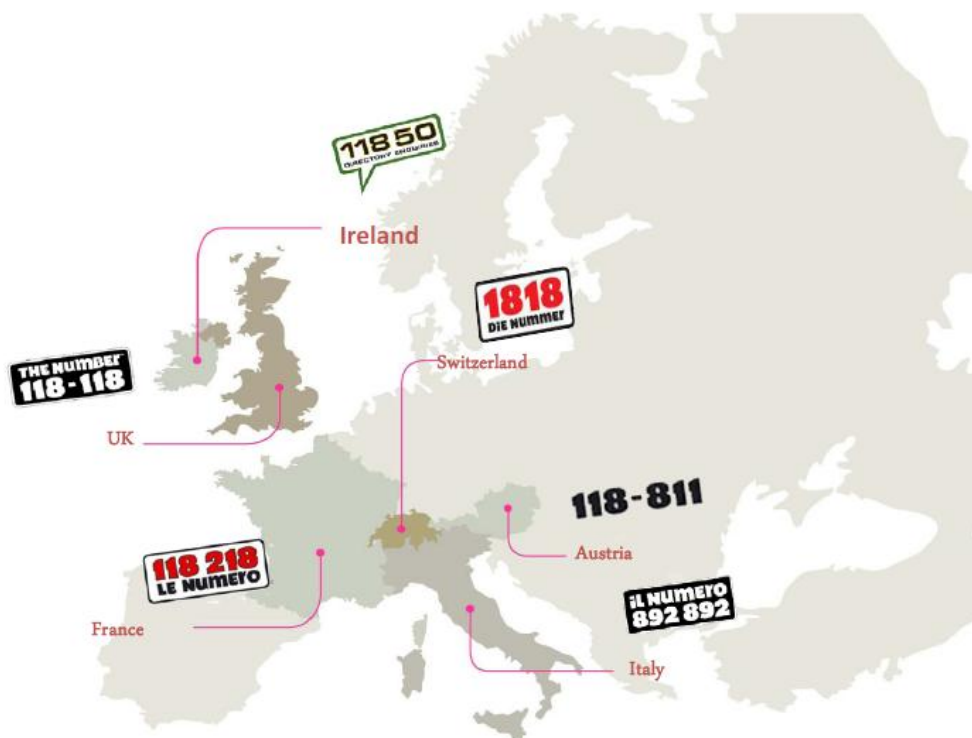
We thank you in advance for taking consideration of these views. Feel free to contact Simon Grossman, Director, Government and Business Affairs – Europe for The Number, by phone (+44 7971 050 001) or email (simon.grossman@118118.com) should you need further information.

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ANNEX 1 - ABOUT THE NUMBER



The Number and its group companies are the largest independent providers of directory enquiry (DQ) services in the world. In Europe, the group has entered six markets (UK, France, Italy, Austria, Switzerland and Ireland) offering new, competitive and high quality services to end users. We use live operators to handle enquiries and today employ more than 6,000 in our European operations. The companies have invested heavily in the development of enhanced databases and innovative new services (such as two-way SMS services).