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BEREC consultation report on Special Rates Services

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Content

1 Introduction

1. On 9 January 2012 BEREC launched the consultation of the "draft BEREC Report on Special Rate Services" (SRS).[1] The main objectives of the Report are to: a) analyse the characteristics of SRS in general and analyse the problems and the negative effects for consumers as they occur in at least a number of countries; b) give guidance to NRAs on what can be done if problems occur on national level. The consultation was published on the BEREC website, inviting stakeholders to send their answers by 10 February 2012. A total of 19 responses were received, coming from a range of organisations, including operators, service providers and user associations. A list of the respondent is provided in Table 1. BEREC welcomes this feedback and thanks the respondents for their efforts and submissions. The full text of the responses is available on the BEREC website.

2. This consultation report summarizes the responses structured along the contents of the Report and presents the BEREC's position with regard to suggestions and proposals mentioned in those responses, whenever relevant. In case the Report is changed, this is indicated in BEREC's response. The changes made to the Report are relatively minor.

	Name respondent	**Country**	**Main activity of market party**
1	3StarsNet	Belgium	Facilitator of SRS services (intermediary between SPs and OO/TOs.
2	Belgacom	Belgium	Fixed and mobile operator
3	Deutsche Telekom	Germany	Fixed and mobile operator
4	DVTM	Germany	Association that represents all companies involved in the value-added chain of telecommunications and media.
5	EIDQ	international	Association of companies offering directory information and related search services across multiple channels including mobile, voice and online. Its members span the entire value chain including service providers, content suppliers, vendors and consultancies. (40 member organisations)
6	GSMA	international	Association of mobile operators
7	Juconomy	Germany	Representing the German telecommunication companies (with SP role) 01051 Telecom GmbH, Callax Holding GmbH, MEGA Communications GmbH and mr.netgroup GmbH & Co KG
8	INTUG	international	International association of business users of telecommunications.
9	On your map *	Switzerland	SP
10	Optimus	Portugal	Fixed and mobile operator

[1] See: http://www.erg.eu.int/doc/berec/bor/bor11_68_srsreport.pdf.

	Name respondent	Country	Main activity of market party
11	Orange	France	Fixed and mobile operator
12	QSC	Germany	Fixed operator
13	Telecom Italia	Italy	Fixed and mobile operator
14	Telefónica	Spain	Fixed and mobile operator
15	The Number	UK	SP
16	Vodafone	UK	Mobile operator
17	Voice Data Bridge *	The Netherlands	SP
18	Wind Hellas	Greece	Fixed and mobile operator
19	Wind	Italy	Fixed and mobile operator

Table 1. Respondents. * The responses of these parties where very similar.

2 General comments

3. **3StartsNet** has a keen interest in BEREC's assessment particularly in mobile calls to SRS. 3StartsNet emphasises the importance that BEREC's work helps NRAs to reach real solutions.

4. **DVTM** strongly agrees with BEREC's characterisation of both problems and effects and in particular that the problem is more acute in mobile than in fixed. DVTM expects that, as a result of the public consultation, BEREC will issue stronger guidelines to solve the existing problems that have negative effects for consumers and competition.

5. **QSC** supports BEREC in its concept to solve the problems arising in the provision of calls to SRS, especially concerning calls originated on mobile networks. BEREC's intention to reduce the OTRs especially in case of calls from mobile networks is really important and must be pursued effectively as it increases availability, acceptance and profitability. NRAs should and can already take all necessary and appropriate measures to eliminate or minimize the current problems as efficient and as soon as possible. Because of the importance of the detected problem and to ensure harmonisation and effective competition, BEREC´s report should lead to a more binding recommendation so that NRAs feel a stronger incentive to fulfil these requirements.

6. **INTUG** notes there is significant inconsistency in the provision of SRS between different Member States, both in terms of numbering plans and charging principles. INTUG notes current charging structures for SRS are extremely complex and confusing. INTUG stresses the importance of SRS and indicates that SRS tariffs should not be inflated by the excessive pricing of OOs. INTUG therefore supports the BEREC Report.

7. **Deutsche Telekom** states that BEREC's simplified value chain and pricing models provide a useful high-level overview on the flow of payments between selected market participants for different types of SRS categories. Deutsche Telekom stresses that due to the simplification of the models used in the Draft BEREC report, the models as well as the conclusions drawn with regard to (1) identified problems and (2) possible regulatory approaches and legal instruments, can only be seen and used as a framework for national discussion. Deutsche Telekom therefore underlines BEREC's conclusion that the assessment whether regulation is appropriate will depend on national circumstances. It is the role of individual NRAs to assess whether problems occur for SRS services on national level, whether they justify regulation and which regulation is appropriate.

8. **Telefónica** agrees with the high-level descriptions in the Report but cautions that it is not appropriate to single out one method as being superior to others. There is a danger that the BEREC document could be viewed by NRA's as a mini market analysis which highlights perceived problems in markets and is a "call to action" for NRAs to regulate. Telefónica feels that the proposal of a specific pricing model gives a strong signal of intervention into a specific direction. Such a proposal by BEREC could hinder the NRA from looking at the issue without prejudice. Telefónica welcomes that BEREC states in that context that the NRA is free to make a different judgement but proposes that BEREC

takes an even more neutral position. This is especially important considering the fact that the identified “problems” are not based on facts (e.g. an evaluation) but on rather vague perceptions.

9. **Vodafone** and **GSMA** consider that, at present, SRS can be a source of confusion and uncertainty for consumers and that guidance is required. Vodafone believes that a simplified approach to SRS would be beneficial. Vodafone also considers that BEREC’s final report should not only provide guidance on the charging regimes, but should also provide guidance as to how these mechanisms can feed through to greater consumer confidence for SRS.

10. **Wind** invites BEREC to emphasize that the report should not be interpreted as a proposal to introduce any kind of ex-ante regulation. It is Wind’s opinion that the report should be seen as a guidance for NRAs to handle and address eventual disputes on a case by case basis.

11. **Telecom Italia** states that the pros and cons of different models depend on national circumstances and BEREC therefore should not indicate any preference. Telecom Italia does not share the preference for a C+S approach.

12. **BEREC** (referring to paragraph 2 to 11) agrees that the weight of the pros and cons of the pricing models and regulatory approaches depend on national circumstances, this is also reflected in the conclusion that clearly indicates this. BEREC considers that the draft Reports strikes the right balance between giving guidance and leaving sufficient room for NRA’s to manoeuvre based on national circumstances. BEREC does not see facts and/or reasons in the consultation responses to change the guidance by either making it stronger (as requested by DVTM and QSC) or weaker (as requested by Telecom Italia and Telefónica).

13. BEREC considers the proposed regulatory approaches provide mechanisms that will create a greater consumer confidence; an aim emphasized by Vodafone and GSMA. Contrary to the opinion of Wind – the guidance of the Report is not restricted to handle and address disputes.

14. BEREC does not agree with Telefónica that the indentified problems are based on vague perceptions. Although the Report does not provide an extensive analysis of the situation in individual member states, the data provided in annex A, the reasoning in section 3 and the additional data given in some the responses to the consultation, provide ample evidence to come to the conclusions in the Report.

15. **OnYourMap** and **Voice Data Bridge** believe that there is an urgent need for BEREC to provide some more direct guidance to regulators on what triggers might be sufficient for a regulator to take action.

16. **BEREC**’s view is that the Report does already suggest in the section on the preliminary observations (section 3.1) which situations could trigger regulatory investigations and intervention. These triggers are a low level of transparency and a relatively high revenue that is retained by OOs. In the latter the retained revenue is relatively high when compared with retail revenue on standard calls or compared with cost. Also revenues retained by mobile operators can be compared with those of fixed operators. These triggers will be mentioned by BEREC in the conclusion of the Report.

17. **The Number** puts forward that BEREC should stress the need for immediate regulatory intervention by the relevant NRA before further and worse damage is done in each Member State where any of the listed symptoms above occur.

18. **BEREC**'s goal is to provide background and guidelines to NRAs in dealing in case of potential SRS problems. It is the role of the different NRAs to assess if an investigation of the competitive situation of its domestic market is appropriate and if some intervention is needed. BEREC does not find that this report should be too prescriptive, because the national circumstances may vary.

3 Value chain, models, terms, definitions

19. **Orange** indicates that there is often an intermediary operator in the value chain that deals with the numbers and related services offered to the SPs. This intermediary operator is not mentioned in the Report.

20. **BEREC** note this intermediary operator is identified in paragraph 10b of the draft Report as 'integrating operator'.

21. **Wind Hellas** suggests that the terminology of the report be changed, using the term 'content part' instead of 'service part' and 'service delivery part' instead of 'communication part'.

22. **BEREC** agrees that network operators also provide a service to the customers. However, the terms and definitions used in the BEREC Report are widely established and changing the terminology would create confusion.

4 Problems

4.1.1 General

23. **3StarsNet** indicates that mobile OOs in Belgium charge a service fee (part of the OWR) of 20 eurocent for calls to SRS. This service fee was introduced after the introduction of retail regulation that required the end-user tariffs for SRS to become undifferentiated between fixed and mobile (this is an S model without further wholesale regulation). The aligned introduction of the fee by mobile OOs suggests (either implicit or explicit) coordination (‘synchronised swimming’).

24. **BEREC** notes that this example illustrates that imposing regulation only on retail level, can increase (or transfer) the problems to wholesale level, as also mentioned in paragraph 55 of the draft Report. BEREC considers this Belgium case as an indication that OOs can set high OWR. However, it is not possible to draw a strong conclusion because the regulatory intervention has influenced the behaviour of OOs.

25. BEREC does not see sufficient proof of coordination in the facts presented by 3StarsNet. It seems that the aligned introduction of the service fees can be explained by the introduction the retail regulation, so coordination does not seem a root cause problem.

26. **Belgacom** states that following the introduction of retail regulation (as described in paragraph 23) the Belgium mobile operators were not able to increase their OWR to compensate for the loss in ORR. According to Belgacom this shows the power to negotiate is also in the hands of TO/SPs. According to Belgacom it was only due to intermediation from the Belgium NRA, BIPT, that the dispute was settled in a reasonable way.

27. **BEREC** notes because this case was influenced by intermediation from the Belgium NRA, it does not show that TO/SPs have negotiating power in the *absence* of regulation.

28. **3StarsNet** strongly agrees with the observation that a relatively high percentage of revenue is retained by the OO, especially by mobile OOs.

29. **3StarsNet** considers possible discontinuation of the regulation of wholesale fixed call origination highly unlikely. 3StarsNet is not aware of any NRA having withdrawn remedies in market 2.

30. **BEREC** notes that deregulation of this market can occur depending on the national circumstances. A recent notification of the Dutch NRA is an example where price regulation obligations on parts of market 2 are withdrawn.[2]

31. **Juconomy** and **DVTM** support the assessment of BEREC that especially mobile operators retain a relatively high percentage of the total revenue of calling to SRS. Juconomy and DVTM give an

[2] Notified 12 March 2012, case NL/2012/1306.

example of a certain type of SRS calls in Germany (0180-5 calls) where fixed OOs retain 6,5 eurocent per minute and mobile OOs 28 eurocents per minute. In this example mobile OOs retain approximately 80% of the retail price.

32. **EIDQ** strongly agrees with BEREC's characterisation of the problems and effects and in particular that it is much more acute for mobile.

33. **Optimus** does not recognize that a higher proportion of SRS revenue is retained by the mobile originating operator. For instance in Portugal a call to certain number ranges with a maximum retail price of 60 eurocents (VAT excluded), due to its very small duration (only a few seconds), and the fact that the origination compensation is mainly billed per second, the originating operator retains a very small part of it.

34. **Orange** indicates that the 50% retention of revenues observed by Ofcom in the UK is not used all over Europe, notably in France from fixed lines. As a result BEREC should not deduce from this that retention rates are too high.

35. **BEREC** agrees that the retention is not always as high as 50% across Europe and it depends on the service concerned (the example mentioned by Optimus is very specific – televoting). Therefore, the UK case is merely presented as an example rather than as a generic rule. Still retention rates around 50% from mobile lines are widespread in Europe.

36. **Orange** notes that the retention rates cover both the call conveyance and the commercial intermediation, the latter deserving a comparison with rates observed in other industries (for example Apple's service Appstore, where retention rates are around 30%).

37. **BEREC** notes that Apple operates in a role that is comparable to the SP and not comparable with that of the OO. Therefore, BEREC considers that no conclusions can be drawn from this example.

38. **Optimus** notes that some traffic is highly concentrated in specific hours, for example, during 1 or 2 hours of a TV show. This puts additional and specific challenges to the traffic management by originating operators that must also be taken into account when the adequate compensation is discussed.

39. **Orange** states that mobile costs are higher than fixed costs so that one should not be surprised that retention rates are higher for mobile than for fixed.

40. **BEREC** recognizes that mobile cost can be higher than fixed cost. This is taken into account in the text in paragraph 24 of the draft Report that says the higher retention for mobile cannot be explained solely by the fact that the cost price for calling from a mobile is generally higher than for calling from a fixed line. Regarding Optimus comment, BEREC considers that the traffic management issues mentioned can affect both mobile and fixed originating operators.

41. **3StarsNet** regrets the assumption that there is a cost asymmetry between fixed and mobile originated communication, which suggest that retail tariffs for calls to SRS would justifiably be differentiated between fixed and mobile originated calls.

42. **BEREC** notes that an (exogenous) cost asymmetry between fixed and mobile is widely accepted and mobile services are usually perceived as more costly. However, this BEREC Report does not make an assumption on the nature of the cost asymmetry (and therefore does not assume mobile services are more costly *per se*); it only takes the *possibility* of such an asymmetry into account and in the C+S approach, prefers a regulatory approach that does not require regulatory determination of this cost asymmetry. After all, the C+S approach leaves it to the market to find the right pricing for the C applied by individual OOs.

43. **INTUG** considers that there must be no penalty for accessing SRS (among which free phone services) from mobiles because convergence of fixed and mobile access is inevitable.

44. **BEREC** considers it not unreasonable when prices between fixed and mobile access to SRS differ if this difference reflects the usual price differences between standard fixed and mobile calls.

45. **Telecom Italia** underlines that BEREC does not sufficiently address the role of the TO, which – according to Telecom Italia – plays a central role.

46. **BEREC** does identify the role of the TO and recognizes its importance. However, given that SPs can choose their TO (where SPs cannot choose their OO) there seems to be no competition problem attached to this role.

47. **Vodafone** finds that the presence of high prices at either a wholesale or retail level is not a problem under competitive conditions. When consumers place different values on different call types the expected competitive market outcome is differentiated prices rather than homogenous ones. Market failure should not be assumed simply because prices are high or different.

48. **BEREC** recognizes that such a 'Ramsey type pricing' could be beneficial under certain conditions, but those conditions are not met in the case of calling to SRS. A necessary condition for 'Ramsey type pricing' to be beneficial is that it should concern a set of services under a homogenous competitive conditions. This condition is not met in the case of SRS where the SRS communication services that are delivered by the OOs, experience problems due to a lack of sufficient competition. Above that, calling to SRS is a bundle of the communication service delivered by the OO and the service delivered by the SP in which Ramsey type pricing of the communication service could lead to an inefficient interaction between the two prices (similar to double marginalisation). Therefore, BEREC maintains its position that high prices leads to several negative effects like – beside the high prices itself – reduction of demand, increased risk of fraud and loss of service diversity. These problems can be addressed only through regulatory approaches by setting at least reasonable prices if not cost oriented, possibly alongside pure transparency measures.

49. **The Number** notes that complaints of users related to excessive pricing sometimes result in refunding an amount far greater than the revenue that The Number receives from the call. The Number also mentions there is a significant confusion among consumers about the influence of OO and SP on the retail price. This confusion appears to extend to some mobile OOs, as The Number has examples where customers that say that their OO has explained to them that the directory inquiry prices where set by The Number, while they are in fact set by the OO.

4.1.2 No cost pass-through

50. **3StarsNet** considers that it is unrealistic that callers would switch based on price differences of SRS services even when the cost of the OWR where fully passed through to the caller.

51. **BEREC** supports the point that even with full cost pass-through switching is difficult because of the lack of price awareness that is described by BEREC as another root cause problem. This strengthens BEREC's conclusion by stating that even with cost pass-through, consumers would not switch in response of changes in the pricing of SRS.

52. **3StarsNet** states that mobile operators do not readily publish retail call prices and in practice use identical or very similar retail prices for the communication part of SRS.

53. **BEREC** recognizes that retail prices (retail mark-ups) for calling to SRS usually are not easily available to users. This is also mentioned in paragraph 35 of the draft Report, which says these prices are usually not mentioned in advertisements. BEREC also recognizes that identical or very similar pricing of the communication mark-up does not incentivise switching. However, BEREC considers identical or very similar pricing more an intermediary effect and not a root cause problem.

4.1.3 Disconnecting not effective

54. **3StarsNet** confirms BEREC's view that disconnecting from individual OOs is not an option for SPs and indicates that this is illustrated by the case with Belgium mobile operators. In the Belgium case it where the mobile OOs who threatened to disconnect from SPs and this disconnection was only prevented by the (interim) regulatory measures. 3StarsNet agrees with the conclusion of the SEO (2011) study and also supports BEREC view that its findings extend beyond free phone.

4.1.4 Vertical integration

55. **3StarsNe**t suggests that mobile operators may proceed to disconnection of alternative operators after they have secured sufficient use of their own (vertically integrated) SRS.

56. **BEREC** finds it still unclear whether mobile OOs proceed to disconnection after securing sufficient use of their own (vertically integrated) SRS.

57. **3StarsNet** notes that OOs typically offer SRS themselves. The BEREC Report understates this fact, which should be corrected in the final Report.

58. **BEREC** agrees that OOs typically offer SRS themselves and will mention this in the Report.

59. **The Number** refers to an example of blocking by BT of VoB calls to competitor directory inquiry services, where BT's own directory inquiry services remains reachable. The fact that the blocking occurs only for VoB calls seems to result from the fact that the rules for interoperability are perceived by BT as different from that for PSTN calls. The Number also gives an example of prices applying to

calling to the mobile OO own preferred directory inquiry service as compared to a competitors' directory inquiry service. The latter have prices that are two to three times higher.[3]

60. **BEREC** will include these examples in the section on vertical integration in the Report.

4.1.5 Lack of control by SPs over the full retail price

61. **EIDQ** emphasizes the importance of the problem that SPs lack control over the retail price.

62. **The Number** emphasizes the lack of control over the retail price creates a disincentive for SPs to compete on the price of the service component. This problem is exacerbated by the fact that mobile OOs increasingly charge all directory inquiry services (except their own) at a standard price.

63. **Wind Hellas** believes that situations in which the SP as a wholesale provider has full control over the retail price can be considered to be a vertical agreement and thus possibly not in line with the relevant competition laws.

64. **BEREC** (referring to 63) notes that more control over the retail price as described in the Report, cannot be considered as a vertical agreement. For example in the C+S approach the OO sets its own rate so there is no vertical agreement there. In the S_fS_m approach it is the regulator that sets restriction on the pricing of services delivered by the OO, based on an assessment there are problems with the delivery of these services due to insufficient competition.

4.1.6 Effects

65. **3StarsNet** does not think mobile OOs use high revenues on SRS to fund lower prices on other services.

66. **BEREC** does not claim this waterbed effect is sure either. BEREC's point merely is that if there is a waterbed effect, the resulting price structure is not efficient.

67. **Wind Hellas** warns that over-regulation of a non-core service such as SRS might lead to price increases of basic services and reduced investments, leading to negative effects for both core and non-core services. Wind Hellas interprets the Report as an initiative by BEREC to promote regulation of ad hoc issues related to a so-far unregulated market segment in an inconsistent way, thus leading to market distortions.

68. **BEREC** recognizes that reducing OTRs could result in higher prices of other services. This is described and assessed in paragraph 39 of the draft Report. BEREC does not follow the argument that the Report would promote regulation of ad hoc issue's.

69. **EIDQ** agrees with BEREC's conclusion that high retail mark-ups lead to high prices of SRS relative to standard services and therefore to a reduction in demand for SRS.

[3] See response The Number, table 3.

70. **OnYourMap** and **Voice Data Bridge** agree with the effects identified by BEREC and underline that the high retail margins imposed by mobile network operators are pushing up the retail cost of directory calls and pushing down the general demand for these services. Both respondents conclude the OOs are unconcerned because it is a very small part of their business. These adverse effects are not only felt by consumers and SPs but also by a much wider range of businesses which form part of the broader directory industry.

71. **3StarsNet** agrees with the negative effects of reduction of demand, increased risk of fraud and loss of service diversity, that BEREC identifies.

72. **3StarsNet** agrees with BEREC that OOs conduct is ultimately to their own detriment and results in content and services migrating to Internet services.

73. **The Number** mentions examples of the negative effects of high OTRs on service diversity and innovation. One example is a service that would onward connect directory inquiry calls to the requested number. Such a service is not feasible because the high charges levied by mobile OOs. Another example is a service developed by The Number that would enable users to choose restaurants and make reservations. Because this service had a relatively high call duration, this service was not considered economically feasible anymore at the time a mobile OO increased the OTR. The Number decided to withdraw the service despite the considerable expense of it its development.

74. The Number mentions that regulatory intervention by ARCEP limited the retention by mobile OOs resulting in lower retail prices. As a result a substantially higher proportion of directory inquiry users make calls from mobile phones. This shows that lower OTRs do result in lower retail prices and increased usage.

5 Regulatory approach

5.1 Pure transparency measures

75. **EIDQ** and **The Number** agree with BEREC that ‘pure transparency measures’ alone are insufficient to address the problems that have been highlighted. They therefore welcome BEREC’s statement that the focus of its draft report is to go further. The Number notes that pure transparency measures can even worsen the SPs situation, e.g. because some services require a very quick access to the service and pre-call announcements increase the waiting time resulting less usage an early closure of the call.

76. **OnYourMap** and **Voice Data Bridge** agree with BEREC that greater pricing transparency is not sufficient to address the problem because the markets for SRS are not effectively competitive. Moreover, consumers will not switch network operators on the basis of their charges for SRS, which will always be a relatively small part of their overall expenditure.

77. **Telefónica** stresses a two step approach of regulation of (1) transparency measures and (2) deeper market regulation. Telefónica proposes that BEREC extends the sections of the report that deal with transparency measures and maybe adds an overview of the transparency measures taken in the different member states.

78. **Telecom Italia** deems that SRS do not need new regulatory interventions. Telecom Italia believes that many of the competitive problems referred by BEREC have been solved by means of a greater transparency on the rates paid by the users. Further problems should be addressed firstly through greater transparency measures.

79. **Wind** states that transparency measures are suitable tools to protect customers from fraud and other behaviour that might harm their interests. Consequently, Wind believes that relations between OOs and SPs should be left to market dynamics and should not be regulated *per se*. Wind points out that the level of information to be provided to customers should be reasonable in order to avoid an information overload and that additional questions arise that will need to be addressed (such as who is required to provide a pre-call announcement, where can customers direct complaints etc.).

80. **Vodafone** and the **GSMA** believe that setting price bands through a numbering plan is a good idea but this band should be adapted to reflect the charging regime. Thus, in case of A+S the SPs will need to clearly state the level of ‘S’ that they charge and that an additional charge will be applied by the originating network operator.

81. **QSC** support the idea to set price bands through the numbering plan.

82. **BEREC** (responding to paragraph 77 to 81) recognizes the use of pure transparency measures to address problems i.e. the use of a price band. However, pure transparency measures do not always

solve the problems (see also paragraph 99 of the Draft Report) and pure transparency measures are not the focus of this Report (see also paragraph 52 of the Draft Report). Therefore a more extended coverage of these measures is not appropriate. BEREC therefore agrees with OnYourMap, Voice Data Bridge and EIDQ that other measures could be necessary. BEREC also supports Wind's point that the level of information to be provided to customers should be reasonable in order to avoid an information overload. BEREC considers it a pro of the C+S approach that it reduces the information load on users by the fact that the C mark-up is identical to the standard call rate. BEREC believes that transparency measures and market dynamics alone are not in all cases sufficient to avoid the problems and effects laid out in the chapters 3.2 and 3.3. BEREC consequently does not support the statement of Telecom Italia that pure transparency measures can usually fully address problems. Reality shows that problems occur also in countries which have these pure transparency measures in place (e.g. pre call announcements in The Netherlands).

5.2 Category 1 approach – free services

83. **3StarsNet** supports the option of cost oriented price caps for free services (category 1). 3StarsNet disagrees with the suggestion it would be reasonable to base the OWR on (a percentage of) average retail revenue, because it is clear that there is no relation between wholesale costs and retail prices.

84. **Juconomy** and **DVTM** support regulation of the OR based on costs like this is done in Malta.

85. **Telecom Italia, GSMA**, **Wind** and **Vodafone** are strongly against the idea of linking the origination charge to the termination charge. These respondents reason that termination and origination are different services using different network elements and have different underlying costs. Also applying a pure BULRIC methodology, as usual for termination, is not justified for origination since the reasoning behind pure BULRIC is not valid for origination.

86. **GSMA** and **Vodafone** consider that BEREC should also give guidance on what constitutes reasonable prices for wholesale origination rates for calls to free phone numbers.

87. **Wind** favours a light approach regarding regulation of the OWR, for example a price cap based on the average retail revenue per minute on a downstream voice market or a certain percentage of it (since termination is not included). The company argues that calls in this category are comparable to retail calls and should therefore be priced in accordance to pricing schemes for standard calls rather than the cost orientation principle.

88. **Wind Hellas** believes that introducing price control and especially cost oriented prices in a competitive market is harmful such that it reduces intensity of competition and leads to reduced investments. Network costs are not the only costs incurred when providing SRS to customers and there should be no relation to mobile termination costs as these do not include some costs that nevertheless need to be covered by origination costs or fed through to the retail level. The company thinks that an OO would be at a competitive disadvantage if he could not recover all costs by means of the wholesale origination charges.

89. **BEREC** (responding to paragraphs 83 to 88) mentions multiple regulatory options. One option is regulating the OR on a cost orientated basis. The example of Malta, that regulation of the origination rate for calling free phone is based on termination regulation, is purely a factual example. Another option BEREC mentions is the possibility of setting reasonable caps based on (a percentage) of the average retail revenue. This does not depend on an assumption that there is a direct relationship between wholesale cost and retail pricing, as 3StarsNet seems to assume. The reasoning behind this possibility is that it would allow OOs to retain the same revenue on origination to free services as they retain on other calls. It is not BEREC's opinion that because it concerns a problem at wholesale level, this type of – possibly non SMP – regulation should automatically opt for cost oriented price caps. However, on the other hand BEREC also does not find that regulation for category 1 should automatically be based on retail prices. BEREC reiterates that it does not favour any of the described approaches. As the objective of the report is to give NRAs guidance on what can be done if problems occur on national level BEREC finds that it is the discretion of the national NRA to decide if it is appropriate to perform an investigation of the market. In the event of competitive problems the NRA's decide the appropriate form of regulation as these depend on the national framework and circumstances.

90. Both **GSMA** and **Vodafone** agree that all member states should have a free phone number range that is free for all users from all networks, but this can only be achieved if the providers of these free phone numbers are prepared to pay the additional costs associated with originating calls on mobile networks.

91. **BEREC** recognizes that free phone with a zero retail price (so a category 1 free services) is a preferable situation, considering that it is more transparent for users. However, it is not a part of the scope of this Report to give guidance on this. BEREC also notes that the provision of such free services seems to require additional regulation of the OWR, since it increases the power of the OO.

92. **Vodafone** believes that BEREC's guidance on free phone should also cover over the top VoIP providers that use number ranges.

93. **BEREC**'s Report does not differentiate between the originating operators. VoIP providers are also under the scope of the report.

5.3 C+S approach

94. **OnYourMap** and **Voice Data Bridge** believe that the mobile operator should ideally be obliged to charge the same access charge as it does for standard landline/geographic calls, because the network costs are not different. In any case, the access charge should be the same for all special rate and non-geographic calls. OnYourMap and Voice Data Bridge believe that a model which separates the directory provider's wholesale service charge from the mobile network operator's retail access charge/profit margin is likely to be the best way of achieving this. Allowing customers to see these charges separately should ensure that both are subject to a greater degree of effective competition.

95. **Juconomy** and **DVTM** support the C+S approach, especially for calls from mobile. Juconomy states that for low price SRS the C should reflect all cost of the OO and no additional percentage x is required. On the retail level **Wind** agrees with the C+S model described by BEREC.

96. **BEREC** (responding to paragraphs 94 and 95) agrees with OnYourMap and Voice Data Bridge that in the C+S approach the C should reflect the price plan of the particular user. Principally in the C+S approach an OO does not obtain revenue other than the C. However, it could be reasonable for the OO to obtain a compensation for additional costs, originating from commercial operations, like billing, cash collection, bad debt insurance and customer information. On the other hand BEREC agrees that, especially for lower priced SRS, an additional payment may not seem reasonable if at the same time an OO does not pay a termination charge like it does with a standard call.

97. **DVTM**, **Juconomy** and **The Number** highlights three approaches that can be seen as benchmarks for regulating premium (higher priced) SRS. This is (1) the approach of Malta, (2) the Austrian approach in which the OWR is capped at al level of 2,2 eurocents per minute and the ORR at 10% of the retail price (3) the German approach for fixed originated traffic, which is an S model on which the billing cost is capped at 5 eurocent per bill and the OR is capped at the level of the termination rate.

98. **BEREC** agrees that there could be different approaches to tackle the identified problems. This depends on the national circumstances. DVTM calls the German approach a clear-cut S model, but in fact this approach, is not a S approach for fixed plus mobile, since mobile OOs are not regulated. Therefore the disadvantage of the impossibility of taking into account cost asymmetries between fixed and mobile networks does not arise.

99. **The Number** considers the A+S approach an alternative, but finds that it does not offer all the advantages of a C+S model. Therefore, The Number has a preference for the C+S approach. The Number emphasizes that the C+S approach ensures that the rates that are published and promoted are more clearly understood by consumers and the pricing of the service reflects what is being delivered by SPs. The Number also notes a C+S model would benefit OOs. It will require OOs only to understand and communicate their own communication charge, leaving any other questions to the SP. It will also mean that they can maintain a steady de-risked communication charge, rather than feeling that they have to alter it, in response to price changes from some, but not all, SPs.

100. **Belgacom** states that the retail pricing regulations in Belgium sets price caps per defined number range (price bands, like indicated in table 2 of the BEREC report) and this makes the application of the C+S approach not possible.

101. **BEREC** considers that depending on the national circumstance that some regulatory approaches are more suitable then others. It could therefore be that in certain countries a C+S approach does not fit in the current country specific regulatory framework. However, in general the application of price band does not hinder the use of a C+S approach if the price bands are applicable only to the S component.

102. **Belgacom**'s preferred solution is a C+S model where the C corresponds to the price plan selected by the particular mobile user and where S is defined as the maximum price per number

range. Belgacom describes as main advantages that (1) for SPs revenue will be less origin dependent, (2) it reduces difficult negations of how revenue is shared between OOs and SPs (with only the additional costs related to handling a SRS call requiring negotiation), leading to less disputed model with more legal certainty, and (3) it makes pricing more transparent for the user and also makes it clearer who the provider of the content is (useful for handling complaints).

103. **BEREC** notes that regarding the C as described by Belgacom, this is in fact the C+S approach as defined by BEREC. The difference is that BEREC defines S only as *a rate* set by the SP and the SP would be able to select the appropriate number range with the appropriate tariff.

104. **EIDQ** notes that the A+S and C+S model both use versions of “a separation of access and service charge” which EIDQ highlights as one possible remedy. EIDQ explains that the key advantages of this approach are that it would increase both competition and transparency in the interests of consumers. EIDQ favours a model which minimises the ‘mobile mark-up’ (i.e. A or C component of the charge) as far as possible. The EIDQ position paper criticises the S, S_fS_m and S’ pricing models as being responsible for high directory prices and a resulting reduction in calls being made. EIDQ objects to either being adopted or preferred as the basis for retail charging of directory services, because of the very significant adverse consequences for both consumers and directory providers’ own businesses.

105. **QSC** supports the C+S approach stressing the fact that prices will be more comparable for users.

106. **Telecom Italia** does not share the preference for a C+S approach. Telecom Italia reasons that the value of a premium rate call is higher than the value of a standard voice call and the C charge does not take into account usage patterns and preference profiles of SRS.

107. **BEREC** does not follow why in this case a higher value of a SRS call or a specific usage pattern in itself should be a sufficient reason to charge a higher price for the C-component of the call. The extra value added to the call will probably be taken in account when determining the S-component. See also BEREC’s response on Ramsey type pricing in paragraph 48.

108. **Telecom Italia** states the final report should clearly indicate that in the case of application of A+S and C+S approaches, the S component remunerates both the SP and TO. The revenue sharing of the S component should, therefore, be freely agreed between the SP and TO.

109. **BEREC** notes the document already indicates the S goes to the SP. BEREC will add that the sharing of the S component is to be negotiated between the SP and the TO.

110. **Telecom Italia** notes that the cost of calling to SRS is not directly comparable with that of a standard geographic call. Therefore the OO should be remunerated also for specific network facilities, for instance special network elements that avoid congestion for televoting call services.

111. **BEREC** has not found that extra costs are involved in calling SRS. BEREC also is uncertain where these perceived extra costs would arise. If however an NRA deems there to be extra cost an NRA could in an individual case judge it reasonable for an OO to recover these costs. In this

judgement an NRA should also take into account that an OO does not pay a termination charge like it does with a standard call. BEREC therefore does not expect an extra payment to be necessary.

112. **Orange** explains that SRS calls are structurally more costly than non-SRS calls, primarily because the percentage of such calls during peak hour is higher.

113. **BEREC** notes that, even if calling to SRS is peakier, the C+S approach does not prevent an operator to apply differentiated C tariffs depending on time of the day for all calls, to reflect for instance the specific role of peak hour traffic in the network dimensioning, including for SRS calls. If conversely operators decide to apply flat C tariffs, it means they decided to average traffic costs across all time periods. This issue is no different from the general question if operators differentiate their tariffs for peak and non-peak instances.

114. **Wind** points out that pre-paid customers might spend their credit on SRS rather than on standard calls, meaning that the OO might suffer a decline in retained revenue and profit. **Optimus** makes a similar point and also mentions that while such effect is particularly relevant within pre-paid customers, it is also important for post-paid customers because their expenses in third parties services lower their willingness to spend on services of their own operator. Moreover, in Optimus opinion the level of compensation for the effect on the retail side should be linked to the SRS retail price and this compensation must be applied regardless the SRS retail model that is in place.

115. **BEREC** questions whether pre-paid usage really suffers because pre-paid users spend their prepaid credit on SRS rather than on standard calls. Wind and Optimus do not provide any data on this. Some revenue may be lost for OOs when low usage pre-paid customers that spend less than their fixed credit allowance that expires after some time. On the other hand there will also be users that use SRS and thus recharge more often and generate more revenue. Moreover, as these customers spend more money on calls, they might be tempted to switch to post-paid. So, whether calls to SRS will generate a loss depends on several factors: the opportunity cost, the extra traffic generated, the change in customers' behaviour. Without statistical data, it is difficult to predict any loss or benefit at all. Therefore, BEREC considers that if usage of standard services decreases because pre-paid allowances are used on SRS, this at most seems a relatively minor effect.

116. **Vodafone** considers that in markets where a one-part charge is applied, in the case of services that consumers are willing to pay extra for, the best solution is for the market to determine how that revenue should be distributed. Further, Vodafone with the support of GSMA believes that in markets where a two part charge for calls to SRS numbers is deemed optimal, the A+S model should be adopted rather than the C+S model.

117. **Vodafone** and **GSMA** note that under A+S methodology the originating operator would not retain any commercial commission in relation to the S element, but would recover all its own commercial costs in the A element and the service provider would be free to choose the S and the corresponding number block. More, each originating operator is free to set the price for the A element on a tariff-by-tariff basis subject to meeting certain transparency obligations as set out below. In addition, consumers will be provided with sufficient information on call charges under an A+S model allowing them to make an informed choice at point of subscription.

118. **BEREC** has motivated in section 5 of the report why a C+S approach is preferable to an A+S approach. The main advantage is that the competitive pressure of calling to standard fixed rate numbers is extended to SRS. This is not the case with A+S. Also the clarity for customers is increased in a C+S approach. BEREC describes an A+S approach having a single A component for all SRS numbers. If like the GSMA and Vodafone propose the A is set on a number by number basis, the transparency and competitive pressure will decline. BEREC recognizes that a A+S approach could have the advantage that the regulator does not have to judge whether a percentage is reasonable and how high it can be at most. However, BEREC considers this disadvantage of less importance than the advantage of the C+S approach. This is even more true since some of the extra cost for the OO (billing cost due to bad debt) could be related to the height of the S component. The A+S approach uses a single A for all levels of S, which does not capture this relation and does not make it possible for an OO to retain more revenue – through the percentage x – for calls with a higher S.

Percentage x

119. **3StarsNet** finds the concept of the percentage x, to cover legitimately incurred ancillary cost, acceptable in principle, but BEREC should avoid overestimating the ancillary costs. 3StarsNet notes the investments in billing systems are sunk and probably have been largely depreciated; state of the art billing systems would cost a fraction of legacy systems; cash collection cost should be made fully transparent, prepaid plans have no bad debt risk and the cost of over complex information system should not be allocated to the percentage x.

120. **The Number** shares this view and adds that it should be ensured that the whole compensation for the OO (C + percentage x) is not excessive.

121. **Wind** agrees with the statement that NRAs should be prepared to decide on a reasonable level of the commercial commission in case of disputes. However, the company considers the decision on whether a commercial commission is needed to be a commercial choice which should be left to the operators and not the NRAs.

122. **BEREC** (responding to paragraphs 119 to 121) agrees with 3StarsNet and The Number that NRAs should be cautious when deciding on the percentage x and should analyse if this percentage is necessary. Like Wind says, it could be reasonable for the OO to obtain a compensation for additional costs. On the other hand BEREC does not agree with Wind that the percentage x is a commercial choice that should never be regulated.

123. **3StarsNet** is concerned about the reference made to “the value added by the OO” in paragraph 67 of the draft Report, which would allow for demands of OOs for extra remunerations above costs.

124. **BEREC** agrees the reference to “value added” is not appropriate in this context. The assessment of NRAs should focus on what is a reasonable percentage in view of the cost incurred. BEREC has removed “value added” in the paragraph concerned.

125. **Wind** emphasises that the SPs have alternative ways of charging customers. Wind mentions for example credit cards, pin codes.

126. **Orange** believes that the SP actually has some countervailing buying power, considering the existence of alternative media to voice telephony.

127. **BEREC** recognizes that an SP could in some cases charge customers by different means. However these alternative payment means are mostly not suitable and BEREC does not consider these means to be viable alternatives. BEREC notes that paragraph 66 of the draft Report already deals with this point.

5.4 S_fS_m approach

128. **3StarsNet** prefers the S_fS_m approach with cost-oriented OWR over the C+S approach, because it is the only approach that deals convincingly with excessive OWRs and that prevents discriminatory and potentially predatory behaviour by vertical integrated operators. However, 3StarsNet does not believe a differentiation between fixed and mobile is justifiable. 3StarsNet does not consider the fact that a regulator has to set the rate of the OWR a con, because this rate has to be set anyway for free phone calls.

129. **BEREC** notes that depending on the national framework and circumstances, NRAs can consider applying the S_fS_m approach, although it considers that C+S approach would be a lighter regime requiring less intrusive regulation and be based on lighter regulatory instruments. BEREC also sees the advantages of the S_fS_m approach and that a consumer sees one retail tariff from fixed lines and one retail tariff from mobile lines.

5.5 Conclusion

130. **Optimus** suggests that the final report should emphasize that the best suitable model should be analysed on a country by country basis.

131. **GMSA** and **Vodafone** do not believe that a single pricing methodology should be favoured. The appropriate methodology needs to be considered on a case by case basis taking into account all relevant local factors.

132. **BEREC**'s objective is to achieve more consistency in regulatory measures. It therefore considers it is justified to favour a limited number of preferred approaches in its Report. However, BEREC explicitly states in its conclusions that individual NRA's can make a different judgement based on the importance of the different pros and cons in national circumstances. BEREC therefore does not see a huge difference between its current statement and these suggestions.

6 Legal instruments

133. A number of respondents question whether some of the non SMP instruments identified by BEREC, would be suitable for imposing the regulatory approaches.

134. **Wind**, **Wind Hellas** and **Telecom Italia** claim the regulatory approaches identified by BEREC generally require the use of the SMP instrument.

135. **QSC** states that if SMP is used as a legal instrument the relevant markets should be defined as the existing market 2 (fixed) and old market 15 (mobile).

136. **The Number** points out that dispute resolutions are costly for SPs, not only from a resource point of view, but also in terms of the strain they put on the relation of the SP with the player of the value chain the dispute is directed against. Moreover, many disputes are not settled in first instance, as originating operators tend to appeal every decision by an NRA that negatively impacts them, hence creating further delays in reaching a possible solution, and increasing the costs for the SP (and the NRA) in settling the dispute. The Number therefore does not agree with BEREC's view that resolving disputes is significantly shorter than the time taken to undertake a full market review.

137. **3StarsNet**, **QSC** and **The Number** consider article 5 of the Access Directive an appropriate legal instrument.

138. **Wind Hellas** disagrees with BEREC in that article 5 of the Access Directive offers NRAs the powers referred to in the report. The company believes that the article cannot be extended to include the imposition of specific wholesale or retail pricing for SRS and that symmetric regulation under the article mentioned can only be applied when end-to-end connectivity is not ensured.

139. **3StarsNet**, **Wind Hellas**, **Vodafone** and **GSMA** do not consider Part C of the annex to the revised Authorization Directive an appropriate legal instrument. Vodafone and GSMA find it logical that this instrument only applies to the wholesale element of calls to SRS because this wholesale element is not subject to competition and ex ante imposition of a maximum price therefore proportional. Vodafone and GSMA also infer their interpretation that this instrument is restricted to wholesale regulation, from the wording of this instrument. The wording mentions that any requirements can apply *in* the specific number range, while according to GSMA regulation of retail prices would be a requirement *out* of the number range.

140. **The Number** agrees the revised part C of the annex to the Authorisation Directive enables NRAs to specify tariff principles including unbundling and the specification of a maximum price in relation to a tariff.

141. **3StarsNet** does not consider article 21 and 28 appropriate legal instruments. **Wind Hellas** disagrees with BEREC that article 28 of the Universal Service Directive grants NRAs the power to regulate specific wholesale and retail prices in relation to SRS.

142. **The Number** considers that in the four listed types of symmetric regulation, the use of Article 21 of the Universal Service Directive should not be interpreted as a stand-alone tool: transparency can be helpful but cannot solve the issues at stake in the SRS market on its own. The Number considers the interpretation of Article 28 of the Universal Service Directive by the Dutch Ministry extremely valid and useful and can only recommend NRAs to either follow a similar interpretation or, where required, encourage the relevant Ministry to do so.

143. **BEREC** (responding to paragraphs 134 to 142) agrees with some of the parties that SMP is probably the most thorough way of analyzing a market. It is however also the most intrusive and administrative burdensome instrument. BEREC considers that the lighter touch symmetric legal instruments could be an appropriate way to address the problems, especially since the problems – when they occur – seem to be structural and related to numerous operators. Also a lighter touch regulatory approach (like C+S) could justify a lighter touch regulatory instrument.

144. BEREC is not convinced that the symmetrical instruments would in general not be viable. BEREC notes the critique on these instruments is often not motivated and where it is motivated BEREC does not follow the reasoning that is provided. For example BEREC does not agree with Vodafone and the GSMA that Annex C of the Authorization Directive only applies to wholesale because the wholesale element only does not get competitive pressure. Annex C does not state this and on top of this BEREC has concluded that the retail problems have emerged due to too little competitive pressure. Following Vodafone's and GSMA's reasoning this would make annex C suitable. BEREC also does not follow the reasoning that the wording "any requirement … *in* a specific number range" implies a restriction to wholesale and that a retail measure would be a requirement *out* of the number range.

145. Regarding dispute resolution, BEREC's opinion remains that in general this should take less time than a market analysis procedure. In the market analysis, more steps are needed: public consultation, notification of the draft measure to the EC and then the final decision.