Body of European Regulators for Electronic Communications
BEREC

BoR (21) 117

BEREC Report on the outcome of the public consultation on the Draft BEREC Report on the handling of third party payment charges on mobile phone bills

30 September 2021

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Executive Summary

This report summarises the responses received to the public consultation on the draft BEREC Report on the handling of third party payment charges on mobile phone bills.

During its 46th plenary meeting (11-12 March 2021) the Board of Regulators approved the draft BEREC Report on the handling of third party payment charges on mobile phone bills.

In many European countries, mobile operators allow third party providers to charge their customers via their mobile phone bills for goods or services. Such charges usually apply to:

- various services offered by phone call or via text message which are known as Premium Rate Services (PRS) as they are usually charged at higher rates than those normally applied to phone calls and text messages.
- the purchase of goods and services by Direct Carrier Billing (DCB) - a system of charging a mobile phone user for a good or service via their mobile phone bill.

To draft the report on the handling of third party payment charges on mobile phone bills BEREC collected useful information by means of an ad hoc questionnaire circulated to NRAs/competent authorities in September-October 2020. However, it should be noted that at the time of data collection, most NRAs and/or competent authorities were operating under the previous framework, as the transposition process of Directive 2018/1972 was still ongoing. The draft Report on the handling of third party payment charges on mobile phone bills also aims to serve as a useful information tool in the search of the legal status of third party services, the responsibilities of NRAs/competent authorities and the scope of the present legal/regulatory obligations, as well as on current consumer protection measures and complaints in this regard.

The public consultation was organised from 16 March to 16 April 2021 with the objective of gathering stakeholders' comments and observations on the content of the draft BEREC Report. In response to the consultation on the draft report, BEREC received 6 contributions from the following stakeholders:

1. DEUTSCHE TELEKOM AG
2. ECTA
3. MVNO Europe
4. Three Ireland
5. Vodafone Group Services Limited
6. Wind Tre

In general, stakeholders welcomed the opportunity to comment on the draft BEREC Report on the handling of third party payment charges on mobile phone bills. The following sections provide further comments, observations and recommendations expressed within the contributions during the public consultations, together with BEREC's response.

1. General comments

1.1. Respondents' views

Deutsche Telekom states that BEREC's Report provides useful and comprehensive information on rules and best practice regulations relating to the handling of third party payment charges on mobile phone bills in different European countries. According to **Deutsche Telekom,** the draft report states correctly that markets are developing and accordingly "third party services" are interpreted in a broad sense and include both:

- Premium Rate Service (PRS), which are services offered via phone call (voice call) or text message (SMS/MMS) which are charged to the mobile phone bill at a higher rate than normal phone calls or text messages. The focus is on Premium Rate Services (PRS), and
- Direct Carrier Billing (DCB), which is used to charge digital content services, or other products or services directly to end-user's mobile phone bill – and which is increasingly popular.

Deutsche Telekom determined that the main focus of the report for both use cases (PRS and DCB) lies on consumer protection issues, and on this the report also provides useful and comprehensive information.

Overall, the report serves as a useful information tool in search for best practices regarding third party payment charges on mobile phone bills.

ECTA, the European competitive telecommunications association, welcomes the opportunity to comment on the Draft BEREC Report on the handling of third party payment charges on mobile phone bills – BoR (21) 36. **ECTA** appreciates the effort made by NRAs and by BEREC in developing a detailed Draft Report on the handling of third party payment charges on mobile phone bills. It is informative, and – unsurprisingly – it confirms that national situations are extremely diverse. **ECTA** welcomes the fact that BEREC identifies the countries that have particular policy/legislation/regulation/codes of practice in place on the various topics addressed. The fact that the Draft Report identifies and lists countries by name or acronym is a welcome development, and **ECTA** encourages BEREC to do so in all of BEREC's deliverables.

ECTA is puzzled as to why BEREC took up work on this item. **ECTA** expressed its doubts in its responses to BEREC's 2020 and 2021 calls for input on the work programme, and in its responses to BEREC's 2020 and 2021 work programme consultations, including as follows: "***ECTA** is puzzled as to what the genuine origin of this workstream is, given that the EECC does not seem to require harmonization. Also, there is a real question on what BEREC might expect to achieve in practice. This does not appear to be a priority, also because much work already occurs at national level, and it is an area which is not readily suitable for harmonization given the diverse national situations and market trajectories.*"

With reference to paragraphs 11-13 of BEREC's Draft Report, **ECTA** notes that Art. 102(6), Art. 115, and Annex IV, Part A of the European Electronic Communications Code (hereafter 'EECC') do not result in relevant binding obligations on Member States or obligations placed on National Regulatory Authorities or on (other) Competent Authorities.

ECTA's position is that the national situations on third party payment charges reflect painstakingly achieved equilibria, usually involving both wholesale and retail regulation (e.g. selective prohibitions, price caps, charging principles, customer information principles, including in-call announcements, in-call cut-offs, etc.) which would be rendered fragile by attempts at harmonization or modification.

ECTA also notes that the Value Added Tax treatment of the premium-rate services value chain is often complex, given that multiple (often 3, 4 or more) companies are involved in a transaction (often invoicing end-users and each other at different times, e.g. when amounts are systematically withheld to discourage fraud, or punctually withheld in case of end-user complaints). This is an aspect that is not included in BEREC's Draft Report. Any attempts to harmonize or modify third party payment charges could result in modifications of payment flows, and consequently in modifications of Value Added Tax treatment, with potentially wide-ranging consequences. Therefore, **ECTA** cautions against any action that could result in fragilizing painstakingly achieved equilibria.

ECTA considers the diagram in Figure 1 – Schematic representation voice premium rate call in the Draft Report to be inaccurate, because it tries to simplify matters to the extent that it does not correspond to reality, and certainly does not cover all types of payment flows. In particular, it omits legal and regulatory parameters, including aspects such as retail price caps and regulation of wholesale charges, differential treatment of different number ranges, and Value Added Tax treatment. BEREC itself recognizes in Footnote 14 of its Draft Report that only 10 NRAs accept the diagram as being able to capture the functioning of third party payments in their country.

ECTA also notes that internet-based offers are substituting premium-rate services to a large extent, and that online payments are substituting direct carrier billing. These trends are expected to accelerate as digital currencies receive wider adoption.

Based on the points articulated above, and noting paragraphs 18, 19 and 104 of the Draft Report (references to EECC transposition but tangible follow-up action being limited for the time being to considering a repeat exercise as part of the BEREC Work Programme 2023), **ECTA** emphasizes that:

- National situations are extremely diverse; they cannot even readily be captured in a single diagram.
- The national situations reflect painstakingly achieved equilibria.
- Value Added Tax is a complex additional factor, omitted by BEREC.

Therefore, **ECTA** suggests that it would be wise for BEREC to exercise restraint in terms of potentially proposing follow-up work or even harmonization in the future – however well-intended – because this is certain to cause serious disruption. **ECTA** notes that BEREC has so-far not articulated potential benefits from relevant harmonization.

ECTA considers that no overall EU conclusions should be drawn from edge cases in certain countries or from non EU/EEA Member States.

MVNO Europe also welcomes BEREC's initiative to consult interested parties on its Draft Report on the handling of third party payment charges on mobile phone bills – BoR (21) 36.

It comes as no surprise to **MVNO Europe** that BEREC's main finding is that there is massive divergence between national policy/legislation/regulation/codes of practice in the EU and EEA Member States (and beyond). This logically results from the fact that frameworks have developed 'organically' at national level over time, reflecting problems that needed fixing, in the specific national context. It also comes as no surprise to **MVNO Europe** that BEREC's attempt to schematise the payment flows (only for a premium-rate voice call) is met with limited agreement by national authorities (paragraph 21 and especially footnote 14). Reality is much more diverse, and much more complex.

As stated in **MVNO Europe's** responses to BEREC's draft Work Programmes for 2020 and 2021, MVNO Europe urges BEREC to handle this topic prudently, and to avoid introducing new overly bureaucratic rules, which might end up harming competition rather than promoting it. Indeed, attempts to harmonize or modify national frameworks could upend carefully crafted interlocking rules, such as consumer protection measures, billing and accounting principles, retail and wholesale price caps, etc. that drive the regulatory set-up at national level.

MVNO Europe is therefore satisfied to note that BEREC's Draft Report is descriptive rather than prescriptive in nature, identifies no areas for harmonization, and that the sole envisaged follow-up action at this time is that "The same exercise will be considered as part of the BEREC Work Program in 2023" (paragraph 104 of the draft BEREC Report).

According to **MVNO Europe** one area that is absent from BEREC's Draft Report is the Value Added Tax treatment of the premium-rate services value chain. This is often very complex, driven by tax authorities' approach rather than by electronic communications regulation. Similar to ECTA's views, **MVNO Europe** warns that any attempts to harmonize or modify third party payment regulation could result in modifications of payment flows, and consequently legal uncertainty and unpredictable changes to Value Added Tax treatment, with potentially major negative effects for mobile operators including MVNOs. This further emphasizes the need for BEREC to exercise extreme caution in considering any harmonization.

MVNO Europe strongly advises BEREC to abstain from making any harmonization proposals relating to third party payment charges on mobile phone bills.

Three Ireland welcomes the BEREC draft Report on the handling of third party payment charges on mobile phone bills and the opportunity to respond. **Three Ireland** praises the draft BEREC Report on the handling of third party payment charges on mobile phone bills as it contains a useful assessment of the topic. However, **Three Ireland** would caution that innovation should not be unduly stifled. **Three Ireland** is concerned that over-regulation of DCB or trying to ensure that it fits within the existing PRS regulation could lead to innovation being stifled. Many of these new DCB arrangements involve partnerships between the operators and respected digital content providers. It is important that regulatory requirements can be communicated clearly at the outset so that propositions and IT builds can be tailored accordingly and operators can plan the timing for getting to market.

Vodafone Group Services Limited, or **Vodafone Group** also welcomes the opportunity to provide feedback to the Draft BEREC Report on the handling of third party payment charges on mobile phone bills. Vodafone appreciates the thorough review and comparative insights provided by BEREC. The Draft BEREC Report on the handling of third party payment charges on mobile phone bills provides a useful benchmark and insights into how Member States handle third party payment charges on mobile phone bills. At the same time, **Vodaphone Group** hopes that this activity is not only a fact-gathering exercise but will also inform BEREC policy initiatives post-EECC[1] implementation, which can be reflected in its next annual Working Programme.

Vodafone Group states that Pan-EU operators that make use of single platforms and centralised legal entities for the provision of related services would welcome a harmonised regime across EU related to Premium Rate Services (PRS) and Direct Carrier Billing (DCB). **Vodafone Group** sees this review as an opportunity for BEREC to further support the harmonisation of consumer protection principles, concept definitions, information collection and, most of all, DCB market growth.

Vodafone Group understands that BEREC recognized a fragmented legislative framework (including consumer protection measures) which is visibly present across all EU Member States and **Vodafone Group** would like to further illustrate this with examples from the EU markets where they operate. It still remains to be seen how the EECC adoption can stimulate DCB transactions and facilitate greater harmonisation moving forward.

It is impossible to discuss PRS and DCB without considering Directive (EU) 2015/2366[2] (PSD2) because this instrument plays a significant role in defining the current DCB market opportunities and operators' commercial considerations. Therefore, **Vodafone Group** would welcome a deeper assessment of the interplay between PSD2 and DCB applicable requirements, in light of the existing (and future) use-cases and DCB market growth. In **Vodafone Group**'s view, mobile should be further promoted as an alternative payment mechanism and that is not an option if it is over-regulated. The Payment Services regulatory framework has already limited mobile operators' ability to compete and unlock the potential of DCB model in entering new payment segments; **Vodafone Group** deems that this market can do more to balance appropriate regulation with the promotion of new legitimate business interests.

When it comes to consumer protection measures, self-regulatory industry initiatives (driven by good cooperation with regulatory authorities) have proven successful in some markets, addressing the lack of clarity and transparency concerns. As a result, the number of complaints has decreased significantly therefore **Vodafone Group** would like BEREC (and the NRAs) to continue supporting and promoting these.

The consultation is a good opportunity for BEREC to consider best practices that have been developed across markets and consult with stakeholders in the near future whether such examples (if needed) can be replicated more widely, to the extent that policy support does not come at the expense of market growth opportunities. **Vodafone Group** provides some more details on this and specifically look into the German approach as a good example of effective cooperation between the industry and the regulatory authority.

Vodafone Group also provides additional observations regarding the existing consumer protection requirements across their footprint in Europe (not captured in the draft report). At

[1] European Electronic Communications Code, Directive (EU) 2018/1972

[2] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

the end they make a few suggestions with regards to new definitions that should be included in Annex 1.

According to **Vodafone Group**, PRS have been around for a long time while the DCB (or Charge to Bill – C2B) related market has grown in the last years and is likely to continue growing at the same pace. As mobile phones become more essential for individuals, DCB has evolved in a simple, flexible and reliable way of billing customers when they purchase third-party digital content and services.

Vodafone Group operates a payment processing service which enables mobile phone subscribers to pay for selected third-party goods and services through their mobile pre-paid credit or post-paid bill. As mentioned in the report, DCB is used predominantly for low value purchases of digital goods like games and apps, including content (e.g. video or music) subscriptions.

From a technical perspective and related integration with partners, DCB models set-up can be through operator API, partner API or an approved third-party integrator. Different models impact roles and accountability between network operator and service partner. In any case, for all of **Vodafone Group's** partners (providers of digital goods and services, aggregators and app store operators), the DCB model reduces barriers to purchase, giving their customers a simple and virtually frictionless way to pay.

Wind Tre welcomes the opportunity to submit its views on the draft BEREC Report on the handling of third party payment charges on mobile phone bills and to present its ideas about the need for proper handling of third party payment services. In the view of **Wind Tre,** this is necessary to achieve a harmonized and sustainable European regulatory framework that will bring a growth of a single EU-wide market for PRS and DCB services.

Wind Tre believes that BEREC needs to clarify in the Report that in a large part of the European market, there are PRS and DCB services that can be described as follows:

- PRS offered via phone call (voice call) or text message (SMS/MMS) which are charged to the mobile phone bill at a higher rate than normal phone calls or text messages. (BEREC definition at point 20)
- DCB offered according to both:
    - o the model described by BEREC in the document under consultation in Fig. 2, which **Wind Tre** notes is low-value content, without a registration phase or authentication, and where the subscription is activated all through a single payment method being phone credit/bill
    - o a model described by **Wind Tre** in its contribution, which **Wind Tre** claims to offer high-value content, a recognized brand, including a registration and authentication process and multiple steps through customer recognition with several payment options, one of which is phone credit/bill.

According to **Wind Tre**, the second DCB model always includes a mandatory registration phase and the subsequent choice of a payment method from among those offered to the customer (credit cards, PayPal, telephone credit/telephone bill). For **Wind Tre**, the differences between this model and the one described by BEREC are numerous and significant.

According to **Wind Tre**, any form of preventive barring of DCB services (by default) would discriminate this method of payment from other methods, such as credit cards and/or PayPal, since the customer journey to reach the choice of payment method is always the same. Adding to the whole set of steps one more (*removal of the default barring for PRS/DCB services)* only for third-party payments on mobile phone bills would set up discrimination that could limit the adoption of such a payment method, damaging mobile operators and disadvantaging customers that could find phone billing easier to use and control.

In light of the above, **Wind Tre** believes it is important to make clear distinctions between different categories of services, highlighting the fact that the application of the preventive barring (by default) to DCB services is not necessary.

Wind Tre also asserts that harmonisation of numbering plans is definitively needed and urgent, because of differences to premium number ranges from country to country and suggests as an interim measure a European database with premium number ranges..

According to **Wind Tre**, wholesale carriers should be regulated and the procedures for handling economic exchange in case of fraud between EU operators need to be reorganised.

In respect to roaming and the ability to access PRS numbers and associated charges, the need for harmonized dispute resolution mechanisms in place in advance among operators and content providers was identified along with suggested rules of operation whilst noting the need to evaluate any anti-bill shock measures.

Wind Tre additionally advocates for transparency measures in respect to pricing and the role of the providers and content providers whilst noting the need to avoid imposing an unfair burden on operators. Obligation for transparency should be limited to publication of information on the operator’s website. The possibility to adopt more detailed solutions, such as applications, should also be available.

1.2 BEREC response

BEREC welcomes the stakeholder responses received to the public consultation on the draft report on third party payment charges, which is a deliverable as set out in the BEREC 2020 & 2021 work programs. The report is descriptive and its aim is to provide an initial frame of reference in the field of third party payment charges with a main focus on PRS and DCB.

In respect to the depiction in Figures 1 and 2 of the basic relationships and steps in the PRS and DCB transactions respectively, we acknowledge there are more complex models, players and parties to the flow of payments and services that exist at the individual national level. Whilst the generality of the schematics should accommodate for a variety of models, BEREC acknowledges that there can be variations according to the market and type of purchases involved.

For the same reason, BEREC does not think that in the context of this report (which is, as already mentioned, a fact-finding report), any judgement on the quality/security of the user experience or on the appropriateness of the measures in place in each Member State should be introduced, in particular since in many cases, the latter derive from national law and codes of conduct.

BEREC did not include Value Added Tax treatment of the premium-rate services value chain in the Draft Report as VAT is a tax charged on the sale of goods or services and is included in the price of the third party charge to the customer's mobile bill.

With regard to PSD2, BEREC notes that the services referred to in this report are not covered by PSD2 as far as they fall within the exclusions of Article 3 letter (l) of the same directive that relates to "*payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service"*; *"for purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill*; where "*the value of any single payment transaction […] does not exceed EUR 50 and" "the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month, or where a subscriber pre-funds its account with the provider of the electronic communications network or service, the cumulative value of payment transactions does not exceed EUR 300 per month".*

Therefore, given the nature of services and the level of charges typically applied to PRS and DCB services, payments through telecom operators do not fall under PSD2 and consumers cannot benefit from the enhanced protection against fraud and other abuses or payment incidents brought by PSD2. To this end, regulations, codes of conduct and any other consumer protection measures enacted in Member States with regards to PRS and DCB can be considered as complementary to the provisions of PSD2.

BEREC also notes that the simple fact that telecom operators that engage in third party payment services have to notify, on an annual basis, to the competent authority under PSD2 that they comply with the transaction limits does not imply that there is any overlap between financial and telecom regulations.[3]

[3] For more information see at https://ec.europa.eu/commission/presscorner/detail/en/MEMO_15_5793 the FAQ on the PSD2 and the guidance at https://eba.europa.eu/single-rule-book-qa/search as well as the Commission Implementing Regulation (EU) 2019/410 and the Commission Delegated Regulation (EU) 2019/411.

2. General Overview of major issues as set out in Section 2 of the Report (Question 1)

Question 1: Have you any specific observations in respect to the general overview of major issues as set out in section [2] of the report and split as follows:

1(a) Complaints and Enquiries in respect to Third Party Payments?

1(b) the presence and sources of definitions for PRS and DCB?

1(c) Responsibilities regarding PRS Calls, SMS and DCB?

1(d) Collection of Information in respect to PRS and DCB?

1(e) Are there any other major issues that have not been referred to in section 2 – 'General Overview' that should be considered in this report?

2.1 Description

This section of the report explores:

- Complaints and Enquiries in respect to Third-Party Payments; and
- The presence and sources of definitions for PRS and DCB; and
- The responsibilities regarding PRS Calls, SMS and DCB; and
- The collection of Information in respect to PRS and DCB; and
- Any other major issues that have not been referred to in section 2 – 'General Overview' that should be considered in this report.

2.2 Respondents' views

Three Ireland had no comments for this question and its sub questions.

2.2.1. Comments on question 1(a) – Complaints and Enquiries in respect to Third-Party Payments

Deutsche Telekom proposes to add information on "consumer profit" with regard to PRS and DCB. It is important to state that both use cases cover consumer requests to choose and use services from enterprises in different sectors in a simple way, which includes offering easy and suitable options to pay for these services. This includes for example to pay for parking tickets or tickets for public transportation via mobile phone bill.

According to **ECTA**, complaints in respect to third party payments do not appear to be increasing (BEREC's data at paragraph 34). **ECTA** does not have any further comments.

There are a number of examples of good practices across **Vodafone Group's** footprint that have not been captured in full in BEREC's report. **Vodafone Group** set these out below, as they are directly relevant to the reduction in the number of complaints that **Vodafone Group** have received in this area.

The DCB business model in Germany, as pointed out by **Vodafone Group,** is subject to a recently adopted decree[4] of BNetzA developed in cooperation with German MNOs. Parties have worked together for more than a year to identify effective measures for customer protection. The decree specifies several measures that will increase the transparency and safety for customers and reduce fraudulent behaviours of third party providers.

Another example provided by **Vodafone Group** is the UK, where the number of complaints has decreased substantially because of the following active mitigations:

- Inclusion of a one-time pin (OTP) on all subscription services; real time fraud management on DCB; PSMS only used for media competition entries;
- Constant agent upskilling programme to direct customers to merchant for support;
- Vodafone actively monitors all PRS adverts in the UK via a third party to ensure compliance to fair and reasonable standards to avoid false expectations being set to the customers. This also ensures compliance to the Phonepaid Services Authority (PSA) Code.
- Customer refunds: automated merchant direct to bill refunds available and Vodafone credits directly clawed back from merchant has improved post-sales support.
- PSA as the sector regulator provides backstop consumer support where issues of fraud are identified.
- Furthermore, the Payment Services Regulation of 2017 bars usage of services beyond a single transaction of £40 and monthly cumulative amount of £240. Services are also captured in the Bill Capping requirements under the Digital Economy Act 2018[5].

The third example of **Vodafone Group** is the Netherlands, where self-regulation and adoption of a Code of Conduct supported by the parties involved has helped to avoid issues and decrease the number of complaints[6].

2.2.2. Comments on question 1(b) – the presence and sources of definitions for PRS a DCB

According to **Vodafone Group** there are a variety of different definitions across their geographic footprint, which can vary between legislative instruments to industry self-regulation

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[4] "Allgemeinverfügung zur Festlegung von Verfahren zum Schutz von Verbrauchern im Bereich des Bezahlens über die Mobilfunkrechnung - Aufgrund von §§ 45d Abs. 4, 67 Abs. 1 Satz 1 Telekommunikationsgesetz (TKG) und § 35 Satz 2 Verwaltungsverfahrensgesetz (VwVfG)"

[5] As this is expected to apply across all EU, where companies do not have a Payment Services licence, it was surprising to see the variety of responses in the report from NRAs.

[6] More details can be found here: https://www.payinfo.nl/media/gedragscodes/97dd9786-982a-475d-b757-68b9a4887e99.pdf

instruments. Similarly, in some market clear definitions exist, and in some others do not. So, for example,

- In the Netherlands, definitions are being discussed between market players in formal self-regulation groups (like Vereniging COIN for PRS calls and Stichting Gedragscode Mobiele Diensten for DCB);
- In Germany, PRS are defined in the German Telecommunications Act (TKG)[7]. A definition of DCB does not exist. But there are two laws which contain provisions that are applicable to DCB although their scope is not restricted to DCB[8] (including the Payment Services Supervision Act which reflects PSD2 transposition). Also, there is no explicit definition of PremiumSMS.
- In the UK, there is a Controlled PRS definition in the 2003 Communications Act. DCB was caught under a voluntary industry scheme "Pay For It" that has been disbanded and replaced by individual operator codes with suppliers.

2.2.3. Comments on question 1(c) – Responsibilities regarding PRS Calls, SMS and DCB

Vodafone Group agrees with BEREC findings that the roles and responsibilities for PRS and DCB monitoring vary from market to market. Some additional good examples worth mentioning are listed below:

- In the Netherlands, a compliance office supervises whether market players adhere to the Code of Conduct for Premium SMS and DCB. In case of an alleged violation, the compliance office will bring the case to an Enforcement Committee[9].
- The German NRA has responsibilities regarding PRS, Premium SMS and DCB according to the provisions in the respective telecommunications law. If the DCB transactions would exceed the thresholds of PSD2, the German Financial Services Authority would also have responsibilities.
- In UK, with regard to Premium SMS and DCB, the merchant responsible for first line support and the network acts to resolve issues. PSA as the sector regulator provides backstop consumer support where cases of fraud are identified.

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[7] Services, in particular in the (0)190 and (0)900 number ranges, for which an additional service is provided in addition to the telecommunications service, which is billed to the caller together with the telecommunications service and which is not attributable to another number type

[8] Payment Services Supervision Act provides that: Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service: a) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or b) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets; provided that the value of any single payment does not exceed €50 and the cumulative value of payment transactions for an individual subscriber does not exceed €300 per month;

[9] The Enforcement Committee is an independent expert body, established and empowered by the Code of Conduct. Participating parties in the Code of Conduct are operators, SMS and mobile Internet gateways and content providers.

2.2.4. Comments on question 1(d) – Collection of Information in respect to PRS and DCB

Deutsche Telekom proposes to add that the collection of information in respect to PRS and DCB shall be proportionate and target-oriented and accordingly strike the balance between achieving regulatory objectives and reducing the data collection burden for market participants.

Vodafone Group in overall agrees with BEREC findings on this topic; there is a variety of information collected from market to market, and a considerable level of disparity between PRS and DCB information provision:

- In Germany, there are no specific provisions about collection of information with regard to PRS or DCB in the telecommunications law. BNetzA is however entitled in general to collect information from the network operators and service providers. It is worth referencing the new process in Germany where information collection focuses on number of customer inquiries, number of refunds issued, and number of refunds declined (including the respective reasoning). From 2022 and onward, the data provided to BNetzA must also contain all service providers that the complaint is referring to and differentiate between one-time-payments and subscription services. Cooperation with BNetzA on this topic has been highly effective and customer complaints related to DCB have significantly reduced.
- In UK, PSA is currently consulting to expand its formal data gathering powers. PSA already has detailed customer spend information and the ability to request information regarding specific services under investigation.

2.2.5. Comments on question 1(e) – Are there any other major issues that have not been referred to in section 2 – 'General Overview' that should be considered in the report

Deutsche Telekom proposed to add information on the existence of consumer protection initiatives, established by market participants besides regulation. **Deutsche Telekom** points out that it is important to be aware that mobile network operators as well as service providers aim to ensure safe use of services and to meet consumer interests regarding secure and transparent billing, as this is a precondition for PRS and DCB market existence and market development. Accordingly, market participants have implemented several voluntary measurements, which continue to be constantly developed and adjusted to keep markets clean. These measurements also lead to a significant decrease of consumer complaints.

According to **Vodafone Group**, there is a noticeable overlap with PSD2 and its micropayment requirements and the BEREC document findings related to PRS/DCB applicable limits in many markets. However, **Vodafone Group** observes that apart from stating that DCB is a payment method, BEREC has not further discussed this topic or brought additional clarity in this regard.

Vodafone Group provides an example of Italy where the PSD2 digital exclusion thresholds have entered into force through the Legislative Decree n. 218 of December 2017. These thresholds which go back to PSD2 requirements are effective for Germany as well and were implemented in German law in 2018 ("Zahlungsdiensteaufsichtsgesetz").

Vodafone Group elaborates further that PSD2 updated the digital exclusion under PSD so that providers of electronic communication networks or services can provide certain goods and services, up to given limits, without needing to be authorised or registered (Article 3(l), PSD2). The goods and services that fall under the exclusion are:

- Digital content, such as music and digital newspapers,
- Voice-based services, such as premium rate phone numbers,
- Tickets,
- Charitable activity such as donations.

Physical goods do not fall within the exclusion. As the intention is for the exclusion to be used for lower-value and micro-payments, individual transactions are excluded only if they do not exceed EUR 50 and the cumulative value of payment transactions for an individual subscriber does not exceed EUR 300 per month.

Vodafone Group states that these provisions have been replicated in several markets and influence the commercial activity and decisions of operators. It means that operators need to impose transaction limits and block transactions in accordance with regulatory requirements. Further on, they may have to send a notification to the regulator and provide an annual audit opinion, testifying that the activity complies with the said limits.

Vodafone Italy, for instance, has implemented these thresholds for all PRS and DCB purchased by mobile calls since 2019 and has put in place a monitoring system for the same services purchased by fixed calls in order to respect the PSD2 thresholds. In Italy, Vodafone reports to the Bank of Italy on an annual basis the total amount of transactions in terms of volume of subscribers and the value for purchase of the three categories mentioned above included all the digital and value-added services (DCB and PRS).

Vodafone Group observes the following issues in Italy, which have not been captured in the draft report:

- PRS unaware activations – This issue has been extensively debated in the last years with the Italian Authorities. For that purpose, since 2016, operators have been sharing with the NRA on a quarterly and monthly basis the data on PRS activations /deactivations/revenues and others. This has led to a decreasing trend regarding PRS activations, also considering the measures adopted in order to address the issue. In February 2021, the Regulatory Authority adopted the new legislation regarding VAS (understood as PRS and DCB), setting out – both for new SIMs, and for the customer base – the default block to PRS and digital content services subscriptions charged directly on telephone billing. A series of services including televoting, mobile ticketing and banking SMS are excluded from this block.
- Blocking – Regarding digital content services default blocking, in Italy operators are trying to challenge the extension of default barring to these services, considering that: (i) no customer complaints have been received and (ii) these services have a specific activation process that excludes the possibility of unaware activation.
- Consent – The new 2021 NRA resolution sets out a procedure comprising the sending of a One Time Password (OTP) on the subscribers' number which increases security and consumer protection.

2.3 BEREC response

BEREC welcomes the stakeholder observations in respect to the general overview of major issues as set out in section 2 of the Report.

Regarding the request for comments on question 1(a) - *Complaints and Enquiries in respect to Third-Party Payments,* the report is based on information regarding NRA complaints and not complaints from providers in the market. Third-party payments as set out in the background to the report have evolved from the traditional PRS and as evidenced by the studies and reports set out in the literature list, mobile online payments including DCB are extensive and varied. In relation to the proposal to add information to the Report on "consumer profit", it should be noted that while an end-user may benefit from the convenience of accessing PRS and DCB to pay for a wide range of goods and/or services, such convenience can turn into inconvenience where there is a lack of end-user protection (which could result in unwanted subscriptions or high, non-transparent tariffs and a subsequent bill shock).

Regarding comments about NRA and MNO co-operation on self-regulation in one Member State, it should be noted that such comments reflect actions taken at a national level in a Member State while the BEREC Report captures a pan-European view of the market.

In respect to the subscription services of the PRS market, there are some authentication problems, especially through the usage of “pin” in web pages, which are accessed by laptop or tablet. Authentication problems also may appear in DCB transactions through mobile phone. It is worth mentioning that for online payments, which are supervised by financial institutions (under PSD2 Directive), the authentication process takes place prior to the payment execution. In contrast, the DCB payments follow a different process that may also result in unknowing and unwanted subscriptions as well as in charges for end users for amounts up to the threshold limits.

In relation to the request for comments on question 1(b) - *The presence and sources of definitions for PRS and DCB,* BEREC notes that there are no common definitions in the EU and that, at a general level, some service providers have adopted more stringent measures but the BEREC Report captures a pan-European view of the market.

Regarding the request for comments on question 1(c) - *Responsibilities regarding PRS Calls, SMS and DCB,* BEREC acknowledges Vodafone Group's agreement that the roles and responsibilities for PRS and DCB monitoring vary from market to market and notes the examples provided.

In relation to the request for comments on question 1(d) - *Collection of Information in respect to PRS and DCB,* BEREC understands that there is a variety of information collected from market to market, and notes Vodafone Group's comment that there exists some disparity between PRS and DCB information provision with examples provided.

Finally, regarding the request for comments on question 1(e) - *Are there any other major issues that have not been referred to in section 2 – ‘General Overview’ that should be considered in the report* – additional information in respect to PSD2 is now included in the report.

3. The summary of NRAs ranking of the key information elements, set out in Section 3 (Question 2)

***Question 2: Do you have any comments or observations regarding the summary of NRAs ranking of the key information elements, set out in Section 3?* Please clearly reference the measure and paragraph number when responding to this question.**

3.1 Description

This section of the report examines consumer protection measures and includes information on:

- Information and transparency measures or tools
- Detailed billing
- Available services
- Blocking
- Threshold amounts
- Alert services
- Spend reminders
- Consent
- Unsubscribing
- Cancellation
- Guaranteed minimum service
- Refunds
- Complaint filing

3.2 Respondents' views

Three Ireland had no comments to this question.

Deutsche Telekom comments that the presentation on the consumer protection measures as set out in section 3 is informative and comprehensive. Nevertheless, **Deutsche Telekom** advocates it is important to state that the report provides a helpful description of potential consumer protection mechanisms but should not be interpreted as prejudice for further regulatory measures.

According to **Vodafone Group**, in paragraphs 60/61/64/65 of the Draft Report (deactivating PRS/DCB) it is not entirely clear what is meant by deactivation of the service[10]. Theoretically

[10] According to the definition included in "Annex 1" of the Draft Report, "Deactivation" means the facility for end-users to deactivate the ability of third-party service providers to use the bill of a provider of an internet access

speaking, end-users cannot prevent third party service providers to use the bill of mobile service providers to charge for their products or services; however, they can achieve the same result simply by blocking PRS and DCB.

Vodafone Group observes the following in Portugal, which has not been reflected in BEREC's report:

- mobile service operators do offer the possibility to end-users to deactivate/block PRS in writing or via another durable medium (obligation set out in law) and DCB via customer area or customer support;
- a similar situation refers to Blocking Facilities (Paragraph 73): mobile service operators do offer the possibility to end-users to block specific number ranges (obligation set out in law) and specific types of DCB;
- Transparency (Paragraph 105): the mobile industry has managed to significantly reduce the number of complaints and customer dissatisfaction on these services by increasing transparency and the information provided to the end-user before the service subscription and implementing technical measures to ensure the end-users give their express consent to the use of their phone bill to charge third party services.

Vodafone Group states that all of these have been achieved by a self-regulation instrument in Portugal – more specifically a Code of Practice on Wap Billing (C2B services) –, which outlines several rules regarding the provision of these services, notably that the customer must be presented with a page stating the name of the service, its recurrence and price (amongst other information) before concluding the subscription of these services. This Code of Practice in Portugal was adopted in April 2018 and since then the number of complaints has dropped significantly.

Vodafone Group observes the following in Italy, which have not been reflected in the Draft Report:

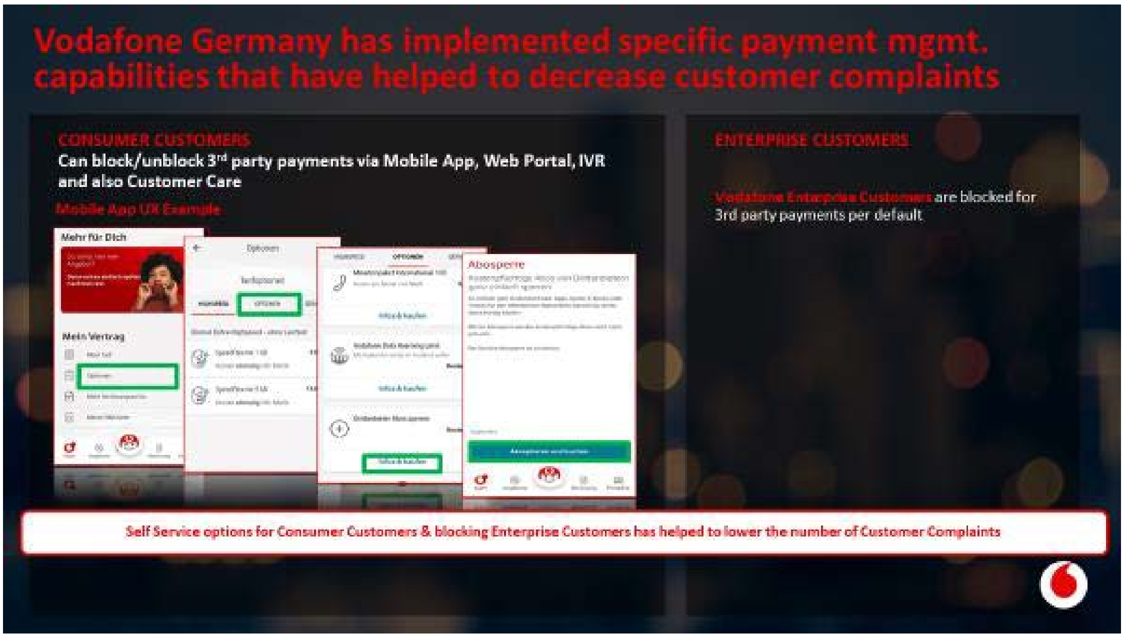
- 3.3 Available services – we provide customer support related to PRS and DCB, through My Vodafone App for services deactivation and for information related to the services charged .
- 3.11 Guaranteed minimum service – as for the obligation to give the option to the subscriber to pay telecom services excluding PRS and DCB charges, Vodafone provides for invoices with separate costs ensuring billing transparency to its customers.
- 3.12 Refunds – Vodafone Italy has in place an ad hoc policy named "Soddisfatti&Rimborsati", which allows customers to be reimbursed for PRS even without any evidence that the activation has been unaware/unconscious.

According to **Vodafone Group** in addition to the measures that were already stated for the German market in the BEREC report, the following measures are in effect (and which were not highlighted in the report):

service or a provider of a publicly available interpersonal communications service to charge for their products or services.

- 3.1 Service acceptance process and 3.8 Consent – The BNetzA decree previously mentioned demands that subscription services can only be charged if the customer was redirected to an MNO landing page (MNO-Redirect) and has given double consent on the MNO landing page[11].
- 3.4 blocking – Vodafone customers can conveniently block third party billing with different options:
    - o Block all third party providers from charging their mobile phone bill;
    - o Block only subscription services but leave one-time payments available;
    - o Block all third party providers with nominated exceptions (e.g. AppStores)

Vodafone Group informs that customers can manage these options conveniently in the “MeinVodafone App”.



- 3.12 Refunds – responsible party – As stated in the BEREC report, the German MNOs are obliged to refund, but so are the third party providers. In general, the third party providers are responsible for handling customer complaints and they are obliged to refund amounts in question because the contractual relationship for the content purchase is concluded between the third party provider and the customer.
- 3.13 complaint filing – Customers can file complaints at all authorities mentioned in the draft report. German MNOs are cooperating closely with BNetzA to resolve complaints filed to them. Information on how the complaint cases were resolved, if refunds were issued and if services were blocked from charging via DCB is reported to BNetzA on every single case.

[11] Detailed information regarding the service and the price of the service are shown on the website of the third-party content provider and customer’s first consent is the buy-button on the website of the third-party content provider.

Vodafone Group provides information that a stop command is already in place in the UK. The key to the complaint process is that the customer should go to the Merchant first. If the Merchant cannot remedy, then the network acts as a backstop and recovers any refunds from the Merchant. At that point, the customer also has access to the network's complaints process and Alternative Dispute Resolution. The regulators then provide ultimate backstops.

3.3 BEREC response

BEREC welcomes stakeholder's comments and/or observations regarding the summary of NRAs' ranking of the key information elements, set out in Section 3. Clarification has been included with respect to cancellation periods, deactivation and blocking/barring in the final report.

As similar to other reports that capture the 'state of the nations' in all Member States at a point in time, this third party payments report is based on data collected in 2020 and offers a helpful description of consumer protection measures but should not be interpreted as being indicative of areas where specific regulatory future action may arise.

BEREC welcomes the information provided in respect to the Portuguese market and will include it in the Final Report.

BEREC notes that both third party providers and MNOs in Germany are responsible for handling customer complaints and processing refunds and this has been noted in the Final Report.

4. Definitions contained in Annex 1 and the literature list contained in Annex 3 (Question 3)

Question 3 (a). **Are you of the opinion BEREC should amend, add or delete definitions contained in Annex 1? Please detail the changes you suggest and explain your answer.**

(b) **Are you of the opinion BEREC should add other European or International Reports/Studies/Position Papers to the literature list contained in Annex 3? If so, please specify the URL where they can be found.**

4.1 Description

This section of the report details the definitions used by BEREC in the Report (Annex 1) and a list of European or International Reports/Studies/Position Papers on the subject matter of third party payments BEREC has compiled and summarized (Annex 3).

4.2 Respondents' views

Three Ireland had no comments for this question.

Deutsche Telekom had no comments for this question.

Although these services are already defined in the report, **Vodafone Group** believes it would be helpful to include a definition of both PRS and DCB services in Annex 1. As an example, in Italy, the following definitions are being used:

- Premium rate services (PRS): a subset of Value-Added Services as services offered via phone call (voice call) or text message (SMS/MMS) which are charged to the mobile phone bill at a higher rate than normal phone calls or text messages.
- Direct Carrier Billing (DCB): digital content services, or other products or services, charged directly to the end-user's mobile phone bill. It can also be referred to as direct operator billing/third party billing.
- It would be useful to add the definition of "Access Provider" as well; a useful example is provided in the Italian Premium Service Code of Conduct (CASP): Access Provider – network operator who provides internet connectivity and / or mobile internet to the Customer issuing the billing invoices

Furthermore, since the redirect to an operator's payment page is an important measure in Germany in order to provide, track and verify the customer' s consent to a transaction, **Vodafone Group** states the Redirect should be also defined and explained in Annex 1.

Lastly, **Vodafone Group** would like to make a more general remark on the need to standardise the words/terms that are used in this area. For example, throughout the draft BEREC report there are numerous references to "blocking" and "barring" indistinctively in a way that seems these two terms are being used interchangeably. If this is the case, unification of the terminology is welcomed to avoid different interpretations. If, however, these words are meant to have distinct meanings, the two different definitions (blocking and barring), should be addressed and clarified in the Annex.

With regard to the literature list, **Vodafone Group** provided the information that the German NRA issued a press release on 29th of December 2020 stating that regulatory actions were showing positive effects on the German DCB market:

„The Federal Network Agency's definition of specific requirements for paying via mobile phone bills came into effect in February 2020. As a result, the number of complaints about third party mobile services has fallen significantly. The level of complaints is currently around 25 complaints per month, which is only one third of the previous year's average."

The full statement can be found here (in German):

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2020/20201229_Rufnummernmissbrauch.html".

4.3 BEREC response

BEREC welcomes stakeholder's contributions on whether BEREC should amend, add or delete definitions contained in Annex 1. BEREC notes Vodafone Group's request and has included a definition of both PRS and DCB services in Annex 1 but does not consider it necessary to define Access Provider or Redirect. BEREC has also streamlined the use of "blocking" and "barring" in the final Report.

BEREC also welcomes stakeholder's contributions on whether BEREC should add other European or International Reports/Studies/Position Papers to the literature list contained in Annex 3.

BEREC again notes that the BEREC Report captures a pan-European view of the market and therefore has not included information on actions taken at a national level in a Member State.