

ECTA POLICY POSITION

ENABLING SERVICE DIFFERENTIATION FOR THE BENEFITS OF CONSUMERS THROUGH THE UNBUNDLING OF LINE ACTIVATION AND FAULT REPAIR SERVICES

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THE ISSUE

Fixed broadband consumers may have different quality of service requirements when it comes to line activation and fault repair, depending on their needs. However alternative operators (Altnets) have limited control over the quality of the service provided to end-users because they are unable to self-provide or sub-contract those tasks, which are controlled by the incumbent.

A level playing field is needed in order to ensure that all operators are able to compete on quality of line activation and fault repair services delivered to end-users.

ECTA'S POSITION

The unbundling of line activation and fault repair services (i.e. the possibility for Altnets to provide such services using their own personnel or outsourcing their provision to external contractors) should be promoted as an additional ancillary remedy to be mandated in particular in the currently defined market 3 (a), market 3 (b) and market 4¹ and any replacement markets going forward.

This will deliver consumer benefits and enhance competition, through service differentiation, innovation and customer satisfaction, while limiting the scope for discriminatory practices. It will also lead to increased network management efficiency and performance.

More generally ECTA considers that, wherever feasible, Altnets should be able to use their own contractors to carry out technical activities for other fixed access services.

¹ Markets listed in the Annex to the Commission Recommendation of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services, OJ L 295, 11.10.2014, p.79.

BACKGROUND

Line activation and fault repair are essential services for the provision of all fixed line services and particularly so for Altnets providing retail fixed broadband services by means of LLU or other wholesale access services over the incumbent's network. The quality in the provision of line activation and fault repair is, in fact, a key element in order to allow Altnets to compete effectively in the retail fixed broadband market and for converged offers.

In most EU countries, line activation and fault repair are provided exclusively by the incumbent, using its own personnel or external contractors. The incumbent provides line activation and fault repair at regulated terms and conditions, often included in the reference offers.

The current system is problematic for consumers and Altnets and for competition in general, as it:

1. Prevents the offering to customers of different levels of quality

As activation and fault repair services are provided exclusively by the incumbent based on regulated conditions, there is little possibility for an Altnet to differentiate its service based on the quality and features of line activation and fault repair. Altnets are *de facto* prevented from competing on the quality of after-sale services. This is detrimental to consumers, such as businesses, who may require better, tailored service levels.

2. Creates opportunities for discriminatory behaviour

The provision of line activation and fault repair services by the incumbent operator may give rise to discrimination in terms of the quality of the services provided to Altnets.

Incumbent operators do not have an incentive, for competitive reasons, to provide timely and efficient line activation and fault repair services on Altnets' customer lines. Altnets frequently experience delays or unjustified rejections during the activation process and in the process of fixing technical problems on the line. These entail important anti-competitive effects to the detriment of Altnets and ultimately to the detriment of consumers.

3. Has inherent inefficiencies

Even if the incumbent does not adopt a strategic anti-competitive behaviour when providing line activation and fault repair services to Altnets, lead time

for line activation is by definition longer for Altnets' customers than for the incumbent's customers because the process involves the intervention of both a technician sent by the incumbent and one sent by the Altnet (a 'two step' process). The same goes for fault repair: since two different technicians are in charge of fixing technical issues on different segments of the line, faults on Altnets' customer lines are seldom fixed by means of one sole intervention and require coordination between competitors.

BEST PRACTICES AT EU LEVEL SHOW A WAY FORWARD

In many countries, incumbent operators already make extensive use of external contractors - rather than their own personnel – for the provision of line activation and fault repair services. In general, the incumbent operator has an exclusive contractual relationship with the external contractors, thus preventing Altnets from establishing a direct relation with those same contractors.

The unbundling of line activation and fault repair services - i.e. the possibility for Altnets to provide such services using their own personnel or outsourcing the provision to external contractors authorized by the incumbent to work on its network - **would be the most effective solution to the above problems.**

Some examples:

The Belgian case

In order to prevent inefficiencies and discrimination in the activation process, in 2011 Belgacom and the Belgian regulator BIPT agreed on a process which allows Altnets to use their own personnel or subcontractors for interventions on the Belgacom network for line activation of new Altnet customers. The process is known as 'Certified Technicians'.

A 'Certified Technician' is defined as *'Any technician employed by either by a Beneficiary [OLO] or by one of Beneficiary's subcontractors, trained and certified by Belgacom in order to perform, in place of a Belgacom technician, the installation of the [service] lines'*.

Destiny, a service provider operating in Belgium, makes use of its own 'Certified Technicians' for line activation of its customers².

² <http://datanews.levif.be/ict/actualite/destiny-premier-operateur-telecom-avec-des-techniciens-certifies-belgacom/article-4000040029950.htm>. More information about Destiny can be found at www.destiny.be.

Maintenance services in Italy

Based on a private agreement between Telecom Italia and Altnets, whenever Telecom Italia (TI) uses external contractors to repair Altnets' lines, Altnets may hire directly the same contractors to perform the repairs in the segment of the line under their responsibility, hence accelerating the fault repair lead time.

However, currently:

- TI is not formally obliged to use external contractors and is increasingly and strategically withdrawing the use of external contractors for line activation and fault repair of Altnet lines in specific areas – hence reducing the opportunity for this cooperative approach to work.
- Altnets are not allowed to enter into a direct contractual relationship with the contractor for the line activation and the fault repair of the part of the line under TI's responsibility.

WHAT CAN BE DONE AT THE EU LEVEL? ECTA'S POSITION

Current best practices, particularly the Belgian case, show that **it is possible for NRAs to impose the unbundling of line activation and fault repair services as a regulatory remedy**. Further, considering that in many Member States fixed incumbent operators already outsource the abovementioned services to third party companies, there is no reason why the same third party companies should not provide services directly to Altnets, thereby bypassing the exclusive ordering system of the incumbent and thus promoting a level playing field, a more efficient process and allowing service differentiation to the benefit of consumers.

It goes without saying that the possibility to unbundle line activation and fault repair services must constitute an option for Altnets, which the latter can decide to benefit from or not. The obligation for SMP operators to provide line activation and fault repair services as ancillary services to the provision of wholesale access services must therefore be maintained and these services should in any case be provided by incumbents at efficient prices.

Potential inefficiencies and discrimination may also arise in the context of other technical activities carried out by incumbents for other fixed access services. ECTA is therefore of the view that, wherever feasible, Altnets should be able to use their own contractors to carry out technical activities for other fixed access services.

In light of the above, ECTA will:

- raise awareness to BEREC, the European Commission, and user associations (e.g. BEUC, INTUG) of the advantages of giving Altnets the possibility to provide line activation and fault repair services by means of their own certified technicians or by outsourcing such services to external contractors;
- promote *vis-à-vis* NRAs the mandating of unbundling of line activation and fault repair services as an additional ancillary remedy to be mandated in current market 3 (a), market 3 (b) and market 4 and any replacement markets going forward; and
- promote the ability of Altnets to use their own contractors to carry out technical activities for other fixed access services, where feasible.

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