

Consultation on Legal and Administrative Barriers to the Cross Border provision of communications services for the Business market

Response from the International Telecommunications Users Group (INTUG)

Introduction

INTUG is pleased to contribute to the consultation on legal and administrative barriers to the cross border provision of electronic communications services for the business market. The December 2009 BEREC Report noted that “conceptually it is possible to distinguish high end business user needs”, following a survey which INTUG helped to conduct.

In previous submissions, INTUG has highlighted priority issues of concern, including:

- the inappropriateness of using consumer market analysis for business users
- the special factors arising from multi site and cross border connectivity needs
- the regulatory risks of sub-national geographic segmentation and deregulation
- the continuing dysfunctionality of the international mobile services market
- the potential for loopholes in the interpretation of the NGA Recommendation
- the oversimplification of broadband definition using headline downstream speed
- the risk of anti-competitive service quality issues arising from traffic management

Executive Summary

INTUG continues to believe that the absence of a competitive market for effective and efficient international communications services for business users proves that there are still significant barriers to such service provision. These are not limited to administrative and legal barriers. They also include inadequate regulation of access services, resulting in continuing discriminatory provision by ex-monopolies with continuing and growing SMP. In summary, due to a lack of harmonisation and consistency across the EU, a single market for communications services does not exist.

The next five years will experience rapidly accelerating take up and growth in business use of many new e-applications and technologies, in public and private institutions, for which the current fragmented European regulatory landscape is unsuited.

If the current legal and administrative barriers to cross-border business applications are not addressed urgently, this will put Europe at severe economic and social disadvantage, expressed increasingly in the phrase “the cost of non-Europe”. These include, but are not limited to: public and private business use of mobility; social networking; cloud computing; very high speed bidirectional fixed/wireless broadband, 4G/LTE mobile communications and roaming internationally on new devices like tablets and multifunction handhelds.

INTUG believes that a specific legal and administrative regime needs to be established to achieve these aims, without damaging the value of the existing regulatory framework for the mass-market domestic individual consumer.

Responses to Specific Questions

Question 1: Implementation of Authorisation Regime

Under the current authorization regime laid down by the 2002 Authorization Directive (and substantially confirmed by the 2009 review), the ECNS operators are entitled to start activities upon notification/declaration to the NRA.

1a - What is your experience of the practical implementation of the administrative regime?

1b - Did you encounter inconsistencies or operational constraints, potentially affecting the provision of cross-border business services?

INTUG Response

1a: Business user experience of the practical implementation of the authorisation regime can be summarised as a fragmented patchwork of national regulatory islands, based on inconsistent interpretation and barriers to cross border e-trade. This is especially the case for international mobile services.

1b: Multinational companies experience many inconsistencies in the provision of cross-border business services including: taxation of elements of communications service provision and of service providers; tariff structures (where set up costs on per minute call charges are bundled in some cases, and roaming thresholds are implemented inconsistently); MTR reductions not being passed through to customers in retail rates; MNO/MVNO licensing and service limitations (e.g. blocking of Skype and/or VoIP); fixed communications services, especially when other service providers require last mile access from the national incumbent.

Question 2: Best Practice for Cross-Border Services

As far as the administrative regime is concerned, can you identify some national best practice across Europe, which may help in supporting the provision of cross-border business services?

INTUG Response

2: INTUG believes areas where administrative best practice exists in some Member States, but where others are poor and/or inconsistent, include: authorisation of dark fibre schemes; implementation of emergency services; network neutrality and traffic management transparency guidelines; security and privacy principles; positive and prompt action in approving MVNOs; rapid processing of appeals; and spectrum allocation which fosters harmonisation and scope for pan-European MNOs.

The rapid emergence of cloud computing will impose additional responsibilities for regulation throughout the EU to ensure adequate quality, reliability and accessibility of services are achieved within a competitive environment in which there is no risk of vendor lock in through vertically integrated service delivery.

Question 3: Inconsistent Administrative Procedures

Besides the authorization system, are there any other differences in administrative procedures in the area of telecommunications that may affect the provision of business services across Europe?

INTUG Response

3: Business users suffer consequences of inconsistent administrative procedures for business services in many areas, including: unified communications standards; SIP trunking standards; blocked access to national mobile number data bases for routing international incoming calls; (non)implementation of international freephone numbers and inconsistent implementations of non-geographic numbering schemes (e.g. the 03 range introduced in the UK as a replacement for 0870 and 0845);

The Commission's consultation on future harmonisation of numbering resources for business services acknowledges the separate needs of the business service market, and a desire to facilitate cross-border non-geographic numbers (especially e.g. between Northern Ireland and Eire and other countries with close historic links). Creation of corporate numbering space in some Member States tried in the past to address this issue, but numbering decisions in the future must be taken at BEREC level, as it has a major impact on international businesses, especially in terms of cost when numbering schemes are changed.

Question 4: Specific Administration Regime for Cross-border Business Services

Do you believe that the provision of cross-border business services could be subject to a specific administrative regime?

4a - If so, for which reasons and under which legal basis?

4b - What should be the special features of such regime?

INTUG Response

4a: Yes. The current administrative regime is too geared to the single site, mass market, domestic user and hence does not address many issues applicable to cross-border business services.

The Relevant Market analysis process only addresses national markets rather than pan-European, and analysis focuses on the economic impact on single site users. This overlooks multi-site user consequences, e.g. from sub-national geographic deregulation and broadband service definitions which are inadequate in QoS terms for business users. Removal of Market 15 also eliminated the only vehicle available for justifying remedies for cross-border services such as pan-EU MVNOs.

Rapid growth in machine-to-machine communications (the "Internet of Things") will demand a legal and administrative regime which ignores national boundaries within the EU in the same way that IP addressing schemes are geographically unaware.

4b: A cross-border services administrative regime would have to be at BEREC level, rather than being implemented by NRAs individually, and would therefore have to be BEREC proposals to the Commission for Directives. It would have different metrics for minima for services (e.g. for broadband), consistent rules for security, data protection, privacy, and copyright, which would be applied cross-border.

Confidentiality

Nothing in this document is confidential. The contents may be considered as in the public domain, and available for distribution. They are based on regular consultation by INTUG with its member associations, and their members, of draft documents prior to submission.

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About INTUG

The International Telecommunications Users Group (INTUG) represents the interests of business users of telecommunications globally. These include some of the world's largest financial institutions, car manufacturers, pharmaceutical companies, fast moving consumer goods enterprises, and retail and distribution companies. They also include small and medium enterprises, who are increasingly dependent on telecommunications services.

The INTUG community includes user associations in many large Member States, including Belgium, Denmark, France, Germany, Spain, the Netherlands, Sweden and the UK, and the multinational user group EVUA. Each represents both public and private business customers of telecoms operators, both directly and indirectly through service providers. INTUG is an association established in the Netherlands, governed by an elected Board.

INTUG was established in 1974, with close links to user groups throughout the world, in countries as diverse as Australia, New Zealand, Hong Kong, Indonesia, India, Korea, Mexico, Norway, Switzerland, and South Africa. INTUG also has a signed Memorandum of Understanding with the Commonwealth Telecommunications Organisation (CTO).

INTUG has permanent observer status at the ITU, participant status in APECTel and CITEL, chairs a user group in ICANN, and is an expert group within the OECD/CISP.

INTUG engages actively with the European Commission and Members of the European Parliament, and has made submissions to many EU regulatory consultations and events.