Vodafone response to BEREC's call for contributions on possible existing legal and administrative barriers with reference to the provision of electronic communications services for the business segment

Vodafone welcomes comments or questions on the views expressed in this submission. They should be directed to Giulio Maselli at giulio.maselli @ vodafone.com

Vodafone welcomes BEREC's public consultation on possible legal and administrative barriers to the provision of services to the business segment in more than one EU country. Cross-border services are common to all segments of the market. The typical example is international roaming offered to both the business and consumer customer base. However, the segment of the industry providing services to the business segment is particularly exposed to legal and administrative barriers (and other regulatory barriers), because many companies have offices in locations in various EU countries. The consumer segment, instead, is generally interested in electronic communications services in a specific country only[1].

The BEREC consultation is focussing on barriers to start operation in a specific country (i.e. obtaining and managing a general authorisation). However, there are a number of more general issues related to the different regulatory regime applied in different countries that affect much more the provision of services to business users. They include[2]:

- Numbering
- Emergency calls management
- Number portability
- Legal interception and data retention
- Data protection
- Transparency and customer protection rules
- (Lack of) regulation of Over The Top services

The first section of the document will focus on more general regulatory barriers that affect the provision of electronic communications services in the market. The second part provides the answers to the specific questions of the consultation.

Section 1: General regulatory barriers to cross-border services

Regulatory barriers to cross-border services can be divided into three categories:

1. Barriers that affect the final service offered to the customer (lack of a uniform service): These will imply that the business/corporate user will receive a different service in each location where the company is present. They include numbering, transparency and customer protection and data protection. These issues are the most important ones because they will hamper the provision of a uniform service to the user. The importance of these issues is likely to increase substantially as operators are starting to offer M2M services that for their nature require a uniform service to be offered across Europe.

[1] The most notable exception is international roaming that is used by consumers abroad. However, international roaming benefits from an exemption from normal general authorisation rules in the hosted country. This greatly facilitates the cross-border provision of such services

[2] While relevant barriers could include spectrum assignment and management rules, this response will not analyse them as the 2009 regulatory framework does not provide tools to remove them

2. Barriers that affect the technical and operational modalities to offer a specific service: Differences in the data retention and legal interception rules, obtainment and management of general authorisations, administrative authorisation fees, emergency calls routing and data protection rules among various Member States will increase the complexity and costs related to the offering of services, but they will not affect the service used by customers. From the regulators perspective, they are less important, but they will increase the cost base of the operators and, in the end, increase prices for the end users.
3. Barriers that affect the competitiveness of the sector compared to adjacent industries: The business and corporate communications market is part of a larger where IT and internet players are offering similar IP based communication services to the same customers. Being based over IP, most players are *de facto* not currently subject to most of the regulatory obligations (and barriers) faced by telco operators with whom they compete with.

The rest of this section will analyse the specific barriers in detail. It is clear that it will impossible, and inefficient to remove all the differences in regulation in the EU. In many instances, such different regulatory approaches are perfectly justified by different market situations. However, analysing how these differences will affect cross-border services might help to reach a more favourable regulatory environment.

Numbering issues and emergency calls management

The 2009 EU regulatory framework foresee only general principles for the assignment, management and use of numbers. Some technical matters have being dealt at ITU and CEPT level. However, many of the regulations are often only general guidance instruments that are them need to be implemented by national authorities. Both the BEREC and the EC (with the exception of the recent consultation on a EU wide numbering range) have left the regulation of numbering to NRAs/national ministries.

A notable example is related to the use of geographic numbers. These numbers are particularly important for the provision of services to corporate customers as they are still the main contact for corporate users (the use of mobile telephony is still not as common as in the consumer market). Some countries allow the use of such numbers on the whole national territory (for example, a 020 geographic number theoretically identifying the area of London can be used on the whole UK territory), while other put stringent limitations in their use (for example, in Spain, a geographic number can be used only in the relevant geographic area). This different regulatory approach will require the operator to develop different technical/operational solutions for each area and the specific corporate customer will receive a service that is limited and different in some specific countries.

Similarly, the management of emergency calls differ substantially from country to country. Not only the specific numbers are different, but also the routing of the calls, the call set-up information, the caller location information interfaces differ substantially and require an adaptation of the platforms to local requirements. This factors increase the cost base that could then be reflected on end-customer prices. This is an area where the development (and actual implementation by relevant authorities) of technical standards could reduce the costs of implementation.

As corporate services become more complex, corporate users require more flexibility and mobility, diverging numbering rules will increase costs for operators, limit innovation in the corporate market segment and potentially move services to IP based platforms that do not require numbers. However, these platforms are generally not interoperable thus potentially limiting competition in the market.

Number portability

All services providing numbers to users are subject to number portability requirements. The categories of numbers covered include geographic numbers, mobile numbers, free-phone numbers and premium rate numbers. All of them are likely to be used by business/corporate customers.

General portability principles are provided by the 2009 EU Directives, but the implementation is left to the decisions of NRAs. Each category of numbers will be subject to a different number portability procedure with different technical requirements, processes and interfaces which will then be multiplied by the number of EU Members States. In addition, bilateral or multi-lateral agreements will have to be signed with each operator in the market.

The result is a high level of complexity and costs. There is no easy solution in this area as most systems and processes have been already implemented. However, a more converging approach in this area including the use of standardised solutions could have a positive impact in the longer term.

Legal interception and data retention requirements

Legal interception requirements and access to traffic data/customer information are considered a national security matter and, as such, are defined at national level by governments. The inevitable consequence is a patchwork of different obligations that require internal procedures to manage them and investments in technical supporting platforms that need to be hosted within the country (no centralisation is allowed by national authorities). Again, this does not affect directly the service offered to customers, but the outcome is an increase in costs and complexity for the operator. Even though national security issues are involved, workable solution to reduce implementation costs should be pursued.

Data retention requirements generate similar issues. While the general principles have been harmonised at EU level, the detailed definition of the requirements (including the timeframe for retention) and the technical specifications are provided by national governments or authorities. Also in this case, data to be retained will generally have to be hosted within the country (or in any case to be made available to relevant authorities at national level). In this area, the definition of a standardised approach to data retention technical requirements would help to reduce costs.

Data protection:

The general EU data protection regime for the electronic communications sector is set by the e-Privacy Directive revised in 2009 and the Data Protection Directive. Both directives contain specific and detailed requirements, but also general principles that national privacy authorities implement at national level via regulatory decisions applicable to undertaking operating in the country.

Also in this case, this has had the consequence of different obligations and approaches to privacy requiring customer data management systems to be customised in each country where an operator

offers services. In some cases, the differentiated approach requires also adjustment to the network services themselves (for example, this is the case for management of CLI presentation/restriction, treatment of so called malicious calls).

In some instances, these different rules will affect the provision of the service. For example, more flexible and innovative approaches to data protection management that can be implemented without impacting the rights of users could facilitate the provision of facilities such as mobile advertising or mobile analytics applications some countries. A more traditional approach could instead negatively affect or even block their provision.

A more convergent approach in this area is essential taking into account that most of on-line services are cross-border by nature.

The implementation of the recent changes to the e-Privacy Directive (notification of data breaches and user consent to cookies) will be a test on the capacity of European institutions and national regulators to provide a EU-wide and coherent approach that could avoid further complexity to the provision of cross-border services:

- Data breaches notifications: different procedures or systems in each country could increase the complexity. The European Commission consultation in this area provides a clear opportunity and it is, therefore, welcome. In addition, these rules are of vertical nature and they apply only to electronic communications operators, while any other on-line service provider would not be subject to the same rules. The upcoming revision of the horizontal Data Protection directive should rectify this.
- User consent to cookies: on this matter, taking into account that on-line services are by nature cross-border, a common approach at EU level is essential. The European Commission guidance given to COCOM is a step forward, but further initiatives are needed

Transparency and customer protection rules

In the last years, national regulators have added layers of customer protection and transparency requirements that have been implemented by electronic communications operators. The recent 2009 regulatory framework has also increased the powers of NRAs in this area.

They include:

- Customer care obligations
- Tariff transparency tools
- Pricing structure obligations
- Content of customer contracts and general conditions
- QoS measurement and results publications
- Special conditions for disabled users

With the exception of the obligations coming from the roaming regulations, all those requirements are country specific. Although some of the obligations are only applicable to the consumer

segments, some others are not. The resulting complexity of managing different national regimes increases the costs of providing services on a cross-border basis.

(Lack of) regulation of Over The Top services

The recent years have seen a rise of electronic communications services offered by Over The Top players that are based on IP protocol and that use the broadband connections of infrastructured operators.

In the business/corporate market, these players are not niche start-ups, but they are rather large IT corporations that have been serving the business/corporate segment for long time (usually systems integration).

Therefore, if an OTT player is offering an electronic communications service that is based entirely over the IP protocol and that does not use numbering, in practice, none of the above described regulatory obligations and requirements will not apply. This put infrastrucutred operators in a clear competitive disadvantage (in addition to issues related to customer protection and national security).

The costs for "regulated" electronic communications players (both mobile and fixed) is not only in terms of the additional CAPEX and OPEX require, but more importantly in terms of innovation and time to market.

Proposed way forward

There is no fast or easy solution to the issues raised in this paper. These issues are now a structural part of the sector. Radical changes will possibly require legislative modifications at EU level and will require a number of years.

However, BEREC and its NRA Members could start to reverse this process of progressively higher and diverging set of regulatory requirements, by implementing the following three principles:

- Foresee a mandatory analysis of any new national regulatory requirement that looks at the impact on provision of cross-border business services
- Progressively exempt cross-border business services from un-necessary regulation and obligations (or foresee special rules coordinated among all NRAs)
- Apply the same regulatory obligations and requirement to all players in the market without regard to whether the services are offered Over The Top or over traditional networks

Section 2: response to the specific questions of the consultation

1) 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.

- ***What is your overall experience of the practical implementation of such administrative regime in member States?***
- ***Did you encounter inconsistencies or operational constraints potentially affecting the provision of cross-border business services? If yes, please provide a description.***

- [omissis]

2) 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?

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3) 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?

Please see Section 1 of this response for more details on this matter.

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

- ***If so, for which reasons and under which legal basis?***
- ***What should be the special features of such regime?***

Yes, Vodafone believes that a EU-wide administrative regime will certainly facilitate the provision of such cross-border business services. A one-stop-shop would remove an administrative burden that in case of pan-European service is substantial in terms of operational effort and costs.

This option is likely to be essential to facilitate the development of Machine-to-Machine (M2M) services in the EU. Many of these applications will be of a cross-border nature and the current regime is likely to become an obstacle to their development.

A possible legal basis could be found in the last paragraph of art. 3.2 of the Authorisation Directive (Directive 2002/20/CE as amended by Directive 2009/140/CE) that foreseeing that "undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned". The literal article makes little sense as, in general, one notification is already enough for all type of services (not only cross-border ones). This means that the intention of the EU legislator must be interpreted in a wider sense to favour the provision of cross-border services. A possible interpretation of the article is that if an operator intends to offer services to a multinational company with headquarters in Country A, but offices in country B, country C and country D, it will be required to file just a notification in country A (the NRA of Country A could then inform NRAs of countries B, C and D about the notification of the operator). This could work as a sort of mutual recognition of the declarations provided.

A practical solution could be using BEREC as a facilitator for operators for the filing of notifications. The process could foresee the following:

- A specialised unit in BEREC is set up as a facilitator for the filing of notifications.
- The provider informs a specific unit of the BEREC about which Member States it intends to operate in and about the services it will offer.
- BEREC will then compile the list of legal documents required by the different NRAs
- The provider signs and sends the declaration and the relevant documents to BEREC (these documents will need to be sent by the operator in just one copy and might be in English)
- BEREC will then inform all relevant NRAs about the notification
- BEREC will then inform the provider about all the regulatory obligations related to the notification and, in particular, about the authorisation administrative fees required by each NRA/Member State
- BEREC could charge a small administrative fee for the service provided

This simple workaround could greatly simplify the administrative process for cross-border operators (no need for multiple notifications and legal documents) without requiring modifications to current legislation.