

Electronic communications services: Ensuring equivalence in access and choice for disabled end-users

BEREC report of the public consultation

February 2011

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1. Introduction

On the 11th October 2010, BEREC published for consultation, open until the 26th November 2010, a draft report entitled: Electronic communications services: Ensuring equivalence in access and choice for disabled end-users¹. In addition, a public hearing regarding this draft report was held in Brussels on the 19th November 2010.

The report aimed to draw on the preliminary views of BEREC member NRAs with respect to the implementation of Article 23a of the 2009 USD² ; 'Ensuring equivalence in access and choice for disabled end-users', in Member States (MS).

The objectives of the consultation were to:

- a) Present information collated from NRAs regarding the current measures in place in Member States;
- b) Present the preliminary views of NRAs with respect to assessing and implementing equivalent access and choice, and
- c) Seek the views of interested parties including consumers, end-users with disabilities, representative organisations, and service providers.

Eleven contributions were received by BEREC in response to the public consultation, from the following organisations:

Organisations operating in the field of promoting and protecting disabled users' rights:

- a) PhoneAbility³ ;
- b) TAG⁴;
- c) ANEC⁵ / EDF⁶;

¹ http://erg.eu.int/doc/berec/bor_10_47.doc.

² Directive 2009/136/EC

³ A Charity Organisation from United Kingdom.

⁴ A consortium of the main organisations concerned with interests of deaf in relation to e-communications operating in UK.

⁵ European Association for the Co-ordination of Consumer Representation in Standardisation.

⁶ European Disability Forum.

Private companies operating in the market to provide services and products for people with disabilities:

- a) Omnitor;
- b) Sorenson Communications;

Electronic communications service providers:

- c) British Telecom (BT);
- d) SFR;
- e) Telecom Italia (TI);
- f) Telefónica Spania (Telefónica);
- g) Vodafone Group (Vodafone);

Organisations representing electronic communications service providers:

- h) ETNO⁷.

This document summarises the responses received to the public consultation and feedback from the public hearing where relevant and presents BEREC's position with regard to suggestions and proposals put forward in those responses, as relevant. Consultation questions 10, 11 and 12 were not directly answered, by most respondents. The full texts of the responses are published separately on BEREC's website.

In general, respondents welcomed the document and supported BEREC's initiative and proposed approach to the implementation of Article 23a of the 2009 USD⁸ by NRAs, as relevant. Several suggestions and information provided in the responses have been incorporated into the BEREC report.

Consultation questions

⁷ European Telecommunications Network Operators' Association.

⁸ Directive 2009/136/EC (the 2009 USD), 'Ensuring equivalence in access and choice for disabled end-users'.

Stakeholders were invited to respond to 14 questions, covering the various aspects of the draft BEREC report – the current legal framework and associated measures in place in Member States, factors for consideration regarding equivalent access and choice, services and features available for end-users with disabilities and proposed approach to achieve equivalent access and choice.

Summary analyses of the responses to these questions are set out in the remainder of the report. Some stakeholders also provided comments on issues outside of the questions posed, or not in direct response to the questions posed and/or provided additional general comments. Hence, a summary analysis of general comments has also been included in Section 2.

Where appropriate, comments, which relate to particular areas of the report, have been included in the relevant section summarising responses to that section.

BEREC's report has been updated to reflect comments and responses to questions, where relevant.

2. General comments and comments on issues outside the scope of the questions posed - Stakeholders responses and BEREC position

2.1 Proposals in relation to potential related initiatives

Included in the general comments provided in the responses, some relevant suggestions were proposed regarding areas of potential related initiatives, including:

- a) *SFR* proposed cooperation and coordination between providers of mobile and fixed services and between terminal equipment manufacturers to develop and set up policy offerings and services for people with disabilities to facilitate their access to mobile telephony and Internet.

BEREC's position: BEREC is of the view that this is a positive proposal, as it would bring together those active in the market responsible for the production and supply of electronic communications equipment and services; perhaps facilitating a more holistic and effective approach, and therefore, a reference to it has been added to section 4.1.2 of the final BEREC report.

- b) The precise definition of the different types of disabilities by public health services, or other competent bodies in Member States and use of that definition to identify user profiles according to their needs, without prejudice of addressing the potential legal barriers concerning privacy issues (SFR), and for the boundaries between disability, old age and disease to be more clearly defined. *Vodafone* made the point that different disabled users have different needs; Hearing; Visual Dexterity, etc.

BEREC's Position: BEREC is of the view that any developments in this area would be beneficial for those responsible for implementing Article 23a of the 2009 USD. This is because the further definition of the target market, (people with disabilities), and the specific requirements of each segment of that market would help electronic communications service

providers to better understand and in turn meet their communications needs. Therefore reference to this has been added to the final BEREC report in section 2.4 on the role of general legislation with respect to end-users with disabilities in Member States.

- c) The creation of a European consortium, possibly under the auspices of the EC to ensure that the implementation of guidelines on disability also include terminal equipment manufacturers or other major global companies operating in Europe (Google, Apple, TomTom, etc.) (SFR). In that same context, TI and ETNO suggested, at EU level, a harmonisation initiative to identify common guidelines for Member States regarding terminal equipments requirements for disabled end-users. Such harmonisation could improve voluntary availability by manufacturers, since they could sell similar equipments in more countries.

BEREC's Position: BEREC clearly recognises the benefits of pan European cooperation at all levels, in order to enhance the visibility of accessibility issues and to promote the adoption of measures to safeguard the interests of end-users and in particular of end-users with disabilities. However, this is outside the scope of BEREC's report, which is focused on the aspects of Article 23a of the 2009 USD that, in most cases, NRAs will be responsible for implementing.

- d) The co-operation, at the highest level, of EU executive instances to ensure that the most important issues are covered at the right time and in the right *fora* (features of terminal equipments, adapted software development, etc) (SFR).

BEREC's Position: Although BEREC recognizes the importance of cooperation and timely decision making in all EU instances, this is outside the scope of the report, which is focused on the aspects of Article 23a of the 2009 USD that, in most cases, NRAs will be responsible for implementing.

2.2 Universal Service Fund

A number of respondents suggested having a fund to pay for one particular aspect of Universal Service: - relay services for deaf and speech-impaired people.

The 2002/2009 USD allows Member States to designate one or more undertakings to guarantee the provision of the universal service as identified in articles 4, 5, 6 and 7 and, where applicable, Article 9(2). It also allows Member States to designate different undertakings or sets of undertakings to provide different elements of the universal service. .

The submission from *Sorenson Communications* argues that the United States of America (USA) provides a “ready precedent” for the advantages of competition between providers of relay services.

BEREC’s position: The legal framework in the EU is radically different from that in the USA, where Title IV of the Americans with Disabilities Act sets out very specific provisions in relation to telecommunications. In the USA, there is a telecommunications relay services (TRS) fund. Telecommunications providers pay into it, and providers of relay services (as opposed to mainstream communications providers) draw on it. In Europe, it is not possible, under the current universal service regime, to have a universal service fund on which providers of relay services can draw directly.

The 2009 USD increases the ability of regulators to put obligations on all providers rather than solely on the USP(s). Although a universal service fund remains a valid instrument under the 2009 USD, BEREC notes that if obligations are placed on all providers, in accordance with Article 23a of the 2009 USD, the provisions of articles 12 and 13 of the USD, regarding the costing and financing of USO, do not refer to obligations placed on undertakings in accordance with Article 23a of the 2009 USD.

2.3 Other General Comments

Telefónica states that European electronic communications service providers are willing to grant the highest possible level of equivalence in the provision of ECS to their customers with disabilities, taking into account national circumstances, proportionality and demand. Hence, the present regulatory measures would be adequate, at least in Spain.

BT, recognizing that Member States have an important role in promoting measures and creating the right market conditions, states that it actively contributes to making information society inclusive for all and that accessibility is indispensable.

Vodafone, considering that NRAs should not mandate further dedicated services for users with disabilities that require specialised equipment, proposes the following roles for regulators and governments in relation to accessibility with respect to electronic communication services:

- a) Educate disabled users in the use of new technologies;
- b) Provide financing to software and application development;
- c) Facilitate diffusion of Smartphones among disabled users;
- d) Maintain some regulatory measures (e.g. text relay, emergency services, accessible bills);
- e) Impose accessibility measures on main public services, government services and utilities;
- f) Continue to support the development of mobile and fixed broadband.

As for the service providers, *Vodafone* is of the view that those should:

- a) Undertake analysis to understand needs of disabled end-users;
- b) Work on industry-wide initiatives to provide incentives for innovation;
- c) Continue to provide existing measures;
- d) Facilitate access to information on services/functionalities for disabled end-users.

BT States that e-accessibility must be embedded into a wider policy that goes beyond the electronic communications sector, in order to promote a higher degree of

coherence with USO and that future reviews of the USD should take account of EC eAccessibility procurement standards and of European anti-discrimination legislation.

BEREC's position: BEREC welcomes initiatives by service providers to provide services and features for people with disabilities and shares the view that e-accessibility must be embedded into the wider public policies. BEREC notes the proposals above, however, many of these proposals are outside the scope of the report, which is focussed on implementing Article 23a of the 2009 USD. Some relevant suggestions have been included in section 5 of the final BEREC report.

3. The current legal framework and associated measures in place in Member States - Stakeholders responses and BEREC position

Consultation Question 1: Are there additional legal provisions, other than those listed in Section 2, currently in place in MS with respect to users with disabilities regarding electronic communications? If yes, please detail the provisions and the organisation responsible for implementing or monitoring these provisions.

Disability Discrimination Act

Three of the responses (*BT*, *PhoneAbility* and *Telefónica*) reference The Disability Discrimination Act or The Equality Act, issued in UK.

Telefónica and *PhoneAbility* point out that the provisions of this legal act apply also to electronic communication providers, which are under the obligation to make 'reasonable adjustments' to their business practice, especially concerning the provision of information about accessible services and access for disabled users to customer services and shop premises.

PhoneAbility also emphasise that, as a civil law, this legislation offers disabled persons increased legal entitlements, allowing them to raise complaints about unlawful discrimination and that the service providers (after the legal process is completed) must take note of it or risk incurring civil penalties. In addition, *PhoneAbility* is of the view that this legislation appears to have an important influence on the design of the terminal equipment, as it applies to providers that offer electronic communications packages that include terminal equipment. In such cases, the providers have to ensure that the range of terminals on offer will enable a disabled customer to select one that meets his/her needs.

Telefónica suggests that the report should refer to the fact that the service providers have specific mandatory obligations under The Disability Discrimination Act.

BEREC's position: The Disability Discrimination Act was mentioned in the report when referencing Ofcom's obligation to make all policymaking based on non-discrimination principles and it was taken into account when stating that, due to

national conditions, in some Member States there are other bodies that can act with a more general legal basis that include measures related to end-users with disabilities access to electronic communications services. Notwithstanding, BEREC agrees that giving more details about this legislation is useful, and has enhanced the relevant reference in section 2.4

The UN Convention

Three respondents (*TAG*, *BT* and *ANEC/EDF*) referred to The United Nations Convention on the Rights of Persons with Disabilities (the *UN Convention*) as being relevant to the purpose of the report (since it requires State Parties to protect and safeguard all human rights and fundamental freedoms of persons with disabilities), further encouraging BEREC to acknowledge that the instrument on disabilities in any decision-making processes concerning issues relating to persons with disabilities.

BEREC's position: BEREC agrees that, for completeness, a reference and details of, the UN Convention is relevant to this report. Therefore, section 2.4.1 and a related Appendix have been inserted into BEREC's final report for this purpose.

Additional measures

In relation to Section 2 of BEREC's report, which relates to the existing measures in place in Member States, some respondents are of the opinion that the measures listed in the report are not exhaustive, and also give some examples of measures taken in different Member States. For example, *ETNO*, *TI*, *Telefónica* refer to the following measures:

- a) Adapted public payphone as a USO (Austria);
- b) Financial facilities for disabled end-users offered by all undertakings (Czech Republic);
- c) Free of charge directory enquiry service, adapted public payphones, adapted customer care services (France);
- d) Provisions for all undertakings in relation to free or special price services (Italy);
- e) Adequate offer of special terminals, provisions for accessible information, special pricing plans for different categories of disabled end-users as obligations for the USP and the basic conditions for accessibility of products

and services involving the Information Society and Social Communication Means (Spain).

BEREC's position: Figure 1 (Special measures for users with disabilities in relation to electronic communications), in BEREC's final report, has been adjusted to reflect the Austrian payphone measure. The obligations of the USP in Spain are already mentioned in Figure 2 of the BEREC's report. An example of measures concerning financial facilities for disabled end-users in the Czech Republic has also been added (section 2.2), and the example of provisions concerning special tariff plans in Italy has been reviewed to include more details, in Section 2.3 of the final report.

Additionally, ANEC/EDF seek to draw the attention of BEREC to the study *MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe*⁹, commissioned by the European Commission in 2006 and issued in October 2007, on eAccessibility-related policy measures and the status of eAccessibility in 25 EU Member States, and three comparison countries (Australia, Canada, USA).

BEREC's position: The scope of the *MeAC* study is significantly wider than BEREC's report, as it deals with the accessibility of telephony services, TV broadcasting, web sites and self-service terminals. However, BEREC considers that particularly relevant to the aim of its report is a better understanding of EU policy across Europe as a whole, the requirements implemented in national transpositions of the EU measures and the dimensions of electronic communications accessibility that are addressed. For this reason, a reference to the content and key findings concerning the accessibility of telephony services of the *MeAC* study has been made Section 1.1 of BEREC's final report.

⁹ http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm

4. Equivalent access and choice; factors for consideration - Stakeholders responses and BEREC position

Consultation Question 2: Do you agree that the factors listed in sections 3.1.1¹⁰ and 3.1.2¹¹ are important to consider when assessing equivalent access? Are there other factors which should be considered? Are some factors more important than others?

4.1 Functional Equivalence

PhoneAbility and *TI* agree that functional equivalence, meaning that a disabled user is able to perform the same task as a non-disabled person, but not necessarily in the same way, is crucial. *BT* is of the view that functional equivalence should not be confused with equivalence of experience¹², which may not be possible in many cases.

Telefónica suggests that language used with respect to equivalence is important and that the term functionally equivalent should be used.

BEREC's position: BEREC's report proposes that "equivalent" in this context means that equal access to and choice of electronic communications services should be achieved for end-users with disabilities, albeit that this might be achieved in different ways for end-users with disabilities in comparison with other end-users. BEREC additionally notes recital 12 of 2009 USD¹³.

The 2009 USD refers to services for disabled consumers that are equivalent to those enjoyed by other end-users. The objective is functional equivalence, however, in practice, there are reasons why 100% equivalence is not always possible. For example, there may be technical constraints that prevent a particular service from being possible, or the cost of achieving 100% equivalence could be disproportionate.

¹⁰ Availability of terminal equipment, Price, Number of additional suppliers, Additional set-up.

¹¹ Accessible complaints process, Accessible support and maintenance, Accessible billing, Accessible directory enquiry service, Accessible directory (phone book).

¹² Meaning that the user would have the same experience using an alternative means of communication.

¹³ "Equivalence in disabled end-users' access to services should be guaranteed to the level available to other end-users. To this end, access should be functionally equivalent, such that disabled end-users benefit from the same usability of services as other end-users, but by different means."

However, if a service offers a high degree of functional equivalence but is not perfectly equivalent, there may still be a very good case for offering it. For example, at least two Member States offer emergency SMS for people who are deaf or speech-impaired and cannot make a voice call. This provides a high degree of functional equivalence and although it may not be 100% equivalent with making a voice emergency call it is clearly far better than not being able to contact the emergency services in an emergency.

BEREC is of the view that a reference to Recital 12 of the 2009 USD is a relevant addition and has inserted it in section 3 of its report, together with related text, as above, regarding achieving equivalence.

4.2 Important factors in accessing equivalent access

All respondents agreed that the factors listed are important. However, *PhoneAbility*, *BT* and *TAG* stress the importance of the factors listed in 3.1.1 and 3.1.2 of BEREC's report. *BT* agrees that the items listed in 3.1.1 of BEREC's report are important.

TAG is of the view that video relay services are important for sign language users to ensure equivalent access, and that traditional text relay services are slow and do not provide equivalent access for deaf people. *TAG* is of the view that more modern relay services provide more equivalent access.

PhoneAbility is of the opinion that suitable and affordable terminal equipment and an alternative mode of delivery of services may be required and that provision of information in appropriate formats about the products and services provided is the most important factor.

TI and *ETNO* propose that information about accessible services could be provided on the NRA's website, linking to communications service providers' websites. *Telefónica* suggests that, where communications service providers have products and services available for consumers with disabilities, an issue may exist where relevant information is not being distributed.

BT is of the view that the factor "additional set up" (a factor listed in 3.1.1 of the report) is not as important as the other factors listed.

BEREC's position: BEREC's report is not intended to evaluate certain services that may be considered in Member States to help achieve equivalent access. Therefore, BEREC does not propose to comment with respect to comparisons or preferences between text and video relay services in relation to meeting the needs of specific consumers with disabilities.

BEREC recognises that an alternative mode of delivery may be required to work with specific terminal equipment to provide the service e.g. in the case of text relay both a terminal and a service is required for the facility to operate. This was addressed in BEREC's report under the heading 'price'. To reinforce the relevance attributed to this issue, a reference to this concept has been inserted in 3.1.1 of the report, under the heading 'Availability of accessible terminal equipment'.

BEREC also notes that respondents are supportive of the factors listed as being important to achieve equivalent access. A reference to respondents' consideration of important factors has been included in section 3.1.1 of the report.

BEREC further highlights that respondents are of the view that accessible information about accessible services is an important consideration. Article 21 of the 2009 USD also relates to this aspect. BEREC's report addresses this factor in section 3.1.2, which relates to equivalent choice. Nonetheless, a reference to accessible information has been included in section 3.1.1.

4.3 Price

BT is of the view that all the factors listed in 3.1.2, except 'accessible directory', should be made available as standard, at no additional charge (*BT* did not specify if it should be made available by all operators). *BT* agrees that accessible billing, accessible complaints process and accessible fault reporting are important facilities for disabled customers. *ANEC/EDF* agrees that an accessible complaints process is important for consumers with disabilities. *TI* suggests that accessible bills can be provided by supplying different formats suitable for each disability.

ANEC/EDF is of the view that specific accessible services should be provided at the same price as an equivalent service for the general public. *TAG* states that price is an important factor in particular for specialised terminal equipment such as that for deafblind users to ensure that disabled users are not burdened with the cost. *TI* agrees with BEREC's views with respect to price and provides examples of subsidised services in Italy.

BEREC's position: BEREC's report addresses the importance of price both in relation to terminal equipment and in relation to services specifically designed to provide functional equivalence to users with disabilities, with respect to equivalent access. A reference to respondents' views in relation to price has been inserted into the report.

Article 23a of the 2009 USD states that Member States shall, "encourage the availability of terminal equipment offering the necessary services and functions." It should be noted that the Article 23a of the 2009 USD refers to availability rather than affordability. There is an argument that can be made that if equipment is available but not affordable then it is cannot be held to be available. While this is a valid argument, the 2009 USD is not specific with respect to affordability.

4.4 Inclusive Design

BT states that inclusive design is important in assessing equivalent access and that all suppliers should supply non-discriminatory services to ensure that customers have equal choice in providers, services and tariffs.

ANEC/EDF also are of the view that e-communications services and products should be designed for all users in accordance with the concept of universal design, although some specific products and services may still be required. *TI* is also of the view that inclusive design is beneficial in serving this market segment. *Vodafone* states that technological improvements should be fully enjoyed by disabled end-users and that in many cases new technologies offer effective low cost solutions to traditional communications problems. *Vodafone* put forward that the greatest benefits come from mass-market solutions, which also have potential for use by disabled end-users. – internet and mobile phone features (voice dialling; hands free).

Vodafone provided examples such as Smartphones and the iPad and suggests that cost may be a barrier, albeit it also states that the new generation of Smartphone may come onto the market for less than 100 euros

BEREC's position: BEREC's report deals with the concept of Design for All in section 3.1.1 under the heading 'Availability of accessible terminal equipment'. While Article 23a of the 2009 USD does not mandate inclusive design, BEREC is of the view that inclusive design benefits all consumers, including those with disabilities, and can help further advance the achievement of equivalent access. That section of the report has been appropriately enhanced.

4.4 Placing restrictions on usage of services designed to promote equivalent access

ANEC/EDF is of the view that some accessible products and services are provided only on a limited (i.e. weekends) or temporary basis (e.g. for the duration of a project) and need to be provided on a permanent and full time basis to be considered equivalent.

BEREC's position: BEREC is of the view NRAs should consider all the relevant conditions associated with those services, when assessing equivalent access. A restriction of usage of services that are designed to promote equivalent access could limit their ability to ensure equivalence.

Considering that the proportionality test is a key principle of all EU legislation, BEREC is of the view that, at the light of specific national circumstances, it could therefore be proportionate to consider a system in which particular services were provided to disabled end-users to promote equivalence, subject to a usage ceiling. This could be particularly appropriate in the case of services with a high incremental cost, such as video relay for deaf sign language users.

There are a number of ways in which a usage ceiling could be established, including

- a) Providing a service for a fixed number of hours per day;

- b) Giving end-users a fixed allocation of minutes of video relay that are free at the point of use (minutes over and above the quota could be charged at full cost or partly subsidised);
- c) Subsidising the cost of the service rather than providing it free at the point of use.

It is worth noting that under the second of these examples, there would be nothing to stop consumers or organisations from buying additional time on the system.

In some Member States, there are schemes that cover the additional cost of supporting disabled people in employment. Similar models could potentially pay for workplace-related use of relay services. It would also be possible for businesses to pay for video relay calls made to them by their customers or potential customers. This could represent a financial benefit for those businesses in some situations if it enabled business to be transacted over the phone rather than in person if the face-to-face meeting would have required an interpreter. It would also enable these businesses to demonstrate their wish to offer a good service to disabled consumers. Section 3.1.1 of the report has been reviewed to include a new heading 'Rationing or limiting of services designed to promote equivalent access' and this section now includes the above text.

4.5 Pre-registration for services

At the public hearing in November 2010, one participant put forward that where users with disabilities have to register for any special services designed to promote equivalence, that this may in fact be a factor restricting equal access.

BEREC's position: Although it is not desirable to create excessive barriers to take-up of disability services, registration for particular services may be necessary and beneficial for a variety of reasons and across different services. Examples include:

- a) Free directory enquiries for people unable to use a printed directory - this service is provided in a number of Member States. If it were available without pre-registration, it would not be possible to limit the service to those with disabilities, having cost implications;
- b) Emergency SMS - in the UK registration is considered necessary to protect the scheme for disabled people in genuine need, as large numbers

of blank or inappropriate messages are received every day from unregistered numbers and dealing with these messages would divert resources from registered users in genuine emergencies;

- c) Internet Protocol relay services - in the USA, these were initially offered without pre-registration but this was found to be allowing a high level of fraud, for example with criminals using stolen credit cards to order goods. As well as inflating the bill for relay services, this led to some deaf people having difficulty in placing orders for goods and services (because retailers suspected that relay calls were likely to be fraudulent), and registration was introduced in order to protect the service for genuine users.

Registration using a username and password is commonplace for online services such as email, shopping and banking. Registration schemes could also enable relevant information to be sent to disabled end-users who are registered to use these services, providing information about products and services that may be suitable for them. This is in keeping with article 21 of the 2009 USD. Section 3.1.1 of the report has been updated to reflect the points above.

Equivalent Access to Emergency Services

ANEC/EDF propose that the BEREC report should reference the actions being taken in order to provide equivalent access to emergency services for people with disabilities

BEREC's position: The purpose of the report is specifically to assist NRAs as relevant in implementing Article 23a of the 2009 USD. In addition, BEREC is cognisant that the implementation of equivalent access to emergency services is the responsibility of Member State and that this may not be the responsibility of most NRAs.

Hence, although the report may be relevant also in the context of accessible emergency services, the implementation of equivalent access to emergency services is outside the scope of the report. Section 1 of the report has been updated to reference this. This is without prejudice to some examples within the report that relate to accessible emergency services.

ANEC/ EDF is of the view that customers with disabilities should be able to exit their contracts if the service they are subscribed to is not accessible (as advertised), irrespective of the contract conditions.

BEREC's position: BEREC is of the view that there are various methods of recourse available in Member States to all consumers where services are mis-advertised or where there is mis-selling. In addition, if NRAs place obligations on service providers to ensure equivalence in access and choice, undertakings not meeting those obligations would be acting contrary to those specific requirements.

Omnitor proposes that 'total conversation' is considered part of the USO (Recital 13 2009/136/EC). (*"Publicly available telephone services also include means of communication specifically intended for disabled end-users using text relay or total conversation services"*). Based on this, *Omnitor* lists services that it considers to comprise total conversation and that should be included under the universal service.

BEREC's position: BEREC notes the use of the term 'total conversation' in Recital 13 of the 2009 USD. BEREC is of the view that the use of this term in Recital 13 is to assist interpretation and to provide an example. Clearly, the Recital does not place any obligations or mandate any specific services. BEREC therefore considers that NRAs should be aware of services that assist 'total conversation' but be mindful that such services are not automatically mandated. In this context, BEREC's report reaffirms the need for NRAs to consider, in advance of establishing measures, input from stakeholders, to consider the situation regarding disabled end-users *vis a vis* other users and to implement Article 23a of the 2009 USD in the light of national conditions.

Consultation Question 3: Do you agree that the factors listed above (section 3.2.1¹⁴ and 3.2.2¹⁵) are important to consider when assessing equivalent choice? Are there other factors which should be considered? Are some factors more important than others?

4.6 Choice

PhoneAbility states that having a limited choice of undertaking with accessible services would not be sufficient to ensure equivalent choice. *PhoneAbility* considers it important to distinguish between services/facilities which should be made available by all undertakings (e.g. accessible contract terms) and services which are made available for use with all undertakings (e.g. text relay services).

EDF/ ANEC and *TAG* are of the view that in order to ensure equivalent choice, consumers with disabilities should also have a choice of accessible services such as relay services, to ensure competition, quality and innovation.

Some respondents argued that competition was necessary to ensure high quality services for disabled people, particularly for relay services. For example, *PhoneAbility* argued that a General Conditions approach for the provision of relay services had major inherent disadvantages. *PhoneAbility* argued that, as any services mandated would be loss making, it would be against the commercial interests of communications providers to offer high quality services, as increasing quality may increase usage. *PhoneAbility* also argued that monitoring and enforcement of the requirements would be difficult for regulators. *PhoneAbility* therefore argued that more than one electronic communications service provider should be designated for each type of relay service.

All respondents want to see high quality services for disabled people, and competition is understood to be a means to that end.

¹⁴ Availability of service providers with accessible services, Choice of packages with accessible handsets, Accessible Information about accessible services

¹⁵ Accessible pricing information, Accessible contract terms, Accessible switching procedure

Sorenson Communications states that people with disabilities should have a choice of a particular accessible service, implemented to achieve equivalent access.

BEREC's position: The 2009 USD and associated recitals refer to disabled people having the same choice of services and service providers as other end-users.

Some respondents put forward the suggestion that Article 23a of the 2009 USD means that people should have a choice of relay service rather than of electronic communications services provider. This would require the electronic communications providers concerned to commission relay services from different suppliers. BEREC is not of the view that this is the intention of the 2009 USD.

In the USA, it is the case that video relay service users can choose between competing relay service providers. However, the legislative framework under the 2009 USD is materially different to that in the USA. BEREC notes that the provisions of articles 12 and 13 of the 2009 USD, regarding the costing and financing of USO, do not refer to obligations placed on undertakings in accordance with Article 23a of the 2009 USD.

Some respondents to the consultation argued that competition in such services is necessary to ensure high quality services for disabled people, particularly relay services. All respondents wanted to see high quality services for disabled people, and competition is seen as a means to that end. However, BEREC considers there are alternative means available to policy makers to ensure a high level of service quality. For example, in Sweden the video relay service is procured by the Government from competitive bids every four years. The quality of the service that provided to sign language users is one of the most important criteria used when assessing bids. Section 3.2.1 of the report has been updated to reflect this consideration.

PhoneAbility stresses the importance of the non-discrimination legislation in ensuring providers make adjustments to facilitate their customers with disabilities. *PhoneAbility* and *BT* are of the view that ensuring that accessible handsets are made available, as part of packages that include handsets, is an important beneficial

factor because it can extend consumer choice of providers and services and they may also have an impact of the design of handsets.

BT and *TI* consider that accessible information (for instance, regarding price, contract terms and switching procedures) is important for consumers with disabilities to make informed decisions about services / providers and (according to *TI*) to ensure equivalent choice. *TI* also considers that such information should be made available on service provider websites and updated regularly.

TI and *ETNO* are of the view that all undertakings should provide the required accessible services and that accessible services provided by different communications service providers is the primary goal of equivalent choice.

TI and *ETNO* state that accessibility measures determined as necessary by NRAs should be applied to all undertakings, while ensuring proportionality. *TI* is of the view that any further impacts on communications service providers including costs may be detrimental to existing voluntary measures in place

TI and *ETNO* are of the view that the most appropriate way to assess the needs of people with disabilities is to consult with representative organisations.

BEREC's position: BEREC welcomes the agreement by the majority of respondents to this question with the factors suggested by BEREC to consider when assessing equivalent choice.

BEREC does not agree with the view that equivalent choice means that there is also a choice of accessible services such as relay services. BEREC agrees with the proposal that all undertakings should provide, on a voluntary basis, certain facilities to accommodate their customers with disabilities while other more specialised services such as relay services could be provided to a certain standard and at a certain price for consumers with disabilities and that choice of such services is not necessary to ensure equivalence. BEREC has updated its report to reflect this.

Consultation Question 4: In your view, should the obligations currently in place under USO, for end-users with disabilities, be placed on all service providers? If no, what types of service providers, considering factors such as financial impact (cost), should the obligations be placed on? What is your view in relation to alternative mechanisms for funding?

PhoneAbility and Telefonica have reservations about applying all the USO to all service providers, as some measures may prove to be very expensive and service providers may discourage take-up.

PhoneAbility states that services such as text relay which are not provided by all undertakings may limit users choices for this particular service but that in this case fewer effective services are better than wider choice of poor services. *PhoneAbility* states that some aspects of USO should be made mandatory for all service providers, as they would be necessary to accommodate undertakings' customers with disabilities. *PhoneAbility* proposes that some communications service providers that do not offer services to general public could be exempted from providing services and facilities for people with disabilities.

Telefonica is of the view that NRAs should consider how consumers with disabilities use facilities in different ways, before mandating USO. It provides the example of text relay, where it says that there has been negligible take-up of this service on mobile, as customers are using other mobile-specific facilities.

ANEC/EDF is of the view that services and facilities provided under USO for people with disabilities remain important to maintain equivalence.

TAG is of the view that obligations should be placed on all undertakings: However, it states that funding (especially public) must be provided.

Vodafone is of the view that disabled end-users are a very small proportion of total users, meaning that economies of scale are reduced and costs are increased for communications providers to serve disabled end-users and that it would be more efficient to focus on one provider.

BEREC's position: BEREC is of the view that limiting related obligations to one provider would not achieve the requirements of Article 23a of the 2009 USD. BEREC is also of the view that, if universal design is implemented, additional costs associated with meeting the needs of end-users with disabilities can be minimised or eliminated.

Having considered the responses, BEREC is of the view that certain facilities, depending on national conditions and based on NRA decisions, should be provided by all undertakings for consumers with disabilities. Section 3 of the report has been update to reflect this.

Consultation Question 5: In what form should the information provided by service providers to inform end-users with disabilities of details of products and services designed for them and information regarding pricing and contracts be provided in?

PhoneAbility, ANEC/ EDF and Telefonica consider that information provided by communications service providers to their customers with disabilities should follow formats such as large-print, Braille, audio, on-line, video and easy-to-read.

BT and TAG are of the view that the format of information should be appropriate to customers' needs and BT adds that this should not be cost prohibitive.

TI underlines that a co-ordinated approach through associations that represent people with disabilities, using their specialised publications and communications, should be taken to the provision of information to users with disabilities.

BEREC's position: BEREC is of the view that some formats of information should be available as standard, while others should be made available on request. BEREC understands that formats made available as standard, defined by each Member State, could be based on the number of consumers with disabilities that need a particular format in each Member State. Section 3.2.2 of the report has been updated accordingly.

Consultation Question 6: Do you consider it appropriate that NRAs have a role in encouraging the availability of terminal equipment, in accordance with Article 23 (a) (ii)? If yes, what do you consider that NRAs could do to achieve this?

PhoneAbility considers that NRAs have a role to play in encouraging terminal equipment that is accessible and affordable and also in raising awareness and encouraging equipment manufacturers to produce suitable terminals.

TAG agrees that NRAs should encourage the provision of terminal equipment but that encouragement will not overcome the funding issue. *TAG* is of the view that government may play a role in incentivising the provision of accessible terminal equipment. *TAG* is also of the view that NRAs could assist in promoting the benefits to electronic communications providers of being able to increase their market share by provision of accessible equipment.

Vodafone puts forward that attention has moved from services and networks to terminal equipment and that the powers given to NRAs are limited to regulatory measures in relation to electronic communications services. According to this electronic communications service provider, initiatives are likely to be more effective if taken at European level to achieve economies of scale, as many providers have European presence.

BT and TI consider inclusive design to be an important factor with respect to accessible terminal equipment, but seem to understand that this goal, to be promoted by NRAs and disability associations, is a primary responsibility for equipment manufacturers.

ANEC/EDF is of the view that NRAs should support their Member State to help ensure the availability of terminal equipment. In addition to the measures suggested by BEREC *ANEC/EDF* proposed that NRAs could conduct analysis of the needs of consumers with disabilities by consulting with third parties, assist with conducting consumer tests of terminal equipment, and leverage the R&TTE Directive to require certain products with certain features for consumers with disabilities.

BEREC's position: BEREC welcomes the proposals with respect to NRAs role in relation to the promotion of terminal equipment and is of the view that NRAs should consider these in the light of national conditions. BEREC notes that 7¹⁶ Member States have put in place obligations with respect to terminal equipment under universal service and that Article 23a of the 2009 USD is not specific regarding the measures that can or cannot be mandated by NRAs under it.

BEREC agrees that inclusive design, while not mandated by Article 23a of the 2009 USD, is an important concept that should be promoted in Member States and at European level.

¹⁶ The obligations are varied in each MS

5. Services and features available for end-users with disabilities – Stakeholders' Responses and BEREC's position

Question 7: In addition to the services, features and types of terminal equipment listed are there any others which you consider necessary to ensure equivalent access?

The majority of respondents to this question (*TI, Telefónica, BT, Sorenson Communications, ETNO*), are of the view that the services, features and types of terminal equipment listed on the report submitted to public consultation are necessary and seem to be sufficient to ensure equivalent access. Nevertheless, *Telefónica* referred that technological evolution has to adapt to the solutions that are the most advanced and most suited to special communication needs and Vodafone mentioned that some measures have limited effectiveness because they are being superseded by other technologies (for example, text relay services).

As to end-users associations responding to this question (*TAG, ANEC/EDF, PhoneAbility*), they were of the view that the services, features and types of terminal equipment listed in the public consultation report are necessary, but that the list could be added to with other services, such as captioned-telephony relay¹⁷ In addition, *ANEC/EDF* considered that the establishment of equivalent access and choice for persons with disabilities obligations by NRAs would also entail the setting of specific requirements on the quality of the connection offered. In order to

¹⁷ A relay service is used in which spoken words are re-voiced for conversion into text by a high accuracy speech recognition system, so that the captions can be displayed almost simultaneously with the incoming speech; outgoing speech is not captioned. The captioned-telephony relay is particularly suitable for hard of hearing users and provides the normal incoming speech together with a nearly simultaneous transcription into text. The text is very useful as an aid to understanding and it allows people with deteriorating hearing to continue using the telephone. Captioned-telephony allows conversations to proceed with much the same fluidity as conventional calls and provides equivalence for hard-of-hearing users.

implement quality of service requirements, the elaboration of standards may be needed.

TI and *ETNO* proposed that new normative requirements on terminal equipment should be evaluated in compliance with the RTT&E Directive, within the current deregulated EU regime. Besides, with regard to the improvement of terminal equipment availability, NRAs' initiatives have served the purpose. Likewise, EC initiatives could be useful to improve the harmonisation of terminal equipment provisions at national level.

BEREC's position: BEREC draws attention to the fact that the report submitted to public consultation presented, in Section 4, a high-level description of the measures that are in place, or which may be beneficial to be put in place, in Member States, that all have the potential to help achieve equivalent access and choice..

BEREC recognises in its report that the availability of, and access to, electronic communications services plays an important role in promoting social inclusion.

One of BEREC's key findings in section 4.1.2 is that NRAs find text relay services among the most common services available and provided. The USP is highlighted by many NRAs as a major provider of text relay services also, with rebates for text relay calls available in some countries.

As to the selection of types of relay services to be provided by undertakings, BEREC considers, in section 5.3 of the report submitted to public consultation, that where the NRA identifies a lack of legal provisions or other means to address the specific access or choice needs of end-users with disabilities that are not satisfied by the market on voluntary basis, Article 23a of the 2009 USD could provide the legal basis for new provisions, applicable to all providers of electronic communication services. However, where the market adequately addresses the needs of end-users with disabilities and the current provisions in place are sufficient to enable access and choice of electronic communications services for users with disabilities, NRAs may only wish to monitor the situation, set a common approach across the entire sector, or continue the work of mediation between service providers and organisations representing end-users with disabilities.

BEREC welcomes the reference from *TAG* and *PhoneAbility* to the captioned-telephony relay service, as a specific form of relay services addressing the particular needs of profoundly deaf users. BEREC has therefore added this service, in section 4.1 of the final report, as another service that may be considered relevant for end-users with disabilities.

BEREC welcomes *ANEC/EDF's* proposal regarding the setting of specific requirements, if appropriate, on the quality of the service offered because it facilitates that people with disabilities can avail of, in an equivalent way, any quality of service parameters that apply to other end-users. BEREC has therefore added it to section 5.1. of the final report, concerning the determination of factors to assess equivalent access and choice.

BEREC assumes that, when transposed, it is likely that, in most cases, NRAs will be responsible for implementing at least some aspects of Article 23a of the 2009 USD. Article 23a(2) specifies that Member States shall encourage the availability of terminal equipment offering the necessary services and functions. However, it is not yet clear, because it depends on the way in which Article 23a of the 2009 USD is transposed in individual Member States, if, and to what extent, NRAs will have responsibilities with respect to the provisions of Article 23a(2) of the 2009 USD and therefore in relation to specific standards with respect to terminal equipment.

Question 8: Where services, features or terminal equipment suitable for end-users with disabilities have been provided voluntarily, has there been encouragement from NRAs, Government or other parties, or does it appear that the market is delivering and will continue to deliver of its own accord?

Several respondents to this question are of the view that no third party encouragement is necessary to ensure the voluntary provision of suitable services, features or terminal equipment.

Some of the examples mentioned were the following:

- a) *ETNO* referred that in France a number of mobile communications service providers have signed the Access Charter for disabled people; a number of terminal equipment manufacturers participate to the Global Accessibility Reporting Initiative (GARI), a project which was developed to provide a central information source to learn about accessibility in mobile devices;
- b) *TI* has introduced, voluntarily, a specific paragraph on end-users with disabilities in its 2010 “Service Charter” and developed specific services in cooperation with associations, which represent end-users with disabilities.
- c) *Telefónica* also referred to the information about products and services it voluntarily provides in Czech Republic and that are intended for disabled end-users.¹⁸.
- d) *Telefónica* mentioned that in the UK, in the past, communications service providers developed specially adapted handsets for deaf and hard of hearing users. The handsets provided special text facilities and were developed in cooperation with the Royal Association for Deaf People. It was a market driven initiative, in the belief that a handset made to the specification of such an interest group would draw sufficient interest. However, only very few handsets were sold. Based on this example, *Telefónica* argue that disabled users, if at all possible, prefer normal phones because they want to communicate with everyone. Complicated solutions, according to *Telefónica*, are often not the best.

On the other hand, other respondents seem to support the idea of NRAs cooperating with undertakings and consumer associations and help resolve issues that may arise (*ETNO, TI and Sorenson Communications* and, in general, end-user associations), in particular since only voluntary cooperation between communications service providers is not considered fully sustainable.

¹⁸In particular, a special mobile handset sold with reduced tariffs, designed with senior users or people with disabilities in mind (offers easy access to individual functions via lateral buttons, all keys and buttons are large and have backlit display); a nonstop line on which trained operators help and assist the deaf and the hearing-impaired people to communicate with others.

End-users associations also state that market will not deliver products that are loss making or made in small quantities. Relay services and special terminals may fall into this category and regulatory intervention is necessary to provide them.

ANEC/EDF referred (as well as *Sorenson Communications*, but in a different perspective), to the 2007 study “MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe” ⁽¹⁹⁾, according to which the advancement of accessibility of information and communication technologies, including e-communications, for persons with disabilities is directly linked with legislative and incentive measures from the Member State. In that respect, ANEC/EDF also stated that the EC has also decided to consider drafting a European Accessibility Act, as part of the Disability Strategy 2010-2020. *BT* is of the view that national bodies (including NRAs) could stimulate the terminal equipment market by participating in European standardisation activities and promoting the use of eAccessibility standards in procurement.

BEREC’s position: According to the information provided by NRAs, it appears that the USP is still the primary provider of services and features that may be considered relevant for end-users with disabilities. Notwithstanding, the data collected suggests that undertakings other than the USP are also providing quite a number of services and features voluntarily.

Hence, BEREC is of the view as presented in section 2.5 of the report that the measures required to be implemented under Article 23(a) (1) of the 2009 USD to ensure equivalent access and choice will vary between each Member State. This is primarily because of varied measures and conditions existing in Member States. Article 23(a) of the 2009 USD can play a role within Member States, through NRAs, to ensure equivalent access and choice for end-users with disabilities in respect of electronic communications where it is found that existing measures and national conditions do not deliver this.

⁽¹⁹⁾ Launched as part of the follow-up to the European Commission’s Communication on eAccessibility of 2005, available at: http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm.

BEREC welcomes the example regarding the cooperation between communications service providers and the Royal Association for Deaf People and has therefore added it to section 3.1.1 of the final report, concerning the availability of accessible terminal equipment.

BEREC also understands the issues pointed out by end-users associations and considers they are covered under section 2.1.1 of the report submitted to public consultation, where it is referred that the provisions for end-users with disabilities established by Article 7(1) are focused primarily on services provided under universal service by the USP(s) and therefore they are designed to ensure access to universal service (predominantly provided via fixed line) for end-users with disabilities.

Specifically with regard to services provided at a loss, attention should be drawn to section 5.3 of the report submitted to public consultation on the identification of proportionate measures to address issues with respect to equivalence. BEREC underlines that, in accordance with Article 8 of the Framework Directive (2009/140/EC), the measures aimed at achieving the objectives should be proportionate to those objectives.

Therefore, a cost benefit analysis examining the cost, applicability and benefit of the measures proposed should be undertaken to evaluate, assess and refine the measures proposed. BEREC proposed that a review of the current legal framework and the actual conditions applied in each Member State, with respect to end-users with disabilities in relation to electronic communications, would provide important input in assessing any potential new obligations to be imposed on undertakings under Article 23a of the 2009 USD.

Finally, BEREC welcomes the reference to the role of Member States (regarding incentives and legislation) as mentioned in the 2007 study “MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe” and has therefore added it to section 1.1 of the final report, concerning the background of the EU legal framework on accessibility.

Question 9: What consideration should be given to NRAs mandating undertakings to provide services, features or terminal equipment for end-users with disabilities as part of the standard services and packages they offer?

Most of the respondent providers (*TI*, *ETNO*, *BT*) were of the view that the powers given to NRAs in relation to mandating undertakings to provide services, features or terminal equipment for end-users with disabilities as part of the standard services and packages they offer will depend on the transposition of Article 23a of the 2009 USD at national level, in particular with respect to what Article 23a (2) of the 2009 USD.

Nevertheless, some providers put forward varying positions with respect to its view of the NRAs role in relation to this.

TI seemed to support a broad intervention from NRAs. Regarding terminal equipments and when enabled, NRAs could evaluate the possibility to impose obligations on manufacturers, since communications service providers generally do not produce terminal equipments. With reference to services, *TI* considered that NRAs already have the power to mandate all undertakings to apply special prices on services used by specific end-users categories – e.g. SMS for deaf users – and this should be considered in the implementation of Article 23 of the 2009 USD.

BT considered that NRAs may only require reasonable adjustments to ensure services are accessible, but these should not be unnecessarily onerous or cost prohibitive. Instead, *BT* and *Telefónica* proposed that NRAs should monitor and encourage providers to make their services accessible and functionally equivalent wherever possible and foster cooperation of all the players involved (equipment manufacturers, communications service providers, associations, public administrations). *BT* insisted on NRAs taking into account the user's take-up (or decline) of particular services, and considered the most appropriate and effective way for sourcing of funding, including the stimulation of a market oriented approach over long term.

ETNO considers that "terminal equipment" issues are not related to communications service providers and, therefore, NRAs, when enabled, should just verify the possibility to influence manufacturers.

As to end-users associations responding to this question, there seems to be a significant level of disagreement with respondent providers.

ANEC/EDF supports the most demanding position for NRAs. Under Article 23a (1) of the 2009 USD, they should mandate providers to ensure accessibility of services, features and terminal equipments for persons with disabilities as part of their mainstream e-communication technologies.

TAG considered that NRAs should only mandate service providers to provide products where the products would be loss making or made in small quantities.

PhoneAbility considers that mandatory requirements without the opportunity to offset net financial losses will result in some cases in business models, which are of no advantage. As far as terminal equipment is concerned, *PhoneAbility* also assumes that NRAs have no powers to mandate such provision. *PhoneAbility* is of the view that the most that could be achieved is through the use of non-discrimination legislation, where the supply of equipment is inherently linked to a service package.

BEREC's position: BEREC agrees with the view that the powers given to NRAs as to mandating undertakings to provide services, features or terminal equipment for end-users with disabilities as part of the standard services and packages they offer will depend on the transposition of Article 23a of the 2009 USD at national level, which is not yet known by the majority of NRAs, as stated in the report submitted to public consultation under section 3.3.1.

BEREC notes that many Member States have put in place obligations with respect to terminal equipment under universal service and that Article 23a of the 2009 USD is not specific regarding the measures that can or cannot be mandated by NRAs under it.

As to the identification of measures to address issues with respect to equivalence, both mentioned by service providers and end-users associations, BEREC considers that they are, again, covered under section 5.3 of the report submitted to public consultation. Based on the current legal framework in each Member State, BEREC

identifies three main scenarios with respect to the role of Article 23a of the 2009 USD, where the proportionality test has a key role.

Where gaps in equivalence have been identified, BEREC considers that NRAs would evaluate options to achieving equivalent access and choice for end-users. It is understood that in some cases where NRA does not have responsibility for implementing Article 23a(2) of the 2009 USD – encouraging the availability of terminal equipments – measures in relation to this may not be evaluated by the NRA.

Consultation Question 10: What is the role for public procurement of accessible terminal equipment, as it is likely that NRAs may have no powers with respect to design or supply?

Sorenson Communications, the only respondent to this question, argues that NRAs should ensure that terminal equipment is subsidised.

BEREC Position: BEREC is of the view that NRAs may not have a role in arranging the subsidy of equipment.

6. Funding and provision of subsidies for services for disabled end-users - Stakeholders' Responses and BEREC's position

Consultation Question 11: Where a subsidy is available for services, features or terminal equipment needed for disabled end-users is the up-take as expected and are there any barriers to take-up? If yes, what are the barriers?

No respondents directly addressed this question.

Consultation Question 12: If funding is provided to facilitate equivalent access for disabled people, is it best targeted at purchase of equipment, discounts on tariffs, by subsidising special services such as relay services or by direct payment to the user?

Few respondents directly addressed this point. Those who did favoured subsidy of services and equipment purchase rather than direct payment to users. *BT* advocates market based solutions with financing and procurement organised and funded by government, (even as a transitional measure), and based on European standards and the wider adoption of 'design for all' principles. *Telefónica* notes that in some countries initiatives were funded by government and that many communications service providers have undertaken voluntary initiatives, often in collaboration with third parties, to provide equipment and services for disabled customers. *BT* is of the view that communications providers should not be solely responsible for funding of services that improve access and choice for disabled end-users. *BT* bases its view on the fact that all sections of society and business benefit from disabled customers being able to contact and communicate with them and therefore all sections of society and business should contribute financially.

Consultation Question 13: Are there any details available on the cost per user of implementing any of the measures mentioned in the report?

No respondents directly addressed this point. However, many respondents made the point that funding needed to be made available for specialist services.

7. Proposed approach to achieve equivalent access and choice - – Stakeholders' Responses and BEREC's position

Consultation Question 14: Are you in agreement that the steps²⁰, as proposed above, are appropriate for NRAs to consider when preparing to implement Article 23a? Are there any additional factors that should be considered?

Concerning the appropriate steps for NRAs to consider when preparing to implement Article 23a of the 2009 USD, *ANEC/EDF* underlines the importance of an active participation of persons with disabilities and organisations representing them in all decision-making process, while *ETNO* underlines the importance of consultation of all interested parties, including undertakings, giving legal arguments in this regard, such as the provisions of Article 33 and Recital 49 of the 2009 USD. *Telefonica* states that it is important to consider national circumstances, involving other communications service providers and it may not be necessary for NRAs to use their new powers. NRAs should aim to operate without regulatory intervention. It proposes an approach to conduct a review of existing services for disabled end-users and other services used by disabled users. *TAG* is of the view that NRAs should be able to select which types of relay services should be provided after consulting end-users.

BEREC's Position: The importance of consultation of all interested parties is emphasised throughout the report.

TI and *ETNO* agree that it is important to assess the situation for consumers with disabilities in comparison to other consumers. *ANEC/EDF* is of the view that because of different technological developments in Member States, national

²⁰ a) Determination of factors to assess equivalent access & choice, b) Assess each factor for end-users with disabilities and other end-users, c) Identify proportionate measures to address issues with respect to equivalence d) Consult with interest parties regarding proposed measures and obligations on undertakings.

conditions should be considered by NRAs in determining services required to ensure equivalent access. *TI* and *ETNO* are of the view that NRAs should ensure that all consumers with disabilities are considered, not just those that have influential representative organisations.

BEREC's position: BEREC's report (Section 5) addresses these aspects in relation to assessing the situation in comparison to other consumers, consultation with stakeholders, including those with disabilities and implementing proportionate measures, as relevant, in the light of national conditions.

PhoneAbility is of opinion that BEREC's report is not exhaustive in relation to the approach on accessibility of terminals as a key element of equivalent access for disabled users, suggesting that considerable market analysis is needed to identify real requirements of disabled users, as accessibility of terminals is not determined by the availability of particular single features from a list, but is directly linked to the ability to find particular combinations of these features in a single device. *PhoneAbility* also references its own report²¹ on accessibility of telephone terminals, as an example of the principles that should be followed, but with the caveat that, being issued in 1999, the information concerning the new technological developments are not currently up to date.

ETNO, *BT*, *Vodafone*, *TI* and *Telefónica* suggest a rigorous evaluation of current measures in place in each Member State, including the alternative universally-designed services that are valued by disabled customers (for example, SMS, Instant Messaging), before imposing any new provisions for the implementation of accessibility measures, and to introduce self-regulatory instruments, such as codes of practice or guidelines, when the market adequately addresses the needs of end-users with disabilities. *ETNO* also calls for proportionality of measures, in the sense given by Article 8 of the 2009 Framework Directive, regarding the adoption of proportionate measures. *Vodafone* proposes that a cost benefit analysis relating to proposed measures is appropriate, to avoid wasting of resources.

²¹ <http://www.phoneability.org.uk/publications/books/telephones/index.htm>

In addition, *BT* argues that NRAs should not target the communications industry to be the sole driver of improved equivalence in access, especially when on the base of general legislation of accessibility and non-discrimination all employers and providers of services are to make any necessary adjustments to ensure accessibility. In the matter of terminal equipment, *BT* declares its support of inclusive design wherever this is possible and welcomes wider adoption of this principle to reduce the need for expensive, specialist services and equipment.

BEREC's position: BEREC accepts *PhoneAbility's* point of view that the report does not provide an exhaustive list of equipment and facilities and although the report does not intend to provide detailed guidelines on what the target should be for each NRA's research in the matter of accessibility of terminal equipment, a reference to this point of view will be made in the report in Section 4: - Services and features available for end-users with disabilities).

Regarding the suggestion concerning the need for a rigorous evaluation of current measures in place in each Member State, BEREC agrees and considers that the final report already mentions as imperative the regulatory principle of proportionality of measures.

As for the importance of universal design, BEREC understands it and recognises that each NRA should take into account the general status of accessibility in each country and, after making an informed and realistic opinion, should develop its regulatory strategy based on input from disabled users, disability organizations, electronic communication services providers, governmental bodies, etc.

On the other hand, the nature of electronic communication services does not allow for a clear distinction between the use of services and the purpose/amount of their usage. For example, NRAs might decide that measures for disabled users can apply only for natural persons and that financial facilities are to be limited in order to estimate a reasonable usage. In this context, other providers of services, who also have to meet the needs of the disabled users, could initiate cooperation with electronic communication services providers in order to make their services accessible by means of accessibility of electronic communication services.