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The Mobile Challengers would like to raise some issues following the recent consultation on BEREC's draft report on best practices to facilitate switching. The Mobile Challengers would like in particular, to bring to your attention some of the obstacles faced but also some of the best practices in the area of mobile switching and more specifically in the area of Mobile Number Portability ('MNP') in the countries in which they operate.

The Mobile Challengers take the view that making it easier for consumers to port their number when they switch operators can facilitate greater competition and entry in the market, leading to lower prices and a more operationally efficient industry.

A well-functioning mobile switching process should allow for an MNP system comprising of the following elements:

- Near-instant porting and, in any event, porting within one working day
- The process of switching and porting should be Gaining-Provider-Led ('GPL')
- There should be no deterring factors for the customer. For example, no deterring fees at wholesale, no fees at retail level and no harmful or aggressive retention activities.
- Direct Routing of calls to ported numbers

Below is a country by country summary:

AUSTRIA

Retail fees

In most countries in which the Mobile Challengers operate, retail fees to the customer for porting have been removed or, if they exist, they are not passed on to the customer. In Austria

BASE Bouygues Telecom E-PLUS GRUPPE WIND Πολύ περισσότερα tušmobil

avea PLAY WIND 3

however, a retail porting fee exists and all operators except the challenger (3 Austria) charge the customer €19 (in practice this cost is borne by 3 Austria and is not passed to the

consumer). The €19 fee is made up of €15 porting fee and €4 for porting information. Regrettably, the NRA stated that it has no responsibility over the charge to customers following a Court ruling.

Calling party hearing message for ported numbers

Furthermore, in Austria, the calling party hears the name of the recipient network operator to indicate that he/she is calling a number that has been ported. This has been mainly a business customer issue. In the early stage of mobile communication mostly business customers used mobile phones. This in effect gave Mobilkom, the former incumbent operator in Austria, a strong first-mover advantage. Mobilkom has still a marked share of more than 70% in the business customer segment. This issue remains unresolved in Austria despite efforts from other mobile operators in the Austrian market.

Due to the calling party hearing this message, business customers are concerned that after porting their number from Mobilkom to another operator – e.g. to the price leader – they may suffer reputational harm which therefore deters them from porting their number.

BELGIUM

Well functioning MNP process

In Belgium porting mostly takes only a couple of hours. Since the start of MNP in October 2002, almost 3.5 million numbers have been ported. The net balance is positive for the number 2 and 3 operator with respectively about 248 K and 308 K numbers ported. That this net balance is relatively low despite a well-functioning MNP-process indicates the existence of other switching barriers on the market.

Bundling and fix – mobile convergence

Fix customers with digital TV are far more loyal than customers without digital TV as part of their bundle. Once a single our double play customer adds TV to his package, churn is drastically reduced. Some sources even speak about reductions from between 20% and 30% per year to less than 1% per year. The digital TV penetration as part of a bundle has just reached the turnover point of 50% of the total TV market, meaning that full penetration will

be reached within a limited timeframe. Since a wholesale offer that makes it possible to offer digital TV never existed in Belgium, there are only two players active in this rapidly saturating market of fix bundles including TV that is characterized by an almost complete absence of churn: Belgacom and Telenet.

In Belgium, the only vertically integrated operators are again Belgacom and Telenet. Belgacom has its own fix and mobile infrastructure. Telenet runs an MVNO, is establishing a full MVNO and indicates it is interested in buying the 4th mobile license. Both companies jointly dominate the fix market and as a consequence also the market for fixed-mobile convergence. The trend of fix-mobile convergence is just beginning, but the possibility of leveraging the fix duopoly into the mobile market is a strong incentive for both companies to develop the market for fix-mobile convergence. Both companies prepare for replacing the remote control of the TV by the mobile handset. Both companies prepare for a flexible platform that will be distributing content, digital TV and other, to any devices, including the mobile handset. The trend of fix-mobile convergence therefore might accelerate. This growing converged market also will be characterized by an almost complete absence of churn.

Given the particular situation in Belgium, a fix duopoly market and Belgacom and Telenet both having a mobile arm, bundling and fix mobile convergence are a colossal switching barrier that limits churn in the market of bundles and in the market of fix mobile convergence to a percentage that approaches zero.

IRELAND

Best Practice example

In Ireland there is a near-instant MNP process, the typical porting is actually completed in 20 minutes. This has meant that customers are more inclined to port their number. Almost 1.93 million numbers have been ported since the launch of MNP in June 2003. Over the last 12 months an average of 89,118 numbers has been ported each quarter[1].
Ireland is one of the countries that has banned retention activity altogether. As per the Industry agreed MNP Code of Practice, the losing provider is not permitted to try and win back the customer during the MNP process.

[1] Irish Communications Market, Quarterly Key Data Report Doc No: 10/43
http://www.comreg.ie/_fileupload/publications/ComReg1043.pdf

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ITALY

Retention activity

Retention activity has been banned in Italy. In Italy, the MNP procedure was launched in 2002. The reaction of the incumbent operators was to begin retention activities based on the personal data of customers held by them. The regulatory framework forbid the use of the data for purposes that were different from executing MNP - i.e. for making commercial offers to

the customer. However, technical procedures and commercial agreements left the possibility to exercise retention. The procedure of request and validation by the donor operator lasted three working days which gave the opportunity to the donor operator to exercise aggressive retention activity and as a result have the customer cancel the MNP request.

Notwithstanding the number of litigations among operators arising from this, the NRA did not intervene to stop the retention activity. All operators in Italy were exercising retention activity, with the exception of the challenger (3 Italy).

At the end of 2008, when the new Italian MNP regulatory framework was in place, following pressure by the new virtual operators, the NRA decided that an MNP request cannot be canceled by the customer. At the same time the technical procedure was shortened in order to eliminate the long wait between request and validation. As a consequence the NRA obliged all operators to stop their retention activity. This was challenged by the incumbent operators and following a long judicial procedure the decision of the NRA was validated.

POLAND

Exploitation of legal loopholes and ambiguities in the MNP process defined by law

The main reason of incumbents' refusals to port out a customer number (approx. 90% of all refusal cases depending on the period analysed) is "invalid customer identification information"; the incumbents attempt to verify customer identification information that is not required specifically by law, such as the name and address. Any discrepancy in the above data is treated as a reason for refusal to port out the number.

Other grounds for refusal is the "incorrect contract type"; the request for MNP requires the customer to indicate a contract type currently in force (pre-paid or post-paid), however, the

incumbents' terms and conditions do not clearly specify the contract type in case of some contracts. An error in this case results in discontinuation of the MNP process.

Unjustified prolongation of the MNP process is another example. The customer is required to specify the desired porting date in its MNP request. Those unaware of the date of termination of the contract specify the date as "end of current contract"; if the request for porting is filed a day after the actual end of contract the incumbent operator enforces a standard one month termination, adding on the days left until the end of the settlement period which results in an average 45 day duration of the MNP process.

A further example of grounds for refusal relates to retention activities undertaken immediately after receiving the request of porting. Within three hours of receiving the request for porting the incumbent operator sends a retention offer by SMS to the customer and a response to such SMS is treated as grounds for discontinuation of the MNP process.
Below is an indicative breakdown of the reasons for discontinuation/ refusal of the MNP process in Poland (January-June 2010):

[MNPK] Reason (Display Value)	end sum
Agreement breach	13
Inactive MSISDN	3405
Incorrect contract type	6919
Incorrect MNP case number	2
Incorrect MNP case status	76
Incorrect registration data	31598
Insufficient funds	1
Number portability process resignation	3152
Port between in progress	206
Port-out in progress	85
(blank)	72
end sum	45529

Retention activity

Incumbents offer exceptionally better retention offers to customers wanting to port their number which are often below cost and better in comparison to the standard incumbents' acquisition offer and/or better in comparison to the challenger's already very attractive acquisition offer.

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Standard practices involve inauguration of retention negotiations 3 months prior to contract termination. The new incumbents' retention strategy is to begin negotiations after 12 months of a 24-month contract. Furthermore, it has become a noticeable practice for the incumbents to shorten the contract for the customer after completing negotiations, in order to keep the customer for the next 24 months, with the newly negotiated terms.

One of the differentiators between incumbent operators and a challenger such as P4 is that the incumbents execute a retention strategy whereas a challenger concentrates on customer acquisition. Fundamental implications of the above for the MNP process are that:

- Incumbent operators carry out valuations of their existing customers and prepare retention negotiation levels depending on the value of the customer. For example, the offer proposed is much more attractive than the standard incumbents' acquisition offer and most customers choosing to stay with the incumbent operator make the decision at the first level of negotiations creating savings for the operator.

- For a challenger operator concentrating on acquisition, it is the standard acquisition offer that has to attract customers, and therefore its impact on total revenues is much higher as it relates to the entire customer base.

- Such practices of the incumbents benefit a relatively small number of the customers (only those who express an intention of porting their number) and have no positive effect on competitive pricing in the market whereas a challenger's standard acquisition offer benefits all newly acquired customers and increases the competition level.

UK

Losing – Provider Led process

In the UK the MNP process continues to be Losing – Provider – Led ('LPL'). We are aware of no European jurisdiction or other major economy which requires its mobile consumers to contact their current network for permission to move their number to a new network. The LPL system is heavily reliant on regulation to force donor operators to do the right thing by consumers. It requires them to work against their commercial best interests and therefore offers little incentive for them to make the porting process work. Furthermore, it is the consumer that has to manage the process, and ask their current network for permission.

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Ofcom's research has shown that the majority of customers understandably want to avoid this. LPL porting can never be as fast as GPL, because for example in the UK, it consists of a two-stage process. Any system which requires consumers actively to obtain permission from their current provider instead of empowering their new operator to activate the port on their behalf will always be prone to delays. The current system in the UK suffers from even further delays. It relies on complicated messages being communicated to customers in a manner which leads to confusion and on occasion leads to misinformation. It facilitates save activity which the majority of customers do not welcome. It forces customers to speak to their donor network, highlighting that they intend to leave the network. This provides the donor operator with an opportunity to engage in retention activity.

This LPL process has an effect on competition, since incumbent operators may engage in targeted marketing and retention activities that the entrant operators might not be able to replicate. In addition, the current process allows a significant period of time and significant potential for customer retention activity that is not welfare-enhancing, but is competition-reducing; and importantly, potential switching customers may not have information available to them on options to port. In effect the current MNP system in the UK limits switching and disincentivises providers from putting their best deals into the market. It provides significant opportunities for the donor operator to engage in aggressive save activity and build in delays. Ultimately, it is the consumer who loses out under the LPL system.

Indirect routing (tromboning)

In the UK the practice is for calls to ported numbers to be tromboned via the donor network, whereby the call is always routed first to the operator holding the original number allocation and then forwarded to the recipient operator. The tromboning or indirect routing of calls creates a technical dependency on the donor network, because all calls to ported numbers have to be first handled by the donor network before being passed to the recipient network. This can cause consumer detriment in the form of problems with the customer experience, because calls may fail to connect altogether, have a poor quality of service due to congestion on the donor network, or cause service interoperability issues where the donor does support a particular service offered by the recipient network, e.g. video calling.

Indirect routing also leads to transit costs being incurred inefficiently. In the UK, the holder of the number range levies a 'conveyance charge' on the recipient operator. This has been historically significantly above cost, meaning that the number range holder continues to earn profits from the customer even after the customer has ported away. Indirect routing, therefore, places a disincentive on operators from promoting efficient number portability because they earn less or no revenue from customers who port under a direct routing arrangement for calls

to ported numbers. This inefficiency is further exacerbated in the UK because the recipient receives the donor operators' MTR and not its own. In essence, the incumbent mobile operators in the UK, as a group, continue to profit from the inadequacies of the existing MNP system including the receipt of donor operator MTRs which are higher than their own regulated MTRs, and a net in-flow of Donor Conveyance Charges ("DCC") as a result of indirect routing.