



Colt Technology Services Group Limited

Comments on

**BEREC call for contributions
on barriers to business communications services**

BEREC FR IMPL EWG_BS_110704

19 August 2011

This is the response of the Colt Technology Services Group Limited (henceforth entitled "*Colt*") 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*".

1. INTRODUCTION

Colt is the leading information delivery platform for European business, enabling its customers to share, process and store their vital business information. As established leader in delivering integrated networking and IT managed services to major organisations, midsized businesses and wholesale customers, Colt operates a 19 countries, 25,000 km network that includes metropolitan area networks in 34 major European cities with direct fibre connections into 17,000 buildings and 19 Colt data centres. In 2010, the Colt Data Centre Services business was launched to deliver innovative modular data centres which are high quality, rapid to deploy and power efficient. Colt has made a EUR 4.6 billion pan-European investment in its next generation fibre network infrastructure. Our focus is primarily on serving international enterprises.

If not indicated otherwise below, Colt will answer the questions from a Pan-European ECNS operator perspective derived from the experience across the countries it operates in.

2. COLT RESPONSE TO BEREC QUESTIONS

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?

Colt's general impression is that it seems to have become much easier for new entrants to enter the national telecommunications markets as was intended by the EU Commission's 2002 Authorization Directive. In most countries, the administrative procedures around the transition process have not created any barriers to Colt's business.

There are, however, notable exceptions.

Germany

In Germany (Colt's largest market) Colt holds class 3 and 4 licences (public network/voice telephony) since 1996 (as COLT Telecom GmbH).

In 2004, the notification requirement was introduced in section 6 of the revised Telecommunications Act (TKG) to replace the licensing procedures according to section 4 of the 1996 TKG according to the 2002 Authorization Directive.

In TKG section 150 para (2) ("Transitional Provisions"), a preservation of the status quo had been introduced for providers already being licensed under the previous law. (*"Undertakings which have given notification under the Telecommunications Act of 25 July 1996 (Federal Law Gazette Part I page 1120) that they provide telecommunications services or are licensees shall, without prejudice to the obligation set out in section 144(1) sentence 1, not be subject to the notification requirement according to section 6."*)

In November 2006, Colt received a formal note by the NRA BNetzA declaring that it had automatically been registered as certified provider of telecommunications services.

In November 2008, Colt notified BNetzA that the COLT Telecom GmbH had recently been merged with the COLT Telecom Holding GmbH which was subsequently being renamed into COLT Telecom GmbH. In November 2009, BNetzA referred to the aforementioned notification, requiring Colt to undergo the notification procedures for its class 3 (public network) licence with regard to financial capability while at least simultaneously exempting us from the obligation to provide proof of operation of a public telecommunications network, reliability and technical qualification.

Regarding financial capability, BNetzA demanded that Colt present the following documents:

- Mid-term business and financial planning (5-year-span),
- Written evidence on securities, loans, equity capital and guarantees where applicable,
- Credit check of applicant or parent company's financing commitment,
- Excerpt from the commercial register.

Thus BNetzA unnecessarily imposed obligations on Colt which were originally intended to be met by new entrants to ensure that BNetzA is being put in the position "*to keep a register or list of providers of electronic communications networks and services*" as is being laid down in Art. 3 No. 3 of the 2002 Authorization Directive.

As BNetzA would not refrain from its position, Colt was forced to initiate administrative proceedings to avoid undergoing the time consuming notification procedure (again), arguing that BNetzA's behaviour constituted a violation of the applicable law. Colt finally succeeded in the proceedings.

Spain and Portugal

In Spain and Portugal, additional obligations have been imposed on operators to notify the NRAs every two years about their intent to continue providing ECNS.

- **Did you encounter inconsistencies or operational constraints potentially affecting the provision of cross-border business services? If yes, please provide a description.**

Offering a Pan-European voice service is a cumbersome task for Colt from a regulatory perspective. Requirements on the location of a user of a geographic number always exist but they differ from one country to the other. The handling of non-geographic numbers is a very parochial exercise, both from an interconnect and third party billing as well as from a code of conduct perspective.

In most Colt countries – apart from the differences in the handling of phone numbers as described above (pls. see previous paragraph) and the differences in the availability of given flavours for business data services (SDSL, Ethernet) – there is no special issue regarding the provision of the national part of a cross-border business service.

In general, this statement is valid for Germany as well. Nevertheless, the licencing/notification issue described above when BNetzA refused to grant Colt its class 3 (public network) licence and delisted Colt from the list of class 3 licencees, Colt was exposed to the danger of losing credibility in front of its customers as well as eligibility in public tenders involving rights of way. Thus Colt was unjustifiedly subjected to operational constraints which clearly affected the potential provision of cross-border business services.

- 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?**

Networks do differ from one country to the other, in some cases even considerably. In some countries, SDSL – which is strongly requested from business customers having a higher upstream speed demand than individual consumers – is very developed while it is not developed at all in others. The flavours of Ethernet always differ from one incumbent operator to the other. This is not due mostly to differences in regulation, but to differences in the industrial and commercial development of the business telecom markets of each country.

Faced with this situation, a Pan-European ECNS provider is faced with two possible choices:

- (1) Either opting for the “best of breed” circuits in each country and obtaining a rather heterogeneous portfolio, or
- (2) Looking for the lowest common denominator, however antiquated it might be (e.g. SDH).

Colt, serving national customers as well as international ones, tends to propose the “best of breed” approach. However, international customers often prefer a lower performance over a higher price.

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?

Across EU member states there is a certain number of differences attached to such issues as the handling of directory entries, emergency calls, the constraints on the use of geographic and non-geographic numbers, the handling of number portability, interception and data retention which differs from one country to another.

Colt's business customers require a clear, harmonized regulatory framework across EU member states in terms of having similar – not necessarily identical – and reliable administrative procedures to avoid negative impact on the provision of ECNS. Such procedures would allow operators to significantly reduce provisioning lead times and thus put them in the position to offer reliable, competitive cross-border services to Pan-European or global business customers. Achieving this harmonization will also support Colt in achieving harmonized regulated offers from the incumbents in terms of SLAs, lead times etc.

Networks do differ from one country to the other, in some cases even considerably. In some countries, SDSL – which is strongly requested from business customers having a higher upstream speed demand than individual consumers – is very developed while it is not developed at all in others. The flavours of Ethernet always differ from one incumbent operator to the other. This is not due mostly to differences in regulation, but to differences in the industrial and commercial development of the business telecom markets of each country.

Faced with this situation, a Pan-European ECNS provider is faced with two possible choices:

- (1) Either opting for the “best of breed” circuits in each country and obtaining a rather heterogeneous portfolio, or
- (2) Looking for the lowest common denominator, however antiquated it might be (e.g. SDH).

Colt, serving national customers as well as international ones, tends to propose the “best of breed” approach. However, international customers often prefer a lower performance over a higher price.

Germany has unfortunately been putting up a considerable amount of administrative barriers. Here are a few examples:

- There are several operational issues, above all the delayed provision of numbering resources (geo numbers/service numbers) by BNetzA which repeatedly hindered the timely and efficient provision of business services to our customers. However, these issues arise from specific process and resource limitations inside the NRA which will potentially not be eliminated successfully from an EU perspective.
- Certain administrative obstructions have been addressed by providers/industry groups to various international institutions, for example the Office of the United States Trade Representative (USTR), e. g. the NRA's failure to regulate access to the incumbent DTAG's ATM bitstream resources early enough so that during the procedures the providers' demand was waning incrementally. The incident has been published in the

USTR's annual review pursuant to Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 ("USTR Section 1377 Report"), (see "*Results of the 2010 Section 1377 Review of Telecommunications Trade Agreements*", p. 9 for details, published under http://www.ustr.gov/webfm_send/2220).

- Another good example for administrative barriers is Colt's futile attempt to obtain a wholesale line rental product ("WLR") at wholesale pricing level as DTAG did only offer a pseudo WLR product with retail pricing conditions: As part of a long-term business relationship, one of Colt's resellers, the ecotel communication AG (henceforth "ecotel") obtained a portfolio of services, including WLR, by DTAG's affiliate, the T-Systems Business Services GmbH. In 2007, DTAG underwent a restructuring process and informed our reseller that the business relationship would pass over to the parent company, DTAG while discontinuing WLR. Subsequently ecotel filed with BNetzA to retain WLR, supported by Colt which became party concerned to the proceedings. In 2009, BNetzA imposed an obligation on DTAG to offer WLR to ecotel. As BNetzA failed to impose an obligation to offer WLR at wholesale pricing level, DTAG offered only a pseudo WLR as described above.

Therefore ecotel filed again with the BNetzA for abusive behaviour. In a highly questionable approach, BNetzA first unacceptably delayed the proceedings, then formally declared the proceedings being part of the market 1 consultation which had already begun, the result being that DTAG would not be obliged to offer WLR at a wholesale pricing level, thus making it economically unattractive.

In Spain, the NRA CMT appears to be in favour of introducing geographical segmentation on ULL, i.e. lift regulation in highly competitive areas and keep current regulation in non-competitive areas. The problem for Colt is that it operates in Spain's most competitive areas (Madrid, Barcelona and Valencia) so that the potential impact would be huge. However, CMT, having been made aware of the negative impact on business customers, seems to seek to avoid such negative impact in its conclusions of the current Public Consultation on Business Customer Services which will be published shortly by clearly differentiating between residential and business customers.

In consequence, CMT will quite probably take into account the business customer scenario when reviewing its market analysis, potentially by either defining a new market for business customer services or adapting current regulation to business customers' requirements.

- 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?**

Please allow us to make reference to Colt's comments on BEREC's draft report on relevant market definition for business services BoR (10) 46 (included) from Nov 22, 2010 where we shared our observation that NRAs do often fail to properly recognize business customers' specific requirements, much less perform market analysis and definition procedures on potential markets for business services while this might not necessarily be

addressed best in terms of defining a separate market as long as there is sufficient competition.

Please feel free to contact the two following contact points should you like to discuss further with Colt:

Jean-Stéphane Gourevitch, Group Director, Regulatory Affairs

E-mail: Jean-Stephane.Gourevitch@colt.net

Phone: + 44(0)795803-5090

Christian Weber, Senior Advisor Regulatory Affairs

E-mail: Christian.Weber@colt.net

Phone: + 49(0)69-56606-6591

We would like to thank BEREC in advance for its kind attention to Colt's contribution.

Yours sincerely,

Colt Technology Services Group Limited