

BEREC Call for Contributions on Possible Existing Legal and Administrative Barriers with Reference to the Provision of Electronic Communications Services for the Business Segment

Response by BT Global Services

Introduction

BT Global Services welcomes the opportunity to contribute to the consultation on possible existing legal and administrative barriers with reference to the provision of electronic communications services for the business segment. BTGS also supports the joint response made together with AT&T, Cable & Wireless Worldwide, Orange Business Services and Verizon Business.

BT would like to thank BEREC for its interest in finding improved ways to enable pan-European operators like BT to provide services to their cross-border/pan-European business customers.

We firmly believe that the biggest issues with pan-European business communications services lay not in the authorisation regimes or different administrative regulations affecting telecoms operators. Rather it is the lack of harmonised, transparent and non-discriminatory access products and regulations which makes the operations of pan-European business services providers difficult and expensive.

To respond to your questions concerning cross-border business communications services:

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

- What is your overall experience of the practical implementation of such administrative regime in Member States?

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

BT finds the implementation of EU's current authorization regime to be substantially complete across the EU, and we have not experienced any major issues with the authorization regimes in any EU Member State. Authorization of any telecoms services is easy, inexpensive and quick within the European Union, especially if compared with non-EU countries.

That said, in a number of countries NRAs require ex-ante notification of each relevant service that an operator wishes to launch (eg Greece, Luxembourg and Belgium) which adds unnecessary regulatory red tape and defies the general authorization principle.

It is also noted that it remains impossible to operate across Europe under the general authorization issued in one country of the EU. This (ie mutual recognition of general authorizations) would largely simplify and remove unnecessary remaining entry barriers.

Some countries that are still going through accession negotiations (eg Turkey) currently still operate a licensing regime that is not in full compliance with the general authorization regime with individual licensing elements still entrenched in the regulatory framework (although we appreciate that the NRA, ICTA, has been working hard to try and simplify the regime by introducing some changes but is still looking into further reform).

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?

Currently those countries that operate the lightest authorizations regime and any subsequent notification system are the UK, Denmark and the Netherlands. These could be taken as the current best practice.

That said we do not think that we could identify the above as best practice as the best practice we would need does not currently exist.

The best practice that we would encourage is that where a provider is already authorized to operate in one of the EU countries he can do so also in other countries under the principle of mutual recognition. This would help to reduce unnecessary red tape and administrative burden that far too often stifles the provision of services across borders as well as innovation.

The EU telecoms framework has indeed already tried in the past to promote the principle of mutual recognition but with little success to date. We note for instance that under the old interconnect directive (97/33/EC) a provider licensed in a Member State A would have automatically had the right to obtain interconnect from an incumbent operator in the Member State B (and via that interconnect provide services in the Member State B). Indeed the Directive provided for the obligation for Member States to “take all necessary measures to remove any restrictions which prevent organizations authorized by Member

States to provide public telecommunications networks and publicly available telecommunications services from negotiating interconnection agreements between themselves in accordance with Community law.”

Unfortunately, the principle of mutual recognition has been largely ineffective and disregarded by Member States, with the authorization regime and enforcement of provisions related to obligations associated with the latter often hampering developments. For instance cross—border business services increasingly rely on the deployment of centralized/remote service platforms (such as VPNs, cloud based services etc) that often cannot be marketed in all Member States as the complexities added through the licensing regime and relevant local conditions associated with this may make a product not fully compliant for instance with technical rules of the Member State of destination.

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?

There are numerous differences in regulation and administrative procedures amongst the Member States that affect the provision of business services across Europe. Some countries put huge amount of reporting obligations on telecoms operators while a handful of countries try to gather information from sources independent from operators, and by doing that, they decrease the amount of reporting obligations significantly. As a result, there are countries which require telecoms operators to submit nothing but an annual report to the regulator. However some of them, as in the case (but not exclusively) of the Czech, Slovenian and Slovakian regulators, require different types of reports at least 4-6 times in every year.

In the same way there are substantial differences amongst compliance practices of the Member States. For instance, Hungarian law requires every telecoms operator to prove that it meets the SLAs and other KPIs as set out in its terms and conditions. Czech, Polish and Greek regulators require telecoms operators to present their data protection and traffic data retention policies to the authorities and prove that their activities are in line with such policies. Others have introduced mandatory certification requirements in the same area (eg Turkey and mandatory ISO 27001 certification). Similarly, Polish and Czech laws require from telecoms operators to present a plan for action in the case of a state of emergency (such a plan is to be prepared for every county in Poland in which a telecoms operator is active and shall be updated every three

years). Slovenian, Belgian, Czech and Bulgarian regulators regularly request reports on the network infrastructure and network elements of the telecoms operators.

It is also noted that no common format (nor purpose) is applied by NRAs on reporting tools and obligations. In addition, no common language (eg English) is currently used. It is easy to see how the use of a common language for reporting across all jurisdictions would ensure full transparency and enable a quicker transition to a standardised approach in this area.

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

BT has been advocating for the distinct regulatory treatment of business services in the communications industry. However, we do not think a new administrative regime must be introduced specifically for cross-border business services. BT believes that a more unified regulatory practice relating to the current compliance obligations across the EU, together with the alignment of limited types of reports, would best serve the interests of cross-border business service providers, and also those of pan-European businesses.

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