

Optimus' comments on the public consultation about the Draft BEREC Report on Special Rate Services

I. Introduction

Optimus – Comunicações, SA (Optimus) is a Portuguese operator with an integrated offer of communications services, including mobile and fixed telephony services as well as TV and Internet services.

In the scope of BEREC's public consultation about a Draft Report on Special Rate Services (SRS), Optimus would like to highlight some aspects regarding the offer of special rate services in Portugal and some remarks on BEREC's conclusions regarding the "more promising" regulatory approaches.

II. Special Rate Services in Portugal

a. Retail Pricing Models

In Portugal the SRS are accessed through specific numbering ranges of the national numbering plan and the retail model is a mix of the "S" and "S_fS_m" BEREC's models, where the maximum retail price is set by the NRA.

In fact the SRS are accessed through calls that may have a maximum cost per minute, which, in some cases may differ between a mobile and a fixed origination, or a maximum price per call regardless the originating operator (OO). The ceiling retail prices are defined by the regulator.

Optimus understanding is that such model intends to make the access to SRS more transparent for end customers since they become familiar more easily with the maximum prices for access SRS by dialing specific numbering ranges.

b. Value Chain

In general, the service providers (SP) don't have numbering resources because such resources are only awarded by the Portuguese regulator to authorized service communications providers. This framework requires the establishment of an agreement between the SP and an electronic communications provider in order to have access to a specific special number, through which the final customer can reach the special service provided by the SP. The operator that holds the numbering resources also acts as OO in what regards its customer base.

Consequently, in the Portuguese market the value chain of SRS offer usually involves four players instead of three as mentioned in BEREC's document: the caller, the OO, the Operator that holds the rights of usage of special numbers and the SP.

The OO collects the retail price from the final customer and delivers it to the operator that owns the numbering resources. On the other hand the OO's payment, which is assured by the operator that holds the numbering resources, comprises, in general, compensation for the use of the network and additional relevant components like billing, cash collection, etc..

c. The compensation of mobile originating operators for allowing access to SRS

Optimus does not recognize that a higher proportion of SRS revenue is retained by the mobile originating operator. For instance, for a call with a maximum retail price of 60 eurocents (VAT excluded)¹, a mobile originating operator retains a very small part of it, even including the referred additional compensation that is supposed to cover, namely, billing and collecting expenses. This result does not change even when the OO charges an additional component as a call setup.

This happens because such calls have, in general, a very small duration, mostly a very few seconds², and the origination compensation is mainly billed per second.

It is worth noticing that another important characteristic of such calls is the concentration of high amount of traffic in specific hours, for example, during 1 or 2 hours that a contest TV show lasts. This puts additional and specific challenges to the traffic management by originating operators that must also be taken into account when the adequate compensation for originating operators is discussed.

Another important and specific issue of Portugal to consider when evaluating the mobile OO's fair compensation for giving access to SRS is the fact that the mobile customer's base is dominated by pre-paid customers³. Thus, the effects on the mobile OO go well beyond the availability of its network to allow the origination communication, billing and collecting cash.

Given that a substantial proportion of prepaid customers only spend the value that corresponds to the mandatory periodic recharge, the provision of access to services that involve the transfer of absolute retail revenue for the owner of the numbering resources, has the practical consequence of reducing the retail revenues of the mobile operator.

This is the case because the conditions of prepaid services, including price and recharge levels are defined on the assumption that these values will largely be converted into revenues of the operator that owns the client and supports the acquisition and maintenance costs of such client.

In this regard, must be said that setting the value of mandatory periodic recharge is based on a usage profile of a basket of services and requires reaching a proper average return for the mobile operator, namely that sustains the high level of investment that is needed to act in mobile industry.

¹ The NRA decided to allocate the number range 760 XXX XXX to accommodate services reached by a call which retail price is 0,60 € (+VAT). These type

² In most cases these calls refer to the participation in TV and radio contests

³ The majority of pre-paid customers must comply with a periodic recharge, which amount may differ among price plans

Thus, giving access to SRS which retail revenue is delivered to a third party, while the mobile operator is not fully compensated for all the effects of such access, may put into question the whole logic of prepaid services and, given the high percentage of Portuguese customers who adopt this kind of services, the feasibility of mobile services may unjustifiably be affected.

We must refer that such effect is particularly relevant within prepaid customers, but it is also important for post-paid customers. Because the expense of customers in third parties services lower their willingness to spend on services of their operator.

Optimus experience shows that the margin resulting from allowing access to third parties SRS is much lower than the one that is necessary to keep a mobile network, which means that the current level of compensation of mobile operators for allowing access to third parties SRS is neither balanced nor sustainable.

To understand the unsustainability of the current mechanism of mobile OO compensation, just to say that if Optimus exclusively provided access to third parties SRS, would rapidly bankrupt because it would be absolutely unable to sustain the investment needs to develop and maintain a competitive mobile network.

Following that, mobile operators, should be compensated for all the effects that allowing access to third parties SRS implies, including in the retail side. That means that beyond the payment regarding the direct costs of originating calls in its network, the compensation for additional services like billing, collecting cash and bad debt insurance, the OO payment should also include a component that compensates the negative effect in the retail side regarding the compensation of the operator's services. The compensation for the services provided by OO must assure an adequate margin to sustain and develop its network.

In Optimus opinion the level of compensation for the effect on the retail side should be linked to the SRS retail price, for instance an adequate percentage that must be agreed between the OO and the provider that holds the numbers. It is important to notice that the referred OO's compensation must be applied regardless the SRS retail model that is in place.

III. Conclusion on the *more promising regulatory approaches*

In Optimus view the draft report makes clear that both the retail model and wholesale arrangements of SRS provision may differ considerably and have specificities among Member States. Accordingly, throughout the draft report BEREC argues that each national regulatory authority should decide which may be the most suitable retail model and the wholesale arrangement according to the national conditions. In Optimus' opinion the need of a case by case analysis should also be emphasized in the conclusions of the final report.

Moreover, following what was exposed in the previous chapter, Optimus considers that the final report conclusions should explicitly refer that the OO must be fully compensated for all the effects of giving access to third parties SRS, including to be compensated by the impact in the retail side, including the transfer of revenue for third parties.

We reiterate that this compensation should apply whatever the retail model prevails in the market and the name that may be given to the component of OO compensation for allowing

access to third parties SRS. If such compensation is not applied, originating operators will be obliged to offer services at a price that does not assure the required minimum margin to keep and develop their networks, which will be detrimental to customers welfare in the end.