Response to Draft BEREC Report on Special Rate Services

1. About DVTM

The association DVTM represents all companies involved in the value-added chain of telecommunications and media: service companies, network operators, service providers, resellers, technical service companies, media and publishing companies as well as consulting companies and collection agencies. The aims are protection and expansion of the functioning, innovative and competitive telecommunication and media market in collaboration with the market participants.

2. General Comment

The DVTM strongly agrees with BEREC's characterisation of both the problem and the effects, as outlined in Chapter 3 of the draft report. In particular we agree that the problem is much more acute in mobile pricing than fixed pricing, as summarised by the statement in paragraph 24 that

"*The OTR of mobile OOs is significantly higher than for fixed OOs and the difference cannot be explained solely by the fact that the cost of calling from a mobile in general is higher than for calling from a fixed line. The mobile OTR also seems to be considerably higher than the standard mobile retail call prices to national geographic and mobile numbers while the cost for originating is likely to be lower than the cost of a standard mobile retail call*".

As will be shown below, this problem occurs in particular in the German market for Special Rate Services. Unfortunately, the German NRA (Bundesnetzagentur) has not presented to BEREC any clear facts and figures for the revenue shares of Special Rate Services. Thus, the DVTM will highlight the issues for two important groups of Special Rate Services, following BEREC´s distinction between category 1 and 2, before describing potential solutions.

3. Major issues in the German market for Special Rate Services

3.1 Category 1 services: Free-of-charge 0800 numbers (retail price = 0)

In fixed networks, the origination rate (OR) for 0800 numbers in Germany is no matter of disputes. Contrasting that, the OR for 0800 numbers originating from mobile networks is a matter of dispute for many years. Both the Bundesnetzagentur and the Federal Cartel Office (Bundeskartellamt) refuse to take action. As a result, the OR is between approximately 8 and 13 Cents/minute, with slight differences among the German MNOs (T-Mobile, Vodafone,

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E-Plus, Telefonica/O2 and mobilcom-debitel). No price cap decision has been made, not mentioning any form of cost regulation[1].

As a result, the market for 0800 freephone services in Germany is underdeveloped[2] because such high originating rates for calls from mobile networks make 0800 services unattractive for the service provider.

With the latest amendment of the German Telecommunications Act (TKG), this development becomes even more problematic. From 2013, any waiting loops from Special Rate Services must be free-of-charge for the caller. The easiest solution for the service providers in Germany would be to switch from category 2 (RP > 0) service numbers to 0800 (RP = 0) “category 1” numbers. Unfortunately, high OR for 0800 calls from mobile devices will prevent such an easy solution as long as the German regulator refuses to take action.

3.2 Category 2 services: Example of “low-cost” 0180 service numbers

In Germany, the most popular category 2 (RP > 0) service numbers are 0180, which are not premium-rate. In fact, the retail price before tax from fixed networks is 3.3 Cents/minute (0180-1), 7.6 Cents/minute (0180-3) or 11.8 Cents/minute (0180-5), respectively. These relatively low retail prices from fixed networks led to an increasing demand in the late 1990s and the years after. Until today, telephone banking, ticket services as well as customer hotlines and reservation services are connected with the usage of 0180 service numbers.

Regarding the usage of 0180 service numbers from mobile networks, the MNOs have used the fact that no regulation w.r.t. the originating retail revenue (ORR) of MNOs has been performed by the Bundesnetzagentur and – until 2009 – no price cap measures had been introduced. Logically, MNOs set the retail prices independent of any negotiations with the terminating network operator to very high levels, reaching 83 Cents/minute (99 Cents/minute incl. VAT). Thus, for the same kind of service, the German customer had to pay prices 21 times higher for a mobile call than for the same call from fixed networks.

Transparency measures for both 0180 and premium rate services – introduced in 2004 – have missed the point completely: In advertising (both 0180 and premium rate) as well as in mandatory price announcements (premium rate) only the retail price for calls from fixed networks is mentioned, supplemented by “for calls from mobiles the price may differ.”

In 2009, a price cap of 35.3 Cents/minute (42 Cents/minute incl. VAT) has been introduced in the German Telecommunications Act (TKG) for 0180 calls from mobile networks.

[1] As a matter of fact, the Bundesnetzagentur has required T-Mobile not to set a higher OR than the lowest one of any other MNO (decision BK 3g-10-41). The DVTM regards this decision as peculiar.

[2] See WIK Diskussionsbeitrag Nr. 338, Regulierung von Auskunfts- und Mehrwertdiensten im internationalen Vergleich.

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Thus, taking the example of 0180-5 calls without any regulation for mobile networks, the revenue shares today look as follows:

- Fixed network origination: RP = 11.8 Cents/minute (before tax), ORR = 5.3 Cents/minute, outpayment (total revenue passed to TO/SP) = 6.5 Cents/minute.
- Mobile network origination: RP = 35.3 Cents/minute (before tax), ORR = 28.3 Cents/minute, outpayment (total revenue passed to TO/SP) = 7 Cents/minute. In other words: **MNOs keep approx. 80% of the retail price in their pockets**, without any intervention of the German regulator or the Federal Cartel office.

4. Benchmarking and possible remedies

4.1 Category 1 services: Free-of-charge 0800 numbers (retail price = 0)

The DVTM regards the example of regulation from Malta (2008) as a perfect benchmark for other European NRAs. Setting the termination rate as (reciprocal) origination rate (OR) for both fixed and mobile networks makes sure that the originating operator receives at least the costs for origination and that (potential) cost differences between fixed and mobile networks are reflected. Unfortunately, we have doubts that the German regulator will follow this benchmark due to our experiences in the past. This cannot be understood because all countries have the same legal framework and possible remedies; and the DVTM is very thankful for BEREC´s approach including highlighting the possible remedies as described in the Draft Report on Special Rate Services.

4.2 Category 2 services: Low cost 0180 service numbers

Again, Malta (2010) delivers a perfect benchmark for other European NRAs when it comes to category 2 service numbers. A clear-cut C+S approach is recommended. We would like to encourage BEREC to make it explicitly clear that in a C+S approach no further payments from the terminating operator (TO) to the originating operator (OO) are needed because C as the retail communication charge - that is equal to the standard communication fee to a national landline - should reflect all costs for the originating operator. This is especially true for low cost service numbers because bad debt and complaint management are no real issue here (in opposite to premium-rate service numbers, see below).

4.3 Other category 2 services: Premium rate (0900) & DQ (118XY) numbers

The DVTM would like to highlight three approaches which can be seen as benchmarks for other European NRAs when it comes to premium-rate (0900) or directory enquiries (118XY).

- Again, Malta (2010) sets a perfect example with their clear-cut C+S approach including a <u>regulated</u> fee for billing/collection, complaint management and bad debt. As far as we can judge, their approach is based on interconnection and access measures, i.e. measures based on Article 5 of the Access Directive.

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- The same is true for the Austrian approach, introduced by the RTR GmbH in 2004[3]. Following the good definition of BEREC, the originating operator has a total revenue (OTR) of 2.2 Cents/minute (the reciprocal termination rate in 2004 being set as origination rate) plus 10% of the retail price for billing/collection, complaint management and bad debt. In other words: OWR = reciprocal termination rate; ORR = 10% of the retail price for billing/collection, complaint management and bad debt.
- Violating the requirements of technological neutrality, the German regulator has found an interesting approach with the instrument of so-called offline-billing, unfortunately for fixed networks only (introduced by the Bundesnetzagentur in 2004): For 0900 and 118XY calls from fixed networks a clear-cut S model has been introduced, i.e. the retail price authority is with the service provider. First-level billing and collection is being performed by the originating operator, as usual, whereas complaint management and bad debt is the service operator´s task or problem[4]. The price for first-level billing and collection (approx. 5 Cent per bill) can be regulated if no commercial agreement has been made by the parties involved. Additionally, the origination rate is (again) the reciprocal termination rate. Thus, DVTM does not fully agree with BEREC´s proposition that a clear-cut S model does not leave room to take cost asymmetry into account; for German fixed networks the (assumed) cost asymmetry between the incumbent´s fixed network and new entrants´ fixed networks rather has been taken into account.

  It needs to be emphasized that the German approach of offline-billing is no benchmark so far because mobile networks have been completely exempted until today (without any explanation for this violence of the requirement of technological neutrality by the Bundesnetzagentur). Thus, serious issues remain to exist in the German market for premium-rate service numbers as MNOs are not regulated at all.

5. Résumé

We welcome that BEREC attends to the situation and the obvious problems as descripted in the Report on Special Rate Services and we strongly agree with BEREC's characterisation of both the problem and the effects. We want to emphasize our expectation that, as a result of the analysis following the public consultation, there will follow guidelines to NRAs to solve the existing problems as negative effects for consumers and competition.

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[3] Telekom Control Kommission, Decision Z 23/03-38 (atms Telefon- und Marketing Services GmbH ./. T-Mobile Austria GmbH)

[4] The operations in offline-billing are as follows: The premium-rate call (length, caller´s number, etc.) is registered at the service operator in order to create a call detail record (CDR). CDRs are sent to the originating operator for the purpose of billing. The actual bill includes separate lines for offline-billing calls and separate 0800 service numbers from the service provider for complaint management. If the customer does not pay the amount, the CDR is sent back to the service provider for the purpose of dunning procedures or bad debt factoring.

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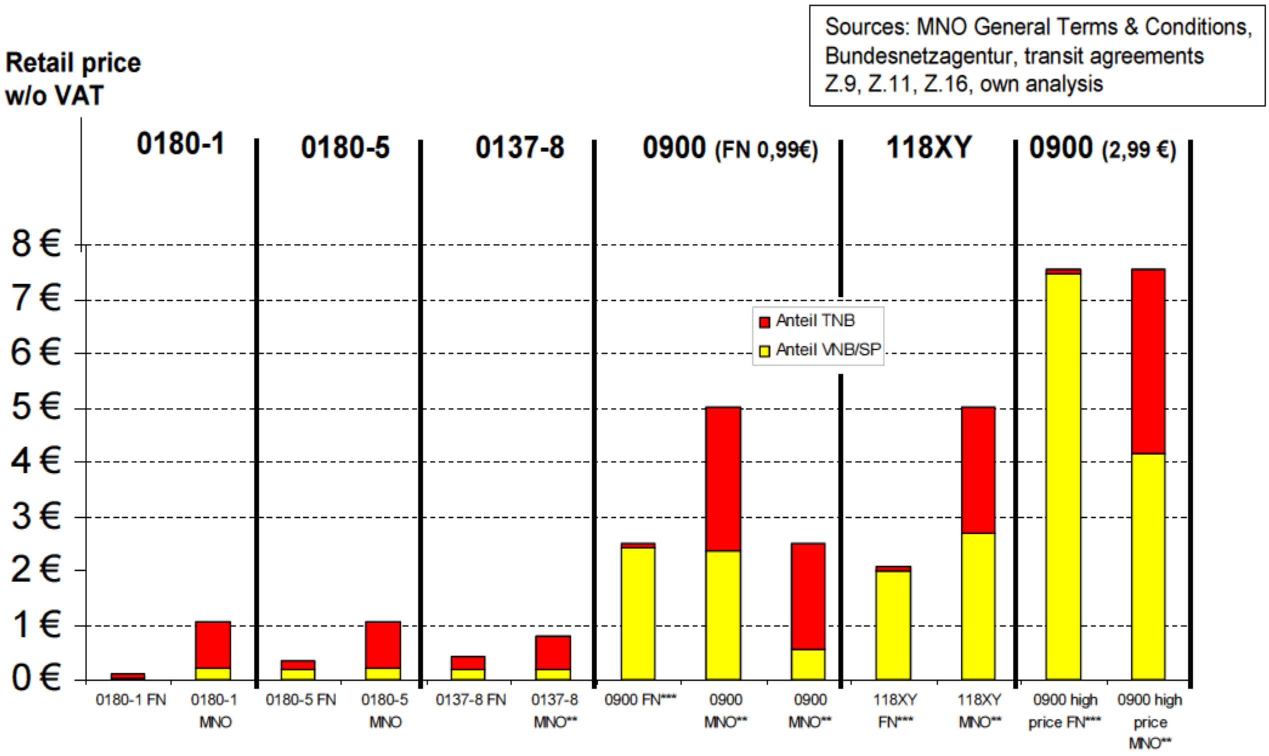
Three-minute* calls to non-geographic phone numbers Germany



* 0137-8 (televoting): one-time renumeration
118XY (DQ service): 1 min call center + 2 min after call completion
** average retail prices of all 4 MNOs (postpaid)
*** without bad debt (offline billing)

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