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Berec – Draft BEREC Report on Special Rate Services
BoR (11) 62
Response of German Fix line Carriers
01051 Telecom GmbH, Callax Holding GmbH,
MEGA Communications GmbH and mr.netgroup GmbH & Co

Dear Ladies and Gentlemen,

in the name of **01051 Telecom GmbH** ("*01051*"), **Callax Holding GmbH** ("*Callax*"), **MEGA Communications GmbH** ("*MEGA*") and **mr.netgroup GmbH** & Co KG ("*mr.netgroup*") we welcome the opportunity to provide comments on BEREC's Report on Special Rate Services (SRS) published in December 2011. 01051, Callax, MEGA and mr.netgroup provide several SRS to their retail and their end customers and they are appearing as terminating operators (TO) as well as service providers (SP).

BEREC reviewed in detail several regulatory options on SRS to improve competition and to avoid negative effects for consumers.

01051, Callax, MEGA and mr.netgroup support the C + S approach of BEREC, as outlined for the category 2 situation, see paragraph 101 of the BEREC review. For the category 1 situation 01051, Callax, MEGA and mr.netgroup sup-

port a cost regulation approach, especially for calls from mobile networks, see paragraph 100 of the BEREC review.

The market for origination to SRS needs to be regulated, especially regarding origination from the mobile networks. The non regulation of the former market 15 was wrong and has lead to a variety of abusiveness. In its letter dated 21/05/2007 – SG-Greffe (2007) D/203037 pursuant to Article 7(3) of Directive 2002/21/EC regarding DE/2007/0627 the Commission criticized that the former market 15 was even not analyzed regulated:

> *" The BNetzA has excluded mobile access and origination services for VAS and DAS providers from the notified draft measure mainly because it is not clear if the interconnection services needed for the provision of VAS and DAS should be regarded as termination or origination services.*
>
> ...
>
> *Nevertheless DAS* (Directory Assistance Services) *and VAS (*Value Added Services*) providers depend on MNOs to have access to end users. There is an indirect payment by DAS and VAS to MNOs, by means of leaving to the MNOs a pre-determined share of the revenues from end customers. Further, it cannot be excluded that DAS and VAS providers have to pay the MNOS for the technical services linked to the opening of the numbering ranges they use.* ***Consequently, the Commission invites the BNetzA to assess mobile access and origination services for VAS and DAS providers, taking into account that for the purpose of the market definition, both demand and supply side substitution must be considered in line with the Commission's position expressed in the serious doubts letter in case IT/2007/0575"***

Up to now, BNetzA did not analyze the mobile access and origination services for SRS, although the origination rates are much to high and avoid competition..

In its study on "Buying power of the purchase of a call Origination to 0800 numbers" seo economic research came to the correct conclusion that there is significant market power ("a monopoly") in each network for the origination to 0800 numbers.

> *"There are no real substitutes for the purchase of call origination to an 0800 number,...*
>
> *Each originating fixed and mobile network has a monopoly on the market for call origination from the associated subscriber."*
>
> *"Buying power of the purchase of a call Origination to 0800 numbers*", seo economic research of March 2011 on behalf of OPTA, page i (Summary)

The same is for all SRS. The single market principle as it is applied for termination markets according to the European principles should also apply for origination markets.

Therefore, 01051, Callax, MEGA and mr.netgroup strongly agree 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 SRS. Unfortunately, the German NRA (Bundesnetzagentur - BNetzA) has not presented to BEREC any clear facts and figures for the revenue shares of SRS. Thus, in the following we will highlight the issues for two important groups of SRS, following BEREC´s distinction between category 1 and 2, before describing potential solutions.

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

1.1 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 as it is still regulated. Contrasting that, the OR for 0800 numbers originating from mobile networks is a matter of dispute for many years. Both the BNetzA and the Federal Cartel Office (Bundeskartellamt) refused to take any legal action. As a result, the OR is between 7 and 9 Cent/Min., with slight differences among the four German MNOs (T-Mobile/Telekom, Vodafone, E-Plus, Telefonica/O2). Although BNetzA regulated for formal reasons the T-Mobile/Telekom's rate in its decision in IC-rates, BK 3g-10-41, in a kind of benchmark, this decision looks peculiar. The benchmark only considers the non regulated origination rates of the other MNO with a circular argument. As there is no formal decision on SMP of the other MNO, these excessive origination rates are considered as competitive pricing rates. No price cap decision has been made, not mentioning any form of cost regulation. **Although the cost for origination and termination are quire similar the rates for origination are still twice as much as the regulated** MTR (in Germany, regulated MTR: 3,36 Cent/Min, non regulated origination rates: 7,14 Cent/Min. to 9 Cent/Min.).

As a result, the market for 0800 freephone services in Germany is underdeveloped 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 SRS 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.

1.2 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 BNetzA 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."

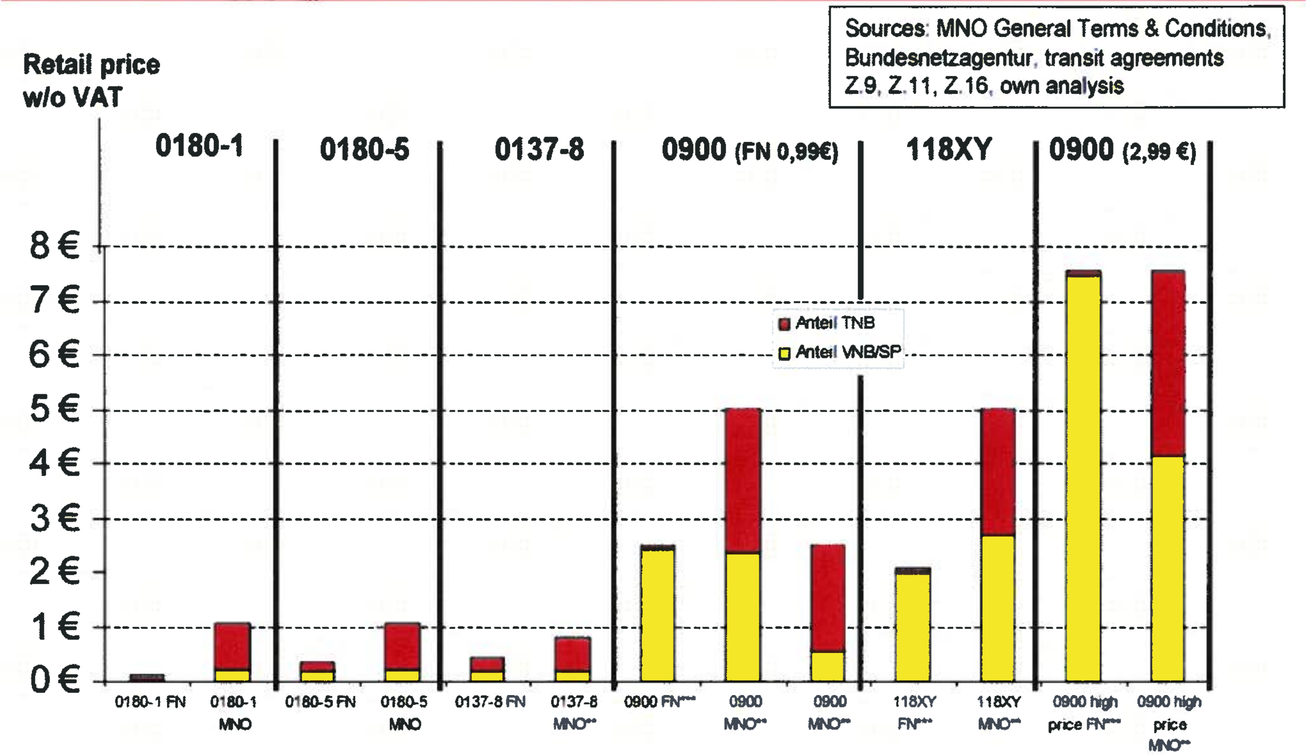
In 2009, a price cap of 35.3 Cents/minute (42 Cents/minute incl. VAT) has been introduced in the German Telecommunications Act (TKG) for 0180 calls from mobile networks. Although the MTR have been lowered by regulation, the price cap according to Sec. 66d para. 3 TKG has not been adjusted. Even the draft of the new TKG which will be expected in March or April 2013 does not contain any adjustment for the price caps.

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.

For more details, see the following diagram, which reflects that the MNO keeps most of the retail price (red band in the diagram below):

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)

Source: VK-Beratung, München 2011.

2. Benchmarking and possible remedies

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

We believe 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 we are very thankful for BEREC´s approach including highlighting the possible remedies as described in the Draft Report on Special Rate Services.

2.2 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).

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

We 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 regulated 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.
- The same is true for the Austrian approach, introduced by the RTR GmbH in 2004. 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 BNetzA 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. 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, we do 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 BNetzA). Thus, serious issues remain to exist in the German market for premium-rate service numbers as MNOs are not regulated at all.

Please do not hesitate to contact us, if you need any further information.

Kind regards

(Dr. Marc Schütze)
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