

# Response

## QSC AG

### BEREC Report on Special Rate Services

Cologne-based QSC AG offers small and mid-size enterprises an extensive range of ICT services - from telephony, data transfer, Housing and Hosting right through to IT Outsourcing and IT Consulting. With its subsidiaries INFO AG, a full-line provider of IT services headquartered in Hamburg, and IP Partner AG, a Housing and Hosting specialist headquartered in Nuremberg, the QSC Group numbers among the leading mid-size providers of ICT services in Germany. QSC offers custom-tailored Managed Services for individual ICT needs, as well as a comprehensive product portfolio for customers and marketing partners that can be modularly adapted to suit the communications and IT needs in question. QSC offers its services on the basis of its own Next Generation Networks (NGN) and operates an Open Access platform, which unites a wide range of broadband technologies. QSC AG employs a workforce of some 1,300 people and is listed on the TecDAX index.

QSC would like to comment on the BEREC Report on Special rate Services (hereafter SRS).

QSC appreciates that BEREC is aware of the competition problems arising in the provision of calls to SRS and that this report was written to give the NRAs guidance to eliminate or at least minimize them.

#### I. Pricing models

BEREC first explains the different methods how calls to SRS are billed to the various parties. BEREC points to the important fact that calls originated in mobile networks do cost the user much more than those from fixed networks. Only in a few European countries there is already regulation concerning calls originating in mobile networks.

In contrast to calls originating in fixed networks there is no regulation in Germany yet for calls to SRS originating in mobile networks. The MNO may and does set the origination tariffs almost independently from market forces, the only countervailing market power being the willingness of Deutsche Telekom to negotiate. Alternative operators with SRS are not able to negotiate differently.

Only the SMP operator on market 2, Deutsche Telekom, is obligated by regulatory obligation to offer transit plus origination in its own mobile network. The German NRA has stated that – because of the fact Telekom is vertically integrated - origination and transit to the terminating operator are one unitary service so that both parts are under regulatory price control. Unfortunately the German NRA has – up to now - determined the price for the origination based on comparison with other national offers (from other German MNOs) and not based of costs (LRIC or other). This leads to the inequitable fact that the price for origination Telekom is able to claim on the mobile side has only to be as low as the lowest price one of the other three MNO claims. As each networks effectively constitutes a separate market, there is no competitive check on these rates.

Therefore QSC appreciates BEREC intention to subject mobile origination fees to effective regulatory oversight so that transparency, consistence and predictability are ensured.

## II. Freephone services

Concerning calls to freephone services QSC favours the method practised in Malta to base the OWR on the termination fees. Origination and termination include almost the same features and network elements used so that it is justifiable to assume almost the same costs – and therefore same prices. Particularly with regard to consumer interest this practise would be reasonable and desirable. Because of the current pricing methods offers of freephone services include the risk of a high proportion of massive (mobile) origination costs for the service provider. As a conclusion it is not offered to the extent preferable for consumer protection and business service. Decreasing origination tariffs to the level of termination fees (like in fixed markets) will free up a lot of market potential and intensified use, as the business risk of running a freephone-based service will diminish. This effect will even be improved upon, once cost-based termination – and therefore origination – fees in mobile markets are implemented.

Particularly regarding the proposed modifications concerning the Recommendation for Consumer Protection a change in the pricing method will be reasonable. In context of a sales or service agreement it is planned that consumers are allowed to have the possibility of calling enterprises for free or for maximum local-call fees. This obligation includes calls originated in fixed networks as well as in mobile networks. To facilitate compliance with these regulatory requirements it is necessary to change the pricing method used for freephone services and to make use of freephone service numbers less risky for the users. In addition it will not be advisable to pressure business and enterprise users of SRS numbers into using freephone services on the one hand and then leave significant market and pricing power in origination towards these service numbers unchallenged on the other hand.

Beyond that an alignment of origination and (regulated) termination tariffs will also help many German small and medium-sized enterprises to fulfil their new obligation specified in the adapted telecommunication law. This obligation stipulates cost-free waiting queues at the beginning or during a call to services under SRS. The realization of this requirement requires significant financial and technical efforts. If enterprises were able to offer free services with low costs this would be an improved and probably cheaper solution than implementing cost-free waiting queues for premium-rate and shared-cost service numbers.

In addition, orienting origination charges towards (fixed?) termination fees will significantly reduce the obvious potential for anticompetitive behaviour from MNOs. Today they might be tempted to increase their competitive edge in the market for SRS numbers by using the excess margins derived from their origination fees to lure customers away from operators without or with small mobile networks. This can be accomplished by waiving some part of the origination fee to the SRS or freephone number user in case the call originated in its own mobile network. The higher the market share in mobile access markets and the more integrated the fixed operations are into the mobile operator (for example in a horizontally integrated operator like Deutsche Telekom), the more tempting and possible are those schemes to leverage the existing and unchallenged market power in mobile origination.

### III. SRS

BEREC proposes the idea of a numbering plan that sets price bands for different numbers. This is a really appropriate method to determine prices and make them transparent to users. Callers will get used to these numbers in short time and would know the prices they have to pay. In Germany this type of solution has already been created. Unfortunately, for all SRS except freephone the low call price is only available for calls originated in fixed networks. Calls from mobile networks are capped at a maximum price so that the real price is not obvious and transparent – though MNOs usually operate at the high boundary. A solution could be the requirement of a price announcement at the beginning of a call if the price keeps the same for total connection time as it is prescribed in Germany today.

Beyond that, to counter the possibility of MNOs to determine prices with regard to leverage of market power or other goals, it is necessary to fix or at least cap their origination charges. QSC supports BEREC's proposition to establish the C+S-method and orient the origination charges toward the standard communication fee to a national landline. The advantages are obvious: Callers do know the price for a national or local call to geographic numbers so that they can easily calculate what they finally have to pay at the end. Also it is easier to evaluate if a call from a fixed or mobile network would be cheaper. Beyond that comparisons between the different MNO and their prices would be stimulated. To implement this solution in the market, it is necessary guard service providers for SRS numbers against additional origination charges levied by the access network operator.

Under the assumption above SRS operators will benefit from this change in the pricing method, too, because origination charges in case of freephone or third-party billed SRS payable towards the MNOs will be reduced and SRS operators are then able to offer their services more assured of a level playing field. In addition, economic rents formerly residing with the MNOs will be transferred to consumers and businesses.

MNOs are not disadvantaged from a perspective of incurred cost, either, because the origination service to SRS does not require more efforts than a standard communication to a landline so that MNOs will still be achieving cost recovery and a return on their capital employed.

Like BEREC stated MNOs do not have to pay a termination charge in case of calls to SRS, either. Due to this fact it seems doubtful if a commercial commission concerning the billing costs etc. in addition to the origination charge is really necessary. These costs should be covered by the margin gained included in the communication fee.

### IV. Legal instruments

It is really important that the regulation of origination charges is finalized as soon as possible to re-establish a level playing field in the market for SRS services again.

BEREC hints at the possibility to define a new market. For sure, a market analysis is the best and most efficient method but this whole process also lasts very long. Indeed in our view it is not necessary to define a new market. Calls to SRS with origination in fixed networks are included in market 2. Origination in mobile networks was part of the old market 15. Before defining a new market it seems more practicable

to reinstate the old market recommendation as far as it concerns market 15. At least NRAs can and should use the old market 15 definition in determining a new market.

Beyond that Article 5 of the Access Directive is also an appropriate enabling provision. Especially a market analysis is not necessary so that the regulatory obligations could be implemented earlier. Even though Article 5 should only be used as last resort, because of the characteristics of the present situation the NRAs should have the permission to apply it here.

In the case of Germany a solution could partially be achieved with less regulatory effort if the German NRA would determine the origination charges of DTs mobile networks by LRIC (based on efficient costs) and not by comparison with other (unregulated) national MNO origination fees.

## V. Conclusion

QSC supports BEREC in its concept to solve the problems arising in the provision of calls to SRS, especially concerning calls originated in mobile networks. BEREC's intention to reduce the origination fees especially in case of calls from mobile networks is really important and must be pursued effectively as it increases availability, acceptance and profitability. NRAs should and can already take all necessary and appropriate measures to eliminate or minimize the current problems as efficient and as soon as possible.

Because of the importance of the detected problem and to ensure harmonisation and effective competition BEREC's report should lead to a more binding recommendation so that NRAs feel a stronger incentive to fulfil these requirements.