



Europe

GSMA Europe Response to the BEREC Public Consultation on Special Rate Services

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About the GSMA

The GSMA represents the interests of mobile operators worldwide. Spanning 219 countries, the GSMA unites nearly 800 of the world's mobile operators, as well as more than 200 companies in the broader mobile ecosystem, including handset makers, software companies, equipment providers, Internet companies, and media and entertainment organisations. The GSMA also produces industry-leading events such as the Mobile World Congress and Mobile Asia Congress.

For more information, please visit Mobile World Live, the online portal for the mobile communications industry, at www.mobileworldlive.com or the GSMA corporate website at www.gsmworld.com.

In the European Union the GSMA represents over 100 operators providing more than 600 million subscriber connections across the region.

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1. Introduction

The GSMA welcomes the opportunity to respond to BEREC's public consultation on Special Rate Services (SRS). The GSMA agrees with BEREC that Special Rate Services can be a source of confusion for customers and that guidance on pricing principles and transparency measures, both for originating operators and service providers will enhance consumers' understanding of these services.

The GSMA believes that BEREC's proposals are a step in the right direction. In this report we build on the work of BEREC and set out our proposals for pricing principles and transparency measures in relation to the different types of Special Rate Services. We believe our proposals will yield better consumer outcomes than those proposed by BEREC and are also consistent with the relevant legal framework.

Our response focuses on the three broad categories of SRS:

- Number ranges that are understood to be free to end users but not always free from mobile networks – termed in this report as freephone numbers
- Non-geographic number ranges that are charged to end users at moderate rates – termed in this document as Generic Special Rate Services
- Non-geographic number ranges that are charged to end users at premium rates – termed in this document as Premium Rate Services

Our main proposals are:

- All member states should have a freephone number range that is free for all users from all networks BEREC should not be over-prescriptive about which pricing methodology is best for SRS. Market conditions and national legislation need to be assessed on a market-by-market basis before reaching any conclusions on pricing methodology
- The best outcome is for pricing to be the product of competitive forces. NRAs should only intervene where necessary
- Whereas the BEREC report favours a C+S pricing methodology, the GSMA believe the A+S methodology is more appropriate in the case of a two-part retail charge.
- There should be no *a priori* assumption by NRAs that the 'A' element set by the originating operators will not be at the competitive rate
- NRAs can set maximum (and minimum) wholesale prices (the 'S' element) for each number range
- In some markets, a one-part retail price structure will be preferred (e.g. SmSf). In these markets wholesale arrangements can be commercially negotiated between different players in the SRS value chain. NRAs should only intervene when commercial agreement cannot be reached.
- Under a S regime, the wholesale charge levied by the originating operator should be at least sufficient to cover the originating operator's average retail revenue per minute to a fixed line plus an allowance for any specific costs associated with the SRS

- There are sufficient transparency measures for NRAs, originating operators and service providers to ensure consumers are fully aware of the pricing of special rate services, whichever pricing scheme is ultimately adopted
- NRAs should be particularly careful to ensure that any revised pricing in relation to Premium Rate Services does not lead to detrimental consumer outcomes

In the final section of the report we examine the legal basis for BEREC's proposed solution and contrast it with the solution contained in this report.

2. Freephone numbers

The GSMA believes that all member states should have a freephone number range that is free for all users from all networks¹. This can only be achieved if the providers of these freephone numbers are prepared to pay the additional costs associated with originating calls on mobile networks. At present, this is one of the reasons why calls to freephone numbers are not always free from mobile networks.

In order to enable this proposal, BEREC should advise NRAs to go through the following steps:

- i. Agree with all stakeholders that calls to freephone numbers on the designated number range(s) should be free to all users and that end providers of freephone services on the number range(s) need to pay a wholesale origination charge which will differ between fixed and mobile networks
- ii. Encourage providers of freephone services to reach commercial agreement with originating operators (usually through transit arrangements) in relation to the level of wholesale payment
- iii. Where commercial agreement cannot be reached, NRAs can use the relevant legal framework to set reasonable prices

As part of its recommendations, BEREC should also give guidance on what constitutes reasonable prices for wholesale origination rates for calls to freephone numbers. The GSMA and its members reject any suggestion that the level of MTR – which is now typically being set on a pure-LRIC basis - has any relevance in this context². Price-setting for MTRs is very specific to two-way access services which have competition and welfare implications. In the case of a one-way origination service to a specific number range, it is important that the price of origination takes into account the average network cost of service provision as well as a contribution to any relevant retail costs. This is necessary in order to avoid free-rider and arbitrage opportunities through call-back and similar schemes. This is consistent with

¹ There is one exception in the case of a customer who calls a freephone number from his home country whilst roaming

² The BEREC report refers to the case of Malta where the level of MTR informs the level of wholesale origination, although in this case, the MTR is not set on a pure LRIC basis.

the decision of the BIPT in Belgium whereby the appropriate rate is based on the average retail revenue per minute for calls to fixed networks.

The GSMA recognises that the approach advocated above will result in freephone service providers incurring more costs than under the current regime. In most cases this is an acceptable outcome – it is not acceptable for freephone service providers to obtain positive branding by appearing to provide a free service to their customers if they are not prepared to meet the full cost of providing that service. Moreover, the freephone service providers would benefit from the potentially increased usage of their services under a ‘free to caller’ principle and have the option to choose both freephone numbers and other SRS numbers according to their business strategies and associated costs.

It is possible that there are freephone numbers that are of genuine value to society, e.g. charity helplines. Originating operators should be free to offer lower rates for these numbers on a voluntary basis.

3. General Special Rate Services

In this section we assess BEREC’s proposal for all special rate services. In the following section we set out some specific concerns in relation to premium rate services.

The BEREC report advocates the C+S pricing methodology for General SRS. Under this methodology the amount retained by the originating operator (the ‘C’ element) is equal to the price for a call to a landline and the service provider independently sets the level of ‘S’. BEREC accepts that a commercial commission should be retained by the originating operator to reflect billing, cash collection, bad debt insurance and customer information but does not explain the basis on which that charge should be set.

The GSMA does not believe that a single pricing methodology should be favoured. The appropriate methodology needs to be considered on a case by case basis taking into account all relevant local factors.

BEREC advocates a ‘C+S’ methodology. The GSMA has identified a number of shortcomings in BEREC’s proposal

- i. It presupposes that the efficient level of pricing (for the communication element of a call to a SRS number) is equal to the cost of a call to a landline. Consumers typically purchase calls to SRS as part of a wider set of prices and the relativities of those prices will be optimal when they reflect the demand preferences of consumers and yield a normal return to operators. This will not be the case when a level of pricing for one category of call is imposed on a different category.
- ii. It requires on-going negotiations between the originating operator and service provider with respect to the appropriate level of commercial commission
- iii. It is not within the powers granted to NRAs under the regulatory framework (refer to section 4)

In order to overcome the weaknesses listed above, the GSMA believes that the A+S pricing regime considered in BEREC's report would be better where a two-part charging regime is implemented. Under the A+S regime, the originating operator retains 'A' and will either pay 'S' directly to the service provider, or in some cases will pay 'S' to a terminating operator from which it will deduct the terminating fee before handing over the rest to the service provider. Under this methodology the originating operator would not retain any commercial commission in relation to the 'S' element, but would recover all its own commercial costs in the 'A' element and the service provider would be free to choose the 'S' and the corresponding number block. Each originating operator is free to set the price for the 'A' element on a tariff-by-tariff basis subject to meeting certain transparency obligations as set out below.

Consumers will be provided with sufficient information on call charges under an 'A+S' model allowing them to make an informed choice at point of subscription. At point of subscription, consumers will consider multiple factors including network quality, coverage and prices for different services. Simplifying the tariff structures for SRS by adopting the 'A+S' model goes a long way to address any shortcomings with multiple retail prices. A further simplification by mandating 'C' charges at the same level as other retail call prices is not necessary and could raise the average prices for all consumers. It would not be in the interests of vast majority of consumers to increase the call charges for the majority of their calls in order to achieve a communication charge that is same as the charges to call landlines.

There are two important points to note:

- i. With the separation of the 'A' and 'S' elements, there can be no *a priori* assumption that there is a separate market for the provision of retail origination services to SRS that requires regulatory intervention
- ii. It is within NRA powers to set the maximum price for the 'S' element for each number range. A maximum price for the 'S' enables the originating operators to estimate the specific costs of each number range (e.g. bad debt) and enhances transparency.

As noted above, it should not be assumed that a two-part regime will be preferable in all markets. In some cases a one-part charge will be preferred whereby there is absolute certainty over the final price consumers have to pay. Under such circumstances there will need to be an agreement between the originating operators and service providers as to how the rate is split. As with freephone numbers, it is preferable for this split to be agreed commercially. Where intervention is necessary guidance should be provided by BEREC that the amount retained by the originating operator should not be less than the average retail revenue per minute plus an allowance for the specific costs associated with SRS, which include wholesale billing and bad debt.

Transparency

The GSMA recognises the importance of transparency to minimise consumer confusion with respect to SRS.

In its report, BEREC includes the following table as an example of a transparency measure.

Number range	Service	Price from fixed networks	Price from mobile networks
0800	Free	0 €/min	0 €/min
0802	National number	Up to an average national fixed call	Up to an average national mobile call
0803	Premium rate level 1	Between X1 and X2	Between Y1 and Y2
0804	Premium rate level 2	Between X2 and X3	Between Y2 and Y3
.....
080N-1	Premium rate level N-1	Between XN-1 and XN	Between YN-1 and YN
080N	Premium rate level N	More than XN	More than YN

Table 2. Numbering plan that sets bands.

The GSMA agrees that such a plan is a good aid to transparency. Ultimately the transparency measures will need to be adjusted depending on the pricing regime adopted. In the case of a SmSf regime the service provider can take on the bulk of responsibility for transparency when advertising its number. In the case of a A+S regime the service provider will need to highlight that calls to its number will be charged at x per minute plus a network charge. The originating operator will need to make this charge clear in the terms and conditions associated with each tariff.

4. Premium rate numbers

Just as for general SRS, we believe the pricing regime for premium rate numbers needs to be determined on a market by market basis. If the A+S pricing regime is implemented as described above for general SRS, originating operators will be free to set different levels of 'A' for premium rate numbers..

Given the different regimes that currently apply to premium rate services across member states, BEREC should advise NRAs to be particularly careful when seeking to regulate charges for these services. This is because:

1. There is a far higher incidence of fraud and bad debt in relation to these services – driving up the costs of the originating operators
2. Any lower origination charges for calls to premium rate services will lead to a reduction in consumer welfare because
 - a. Originating operators will be forced to raise other charges to make up for the lower revenue (the waterbed effect)
 - b. There is no expectation that the lower origination charges will feed through to lower retail prices for Premium Rate Services – the service providers will just pocket the additional margin

Apart from advising NRAs on the pricing regime for Premium Rate Services, BEREC should also provide guidance on the more general set of rules and regulations that apply to

Premium Rate number ranges. At present the rules and regulations that protect consumers differ significantly across member states. Harmonisation of these rules would be beneficial to users of Premium Rate Services.

5. Legal basis

For BEREC's proposed solution of a C+S regime to be mandated, NRAs would need to have sufficient legal powers to regulate retail prices of network operators. BEREC points to wording within the revised framework directive as evidence of these powers:

Part C of the Annex to the revised Authorisation Directive as amended by the revised EU Framework, specifies the conditions which may be attached to rights of use for numbers. In particular, paragraph 1 of Part C provides for: "Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive)."

The GSMA disagrees that the above wording gives NRAs any power to set retail prices for originating calls prior to a market analysis and a finding of SMP/market failure. The imposition of maximum prices referred to above is in relation to the wholesale price for calls terminating on a number range. This is justifiable given that each service provider has an inherent monopoly on calls terminating on its numbers. The same cannot be said for the retail component of such calls as they are purchased as part of a suite of services in highly competitive markets. This interpretation is borne out by the wording of the directive – *any requirements.....can apply in the specific number range*. Setting the termination price for calls to SRS is a requirement **in** a specific number range. Setting the retail price for calls to SRS would be a requirement **out** of the number range. The GSMA believes that competition in the retail origination market combined with maximum prices for termination give consumers sufficient protection, especially if a standard A+S pricing regime is widely adopted.

It should also be noted that the same legal argument could be made with respect to calls to freephone numbers. For this reason, the proposal contained within this response – that each member state should have a freephone number range where calls from all networks to are free for all users – would need to be established on a voluntary basis on a market-by-market basis.