Telecom Italia’s response

to the public consultation on the

draft BEREC Report on Special Rate Services

(10 February 2012)

Executive Summary

Telecom Italia (TI) welcomes the opportunity to contribute to the Public Consultation on the BEREC's Report on Special Rate Services (SRS).

TI deems that the market of Special Rate Services does not need any specific and new regulatory interventions. Many of the competitive problems referred by BEREC as occurred in the past in some member States have been solved by means of a greater transparency on the rates paid by the users. Should competitive problems arise in some specific domestic markets, we believe that the first tools to be put in place should be those assuring greater transparency (messages, spend limits, etc.) by each operator (both fixed and mobile).

TI believes that BEREC should not indicate any preference for one specific retail model since the optimal solution depends on the regulatory, competitive and market situation of single domestic markets. In addition, the imposition of any specific tariff regulation at the retail level, as the ones proposed in this BEREC report, would require the previous assessment of the "triple test" in the concerned relevant markets. In any case, TI deems not proportionate and justified BEREC's preference for the "C + S" model.

Regarding the wholesale regulation, TI deems that the fixed SMP operator should not be put at a disadvantage vis-à-vis the other mobile and fixed operators. In this respect, the origination service for SRS should be regulated neither for the incumbent fixed operator nor for the other fixed and mobile operators. The only way to guarantee a level playing field amongst all the players is providing them with the possibility to agree on commercial bases the origination prices.

Competition in the provision of Special Rate Services

BEREC finds that SRS could raise a number of problems such as limited price transparency and high charges (both wholesale and retail) in some Member States. This is the reason why BEREC intends to investigate the SRS issue providing guidance at national level in case of competitive problems. TI believes that the market of Special Rate Services is truly competitive and a strict regulation is not needed. It should be taken into account that:

1) retail fixed voice call markets have been removed from the list of relevant markets susceptible of *ex ante* regulation and in the vast majority of member States these markets were found competitive and all the previous obligations were removed;

2) retail mobile markets have never been included in the list of regulated markets and no European NRA has regulated these markets;

3) the wholesale access and call origination market underlying the retail mobile market has been as well removed from the list of relevant markets.

In the light of the above, as the market of calls to SRS can be considered a segment of the retail market for voice, TI believes it is neither necessary nor justified to regulate the SRS submarkets both at the retail and at the wholesale level.

The current regulatory situation regarding the origination of non-geographic numbers in Italy is strongly asymmetrical due to the following circumstances:

– fixed call origination is regulated only for the SMP operator (TI) but not for the Altnets the TI's network;

– mobile call origination is not regulated (no MNO is SMP in this market).

What a deregulated market needs is a clear transparency on the final charge paid by the users for value added or premium services.

In Italy, for instance, it is required that the caller (using either mobile or fixed networks) receives, at the beginning of the call addressed to non geographic numbers, free information announcing the maximum price applied to each kind of call (from mobile or fixed phones). Also in case of services offered by SMS/MMS, the consumer receives a message containing details on the service and the price applied.

Moreover Italian regulation on Numbering Plan provides for maximum charges associated to the specific ranges of the called numbers (from fixed networks and for some kinds of service even from mobile networks).

In addition to these measures consumers are also protected by a "maximum spend limit for any single call" (equal to 12 euros). For non free SRS, this limit was introduced more than five years ago: in no case the amount paid for a single call can exceed this limit, whatever its length is. TI believes that this context has been proven to be sufficiently transparent, pro-competitive and able to ensure a fair protection for users.

Free Numbers

Each national or international free phone number should be completely free of charge for the consumer either if the call is originated from the fixed network or from the mobile network. This zero charge provision guarantees full transparency for the consumer and avoid additional regulation.

In Italy the regulator already requires free customer access to national or international free phone numbers independently from the access (mobile or fixed) network.

Premium rate services

The imposition of any specific tariff regulation at the retail level requires the previous assessment of the "triple test" in the concerned relevant markets. TI deems this is not the case of either retail call market or it SRS segment.

In addition, as highlighted by BEREC, each model has *PROs* and *CONs* and the optimal solution depends on the regulatory, competitive and market situation of the single domestic context. Therefore, BEREC should not indicate any preference for a specific retail model to be imposed at the national level.

Applying a new retail price scheme would have an impact on consumers (consumers have to be accustomed to the new price schemes) and would imply costs (i.e. new billing systems) for both operators and service providers, without bringing any relevant transparency improvements or price reductions.

In addition, TI does not share the preference BEREC places the "C+S" model. According to this model, C is equal to the standard communication fee of a national landline call. In a deregulated market the price is set to the value attributed by the consumer to that service. TI actually deems that the value of a call to a premium rate service is higher than the value of a standard voice call. Moreover, the charge for the voice telephony is set by taking into account usage patterns and preference profiles that do not consider the traffic to premium services.

TI would also like to underline that BEREC report does not sufficiently emphasizes the remuneration of the terminating operator who holds the responsibility for the utilization of the numbers assigned by the National Numbering Plan. The terminating operator has a central role in the whole business keeping the relationship with the service provider and being responsible for the usage of numbers before NRA.

The final report should clearly indicate that in the case of application of “A+S” and “C+S” models, the S component remunerates both the Service Provider and the terminating operator. The revenue sharing of the S component should, therefore, be freely agreed between the Service Provider and the terminating operator.

Wholesale regulation

TI deems that all the subjects participating in the SRS value chain should be granted a level playing field. In particular, the fixed incumbent operator should not be put at a disadvantage *vis-à-vis* other mobile and fixed operators.

In Italy, for instance, TI is currently obliged to charge the calls originating from its fixed network at the regulated level while other fixed mobile and mobile competitors are free to set their own charges.

As a result, the prices charged by main Telecom Italia’s competitors are more than 8 times higher than the tariff charged by TI for the same kind of traffic: this situation creates an unfair huge asymmetry which highly distort market competition.

TI believes that the origination service for SRS should be not regulated for all network operators, both fixed and mobile. In fact, the only way to guarantee a level playing field amongst all the players is providing them with the possibility to agree on commercial bases origination prices. This price should not be far from the retail price for a national call.

The costs sustained by an originating operator to provide the access to these special services are not directly comparable with those sustained to provide access for a simple geographic call. Moreover, an originating operator should be remunerated also for all the specific network facilities needed to provide the service. For instance the *televoting call service* requires special network elements to avoid network congestions during peak hours.

TI is strongly against the idea of linking the origination charge to the termination charge. Termination and origination are different services using different network elements and have different underlying costs. In Europe the termination charges are generally set on a pure-LRIC model according to the European Recommendation on termination charges. The reasoning behind the choice of a pure-LRIC model for termination is not valid for the origination service: for instance common costs, not included in the termination charge, should be remunerated by other services such as the origination.