

**Response to the BEREC consultation on its:
Draft BEREC Report on Special Rate Services**

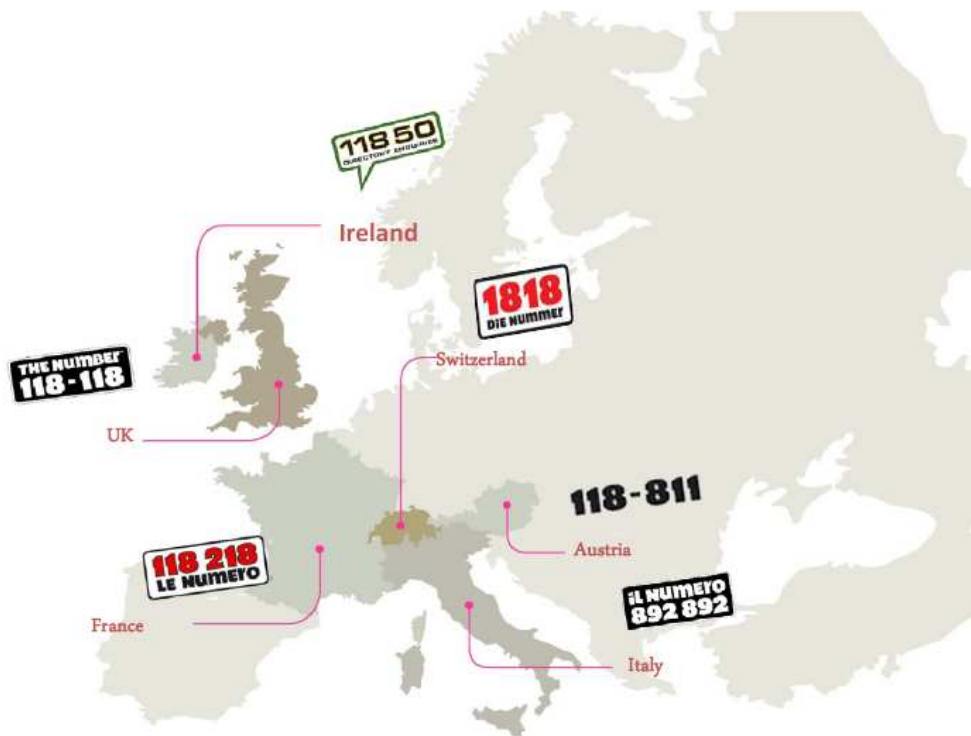
The Number

10 February 2012



1) Introduction

The Number welcomes the opportunity to comment on the Draft BEREC Report on Special Rate Services (hereafter "SRS Report").



The Number and its group companies are the largest independent providers of directory enquiry (DQ) services in the world. In Europe, the group has entered six markets (UK, France, Italy, Austria, Switzerland and Ireland) offering new, competitive and high quality services to end users. We use live operators to handle enquiries and today employ more than 6,000 in our European operations. The companies have invested heavily in the development of enhanced databases and innovative new services (such as two-way SMS services).

This submission focuses on areas of particular relevance to the Directory Enquiries ('DQ') industry and presents comments and proposals that address the vital issues and problems with non-geographic call services as a whole, whilst examining more closely the issues at stake for DQ service providers.

This submission also contains relevant background information on the Number's services, as well as specific illustrations from the UK DQ market, focusing on the consumer experience and the harm caused by issues in the market that need to be solved.



We thank you in advance for taking consideration of these views. Feel free to contact Simon Grossman, Director, Government and Business Affairs – Europe for The Number, by phone (+44 7971 050 001) or email (simon.grossman@118118.com) should you need further information.



2) Executive Summary

The Number has been concerned about all the issues raised by BEREC in the consultation for a long time and agrees with the general conclusions of BEREC in this Report that *'SRS voice calling to service providers at least in some countries have problems of (a) low transparency and (b) relatively high prices. This leads to several negative effects like – beside the high prices itself – reduction of demand, increased risk of fraud and loss of service diversity'* (SRS Report p. 28, par. 98).

We specifically applaud BEREC's analysis on p. 9-11 as regards the 'Root causes and problems', which gives a very thorough and accurate picture of the situation faced by The Number in most (if not all) Member States.

What are the problems?

Although BEREC's analysis in the SRS Report does a great job identifying the issues at stake, The Number would like to summarize the main ones, as identified on a day-to-day basis by each of The Number's subsidiaries across the EEA:

- **Consumer harm** caused by the high level of margin mark-ups applied, predominantly by MNOs. Problems with excessive mobile network charges and margin retention on DQ occur all over Europe, except for places where regulatory action has found cause to limit charges and allow DQ providers to set prices such as France (see our case study on France).
- **Loss of Service Diversity & Innovation:** Not only do certain services stop existing due to the dysfunctions currently present on the market, but innovation in services and delivery is also stifled, as we illustrate in our case study on the UK.
- **Consumer confusion** due to pricing and billing complexity between networks and resulting effects on service provider communications and advertising
- **Market failure** due to excessive retail margin mark-ups, originating operators' discrimination between value-added services and in some countries the inability of service providers to set prices.
- **Commercial breakdown** in a cycle of revenue share and billing disputes between different levels of the value chain
- **Risk of these issues spreading in the future:** As pointed out by BEREC, though the problems mainly occur at present on mobile networks, 'If regulation of fixed originating access is withdrawn, in the future problems with high OTRs for fixed networks could worsen if they are not properly addressed' (SRS Report p. 8, par. 25). It must moreover be noted that for



calls originating on non-incumbent fixed lines, DQ operators may struggle to prevent their services being blocked and have no control over retail rates and the margins made on calls by the network.

- **Abusive blocking:** A dimension not covered by the SRS Report is that of blocking of SRS numbers by originating operators, in the context of voice over Broadband (VoB). Indeed, issues relating to access to DQ services are not confined to mobile and non-BT fixed line networks: in countries such as the UK, the incumbent BT does not allow its customers to call 118 118 over its VoB lines, even though BT's own DQ service 118 500 remains reachable.¹ Despite complaints and negotiation between BT and DQ operators, the regulatory environment has not yet been able to deliver a solution to this discrimination.

What is needed?

- Immediate regulatory intervention before further and worse damage is done in each Member State where any of the listed symptoms above occur.
- Remedies, even if interim ones, strong enough to solve the problems and sustain for the future
- Positive engagement from all sides, industry and public bodies
- Pragmatism and expediency during the transition
- An obligation for NRAs to intervene in an efficient manner if the dysfunctions identified in this SRS Report occur in their country. BEREC should therefore add to this Report which triggers should lead to a mandatory intervention by each NRA.

What are the solutions?

- An unbundling remedy such as C+S or A+S seems the most sound approach
- A combination of wholesale and retail measures covering all components of such an unbundled model, including a fixed commercial commission element. If the commission was set as a percentage, it would need to be at a level which ensured that the absolute sum was never excessive.

¹ In terms of actual impact, please note that according to Ofcom, 17% of people say they use voice over broadband (VoB) to make calls (CMR, March 2010) and BT has over two million customers using this type of service. This number is likely to increase over time as network transition to an all-IP environment.



- The ability of Directory Enquiry and other SRS providers to set their own unregulated retail prices



3) Case Studies: Key Markets for The Number and Overview of Some Problems Faced

a) The UK Market

i. Market Overview

Since 2002, The Number (and associated group companies) have invested [REDACTED] in The Number UK Ltd, building a workforce, developing services and creating a valuable and highly recognisable national brand. The Number's parent group company currently employs over 1400 people in the UK.

Call volumes and mobile market data

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The Directory Enquiries Customer Base

Looking at Ofcom's Communications Market Report 2011²), one can identify some relevant trends when analysing the data.

Mobile internet usage

² See http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr11/UK_CMV_2011_FINAL.pdf



- A key characteristic of the UK market in 2011 has been the growth in take-up of smartphones (now used by 26% of the UK population) and of Internet access through mobiles, 36% of mobile users claiming to access Internet on their mobile phone.
- However, from a DQ perspective specifically, the process of accessing the information which they need via the mobile internet is significantly more time-consuming and inconvenient than a simple call to 118, so it is not a viable or desirable substitute for many people

Mobile/landline take-up

- █% of calls to 118118 are made from mobile phones, where one could expect that phonebooks are not a viable substitute or as accurate and responsive in delivering information.
- 26% of UK adults do not have broadband (fixed or mobile), whilst 15% of UK adults have chosen to rely entirely on mobile telephony and are therefore obliged to pay higher mobile tariffs if calling DQ services
- Older people and those in lower socio-economic groups are less likely to have internet access.
- Consequently, consumers most likely to be affected by very high mobile charges are those from lower economic groups as well as elderly users, with less ability to afford those charges and little choice in how to access DQ services.

ii. UK Market Dysfunctions: Causes and Consequences

Cause: Mobile Network Operator Pricing Behaviour and Lack of Control of Retail Price by DQ Providers

In the UK, MNOs are able to change the retail price of calls to DQ at will, by altering the access charge which they levy for the call. This means that a DQ provider cannot set the retail price of a call from a mobile number.³ The result is that the prices of calls to DQ providers from MNOs tend to be significantly higher than the price from a BT landline. This is illustrated in Tables 1 and 2 below. These tables show that it is almost always more expensive to call a DQ number from a mobile than

³ It can do so de facto in the case of a call from a BT landline, because BT has kept its 'retention' from that call flat, as shown in Figure 1 below.



from a BT landline, that the difference in cost is often substantial and that the difference increases significantly for calls of three minutes or longer.

Table 1: Cost of a one minute call

(Correct on 2 February 2012)

Number	Owner	BT	T-M*	Orange	Three	Vodafone	O2
118 000	Orange	0.50	2.98	0.89	2.00	2.00	2.04
118 111	Talk Talk	0.64	2.98	na	2.00	2.00	2.04
118 118	The Number	1.70	2.98	2.98	2.00	2.00	2.04
118 119	192.com	1.39	2.98	na	2.00	2.00	2.04
118 180	Virgin	0.86	1.02	na	2.00	2.00	2.04
118 212	Maureen	1.48	1.53	3.00	2.00	2.00	2.04
118 247	Yell	1.72	2.98	3.00	2.00	2.00	2.04
118 500	BT	1.98	2.98	3.60	3.50	2.50	2.04
118 800	Connectivity	1.88	3.06	3.00	2.00	2.00	2.04
118 811	The Number	0.50	2.98	na	2.00	2.00	2.04
118 888	Conduit	1.88	2.98	3.00	2.00	2.50	2.04
118 900	Numbers Direct	0.88	1.53	na	2.00	2.00	2.04

Source: The Number

Table 2: Cost of a three minute call

(Correct on 2 February 2012)

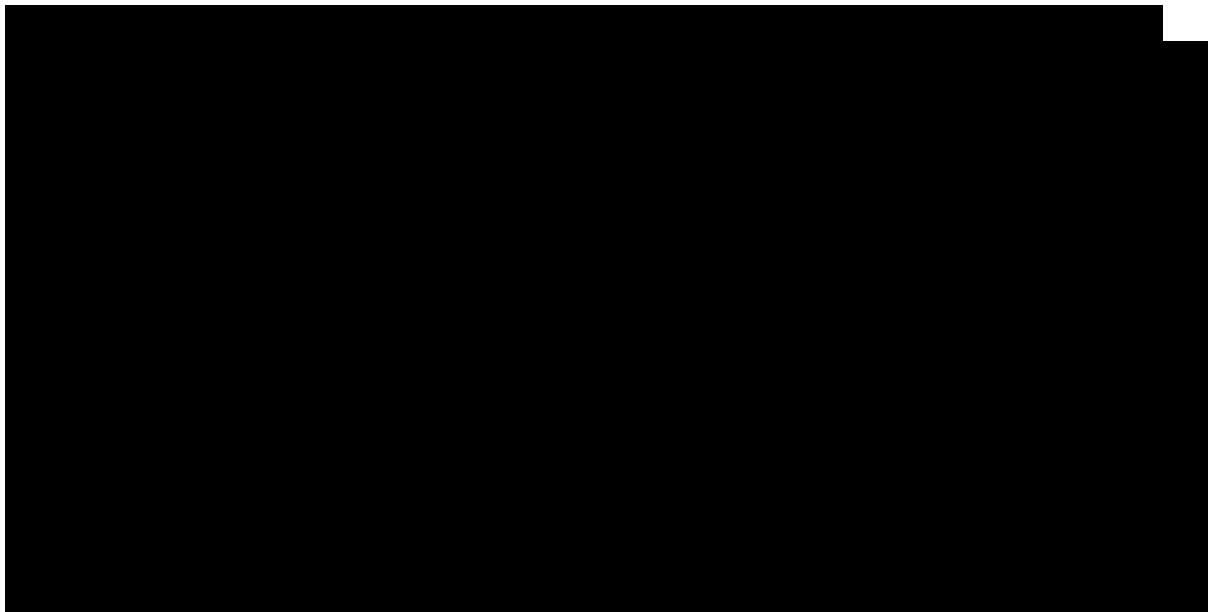
	Owner	BT	T-M	Orange	Three	Vodafone	O2
118000	Orange	1.11	5.96	0.89	6.00	6.00	6.12
118111	Talk Talk	1.10	5.96	na	6.00	6.00	6.12
118118	The Number	4.28	5.96	5.96	6.00	6.00	6.12
118119	192.com	3.37	5.96	na	6.00	6.00	6.12
118180	Virgin	1.16	3.06	na	6.00	6.00	6.12
118212	Maureen	2.46	4.59	5.40	6.00	6.00	6.12
118247	Yell	2.52	5.96	5.40	6.00	6.00	6.12
118500	BT	5.36	5.96	7.20	7.50	7.50	6.12
118800	Connectivity	4.66	9.19	5.40	6.00	6.00	6.12
118811	The Number	0.50	5.96	na	6.00	6.00	6.12
118888	Conduit	4.46	5.96	5.40	6.00	7.50	6.12
118900	Numbers Direct	1.26	4.59	na	6.00	6.00	6.12

Source: The Number



The Number has also carried out further analysis of how the margins it believes the MNOs earn on calls to 118118 (The Number's main DQ number in the UK) have changed over time. This calculation was based on taking the average billable call length of 118118 calls, using that to calculate average call charges to consumers, deducting VAT, then deducting 2p to represent an average BT/terminating network retention charge that networks take for handling the calls and billing at the wholesale level.

Figure 1: Margins added by MNOs for customers to call 118118



Source: The Number

It is clear from this chart that MNO margins have in the UK increased dramatically over the last four years, with the result that the cost to consumers of calling 118118 from a mobile has also increased dramatically. The important point to note is that increases in MNO margins directly impact on the retail price and that DQ providers are powerless to stop this. For example, the increase in MNO retail margins applied to The Number's low/fixed cost 118 811 service have borne no resemblance to the limited changes to the service charge which occurred over the same period. Rather, the MNOs have continued to push up the retail charges for that service, in line with an overall increase in DQ retail charges. So MNO margins have increased (with no related benefit to The Number) to the direct detriment of consumers.



The MNOs control of retail pricing allows them to set lower retail prices for calls made to their own DQ services, whilst The Number is unable to choose the same or lower tariffs to compete with these DQ services on price, for example via 118811. This has obvious adverse impacts on competition, thereby stifling choice and innovation to the detriment of consumers and is acknowledged in the SRS Report on p. 10, par. 32. Table 3 shows the relevant comparisons in early 2011.

Table 3: Examples of different charges set by MNOs for calling 118811 and the MNOs own or preferred service (£) compared to intended price (illustrated by BT originating operators price)

	MNO's own preferred service				118811
	Number	Per call	Per minute	One minute	One minute
Vodafone	118881		0.85	0.85	2.00
Orange	118000	0.89		0.89	3.00
Three	118333	0.61	0.31	0.92	2.00
O2	118402		1.00	1.00	2.04
Intended BT price					0.50

Source: Web searches

Notes: *Assumes no call completion before 1 minute call duration

But it must be noted that discrimination does not only occur in case of vertical integration: the price of calling 118118 (or any DQ provider) from a mobile is significantly greater than that of calling MNO so-called 'preferred services', which are not necessarily integrated as such within the MNO's company. This has the effect of distorting competition between the MNO's preferred services and third party providers. It is likely to damage incentives for third party providers to invest in their business. First, the returns to any investment will be lower if you are not able to be price-competitive with your close competitors. Second, if you do introduce a successful innovation, the MNOs have the option to mimic that innovation whilst pricing the successful innovator out of the market. The vertically integrated nature of an originating operators providing its own DQ service creates a structural advantage over any standalone DQ provider trying to innovate. The result is that DQ innovation and investment is severely disincentivised, encouraging the perpetuation of a utility based service and threatening the very existence of standalone DQ service providers.



Consequence n°1: Market not working for Consumers

High retail charges

As would be expected, these MNO retail price increases are having a real adverse effect on consumers, and this 'high prices' effect is accurately identified in the SRS Report by BEREC (p. 11, par. 38-39). It is reasonable for consumers to expect that, when they dial any 118 DQ service, the call will work on any originating network and that they will pay a similar amount for it, regardless of which network they are dialling from. This is not to say that there should be an expectation that prices must all be the same and consumers do expect mobile calls to be somewhat more expensive than fixed line. The truth is that there is no consistency in pricing and no clarity on charge levels and relationships between them and what is being promoted by service providers. The result is consumer confusion and resentment.

As of February 2012, in the UK, two of the big 5 mobile originating networks are charging £2.98 for calls up to one minute for their customers to access 118118. The three remaining networks charge £2 for a 1-minute call.

The Number set up the 118811 DQ service some years ago as a low cost alternative for consumers. At current rates, a caller will pay 50p for accessing the service from a BT fixed line. This is the retail rate requested and intended for 118811 customers, a charge per call with no associated per minute fee (although onward call connection is not possible on this service). A customer dialling 118811 from Orange or T-Mobile will pay £2.98 for a one minute call or £2 on the other mobile networks. These mark ups of nearly 600%, and 400% respectively, are unjustifiable and incomprehensible to many affected consumers.

Some DQ customers choose the convenience of being connected to the number they have requested. This is called call completion and typically involves longer calls and longer billable call lengths. Three minute calls are common for customers using this service. A customer dialling from a O2 mobile would pay £6.12 for a three minute call, while the other mobile networks only charge a few pence less.

In these examples of call charging from various networks, The Number receives exactly the same amount of money for a call, whether it is made from a fixed or mobile network. Price differences arise from the application of mark ups by originating operators over which The Number has no control and from which it gains no benefit. The result is over-charged consumers, damage to The



Number's reputation and continuing discouragement of consumers from using DQ services. Complaints show that customers very often do not understand the nature of these pricing issues and that they are liable to be misinformed about the cause of excessive charging if they ask originating network operators for an explanation.

In addition, it is important to give particular consideration to those customers who do not have access to broadband internet and who do not have a fixed line phone. For these consumers, the only alternative to DQ when looking for a number is a print directory (or possibly mobile internet), which are often not available (particularly to those without a fixed line) and are less up to date than the databases of the various DQ providers. According to Ofcom statistics, about 15% of consumers did not have a fixed line phone in Q1 2011. Whilst 15% of households relied on mobile phones as their only means of telephony in Q1 2011, this percentage is higher for the lower socio-economic groups. These groups are least able to afford the higher charges that arise when calling a DQ provider from a mobile.

It is important to note that the form of harm outlined above is not 'cured' if the excess profits made by mobile operators on DQ calls are partially channelled back to mobile customers in general. Either non-transparent prices lead to poor purchasing decisions or a vulnerable group of customers may be disproportionately targeted.

Pricing Transparency

In the UK, DQ providers are regulated by PhonepayPlus, the UK phone-paid services regulator, and must comply with rules on how and what information is supplied to consumers on call tariffs. It is vital that providers control retail prices to be able to meet consumer expectations. However, pricing information supplied on interrogation of the PhonepayPlus number checker will only show retail rates charged by BT (and any fixed operator choosing to match those rates), along with a warning that surcharges may be applied by networks providing access. This means that consumers will not know what the cost of a call is, even after checking on the designated regulator website, unless there is a limit to what other networks may levy as a mark-up.

Complaints and Consumer Confusion

In fact, when mobile networks change retail prices, it is likely to result in complaints being levelled at 118118 by consumers. This is because many consumers believe that 118118 prices they are paying are set by The Number. In the months following O2's decision to increase 118118 pricing to £1.50



per minute (December 2009), nearly all complaints received by The Number were to do with 'bill shock' arising from the excessive prices customers were suddenly having to pay. In June 2010, Vodafone and T-Mobile began charging £2 per minute to access 118118 and complaint levels rose dramatically as a result, following a similar pattern and evidencing the same level of consumer confusion and outrage.

Complaints received by The Number that relate to excessive charging for calls made by customers on mobile phones account for a significant proportion of total complaints. These instances also account for a considerable proportion of refunds made for complaints, so The Number can be refunding an amount far greater than their intended charge per call (and indeed far greater than the revenue received from the customer for that call).

In the UK, The Number has provided Ofcom with examples of where consumers have faced large bills that were entirely unexpected and where it is clear that consumers did not understand who was responsible for high DQ call charges. Consumers typically assume that it is the DQ service provider that sets the retail price, when in reality it is the MNO that sets it.

This misconception also appears to extend to some MNOs, as there are a number of examples of customers telling The Number that their MNO said the DQ charges were set by 118118. One customer was told on three occasions that all charges she was paying on her O2 mobile were the responsibility of 118118, despite the fact that she was challenging the customer services operators. Such behaviour very likely constitutes an unfair business practice but addressing that aspect does not solve the core problem.

Consequence n°2: Market not working for DQ Providers

Reduction of calls to DQ numbers

BEREC accurately identified 'Reduction of demand' as one of the effects of the strong market position of originating operators vis-à-vis SPs (SRS Report p.11-12, par. 40).

It is indeed clear that the MNO price increases have harmed The Number's business by significantly reducing the volume of calls that are made to 118118 from mobiles. [REDACTED]

Service Innovation



The SRS Report accurately identifies the 'Loss of service diversity' as one of the effects of the strong market position of originating operators vis-à-vis SPs (p. 12, par 42), but should also mention the loss in service innovation as illustrated below.

Another concern with high MNO pricing that The Number has raised in the UK with Ofcom is that it damages innovation in the DQ sector. Such innovation should enable us to change the value proposition to deliver added benefit from calls and also reduce prices. In particular, high pence per minutes retail call charges undermine any service offered by a DQ provider that increases call length. This has already adversely impacted a number of potential services that The Number wished to offer.

- The Number wanted to move to a broadly fixed price per call to provide certainty to consumers, with a nominal charge of 9ppm for onward connection of calls to all number ranges from October 2010. This proposition made commercial sense and would have enabled consumers to benefit from a set of innovations as much as they liked without significant fear of open-ended costs. However, The Number could not make an equivalent offer for calls from mobiles and therefore feared that consumers could acquire a habit of making longer calls based on landline prices, and then gain increased bill shock from the unexpectedly higher mobile charges for time-based elements (up to £2 / minute on mobile versus 9p per minute on landline). The Number withdrew plans to introduce this pricing.
- The Number spent considerable sums on its 'restaurant service', creating the largest restaurant database in the UK, including searchable menus for more than thirty thousand restaurants, enabling customers to choose restaurants and make reservations. However, the service increased call duration considerably and was launched at the time O2 moved pricing to £1.50/minute. The Number did not think it reasonable to expect consumers to pay high mobile charges for longer calls to such a service (and O2 was the largest customer base on any network in the UK). The result was that The Number had no option but to withdraw the service, despite the considerable time and expense of its development. The total wasted investment by The Number in this service development was £4.5m.

Competition

Under the current system in place in the UK, it is impossible for DQ service providers to compete honestly on price, because they simply do not control the price which consumers pay for their services, other than via a BT landline. The problem is exacerbated by the fact that MNOs are



increasingly charging all DQ services (except their own) at a standard price. So a claim by a particular DQ provider that they are 'cheapest in the market' or cheaper than a named competitor has no merit or substance to it. The lack of ability to compete on price and the obvious adverse impact on consumers is probably the main failure in the DQ market in the UK at present.

Consequence n°3: Market not working for Originating Operators (OO)

Here again, The Number supports BEREC's assessment that the negative effects resulting from the strong market position of originating operators create an inefficient outcome, also for originating operators (SRS Report, p. 12 par 43).

From a consumer relation perspective, the 'bundled' nature of the retail charges which originating operators levy mean that they can have difficulty in explaining to consumers how any individual cost might have been incurred. This contrasts with the situation in France, where DQ providers are able to choose their own retail charges and hence make pan-network pricing available to consumers thereby guaranteeing price transparency and ease of consumer understanding.

Moreover, The Number acknowledges that the originating operators will receive complaints about high call charges similar to those which we receive. Again, if there was a clear and standardised industry-wide regime in place, such as unbundling the C and S components, it would generate clear benefits and ease of understanding for originating operators, DQ providers and consumers alike.

They are also caught up in the process of increasing DQ charges. We note above in section A 'Mobile Network Operator pricing behaviour', that margins on 118118 calls have increased dramatically, but we recognise that this may not necessarily be true for all DQ services. The reason appears to be because the MNOs are applying price increase risk premiums to allow for unforeseen price changes which could come from any one of many DQ service providers as well as to compensate for the time lag before those changes can be implemented on their retail billing systems. **It is interesting to note that of all the European markets in which we operate, it is only the UK and Ireland which employ the same DQ charging regime and it is only the UK and Ireland which have witnessed the same level of increased retail charges, the same level of originating operators margins being applied, the same level of threats between networks and service providers and the same bill-shock issues for consumers.**

So, in some instances, originating operators may have increased their retail charges for all DQ services (except notably their own) in order to prevent calls to DQ services of some of our



competitors becoming loss making. This results in services like 118118 being made accountable for competitors' pricing policies which fundamentally undermines incentives for price competition.

Regrettably the standardised approach to DQ retail charging adopted by MNOs has meant that DQ services such as 118118 have suffered by association in having their retail charges similarly increased. The problem is exacerbated by the fact that as DQ providers are competing, some DQ providers employ very different charging models e.g. high set-up/low per min versus low set-up/high per min to differentiate their pricing for consumers. So if an originating operator chooses not to select the intended DQ retail tariffs that the service provider has proposed, but instead the originating operator selects a single standard retail charge to encompass all competitive DQ prices, then they tend to choose a high price per call as well as a high price per minute to ensure that no calls are loss making, regardless of the length of the call and the charging mechanism employed. Consequently, we recognise the theoretical risk that on average originating operators may lose, as well as gain from overall increasing DQ charges, particularly when taking into account the adverse impact on overall volumes which it is generating.

For all of these reasons, it seems clear that an unbundled charging structure, involving a simple, uniform access charge (as would be the case in a variant of the C+S model) will benefit originating operators as much as anyone else. It will require them only to understand and communicate their own access charge, leaving any other questions to the service provider. It will also mean that they can maintain a steady de-risked access charge, rather than feeling that they have to alter it, in response to price changes from some, but not all, DQ service providers.

a) The French Market

In France, DQ providers are able to choose their own retail charges and hence make pan-network pricing available to consumers thereby guaranteeing price transparency and ease of consumer understanding.

Moreover, regulatory intervention by ARCEP has imposed rules to limit retentions by mobile operators on calls to DQ services, resulting in lower prices and the control of retail rates by the service provider. Effectively, the DQ provider chooses a retail price point, from which the originating operator deducts a regulated access charge. This gives consumers much greater clarity as to the actual cost of a DQ call, than is possible under the UK system and allows for genuine competition between DQ providers. [REDACTED]



These effects benefit consumers directly and allow for more effective service competition and they result directly from regulatory intervention to address problems prevalent in the UK.

However, recently Bouygtel and Free have unilaterally decided to increase their retention fees, i.e. this was not done in mutual discussions but imposed upon The Number. Their argument is usually that the ever higher prices for the DQ service lead to an increase in complaints and bad debt, which in turn results into higher costs to them. So far they have not been able to supply any numbers proving that point, and we believe higher retention fees are really only a revenue raising exercise for them. The mobile operators benefit more from the price increases than the directory provider. Furthermore, we have no effective countervailing bargaining power through which to address the problem. The Number relies on access being provided by all originating operators and there is a clear commercial risk that initiating any form of dispute might result in access being denied, which would have a potentially fatal impact on our business.

a) The Austrian Market

In Austria, The Number can choose the retail price for customers calling its DQ service from a list of pre-determined price points (..... € 1.08; € 1.35; € 1.55; € 1,81; € 2.17; € 3.50). These price points (which apply not only to DQ, but to all value added/premium rate services) were agreed many years ago between service providers and the incumbent fixed provider, Telekom Austria. Currently, there is no realistic prospect that the price points can be changed or added to owing to limitations in Telekom Austria's billing system. The chosen retail price is the same for calls over fixed and mobile networks and they are all per minute and it is not even possible to combine them with a fixed set-up charge (as is common in many other member states).

Within each price point, service providers have a commercial (unregulated) revenue share agreement with Telekom Austria, which determines how much of the retail charge we receive and how much is retained by Telekom Austria. From an operational interconnect perspective, Telekom Austria collects the revenue paid to all network operators by their respective users (through a power of attorney) and pays The Number the agreed revenue share. That share is slightly less for mobile



networks than it is for landlines⁴, but realistically we have very little control over revenue received because it is largely determined by Telekom Austria's pre-existing interconnect agreement with the mobile operators. Moreover, as the agreements between services providers and network operators are placed under strict confidentiality rules, we do not know the content of the other agreements of DQ operators in Austria.

This model would make it tend towards an S model, but where the retail price is not fully set by the SP, as it has the choice of a price point but does not have the flexibility to marginally differentiate from that point (only choice is to jump up or down to the next price point).

The obvious advantage of this system is that it is transparent for the consumer, who pays the same amount for calling DQ numbers from all networks and therefore particularly good value for mobile originated calls, which are charged at the same rate as landline calls, although one would generally expect them to be slightly more expensive.

But there are significant disadvantages. Most obviously, the service provider has extremely limited pricing flexibility. They are obliged to choose from a very limited selection of price points, which have been in place for many years and cannot be altered. There is no option of combining a fixed set-up charge with a per-minute charge and this lack of flexibility has a direct adverse impact on service providers' ability to develop innovative services, which require innovative approaches to billing.

Furthermore, the price points are few and very far apart meaning that if a service provider needs to increase its price, it is forced to do so to a much greater extent than it would probably wish. For example, a service which costs €2.17 per min, can only be increased to €3.50 per minute which is a 61% price increase. This is unlikely to be in the interests of service providers and obviously has the potential to cause significant detriment and bill shock to consumers.

It is likely to distort the market by holding prices artificially low for a time and then subjecting consumers to a much larger price increase than they would expect. This is likely to have a much

⁴ Please note that we cannot share what the amount of this pay out is as we cannot share this information with third parties, without the prior consent of Telekom Austria. If we breach this we have to indemnify and hold Telekom Austria harmless.



greater impact on their willingness to make calls than if the increases were introduced more gradually over time.

The other major disadvantage of the Austrian system (in common with many other member states) is that the service provider has no meaningful control of the revenue share 'agreement' and the revenue split with Telekom Austria. The service provider has no option but to deal with Telekom Austria and to accept the terms which it imposes, which in relation to mobile originated calls, are entirely determined by its interconnect agreements with the mobile operators. As all the agreements are confidential, the service provider does not even have a benchmark by which to judge the terms which have been offered and to compare them with other service providers. In reality, it simply has to accept them and effectively surrender all control to Telekom Austria, as the incumbent fixed provider.

This clearly does not create the conditions for a competitive market, which ultimately harms not just the service providers themselves, but also all consumers.

Proposed Regulatory Solution

Whilst we understand that, faced with very different national circumstances, BEREC cannot as such impose a 'one size fits all approach' to all NRAs, we do believe it important for the SRS Report to clearly state that immediate regulatory intervention should take place before further and worse damage is done in each Member State where any of the listed symptoms in the SRS Report occur.

a) Preliminary Remark: Nature of DQ Services

Whilst we understand why BEREC has chosen to include all Special Rate Services within the scope of this SRS Report, it is vital to recognise the unique nature of DQ services, when compared with the various other premium rate services.

When calling a premium rate service other than DQ, the consumer is invariably trying to contact an organisation who is not providing an electronic communications/content service. Whether the service is a bank, a plumber or a support line, the call is simply the means to access the service (probably one of several means) rather than the service itself. In almost all cases, the cost of making the call will not have been the decisive factor for the consumer, when choosing the service



provider. As such, there are minimal competitive forces influencing the cost of the call. As a result, even if the access charge and service are unbundled and fully transparent, the absence of competition means that there will be no economic incentive on the service provider to reduce the service charge and they will suffer little, if at all, from increasing it.

By contrast, when a consumer calls a DQ service, the call itself is the means of accessing the service, rather than simply a way in which to contact a service provider, providing a separate service beyond the call. Crucially, the service charge becomes not just the cost of contacting the service provider. Rather, it is the cost of the service itself. Consequently, when the access charge and service charge are unbundled and the service charge (i.e. cost of the product) becomes fully transparent, it will be entirely subject to competitive forces and there will be every economic incentive on DQ service providers to reduce the cost, hence inducing positive results for consumers. Indeed, one may argue that (despite attempts at innovation by DQ providers) it is viewed by consumers as predominantly a utility service, which means that price becomes an even more important competitive factor.

The unique competitive nature of DQ services, within non-geographic number ranges is extremely important in any consideration of possible regulation of service charges, as discussed below.

Finally, The Number would like to confirm BEREC's analysis in the SRS Report for its own DQ services, namely that 'SPs require that their service can be reached by all the OO networks' and that certainly for DQ services 'this makes disconnection from OOs not a viable option and therefore not an effective way to exercise countervailing buyer power' (SRS Report p. 9, par. 30).

b) Possible Regulatory Approaches

BEREC sets out various different regulatory approaches in its SRS Report (p. 16-22, par. 46-75), namely:

1. **Purely wholesale approach** whereby the NRA sets a maximum threshold (price cap) on the OWR (par. 47).
2. The imposition of a certain **retail pricing model** (par. 14-19 and 48), the identified options being:
 - S model, where the user pays a single retail price, usually defined by the SP
 - $S_f S_m$ model, where the user pays a single retail price for calls originating respectively from fixed and mobile networks, usually defined by the SP (see Portugal)



- S' model, where the originating operators sets the price which tends to be different per originating network
 - A+S model, where the access charge A is set by the originating operators and the service S is set by the SP, and where A is independent from the SRS called but can vary depending on the package subscribed to by the user
 - C+S model, where C is the retail communication charge and is equal to the standard communication fee to a national landline and S is set by the SP.
3. The imposition of retail transparency measures, such as (par. 48-50) :
- Pre-call announcements
 - A numbering plan which sets bands for prices of special rate services (these bands only applying to the S component in a C+S or A+S model).

BEREC continues by setting out for each identified category of SRS which regulatory approach(es) are most promising. As DQ services fall under category 2 under BEREC's classifications, we will limit ourselves to commenting BEREC's views for said category.

i. Purely Wholesale Approach

The Number agrees with BEREC's identification of two drawbacks to a purely wholesale approach, namely (1) the fact that setting a cap on the OWR is a difficult and intrusive task and (2) the fact that using this remedy on a stand-alone basis does not curb the originating operators' possibilities to act in an abusive manner when setting the ORR charge.

ii. Retail Pricing Model Approach

Here again, The Number agrees with BEREC's analysis that 'a measure that addresses the problems only at the retail level, for example by imposing a C+S model, can increase the problem at wholesale level. In this case the originating operator can choose to increase the OWR as a compensation for lost retail revenue' (SRS Report p. 18 par. 55).

While we therefore wholly support BEREC's ensuing conclusion that 'a combination of wholesale and retail measures seems more promising' (SRS Report p. 18 par 57), **we consider that such a combination is not only promising but also the only efficient approach in the long term.**

The Number's view has always been that unbundling the two parts of the charge for DQ services (the access charge and the service provider charge) and either:



- (1) imposing C+S
- (2) imposing A+S or
- (3) imposing a non-discrimination remedy on the access charge;

is the minimum set of remedies that should be put in place by NRAs to solve the identified dysfunctions of the market.

Unbundled charges can help address the problems in the DQ market by simplifying the pricing structure and ensuring that communication between the industry and consumers is correspondingly comprehensive and transparent. The simplification is advanced by altering the charging structure to ensure that what is published and promoted is more clearly understood by consumers and pricing reflects the true value of what is being delivered to them by service providers.

The unbundling should improve the level of transparency in the market. First, it will allow DQ providers to better advertise their prices as they will be able to advertise a single market-wide price (i.e. 'x ppm plus your network access charge'). This is likely to improve the transparency of overall retail prices as it is likely that originating operators will also publicise their market-wide access charge. It will also make it clear to consumers which of the two parties (DQ provider or originating operator) are responsible for high prices.

Access charge

Clearly, a transparent access charge is crucial. Without it, consumers will be little better informed of the cost of a SRS call than at present, despite service providers' best efforts clearly to advertise their own prices.

Our preference is for the C+S model. Whilst we recognise that originating operators may argue that a requirement to set a single access charge is economically imperfect, it will certainly result in significantly better outcomes for consumers (by way of transparency and resulting competition) than the current situation in many Member States. We agree with the four pros identified by BEREC as regards this model (SRS Report p. 18-19 par. 59-63), namely:

- increased transparency as C is a standard rate normally well-known by the consumer and S is the same for every service number
- incentive for the caller to chose the most efficient network
- the C component is likely to be lower than A and less subject to change



- the C+S model applies well to cross-border traffic. The latter is very important to The Number, which has been fighting for years now to make its DQ services accessible cross-border. Though our fight would not be fully solved (as MNOs would still need to open the DQ codes in a cross-border scenario), it would take away some of the MNOs arguments as regards pricing difficulties.

A+S can be an alternative, even though The Number considers it does not offer all the advantages of a C+S model.

But in both cases, safeguards need to be put in place to ensure originating operators current abusive behaviour is also curbed in the setting of the 'percentage x' commercial commission part of the fee. The Number considers indeed that originating operators might attempt to set off their potential loss of income on the "C" component from the "S" component by increasing, with no economic grounds, the handling costs they apply to directory enquiry service providers (i.e. their commercial commission).

The percentage x (commercial commission)

It is clear that the retail mark-ups currently applied to DQ services by MNOs, go far beyond any consideration of cost or bad debt recovery and are much more akin to exploitation of ill-informed consumers in a non-competitive market.

For example, to our knowledge, there is currently no justification to account for the discrepancies in these 'commercial commissions' between fixed and mobile operators. As for the risk of unpaid bills, it is probably even lower for mobile operators than fixed originating operators, since a significant portion of the mobile operators' customer base consists of prepaid phone customers. Moreover, DQ services (as abovementioned) do not have the same characteristics as other SRS. Most obviously, they are quite different to premium rate value added services such as adult content, whose business models are based on prolonging calls as long as possible, in order to maximise revenue. Our directory services are designed to provide the requested information as quickly and efficiently as possible and therefore create much less risk of bad debt than many other value-added services.

Experience in France for example has shown that, if left uncontrolled, these commercial commissions tend to increase continuously: when the ARCEP got involved in the settlement of a dispute related to a telephone enquiry service (decision No 00-1194 of 15 November 2000), the handling costs applied at the time was set for France Telecom. 11 years later, commercial



commissions charged by certain originating operators in France increased considerably to reach 20% in total, including bad debt and other 'costs' .

Within the limits of these reservations, The Number does however agree with BEREC's view that 'Considering that the costs for cash collection, bad debt and customer information are usually higher with expensive SRS than with cheaper SRS (...) charging the commercial commission as a percentage x of the S component (...) appears more appropriate' (SRS Report p. 20 par. 65).

We would also like to note that the alternatives set out under par. 66 of the SRS Report in terms of possible alternatives to originating operator commercial intermediation are not viable substitutes for DQ services.

Finally, we think that NRAs should on a mandatory basis determine if a commercial commission is needed and if so issue rules ensuring that the percentage is fair and reasonable 'in view of the costs incurred and the value added by the OO' (SRS Report p. 20 par. 67). NRAs should notably require originating operators to provide full information on the level of bad debt for calls to each type of SRS (DQ being a specific category), distinguishing customer categories (isolate prepaid, isolate consumers from businesses, etc.). This should be a mandatory step to ensure every possible abuse is eliminated in the C+S or A+S model.

Service charge (S component)

As regards the S component in a C+S or A+S model, The Number is very strongly opposed to any possible cap on DQ service charges. There can be no possible basis for concluding that consumers' perception of the 118 number range needs to be protected. The significant marketing activities of DQ providers based on their unique 118 numbers, of itself guarantees clear consumer understanding of the purpose of the 118 number range.

As regards the structure of the S component, The Number considers that any attempt to prescribe charging according to time of day or set-up charge/ppm would immediately reduce consumer choice and future innovation, with no associated benefits. Future DQ services may well require innovative charging models beyond a simple eurocent per minute element. If varied charging models were not available, those services could not be developed.

Specifying maximum prices would be a highly intrusive and unwarranted intervention into service providers' ability to set their charges in what is (and will become ever more so following unbundling)



a highly competitive retail market. It would undoubtedly distort the market, reducing consumer choice and severely limiting potential future innovation of new services.

iii. Transparency measures

The Number agrees with BEREC's statement that '[transparency] measures do not solve the main problems discussed in this document' (SRS Report, p. 18 par. 56) and would even add that in some cases, they can worsen the SPs situation without countervailing benefits to consumers.

Looking more specifically at the issue of transparency and pre-call announcements (mentioned notably p. 16 par. 48 of the SRS Report), whilst such announcements may be helpful for certain types of SRS, they are detrimental in the case of DQ services, both to the service providers and to consumers calling them. DQ services, which are recognised by the EU Universal Service Directive as having a social value, typically induce calls of less than one minute⁵. The value of DQ services reside mainly in their accuracy and speed: any pre-call announcement obligations can therefore substantially jeopardize the value, efficiency and relevance of DQ services to their users, by rendering calls up to 20% longer. (As a general rule, for each added 2 seconds a customer waits before reaching an agent for our services, we will lose 1% of customers – as they find the service less useful.) Moreover, such pre-call announcements can in certain cases add to the cost of a communication for the user (or the SP which is already exposed to the often abusive behaviour of originating operators, as identified by BEREC). Such transparency measures should therefore be used in a proportionate manner and take into consideration the balance between the possible harm incurred by users and the risk of affecting a service's efficiency and relevance in a substantial manner.

⁵ The main characteristic of DQ services is indeed to respond to a user's request for information as quickly as possible. Such an approach is fundamentally different to most other value-added services, many of which try to keep callers on the line for as long as possible.



4) Legal instruments

BEREC identifies three main instruments, namely (1) dispute resolution (2) SMP regulation and (3) symmetric regulation.

Whilst The Number understands that 'the purpose of this document is not to provide a definitive answer as to what the right legal instrument is to adopt in all cases', we would like to stress again that BEREC should stress in its Report the need for immediate regulatory intervention by the relevant NRA before further and worse damage is done in each Member State where any of the listed symptoms above occur.

a) Dispute resolution

Dispute resolutions are costly for SPs, not only from a resource point of view, but also in terms of the strain they put on the relation of the SP with the player of the value chain the dispute is directed against. Moreover, many disputes are not settled in first instance, as originating operators tend to appeal every decision by an NRA that negatively impacts them, hence creating further delays in reaching a possible solution, and increasing the costs for the SP (and the NRA) in settling the said dispute.

The Number would therefore humbly disagree with BEREC's view that resolving disputes 'is significantly shorter than the time taken to undertake a full market review' (SRS Report p. 24 par. 82). We do share BEREC's opinion that a dispute resolution approach creates a risk of inconsistency and that it creates an unsatisfactory and inefficient outcome if it limits itself to the wholesale level (par. 84).

b) SMP regulation

i) Three criteria test

The Number considers that defining a market for wholesale mobile call origination to VAS (including directory services) meets the European Commission's three criteria test:

Barriers to entry.

It is a well known and recognized fact that radio spectrum limitations impede entry into the mobile market as a fully-fledged Mobile Network Operator. Furthermore, it makes no commercial sense for a VAS or directory services provider, who is not in the business of building telephone networks, to



establish its own alternative access network for its users, or to enter into an MVNO agreement which would only make its services accessible from a single network.

No tendency towards effective competition.

There is clear evidence, as outlined by BEREC itself, that MNOs apply excessive retail mark-ups for mobile call origination to VAS and directory services (para 24 and figure 5). This may be due to a lack of inter-network competition but whatever the reason, the result is abusive access conditions.

Moreover, as very accurately stated in the SEO Study conducted in the Netherlands on behalf of OPTA and quoted in the SRS Report, 'Each originating fixed and mobile network has a monopoly on the market for call origination from the associated subscribers' (SRS Report p. 10 par. 31).

Lack of efficiency of competition law.

Abuses of market power have been prevalent for many years, and have not been dealt with by competition law. Call origination conditions need to be regulated ex ante: (i) to avoid various types of anti-competitive behaviour by MNOs, whether they themselves have activities in the downstream VAS or directory services market or not, (ii) in order to provide legal certainty for VAS and directory services providers when setting the terms for their services across dozens of different mobile networks across Europe, and (iii) to enable the establishment of non-abusive pricing models (National Competition Authorities usually do not intervene on pricing).

In France, the limitations of competition law were recognized by the Competition Court (*Conseil de la Concurrence*) itself, in an Opinion⁶ issued on 31 March 2008, in which the Court examined the functioning of the VAS sector (in which directory services are included in France) and identified the existing dysfunctions in the mobile origination practices of MNOs in relation to access to Value Added Services, including directory services, and **stated that ex ante intervention was required**

In fact, the *Conseil de la Concurrence* stated in its conclusions that:

“82. L'ensemble des constatations sur le fonctionnement des marchés liés aux SVA soulignent les faibles incitations reçues par les différents acteurs en faveur d'une compétition par les prix au profit du consommateur. Néanmoins, l'intervention directe du législateur sur les niveaux de ces prix devrait

⁶ Conseil de la Concurrence (France), Avis n° 08-A-03 du 31 mars 2008 relatif au fonctionnement des services téléphoniques à valeur ajoutée, <http://www.autoritedelaconcurrence.fr/pdf/avis/08a03.pdf>



rester l'exception, l'animation de la compétition sur les marchés de détail devant de façon prioritaire être recherchée par un fonctionnement plus concurrentiel des marchés de gros.

83. *En particulier, la vente en gros de prestations d'appel aux fournisseurs de services, telle qu'elle est déjà pratiquée par les opérateurs fixes, permet au consommateur de bénéficier d'un accroissement de la pression concurrentielle sur la composante communication de certains SVA, pour lesquels il existe des services concurrents. Cependant, l'apparition d'une offre de gros de départ d'appel sur les réseaux mobiles à destination des SVA ne peut être attendue du seul fonctionnement concurrentiel des marchés, du fait de la position monopolistique occupée par les opérateurs de réseaux sur les marchés concernés. **Cette situation justifierait la mise en place d'obligations ex ante.*** (p. 21 – Our emphasis added)

The fact that a Competition Council itself acknowledges the need for ex ante rules in this matter is a striking illustration of the failure of competition law to address the issues at stake.

i) AGCOM's attempt at defining a Market 15bis

Prior to the French Opinion of the Conseil de la Concurrence, the European Commission issued a "serious doubts" letter concerning AGCOM's proposal to define a specific market (Market 15bis) for wholesale mobile call origination services to non-geographic numbers in Italy. In February 2007, the European Commission's objections centred on the perceived lack of evidence on market definition, market failure and SMP.

The Commission sought to rely on a mixture of considerations, some specific to the Italian case (which we will not examine in this paper as they are not relevant). In respect of the non-specific considerations, the Commission's main points seem to rely on one-sided *a priori* arguments, such as the observation that all MNOs appeared to have an incentive to provide access to a provider of value-added services and that competition was allegedly healthy at the retail level since there had been directory service market entry since liberalization. This analysis is over-simplistic. It makes no reference to the MNO's countervailing incentive to exploit its market power in the provision of the wholesale origination service for information services (especially when it can do so in a non-transparent way and with the service provider "taking the blame" for the high charge) nor considers the ineffectiveness of competition at the retail level (high prices, lack of price transparency, seriously reduced demand, etc.). Nor is there any attempt to examine the empirical evidence of abusive charges.



The Number considers that the European Commission has not properly understood the specificities of the market for mobile origination to VAS and directory services.

In looking at the bargaining power of VAS and directory services providers compared with the mobile network operators, the Commission looked more generally at all service providers. Obviously, the situation of premium content providers when they negotiate with an MNO cannot be compared to that of a directory service or small VAS providers. In the case of a directory service provider, the situation is often rendered more complex as it is very often competing with the directory services provided either directly by a mobile network operator itself or indirectly by its fixed line parent. In other terms, mobile operators would prefer their own directory services to be the only one left standing and in the process of killing the competitors make margins of 50% and more. In terms of wholesale access to mobile networks, The Number's experience in 5 EU Member States and Switzerland shows that directory service providers, to survive, require that at the very least the customers of the two main mobile operators in every Member state (that usually represent about 80% of the market) use their service.

These arguments do not seem to have been properly addressed by the European Commission in its examination of the Italian submission.

Moreover, the main hurdle that the European Commission seemed to consider relevant related to its assessment of the proposed remedies by AGCOM. This in turn seems to have led to a general veto (because the Commission does not have the power only to veto the remedies) due to the fact that the Italian NRA was proposing to impose cost-orientation rather than a mix of remedies as proposed in the BEREC SRS Report.

i) Explanatory Note to the Relevant Markets Recommendation

It must be noted that since the Italian case was reviewed by the European Commission Article 7 Task Force, the Recommendation was revised.

Although Market 15 (wholesale mobile access and call origination) was removed from the list of relevant markets, the European Commission did add in its Explanatory note associated with the Recommendation⁷, in its section on "Related Wholesale Markets" as regards Services provided at

⁷ Commission Explanatory Note accompanying the Recommendation in Relevant Product and Service Markets (c(2007) 5406),

http://ec.europa.eu/information_society/policy/ecom/doc/library/proposals/sec2007_1483_final.pdf



non-fixed locations that “*In order to provide retail mobile services, operators need various wholesale inputs, including termination services, access and call origination services and international roaming services*” (pg 41), adding in a footnote that:

“Some NRAs have defined a distinct market for wholesale call origination to non-geographic numbers in order to address the conditions of competition for calls to value-added services (in particular, directory enquiries). Others have relied on Article 5 of the Access Directive or the Universal Service Directive, or indeed on specific national regulatory provisions concerning premium rate services to address the issue. In these instances the NRAs have sought to address concerns they had about mobile operators imposing high prices in relation to specific services within the retail offer, or about restricting the ability of service providers to control their retail prices.” (footnote 42 on pg 41)

On that same page, the Commission specifically points out that “*(...) it is possible to define a single cluster retail market that includes access, national, international and roaming calls and SMS. In addition, this retail cluster may also include calls to value-added services (in particular, directory enquiries). **Against this background, account may have to be taken of any particular circumstances surrounding access to value-added services.***” (p.41 – Our emphasis added).

c) Symmetric regulation

i. Article 21 of the Universal Service Directive

The Number considers that in the four listed types of symmetric regulation, the use of Article 21 of the Universal Service Directive should not be interpreted as a stand-alone tool: as stated both by The Number and BEREC, transparency can be helpful but cannot solve the issues at stake in the SRS market on its own.

ii. Article 5 of the Access Directive

In France, ARCEP has imposed an ex ante obligation to charge reasonable wholesale mobile origination charges to VAS (including directory services), based on Article 5 of the Access Directive, which establishes the requirement of NRAs to:

“encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users.



In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:

(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;”

ARCEP basically imposed obligations on access operators through its Decision n°2007-0213 dated 16 April 2007 relating to “*obligations imposed on the operators controlling access to the end user for the routing of calls to value-added services*” (the “Decision”).

Directory services are explicitly covered by this Decision.

This Decision imposes the following obligations on all access operators in France:

- Originating operators must grant any request to access VAS numbers and associated facilities such as, for instance, the modalities for physical connection to the sites, provided that it seems reasonable, with particular respect to its technical operational capacity, its technical and economical adequacy, or the customer’s need.
- Access conditions must comply with the principle of non-discrimination, which applies to access to price caps, technical or pricing conditions, access to customer service, etc.
- In terms of pricing, the Decision requires Communication Providers to satisfy “*the reasonable requests of other operators for the transfer of a portion of the sums billed to the final user calling, with regard to communications to these numbers, under objective and non-discriminatory conditions*”.

In compliance with the procedure provided under Article 5, ARCEP notified its Decision to the European Commission. It should be noted that the Commission issued an observation on 10 April 2007 in which it considers that “*article 5 (1) of the Access Directive must be interpreted with care. One should take into consideration the general principle of the common regulatory framework for electronic communications according to which rules must only be imposed in case of necessity and must be, in any event, in proportion to the identified market failure*”.

It indicates that “*the findings of ARCEP according to which certain service providers have faced difficulties while entering into interconnection agreements with originating operators and according*



to which undue delays, or even refusals to grant access occurred, seem to presage the existence of problems concerning the end-to-end connectivity” (emphasis added).

This use of Art 5 of the Access Directive to impose reasonable tariffs for wholesale mobile call origination is confirmed by the changes introduced in the Review of the Electronic Communications Framework to Art 25 par 3 of the Universal Service Directive, which stipulates: “3. Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services. National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent. “ This Article must be read in light of Recital 38 of the Universal Service Directive, which adds that “(...) the provision of network access under reasonable and transparent conditions, should be put in place in order to ensure that end-users benefit fully from competition, with the ultimate aim of enabling the removal of retail regulation (...)”.

However, as stated by BEREC, a mix of retail and wholesale interventions is the only option to create a viable solution to the problems faced by SPs in the SRS market, and Article 5 may therefore only bring part of the solution.

i. Part C of the Annex of the revised Authorisation Directive

As regards the revised part C of the annex to the Authorisation Directive, The Number agrees with BEREC’s analysis that it enables NRAs to specify tariff principles including therefore unbundling and the specification of a maximum price in relation to a tariff, even though that might be expressed as an absolute figure in respect of the access element of an unbundled charge.

ii. Article 28 of the Universal Service Directive

The Number considers the interpretation of Article 28 of the Universal Service Directive by the Dutch Ministry extremely valid and useful and can only recommend NRAs to either follow a similar interpretation or, where required, encourage the relevant Ministry to do so.

We also consider it worth noting and **adding to paragraph 90** of the SRS Report that ‘access to directory enquiry services (which are an important subset of special rate services) is further guaranteed by Article 28 of the Access Directive (as amended by the Citizens Rights Directive). It



includes an express provision that “National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive)”. This therefore guarantees beyond doubt that directory enquiry services are subject to Article 5 of the Access Directive and all NRAs should ensure that they have implemented Article 28 explicitly in order to protect access to an important special rate service, as the Directive intended.

5) Next Steps

a) Finding the Right Balance between Giving NRAs Choice and Ensuring Proper Regulatory Intervention

The Number understands that BEREC considers that ‘the guidance that is given in this document does not necessarily apply to all SRS and it is up to individual NRAs to decide if and where the guidance of this document is applicable based on national circumstances’ (SRS Report p. 1 Par. 3). However, even if a ‘one size fits all’ approach may be too difficult to implement, a certain number of triggers that should lead to the automatic intervention of NRAs could still be identified, to ensure that abuse are in fact addressed.

Such triggers could include, in a non cumulative way⁸:

- The originating operators’ retail mark-up on calls to special rate services exceeds a certain percentage of the overall retail charge to consumers eg 15%
- The originating operators retail mark-up on calls to special rate services exceeds a certain level compared to its retail mark-up on standard non-geographic calls eg 20%
- The originating operators retail mark-up on calls to special rate services exceeds a certain level of cost judged according to the benchmark of its regulated fixed or mobile termination rate eg 400%
- The mobile originating operators retail mark-up on calls to special rate services exceeds a certain level compared to the fixed incumbent’s retail mark-up eg 50%
- The fact that SPs have no say on the end-user price.

⁸ Percentages included in the triggers are purely indicative and are likely to have to vary for different special rate services and in different markets



- Comparison with prices charged in other Member States

NRAs should be obliged at least to initiate an investigation where one or more SRS providers are able to provide prima facie evidence that one or more of these triggers have been met. Although it may be possible for the SRS provider to bring a dispute in these circumstances, that is unlikely to provide the best means of addressing the problem on an industry wide basis and to impose a solution which affects all relevant SRS providers and originating operators

a) Putting in Place, where necessary, Interim Measures To Put an End to Abusive Behaviour and Consumer Harm Quickly

The Number considers that, where dysfunctions of the market as set out in the SRS Report exist, NRAs should intervene as quickly as possible, in order to address the urgent consumer detriment. This could imply taking a two-stage approach, whereby interim measures are adopted speedily, and then followed by more long term regulatory measures.

The rapid implementation of regulatory solutions, on an interim then permanent basis, can address the issues affecting the DQ market and would avoid delays in implementation taking place that could possibly result in even more service providers going out of business.