Fastweb's response to BEREC's "Draft Report on Special Rate Services"

Fastweb welcomes BEREC's initiative on analyzing the competitive problems relative to special rate services and providing guidance to NRAs.

We fully agree with the description provided relative to the various arrangements in place between the OO, the TO and the SP, and believe that the proposed solution outlined in paragraph 5 should be supported by all NRAs.

Fastweb also agrees with the need for NRAs to ensure full transparency to consumers on the prices of calls to SRS and the need to ensure that the OO does not exploit its dominant position on the calling customer to the detriment of the development of this market.

It should be highlighted that there should be no discrimination between treatment of access to SRS between fixed and mobile networks, with the exception as stated in the document of the difference in retail calling charges.

In Italy, there is a strong competitive distortion caused by the abnormally high wholesale call origination charges requested by the originating Mobile Network Operator, which are seriously affecting the market and limiting access to SRS since many service providers actually block access from mobile phones due to the high wholesale origination rates charged by MNOs.

With regards to this issue, please find below a description of current situation which is seriously hampering competition, development of SRS and consumer choice.

- **Excessive levels of OWS charges:**

	Wholesale origination rate	Termination charge	Mark up
Telecom Italia	10.09 euro cent/min[1]	5.3 euro cent/min	4.79 euro cent/min
Vodafone	20 euro cent/min[2]	5.3 euro cent/min	14.7 euro cent/min
WIND	14 euro cent/min[3]	5.3 euro cent/min	8.7 euro cent/min
H3G	21 euro cent/min[4]	6.3 euro cent/min	14.7 euro cent/min

As can be seen from the above table, wholesale origination rates applied by MNOs in the absence of regulatory intervention are disproportionate and are seriously hampering competition and development of SRS. Wholesale rates are necessarily part of the cost of providing SRS and therefore the excessive levels of origination rates charges by MNO are causing many companies to block access to NNG numbers (ie. even toll free numbers) from mobile phones. It should be noted that for access to toll free numbers, no additional service is provided by the MNO and therefore the difference versus termination rates should be extremely limited (if any).

- **Double charging mechanism for calls to other NNG numbers:**

Besides the issue of excessive wholesale rates described above, another competitive distortion is the fact that in some cases, MNO charge both the retail customer and the TO for access to SRS, thus receiving double compensation for the same call without any objective justification.

[1] Price determined by AGCOM after a dispute initiated by Fastweb (decision 111/11/CIR) in September 2011, the previously applied rate was 14 euro cent/min.

[2] Fastweb has opened a dispute in AGCOM in July 2011 requesting AGCOM to determine a fair and reasonable call orgination rates, following unsuccessful negotiation.

[3] Fastweb has requested Wind a renegotiation of call origination rate, negotiation still in progress.

[4] Fastweb has opened a dispute in AGCOM in October 2011 requesting AGCOM to determine a fair and reasonable call orgination rates, following unsuccessful negotiation.

For example, 84x numbers in Italy are SRS in which the OO charges a fixed or variable retail charge to its customer[5]. In these cases, MNOs in Italy not only receive the retail charge applied to end user but also request the TO a wholesale call origination charge. So:

1. The mobile customer pays a retail price to the MNO which may differ according to its specific retail calling plan and keeps all the revenues.
2. The MNO also asks the TO for a wholesale call origination charge.
3. The price to the mobile customer is determined by the MNO and not by the SP.
4. There are no maximum tariffs in the National Numbering Plan for access to these services from a mobile phone.

RETAIL PRICE			
840 – 841	SET UP	PEAK	OFF PEAK
TIM	12,91	0	0
VODAFONE	8,26	0	0
WIND	n.a.	n.a.	n.a.
H3G	12,5	0	0

+

WHOLESALE ORIGINATION CHARGE			
840 – 841	SET UP	PEAK	OFF PEAK
TIM	0	19,37	5,06
VODAFONE	0	19,66	10,33
WIND	0	22	22
H3G	0	18	5

RETAIL PRICE			
847 – 848	SET UP	PEAK	OFF PEAK
TIM	25,82	0	0
VODAFONE	8,51	10	10
WIND	n.a.	n.a.	n.a.
H3G	10	12,5	12,5

+

WHOLESALE ORIGINATION CHARGE			
847 – 848	SET UP	PEAK	OFF PEAK
TIM	0	18,44	4,13
VODAFONE	0	14,49	7,75
WIND	0	19,63	19,63
H3G	0	15	4

So, for a call from a mobile customer to a 840-841 NNG number, TI receives revenues ranging from 29.4 euro cent/min (assuming a 1 minute call duration) to 20.8 euro cent/min (assuming a 3 minute call duration). Similar values apply to the other MNOs.

For a call to 847-848 numbering ranges, TI receives revenues ranging from 41.4 euro cent (assuming a 1 minute call duration) to 24.2 euro cent/min (assuming a 3 minute call duration).

The data above clearly shows that MNOs, in the absence of regulatory constraints are clearly abusing their dominant position in the call origination market and charging consumers and TO excessive retail and wholesale rates to the detriment of the market. The revenues received from calls to NNG are significantly higher than the average revenues from retail calls, proving an absence of competitiveness in the call origination segment.

We believe that a correct regulatory approach would be one of the following:

- The C+S model described in paragraph 5 which as long as C is the standard calling rate of either a fixed or mobile line, allows the respect of the principle of non discrimination and technological neutrality while, at the same time, allowing the service provider to charge a fee for the services provided (ie. S) applicable to all callers thus simplifying the commercialization and transparency of its services;

[5] 840-841 are NNG numbers in which the OO is allowed to charge a fixed retail price to calling customer whereas for 847-848 NNG numbers the OO is allowed to charge a variable retail charge.

- A “call origination model” in which it is the TO together with the SP that determines the retail rate to be charged to the end user and the OO is compensated via a wholesale call origination charge plus billing, cash collection and bad debt insurance (where applicable). This approach would allow a greater level of competition in the provision of SRS since SP would have an additional marketing lever which is the determination of the retail price. This would also allow a greater level of competition between SRS and TOs and avoid discrimination and possible abuse by OO which are also active in the provision of SRS (which would have the incentive of artificially increasing retail rates and/or OWS and therefore increasing rivals’ costs) in order to have a greater competitive advantage in the provision of SRS.

In either of these approaches, the guidelines issued by BEREC should specify that:

- NRAs should not discriminate between fixed and mobile calls to SRS services and the model applied should therefore be the same.
- The OO should be remunerated for the service provided (OWS, billing, etc.) but according to fair and reasonable charges which for the originating wholesale service segment should be in line with wholesale termination charges. Charges for other ancillary services such as billing, bad debt, etc. may vary according to the type of SRS provided but should in any case reflect costs of providing the service and a reasonable mark up.
- In case of toll free numbers the OO is only entitled to receiving the OWS charge which should be aligned with the wholesale termination rate.
- The retail charge (S) for the SRS should be determined by the SP/TO who owns the SRS number and not by the OO.
- In case the OO receives a retail charge directly from the retail customer for the call, (the C segment) the OO is not entitled to apply a wholesale origination charge to the TO. The OO must transfer to the TO/SP the service specific retail price charged to the customer (which will then be passed on from the TO to the SP according to their specific commercial agreements) while keeping only the additional charges (if any) relative to bad debt/billing/etc. specific of the SRS and additional to the normal standard calling charge.

We would also encourage BEREC to clearly state the power of intervention by the NRA in addressing competitive distortions on call origination charges and pricing mechanisms for calls to SRS either by dispute/litigation or via SMP intervention and market analysis.