



contribution to the  
Draft BEREC Report on Special Rate Services

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## **Introduction**

Wind Telecomunicazioni S.p.A. ("Wind"), one of the largest Alternative operator in Italy, welcomes this opportunity to offer its views on the draft BEREC Report on Special Rate Services in order to support the discussion on this matter, representing a market point of view and related concerns.

## **Company Description**

Founded in 1997, WIND Telecomunicazioni SpA is one of the few operators in Europe to offer integrated fixed and mobile telecommunication services and Internet services.

WIND is the third largest Italian mobile operator, with 20.8 million subscribers as of September 30, 2011.

WIND is also the leading alternative provider of fixed-line services in Italy with more than 3.09 million voice customers, of which 2.35 million direct subscribers, and 2.07 million broadband customers as of September 30, 2011.

WIND was the first Italian operator to launch MMS and video over GPRS handsets: one of the earliest services to be made available was the first ever pocket news broadcast via videostreaming. WIND was the first in Italy to launch a trading on line service via WAP. New technologies such as WAP and GPRS, UMTS, make a substantial contribution to the creation of new services and applications. WIND offers a particularly wide range of data transmission and Internet services, capable of satisfying the needs of all segments of the corporate market.

In February 2001, WIND became the first alternative operator of fixed-line telephony in Italy to provide access to local loop unbundling, offering the possibility to make fixed-line calls without the need to pay any form of line rental. WIND was the first Italian operator, in May 2002, to launch Number Portability, enabling customers to switch operator whilst keeping their existing telephone number.

In 2006 WIND expanded its convergent fixed-Internet product offering bundled domestic calls with only a call-set up charge and a broadband Internet connection for a flat monthly rate. In October 2005 WIND launched the ADSL2+ access network, a new technology offering a considerable increase in connection speed and quality and, consequently, a marked improvement in the fruition of services, especially of the multimedia type, such as audio and video applications.

The WIND Group has a best in class network: more than 21,000 kilometers of optical fibre backbone to 4,440 kilometers of MAN. The company also boasts an extensive and innovative mobile network consisting of more than 12,598 radio base stations and more than 9,000 Node B related to the UMTS coverage. Coverage outside Italy is provided by more than 450 roaming agreements.

## General Considerations on Wholesale and Retail measures

Wind supports transparency as a tool to safeguard consumers and their interest. In this view we look favourable at those measures that can protect customers from frauds and behaviours that may harm their interests.

**For what concern the relationship between operators (whether they are Originating ones or Service Providers) we believes that this is a business matter that should be not *per se* regulated and that should be left to the market dynamics.**

If and where problems arise at wholesale level, depending also on their consistency and level of impact on the market, a relevant market should be identified first and then a market analysis should be carried out.

In fact the EU Regulatory Framework establishes that all the *ex-ante* regulatory obligations should be imposed only where there is no effective and sustainable competition, namely in a certain relevant market where an SMP is identified, that is the result of a specific market analysis.

Moreover two kind of obligations to the SMP operator can be applied, that is wholesale and retail ones, where the latter is in general considered as a last-resource measure due to the fact that is applied when wholesale obligations are considered not sufficient to address competitive problems caused by the incumbent's power on the market analyzed.

**Bearing in mind these consideration we invite the BEREC to highlight with more emphasis that the Report should by no means be interpreted as a proposal to introduce any kind of ex ante regulation (in any case a relevant market should first be identified and the market analysis should be carried out before imposing any kind of obligation both at wholesale and retail level).**

**On the contrary we invite BEREC to underline that this report should be interpreted as a general guidance to NRAs to handle and address on a case by case basis those eventual disputes that may arise with SRS.**

## Guidance on handling dispute resolution by NRAs

Where problems arise, we support the BEREC's approach to dispute regulation if this means that *"NRA's could release guidelines or decisions that clarify how certain disputes would be resolved"*.

In this view we fully agree with BEREC's cons of Dispute resolution: *"Cons are the potential for inconsistency since through continual case by case assessment the overall consistency may suffer, the limited application of the individual disputes, **the lower regulatory certainty it provides for parties that have not settled their dispute, the high cost and slower application of settling a large number of disputes** that could be needed for wider market application. A con in this context is also that the regulatory measure mostly seem limited to wholesale level, while most of the regulatory approaches identified also need a retail component."*

## Transparency considerations

For what concern transparency issues, **in general we support all reasonable initiatives of providing clear information to help customers to make their best choice, information that should be settled at reasonable level to avoid harmful overloads.**

With specific reference to the obligation for a pre-call announcement of the price of the call (e.g. “this call will cost x cents per minute”), we believe that it should be evaluated carefully, in particular about *who* should give to end users this kind of information.

In fact it should be noted that the Originating Operator (hereafter: OO) could have no *direct* relationship with the Service Provider (hereafter: SP) and its contents/services, this is usually the role of the Terminating Operator (hereafter: TO), so the SP should be the entity that is responsible for and that should provide these announcements.

However we would stress that currently the responsibility on fraud related to these announcements is *de facto* of the OO, which is the legal entity against whom clients direct their (eventual) complaints (i.e., bad debt).

## Consideration on Promising regulatory approaches

In general we support the BEREC’s approach, both at Retail and Wholesale level, but we would stress some strong concerns.

### Wholesale level

#### Category 1 (‘free services’)

The first consideration is that this kind of call is not susceptible to ex-ante regulation, so a reasonable approach by an NRA can be a *light* approach, namely allowing only reasonable prices. For this reason we agree with the BEREC that *reasonable prices could be set by a price cap that is based on the average retail revenue per minute on a downstream voice market or a certain part (percentage) of this retail revenue to allow for the fact that origination concerns only half of a standard retail call that consists of both origination and termination.*

On the contrary **we reject the possibility of a price measure (for example a price cap) for the OWR based on a cost oriented measures and in any case we reject their price value comparison with termination rates.**

In case of disputes arise between operators, we agree with the BEREC that *reasonable prices could be set by a price cap that is based on the average retail revenue per minute on a downstream voice market*, in fact **this kind of calls are comparable to retail calls so their pricing should follow the principle of the standard calls pricing scheme and not the cost orientation principle.** Moreover, prices are also, commercially, set by OO with a case by case adjustment which results, for example, from a volume discount (or other customized solution), whose aim is to incentivize the development and usage of this Category both by OOs and SPs, that benefit of the market development.

A comparison with termination rates appears not proper and inadequate especially in a forward looking approach, namely considering that all EU countries are still handling the MTR fall to very low levels and that this fall will probably continue in the mid-term, leading to tariffs close to zero, this will consequently entail to force OOs to give SRS for free.

## Category 2 ('charged services')

All the above consideration are also valid with this category, and again we reject the possibility of a price measure (for example a price cap) for the OWR based on a cost oriented price cap that is determined for termination regulation. In fact, on top of the above consideration on Category 1, giving the possibility to an NRA to set OWR equal to the MTR means to:

- **Not consider at all the commercial commission costs**
- **Not consider ALL the efforts** made by operators to reach each their single customer (i.e. investments on network, quality of service, customer care, etc.)
- **Not consider that SP are allowed to be remunerated by accessing to customer's portfolio** (e.g., their prepaid budget) which is no more employed to use operator's services and is spent to buy SP's services
- **Not consider that SP are allowed to be remunerated through the customer's budget** (e.g., their pre paid budget) **which is often constituted and include also by the operator's promotions** (e.g., the offers for prepaid customers that double the credit once the recharge of the credit is made<sup>1</sup>), **so the SP could be partially remunerated also by operators**

Finally we want to highlight that giving the possibility to an NRA to set OWR equal to the MTR is not correct nor proportionate due to the fact that, especially for prepaid customers, SPs are allowed by operators to be remunerated through their customer's credit, which is thought and should be used mainly to utilize operator's services. This is particular important especially for "third operators" such as Wind,

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, **so after the utilization of their credit for SP services instead of operator's ones has a not negligible impacts on customers' willingness to continue to spend their credit to traditional services.**

### Retail level

First of all we believe that transparency rules are enough to make a well informed choice and downsize retails problems.

Second, we agree with the BEREC on the S + C model, but we have some concern about the *commercial commission*, in particular regarding to the possibility to not consider it at all, in fact this is the message that emerges analyzing the paragraph: "*In BEREC's view the C+S model is a relatively light touch regulatory approach because it is limited to **setting a structure of prices** and does not directly set prices (or price caps). It allows OOs to earn the same revenue on SRS as they earn on standard calls. [...] It could be reasonable that the OO retains a 'commercial commission' on the service charge (S) – apart from the C component – as a result of the retail commercial operations it performs on behalf of the SP. [...] **Each NRA could determine if a commercial commission is needed** and if so an NRA could edict rules ensuring that the percentage of the S value retained by the OO remains fair and reasonable in view of the cost incurred and the value added by the OO. Each NRA should furthermore in this case be prepared to precise this percentage in case of a legal dispute.*"

We would remark that if on one hand is correct to consider **the NRA the body who can evaluate and decide the commercial commission reasonable level in case of disputes**, on the other hand **we don't agree with the possibility by the NRA to**

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<sup>1</sup> <http://www.wind.it/it/promo/scheda9.phtml>

determine if a commercial commission is needed, this is a commercial choice, so it should be always left to the operators.

### **Alternatives to OO customer's budget account**

We strongly believe that the commercial intermediation of the OO **is not the only way for SPs to retail their products.**

**As a matter of fact calling cards, pin codes, virtual calling cards through a website and bank account debits or credit card payments are all feasible and existing concrete alternatives.**

We do not agree with the BEREC's finding that *"alternative payment means are mostly not suitable, for instance whenever the use of a given service (number) is one-off and / or the overall retail price invoiced is very small (micropayments)"* Also this payment option is an extra burden for consumers and is therefore not likely to be a viable substitute."

In this respect it cannot be ignored that **choosing between the OOs and alternative intermediaries to retail SRS products is only a business choice of the SP.** In fact it is possible to discuss about which alternative is more profitable for the SP but not if alternatives exist or not.

In this view, it is clear that **the problem does not rely on the possibility or not to deliver SRS, which is always allowed by operators, nor on the condition applied by operators to access to their customer's account budget.**

Operators usually don't make any discrimination but ask to SPs a "compensation" for all the efforts (i.e. investments on network, quality of service, customer care, etc.) made to reach customer's loyalty, which in turn contribute to set up their account budget and to allow that this budget is used to "other" services instead of the operators' ones, accepting the risk that SRS could even lead to a reduction of customers' willingness to use their credit (for more detail see comments above on Category 2) for traditional services (e.g., voice, SMS and data).