

BEREC Report on the outcome of the public consultation on the draft BEREC Report on Terminating Contracts and Switching Provider

07 March 2019

Contents

1. Executive Summary	2
2. General comments	5
2.1. BEREC response.....	6
3. Processes to facilitate switching and provide safeguards to consumers Section 2 (Question 1)	8
3.1. Description.....	8
3.2. Respondents' views.....	8
3.3. BEREC response.....	9
4. Legislative and Regulatory Framework Section 3 (Question 2)	10
4.1. Description.....	10
4.2. Respondents' Views.....	10
4.3. BEREC response.....	13
5. Obstacles to Switching Provide Section 4 (Question 3, 4 & 5)	14
5.1. Description.....	14
5.2. Respondents' Views.....	15
5.3. BEREC response.....	18
6. Suggestions to improve the Switching Process (Question 6)	20
6.1. Respondents' Views.....	20
6.2. BEREC response.....	21
7. Other Barriers to Switching (Question 7)	22
7.1. Respondents' Views.....	22
7.2. BEREC response.....	22

1. Executive Summary

The Body of European Regulators for Electronic Communications (“BEREC”) Strategy 2018-2020, sets out “*Exploring new ways to boost consumer empowerment*” as one of its five strategic priorities. This focus on increasing consumer empowerment and engagement is to ensure consumers have the information and tools to make informed choices and engage effectively with the market.

BEREC’s Strategy places end-users at the centre of its actions, which will allow it to build on already-completed consumer-related topics in its previous work programmes, including reports related to transparent and comparable tariffs, switching, contract information, termination of contracts and equivalence of access for end-users with disabilities, etc. For instance, BEREC Report on contractual simplification BoR (18) 217 adopted on 6 December 2018.

Therefore, the importance of securing consumer choice as a driving force for the development of the market for electronic communication is receiving renewed attention within the European Union (EU) in relation to several areas of consumer regulation. Consumer awareness through transparency and the ability to exercise choice through accessibility and switching are cornerstones on which large parts of the EU regulation on consumer protection are built upon: All consumers have the right to choose their service provider at any time.

Also, it is necessary to take into account that the ability and willingness of consumers to terminate a contract or to switch between service providers is critically important on promoting competition in retail markets.

It is worth recalling that article 106 of the recently adopted European Electronic Communications Code (EECC) tasks National Regulatory Authorities (NRAs) to ensure the efficiency and simplicity of switching process for end users by establishing the details of the switching processes, taking into account national provisions on contracts, technical feasibility – over the air provisioning might also be included and the need to maintain continuity of services to the end users. NRA’s shall also take appropriate measures ensuring that end users are adequately informed and protected throughout the switching and porting processes and are not switched to another provider without their consent.

With the aim of providing relevant information collated from NRAs on the approach to switching across different communications services, legislative frameworks and key factors and biggest obstacles that consumers face in each Member State when it comes to switching or terminating their contracts, BEREC published on its website its draft “Report on termination of contracts and switching the providers” (hereafter the draft BEREC report) on 6 December 2018¹.

¹ The report builds on previous BEREC work in this area, namely “BEREC report on best practices to facilitate consumer switching” (BoR (10) 34 Rev1), published in 2010.

The purpose of the draft report was to consider various factors that have an impact on terminating contracts and switching provider across nine different electronic communication services (ECS), which will serve to better inform both consumers and NRAs as they evaluate how they might maintain and enhance consumer awareness of their ability to exercise choice to seek the electronic communications products that best suit their preference and needs. Such factors include:

- Processes for changing provider, considering number portability procedures;
- the identification of other matters that may facilitate or hinder switching, such as notice periods, data portability (e.g. user profiles), treatment of failures in the process, technical developments (e.g. e-SIM), early termination charges, contract durations, loss of service during the switching process will also be covered;
- switching between bundles (e.g. different legal frameworks of the elements included in a bundle such as electronic communication and audio-visual bundles or switching between heterogeneous bundles);
- the practicalities in switching of internet products; and
- the rules for termination of a contract, after or during the initial commitment period, the obligations that end-users might have in relation to the termination of such a contract in terms of financial compensations regarding special offers or receiving a terminal equipment.

The draft BEREC report was launched for public consultation from 12 December 2018 to 18 January 2019 with the objective to gather stakeholders' comments and observations on the content of the draft BEREC Report.

BEREC has received 14 contributions from the following stakeholders (in alphabetic order):

- 1 AVM GmbH (AVM)
- 2 BEUC, The European Consumer Organisation (BEUC)
- 3 Deutsche Telekom AG (DT)
- 4 Digital branch of the Confederation of Danish Industry (DI Digital)
- 5 DNA Plc (DNA)
- 6 European Competitive Telecommunications Association (ECTA)
- 7 Joint contribution ETNO and GSMA (ETNO/GSMA)
- 8 Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband, VZBV)
- 9 Laurynas Totoraitis -PhD Candidate Vilnius University, (Totoraitis)
- 10 Liberty Global B.V. (Liberty Global)
- 11 Microsoft

12 Tele2 AB (Tele2)

13 Vodafone Group

One contribution is confidential and therefore not listed above, and its comments will be referred to as a **CONFIDENTIAL** contribution. BEREC welcomes all contributions and thanks all stakeholders for their submissions. The contributions received from stakeholders will be published on the BEREC website except for the one that is confidential.

This report summarises the contributions received during the public consultation period on the draft BEREC report and provides further BEREC comments and recommendations on such contributions. Many of the comments received from stakeholders do not suggest amending the draft Report.

2. General comments

On several topics BEREC's findings from the draft report were supported by stakeholder's contributions. Stakeholders claimed that a well-functioning process for switching provider is a key driver not only for consumer choice but also for enhancing further competition in the telecommunications market (**VZBV, Liberty Global, ECTA**) which in turn leads higher quality and increased levels of innovation (**Liberty Global**). Thus the switching of provider remains one of the most important topics in the field of telecommunications (**VZBV**). One stakeholder also referred to the possible implications to the supply-side where challenger operators could be negatively affected where barriers to switching providers still exist (**ECTA**). Another stakeholder endorsed the idea that all consumers should have the right to choose their service provider at any time (**Microsoft**).

With regard to the potential actions to be taken by NRAs in order to improve practice on terminating contracts and switching providers BEREC received a variety of varying contributions. Network operators and service providers comments reach from endorsing voluntary industry standards/self-regulation (**DI Digital, Liberty Global**) and, where necessary, additional legislative action (**DI Digital**) to calls for refraining from additional regulation (**Liberty Global, Vodafone, ETNO/GSMA, DT**) before the background of the new EECC which includes not only updated, but also, new provisions (e.g. on bundles) on the contract termination and provider switching process. Others believe that consumers are better served with best practices and that BEREC and the NRAs are already equipped with the necessary means (common positions and guidelines) to ensure that portability is no longer a factor for end-users to consider (**Tele2**).

Several contributors argued that regulatory intervention is not generally necessary in every Member State as situations differ (**DNA**) or that some services are by nature less likely to create barriers to contract termination and switching of provider. E.g. **Microsoft** argued that Number Independent Interpersonal Communications Services (NI-ICS) (OTT-1 services) have long offered flexibility and choice to consumers as they are in any event free to download and use, with no commitment or lock-in. To the extent that users wish to pay for additional value-added features and services, these are often available on a short-term flexible basis. Thus, Microsoft considers, some nuance shall be required in the implementation of any measures seeking to address such barriers to ensure that providers of internet-based Number Based Interpersonal Communications Services (NB-ICS) are not unduly burdened by new requirements which are less relevant to those services.

Several contributors also hinted at potential follow-up work (**ECTA, Tele2**) or requested a higher level of detail with regard to data backing the findings of the report (**Liberty Global**). **Liberty Global** also asked that BEREC should identify more clearly what it is trying to achieve with its report and what consumer harm has been identified in relation to the switching and contract termination process. Stakeholders also noted that the draft report is mainly descriptive and asked that BEREC should be more precise on which legal/regulatory instruments are considered effective to curb questionable operator practices and where further legislation/intervention might be needed and justifiable (**ECTA, Liberty Global**). **ECTA** also asked BEREC to consult stakeholders on the precise nature and on the exact wording of any such future proposals.

Regarding concrete proposals to improve the report several suggestions were made. Stakeholders suggested the following improvements:

- The report should identify precisely which Member State/NRA has put in place which precise legal/regulatory provision or instrument (voluntary commitment by operators, NRA decision, telecommunications-specific legislation, general consumer protection law, etc.), as its absence from the report limits the use that NRAs and other stakeholders can make of BEREC's data collection. **(ECTA)**;
- With regard to operator bundling practices it was suggested to identify whether bundling is prevalent or not in given Member States, and in what configuration (e.g. forms of double-play, triple-play, fixed-mobile combinations) in order to facilitate interpreting BEREC's data collection, and notably the reasons why certain measures/instruments have been adopted or have been deemed desirable. **(ECTA)**;
- Furthermore the information gathered from those observers which are outside the EU/EEA and have limited obligations to implement or approximate EU law should be separated in presentational terms from the information pertaining to EU/EEA Member States in order to allow stakeholders to gain a better understanding of the situation inside the EU/EEA, and notably the extent to which instruments are widely adopted by EU/EEA Member States or not. **(ECTA)**; and
- One stakeholder asked to define 'barrier' to switching. **(Liberty Global)**.

2.1. BEREC response

BEREC welcomes stakeholder's observations and takes note of the fact that with regard to potential actions to be taken by NRAs the answers given were diverse, even though most of them came from a single group of stakeholders (network and/or service providers). BEREC also welcomes the idea of voluntary industry standards going beyond the requirements provided by EU or national law, while recalling that where such provisions are in place they determine the minimum standards for service providers. Concerning additional legislative action BEREC agrees that the implementation of the EECC has to be awaited, plus an additional period to assess the ensuing regulatory practice before even thinking along the lines of taking steps towards new legislative action. However BEREC also considers that in the meantime, before the EECC takes effect, regulatory action might be necessary on a case-by-case basis to improve the situation in specific areas depending on the situation in the respective Member State and the type of service under observation. In this regard best practices BEREC may consider this approach in its future work programme.

Regarding **Liberty Global's** comment on the aim of the report it already describes that its purpose is to consider various factors that have an impact on terminating contracts and switching provider, which will serve to better inform both consumers and NRAs as they evaluate how they might maintain and enhance consumer awareness of their ability to exercise choice to seek the electronic communications products that best suit their preference and needs. This means that the report is descriptive as well as compiling in nature and shall serve as an overview for NRAs and consumers, which, by nature, cannot be too detailed.

Concerning the suggested general improvements to the report BEREC considers:

- The general legal principles are those set out in the EU Directive. “The telecommunications market, with its specific rules, must be regulated separately from other sectors. At national level the regulation will follow the harmonization principle defined in article 102 of the EECC. To note that in accordance with the new Code each MS has the ability to address some specific issues, foreseen in the Regulation, that impact their MS;
- Data on bundling practices such as forms of double-play etc. was not collected from NRAs and therefore additional detail is not currently available;
- In respect to labelling, the data provided by NRAs which is shown in the graphs the Report also set out in the footnote details of the individual countries which may assist the interested reader to compare the situation inside and outside the EU/EEA; and
- BEREC did purposely abstain from providing a more detailed definition of “barrier to switching” in order to receive the maximum amount of feedback from the public consultation. Whether the barriers reported in the responses are relevant from the NRA’s perspective is discussed in the report.

3. Processes to facilitate switching and provide safeguards to consumers Section 2 (Question 1)

Q: 1. Do you have any comments or observations regarding the processes set out in Section 2 above, related to the switching of provider for different categories of ECS and the safeguards that are provided to consumers?

3.1. Description

This section of the report explored:

- the actions and information required from the consumer in order to initiate and complete a change in provider;
- the information required in order to validate and authorise the switching request;
- the interactions between the consumer and the Receiving Provider (RP) and / or Transferring Provider² (TP);
- the interactions between the PR and the TP; and
- the length of the overall switching and porting process from the date the consumer agrees to enter a new service with a new provider and the new service becoming active.

3.2. Respondents' views

In reviewing Section 2 of the Report, respondents to the consultation identified the following key issues:

ECTA observes that the draft Report reveals few but important basic commonalities in regard to RP led switching but cautions against abrupt changes to number porting and switching processes and advises BEREC and NRAs to justify any proposed changes through proper impact assessment.

In respect to the level of detail included in the report ECTA suggests that BEREC could improve the report by providing more data whilst the **ETNO/GSMA** response puts forward that the results of the BEREC report are too generic and lack empirical research into end users experiences. **BEUC** proposed that the section of the report could include mapping and analysis of the information provided to consumers to terminate their contracts and urged BEREC to consider and highlight the benefits of winner-led switching and to identify gaps, suggest best practices and guiding principles in the final report.

BEUC highlighted the fact that there may be three providers involved in the process which was not referred to in the paper.

² These terms are defined in the Glossary in Annex 1

Liberty Global suggests the focus should be on optimising the switching process, at a minimal cost to industry, not creating a one-size fits all. A suggestion that industry should be allowed to develop processes that redress issues quickly and efficiently was also put forward whilst noting that differences in processes attributed to technology does not point to inefficient processes.

The flexibility and choice offered to ICS consumers (free to download and use with no commitment or lock-in) was highlighted by **Microsoft** which is in contrast to traditional telephony contracts that require notice and suggests that it is important to ensure that additional obligations are not also imposed upon providers of internet-based NB-ICS.

3.3. BEREC response

BEREC welcomes stakeholder's observations and firstly would like to refer to the scope of the Report as set out in the executive summary that did not extend to reporting of individual MS consumer complaints statistics. BEREC has noted details and suggestions for consideration in any future reports.

In addition BEREC published, following consultation, in December 2018 a Report on Contractual simplification (BoR (18) 217) that set out details of the measures taken by MS in relation to renewal and termination of contracts and the information considered to be most important to include in a contract summary.

BEREC notes that NRAs may establish the details of the switching and porting processes in accordance with Article 106 of the new Code and this may offer each MS the ability to address issues that impact their MS, for example the issue of three providers involved in the switching process if relevant. In addition, the EECC states that the RP shall lead the switching process.

BEREC notes **ETNO/GSMA's** comments in respect to the report and refers to BoR (18) 217 that set out details of the measures and initiatives taken by 23 NRAs regarding all aspects of the duration, renewal and termination information in consumer contracts. That said BEREC is aware that, in addition to those NRAs who handle volumes of consumer complaints in respect to switching, consumer groups may be able to source information and consider undertaking future work in this regard.

BEREC welcomes **Liberty Global's** proposal for industry to develop processes that redress issues quickly and efficiently. In addition, it refers to a proposed voluntary standard that was already addressed in section 2.1.

BEREC understands that switching varies and that this can be dependent on technology type and has set out in section 2,1 a number of suggested general improvements.

4. Legislative and Regulatory Framework Section 3 (Question 2)

Q: 2. Do you have any comments or observations regarding the rules (practices, decisions or legal requirements) that have been put in place in the MS to facilitate termination of service and switching between communications provider as set out in Section 3 above?

4.1. Description

This section of the report summarises the legislative and regulatory framework, which describes the rules that have been put in place in the MS to facilitate termination of service and switching between CPs. It includes information on the practices, decisions or legal requirements that apply in the MS relating to the following topics:

- Switching and the validation process;
- Contractual matters;
- Contract termination requirements;
- Charges & fees;
- Customer retention practices;
- Technical issues; and
- Compensation initiatives.

4.2. Respondents' Views

Almost all stakeholders expressed an opinion that it would be premature to consider any further regulation in light of the recent adoption of the EECC.

AVM expressed the importance of an end-user having the freedom to source their terminal equipment either from the service provider or from the EU single market. There should not be a requirement for the end-user to have to change their terminal equipment if they choose to switch to an alternative provider.

Totoraitis, referred to his own research conducted in Lithuania in Autumn 2018. This research identified that in addition to the penalties imposed on an end-user for terminating an IAS contract before the minimum term has concluded, such contracts contain a provision which states that an end-user is obliged to return the value of any discounts received. In other words, the early termination fee is recalculated as if the IAS was provided at the regular full price, or non-discounted cost. In **Totoraitis'** opinion, this provision presents a penalty and creates a barrier to the end-user exiting a contract. In addition, **Totoraitis** claims that the problem can be attributed to case law of the Communications Regulatory Authority

of the Republic of Lithuania (RRT) and claims that the Lithuanian courts lack the economic evidence of discounts provided in comparison to regular prices.

DI Digital, expressed an opinion that the legislation should allow the industry to negotiate a voluntary standard prior to regulation. It is their opinion that voluntary industry standards have shown to be very useful to solve switching and portability issues in Denmark to ensure a “one stop shopping” model. Such a view was similarly expressed by **Liberty Global**. **DI Digital** also commented that win-back activities should only be allowed under certain conditions. In Denmark, there is legislation (secondary) to mitigate eventual problems concerning switching operators in an M2M environment.

DNA remarked that there is no need for additional regulation concerning the termination of service and switching provider in Finland. In addition, termination charges, fees and roll-over contracts are not in use in the MS. Furthermore, **DNA** state that the switching process is simple and porting activity is high. Consumers do not have to contact the transferring provider at all.

ECTA, observed that the draft Report reveals few basic commonalities, such as the prevalence of recipient provider-led number portability. It is ECTA’s opinion that the Report highlights diversity rather than commonality. ECTA recalls that some MS switched away from donor provider-led number portability in the past and succeeded in converting a very low level of numbers porting to a far high number. This benefited both competition and consumers. In ECTA’s opinion, recipient provider-led number portability constitutes best practice. In addition, ECTA believes that BEREC and the NRAs should thoroughly justify the proportionality of any proposed changes through proper impact assessments, including cost-benefit assessments.

Liberty Global. considers that the existing regulation in this area is already far-reaching and intrusive, and state that the matter would be better addressed through cross-sectoral measures rather than through sector-specific ex ante regulation.

ETNO/GSMA who commented that the rules set out in this section do not make a distinction between the legal obligations and self-regulation. They state it may be assumed that legal obligations arising from European rules have been implemented in all MS. Therefore, an assessment should be made in respect of the legal obligations that should be implemented in each MS. Further, in the draft Report it is not clear which rules in a MS are referred to and what these rules actually mean. Nor is it indicated to what extent certain measures are effective in a MS. To effectively accomplish those goals, an extensive overview of legal obligations and self-regulation, subdivided into consumers and (small) business customers, as well as an assessment of the effectiveness of the rules in place, are needed.

DT notes that obstacles to the termination and switching process could arise from the national legislative framework. It observes that tenants in Germany are tied to a specific cable network provider since in most cases the landlord has already concluded a contract with the cable network operator for the delivery of the TV signal (the so-called "Nebenkostenprivileg). Tenants are then permanently bound to this network operator and cannot terminate the cable TV service contract because the service is bundled to the apartment. Alternative and innovative TV services, such as IPTV or WebTV, can only be

used if consumers are willing to pay for both services (e.g. cable TV and IPTV) which, according to **DT** result to be almost identical.

In order to safeguard consumer rights and to create fair competition for end users, **D T** suggests abolishing the 'Nebenkostenprivileg'.

With a confidential submission, one stakeholder stated that operators should be ensured cost recovery of any losses relating to promotional charges that are linked to a minimum contract duration in the case of early termination. In his opinion a harmonized approach could help NRAs to correctly balance the perceived rights of customers and encourage broadband uptake while promoting competition and investment.

Vodafone Group commented that aligning switching processes for bundled services would be likely to have a positive effect on customer's understanding of switching.

BEUC believes that the EECC provisions and the opportunity for Member States' to compliment certain rules to protect consumers should be spelled out in the final Report. The EECC provisions on contract termination and switching provider can have a positive impact on consumers in conjunction with complimentary national rules, a good implementation and strong enforcement. With the introduction of the EECC, consumers will now have stronger rights when terminating a contract. Furthermore, **BEUC** recommend that best practices and guiding principles are promoted. They refer to German law which stipulates that if the switch fails and the switching process needs to be attempted again, the service may be interrupted again for a calendar day. In order not to prolong the change process even further and to avoid supply gaps for consumers, the interruption of services during the entire switch of provider must be limited to a maximum of one working day, as the EECC also stipulates.

Tele2 remarked that it is their belief that the market and consumers are better served through best practices.

VZBV highlighted that there are many consumer complaints relating to the switching of provider and it remains among one of the most important topics in the field of telecommunications for **VZBV** and the consumer advice centres. For this reason, they state it is important that the switching process is not unnecessarily prolonged and is without service interruption for the end-user, and that it is regulated on both a national and European level. As well as **BEUC**, **VZBV** made an observation in respect of their national legislation which provides that the interruption of services during the entire switching of provider must be limited to a maximum of one working day.

VZBV welcomes the fact that the European legislator offers a means of compensation for consumers in the event the switch does not take place within the legally defined timeframe. **VZBV** also welcomes the fact that the EECC also provides general sanction measures for companies that do not comply with the legal obligations. In **VZBV's** opinion, further compensation measures must be established in addition to the reduction of the remuneration agreed upon in the contract in order to hold all parties involved in the switching process responsible. In the event that the switching process lasts in excess of one working day, consumers should be compensated a specified monetary value for each day of supply disruption. Even missed technician appointments could be compensated in this way. **VZBV** states that the burden of proof should lie with the provider in both cases.

4.3. BEREC response

BEREC appreciates stakeholder's observations on NRAs rankings of key information elements, some of which are noted below.

- Firstly BEREC plans to do future benchmarking which will reflect termination of service and switching between communications provider within Member States in light of the EECC. The data collected from the questionnaire completed by NRAs before the EECC was adopted will eventually allow benchmarking pre and post implementation of EECC;
- About **AVM** view that switching the provider does not require the end-user to change the terminal equipment, BEREC responds that Regulation (EU) 2015/2120 on open Internet allows the end-users to use the terminal equipment of their choice but notes there is no obligation on a new provider to fix issues in the case of any malfunction;
- In respect to the specific issue raised on the subject "bundling of the cable network connection with the rental agreement", presented by **DT**, this is a historically grown, country-specific phenomenon in HFC (Hybrid-Fibre-Coax)-Grids and is based on national law;
- BEREC welcomes the fact that in Finland there are no problems regarding switching or ending the contract, as it was mentioned in observations of **DNA**;
- BEREC will consider **ECTA**'s contribution to its future work;
- BEREC is of the view that the telecommunications market, with its specific rules, must be regulated separately from other sectors. At national level and the regulation will follow the harmonization principle defined in article 102 of the EECC. To note that in accordance with the new Code each MS has the ability to address some specific issues, foreseen in the Regulation that impacts their MS;
- The scope of the draft Report is set out in section 1. The draft Report comprise only broad outline about existing rules (of national or European level)and is not intended to provide other than a general overview of the existence or non-existence of rules and not in a way as proposed by **ETNO/GSMA**; and
- BEREC is mindful of the current and future legislation that sets out a maximum of 24 months for contracts.

5. Obstacles to Switching Provide Section 4 (Question 3, 4 & 5)

Q: 3. Do you have any comments or observations regarding the key factors and obstacles to switching different categories of ECS, set out in Section 4 above? In particular, what, in your view, are the possible solutions that could be applied to solve these issues?

Q: 4. Several NRAs identify obstacles for switching in case of bundles, do you consider that specific processes and rules for bundles may be of help to address these issues?:

Q:5. Which barrier(s) to switching should NRAs focus on in the future, in order to reduce or remove?

a. For which category of ECS is this relevant?

b. What should be the aim for the regulatory measure intended to reduce each of the barriers?

5.1. Description

This section of the report summarises what NRAs consider, based on their experience, which are the key factors and the biggest obstacles that consumers face in each MS, when it comes to switching between CPs in respect of each of the categories of ECS. NRAs were asked to consider all of the issues relevant to each of the nine categories of ECS and indicate the four most significant issues which, in the NRAs experience, represent the biggest obstacles to switching between communications providers for that category of ECS in that country.

While factors that might inhibit consumers from switching their ECS provider may vary according to the category of ECS, it is clear from the responses received that contractual obstacles, which have the effect of discouraging switching, feature high in the NRAs assessment of significant factors impacting the switching of most categories of ECS. Such contractual obstacles include:

- contract length, including long minimum contract periods;
- minimum notice periods;
- penalties for early termination of contract;
- requirement to return free or discounted equipment;
- fees for damaged / lost / unreturned equipment;
- remaining/outstanding consumer debt to the TP; and
- use of rollover contracts.

5.2. Respondents' Views

Totoraitis, explains that in Lithuania, IAS contracts have a provision stating that if a client wishes to terminate the contract for which he has a discount offer prior "minimum usage time" (12 or 24 months) he/she is obliged to return "received discounts". This means that subscription fee is recalculated as if services were provided for a regular (not discounted) price. On an economical sense, in his point of view, this has the same effect as a penalty and creates barrier to leave.

Microsoft considers that:

- BEREC should be encouraged to keep in mind the following points when looking to recommend any future ways to address barriers to switching which differ with traditional telephony model: i. flexibility of ICS delivered over the internet ii. multi-homing is also an important feature of the way in which consumers use ICS;
- NB-ICS are also provided by internet-based communications providers, which tend not to suffer from switching obstacles (short-term nature of contracts and the fact that such services are typically taken as supplemental to other pre-existing communications services);
- Concerning NIICS, the little information in the report about them can be explained, in Microsoft's point of view, by the fact that switching NIICS is often easy and takes place against a backdrop of multi-homing activity. The obstacle "availability of offers/technology" should be clarified, and Microsoft disagrees with the obstacle "lack of interoperability", adding that there is provision for interoperability in the EECC;
- the future focus should be on barriers to switching for fixed and mobile NB-ICS.

ECTA considers that:

- the notion of "offer/technology availability" needs to be clarified and suggests that BEREC clarify this,
- in its point of view, BEREC and NRAs should pay attention to i. signed customer commitments, ii. Anti competitive save/retain/win-back practices, and iii. the treatment of bundles, notably bundles with non-ECS – and the concomitant risk of new lock-ins which could reduce telecoms market fluidity,
- M2M/IoT service is not really addressed in the BEREC report, but beyond those services, with regard to bundling of ECS with non-ECS (services and products), NRAs should be attentive to new forms of bundling not leading to new forms of lock-in, ultimately leading to markets becoming less fluid, or indeed frozen, in a way which harms consumers and makes competition regress rather than progress; and
- specific processes and rules for bundles may be of help to address issues for switching. The EECC contains a legal provision on switching for bundles. With regard to M2M/IoT, where a transmission is effectuated, or an interpersonal communications component is included, it follows (in application of the EECC) that these would be classified as ECS, and they would not be carved-out from the application of the regulatory framework. Rules on bundles, notably switching for bundles, would correspondingly apply.

Liberty Global believes that the report lacks sufficient background information on the basis for the NRA's views on the relative severity of switching barriers, in particular whether these views are supported by evidence of consumer harm. Liberty Global urges BEREC to wait and see the impact of these regulations before assessing whether these remain an undue barrier to switching. Concerning the key factors identified in the report, Liberty Global made the following comments:

- contractual obstacles: some of the identified 'contractual obstacles' are legitimate contractual terms, and are already heavily regulated under the new and updated provisions of the EECC;
- offer / technology availability: not a consumer protection issue, and certainly not an undue barrier to switching. Service and technology differentiation is a key aspect of infrastructure-based competition and should be encouraged;
- actions by the TP to hinder the switching decision: this notion needs clarification. Save/retention and win-back activity can be beneficial for — and is often desired by — consumers, and tend to lead to decreased prices and/or more choice through tailored service offerings. Liberty Global does not agree that this behaviour constitutes an undue barrier to switching;
- lack of consumer information: the EECC imposes even greater transparency obligations on services providers with regards to their service offerings; and
- service is part of a bundle: it is not clear from the report what particular issues have been identified with regards to bundles. Consumers clearly value the convenience of bundled offers. Bundled offers are also offered at lower prices than if the products are acquired individually. The customer can still pursue the individual services stand alone as well but at a higher price level. BEREC should base its consideration on the specification of bundles included in horizontal consumer law and strive for consistency. The fact that the service is part of a bundle does not of itself constitute a barrier to switching.

ETNO/GSMA believes that:

- In GSMA- ETNO's point of view, issues around switching and termination are not a sector-specific phenomenon;
- concerning NI-ICS, i. the switching regulation does not consider potential switching barriers. BEREC should rather consider emerging challenges. ii. The conclusion of the BEREC report, (flexibility of NIICS facilitating a switching of provider without hindrance), is not well founded. In their opinion, all data and content produced or stored in NIICS applications work as a barrier for switching, therefore, data portability obligations will remain key for data switching;
- concerning the obstacles, in their point of view, there is a need to clarify the methodology used to determine them, their repartition in each MS, and to define more precisely some of these obstacles. **ETNO/GSMA** also find it hard to understand why slamming is not identified as a key obstacle to switching;

- concerning obstacles for switching in case of bundles, **ETNO/ GSMA** express the view that the new rules for bundles included in the EECC are partly far-reaching and intrusive. A reasonable definition of “barrier” is required. If the consumer had a right of earlier termination and the operator was not allowed to demand for a full compensation, operators could not cover their costs any more. Consequently, operators would have a disincentive to offer contracts with long minimum contract duration. Consumer choice would decrease to the detriment of those consumers who have a lower willingness to pay: and
- the question about barriers to switching NRAs should focus on in the future is misleading, since it already assumes that there are switching barriers that require new or additional regulation. It is of utmost importance that BEREC keeps a proportionate approach and considers rules in other market areas to avoid further asymmetries and fragmentation of rules across the digital single market.

The confidential submission agreed with BEREC analysis, where it identifies that the obstacles that consumers face in switching providers vary according to the category of electronic communication services, but, overall, contractual obstacles feature high in the assessment of factors that inhibit switching in most of the electronic communication services categories.

Vodafone Group questions whether BEREC should be exploring avenues for further intervention since it believes that the new EECC contains new and robust sector specific rules on switching and contract termination. The application of these new sector specific rules will go a long way in resolving any significant ongoing barriers to switching between communications providers. Vodafone Group, concerning the identified main obstacles in the view of the NRAs expresses the view that:

- For contract duration, the maximum contract duration currently is and will be 24 months under the EU framework and EECC. Shortening contract durations may negatively impact on the affordability of high end handsets for certain groups of consumers; and
- Services being part of a bundle: most MS use different switching processes for different services, or even for the same services using different technologies. With bundles becoming more prevalent, Vodafone Group welcomes the focus on switching processes for bundles in the EECC. Aligning processes is likely to have a positive effect on customers’ understanding of switching (otherwise more difficulty for consumers to read about and understand a switching process differing from one service to the other).

BEUC agrees with the identified obstacles of the draft report, the four biggest obstacles per electronic communication service and welcomes the acknowledgment of national differences. BEUC considers that:

- among possible solutions to solve identified issues, the EECC is clear in Article 106 that MS can outline specific processes to improve contracts, technical matters and service continuity. Furthermore, NRAs must adopt measures for end-users to be adequately informed and protected. Also, MS have margin of manoeuvre to set up strong rules on penalties and compensation. BEUC also recommends over-the-air switching, which in its opinion facilitates the switching process;

- specific processes and rules for bundles can help address obstacles for switching in bundled services. NRAs have a duty to ensure the efficiency and simplicity of the switching process (Article 106(1) of the EECC). With the transposition and implementation of the EECC, regulations can be introduced. Without prejudice to Article 101, Article 107(2) and recital 283 the EECC gives MS margin of manoeuvres to ensure that consumers have rights to terminate any or all elements of a bundle before the end of the contract. The implementation of Article 107 EECC shall not lead to lowering competition, consumer safeguards and consumers' ability and willingness to switching. BEUC reiterates that consumers should be able to cancel part of a bundled contract without any penalties. In BEREC's final report best practices could be promoted as a model to follow. BEUC also recommends BEREC to address complex bundles in greater detail (e.g. bundling telecom and energy services) in the final report; and
- NRAs should focus on contractual matters, barriers to switching on bundles, and support over-the-air switching. Less prominent obstacles should not be disregarded and national divergences should be kept in mind. Additionally, it is important to bear in mind that some obstacles reinforce each other. Regulatory measures should aim at providing a high level of protection for consumers to deliver seamless switching.

Tele2 considers that porting mobile numbers is cumbersome and lengthy, which is confirmed by the data BEREC presents. At the same time, there is evidence that porting processes can be much shorter. In Tele 2's point of view, all MS and NRAs should ensure that legal requirements for porting processes are fit for purpose and transferring providers cannot unilaterally disrupt the process without a request from the customer involved. Furthermore, unfair contractual practices that detract rational customers from switching providers when they want to should disappear from the market, since they are detrimental to consumer choice and competition. Regulation should support ending contractual terms and conditions that hinder fast mobile number porting.

VZBV considers that bundles as a barrier to the termination of contracts and the change of provider, since the lock-in effects increase because of stronger customer loyalty through the purchase of several services.. In addition, consumers' willingness to switch provider and the level of competition must not be restricted by the new regulations on bundles. In **VZBV's** opinion, national legislators have the regulatory competence via Article 107 (5) EECC to make the provisions on information and transparency requirements of Articles 102 and 103 EECC as well as the entire Article 106 on switching provider and number portability fully applicable to bundled offers. Furthermore, consumers should be able to cancel, modify or renew individual parts of a bundled offer without incurring additional costs and without affecting the rest of the bundled services.

5.3. BEREC response

BEREC welcomes stakeholder's observations on NRAs rankings of key information elements, some of which are noted below and carefully considers these submissions:

BEREC notes that some of the respondents agree with the main obstacles to termination and switching raised by NRA and welcomes it.

One respondent believes that the report lacks sufficient background information on the basis for the NRA's views on the relative severity of switching barriers. BEREC believes that NRAs have a sufficiently reliable knowledge of the situation in its country, with the information available to them. For instance, some NRAs based their response on the number of complaints received.

Some respondents asked for a clarification of the obstacle "offer/technology availability". BEREC confirms that it meant "(i) the objective unavailability of a service [offer] in a particular geography or on a particular network, (ii) the absence of a particular network".

Some respondents note that there is little information about M2M and NIICS in the report and drew attention to some particularities of these ECS. BEREC takes note of this consideration.

Some respondents also address contractual matters. BEREC invites to refer to the Contractual Simplification report.

Most of the respondents referred to the EECC because it provides provisions to avoid certain barriers evoked by NRAs. If BEREC adopts recommendations, it will obviously take into account legislative and regulatory evolutions.

And, about bundled offers, BEREC will keep in mind the multiplicity of the type of services provide to the consumer, moreover with the implementation of the EECC, and will be careful before any possible recommendation.

6. Suggestions to improve the Switching Process (Question 6)

Q:6. *Do you have any suggestions to improve the switching process, including any measures that providers of ECS could initiate to reduce or remove barriers to switching?*

6.1. Respondents' Views

BEUC thinks that it is important that NRAs *i*) prioritise over the air switching, *ii*) maintain (and regularly update) a price comparison calculator in every country, *iii*) monitor that adequate information is being offered in a timely and user-friendly manner and *iv*) encourage that contract termination fees are as limited as possible.

In **Microsoft** view it is important to ensure that additional obligations are not imposed upon providers of internet-based, which do not exhibit the same barriers to switching or give rise to the problems that may be identified for traditional NB-ICS. Therefore, Microsoft considers that future focus should be on barriers to switching for fixed and mobile NB-ICS, noting that the NB-ICS category will expand in scope from the implementation of the EECC.

DNA argues that the market in Finland is so competitive that it is not possible to make any kind of "overreactions" as it would immediately affect negatively to the business. There is no need for additional regulation concerning telco-contracts / terminating and switching in Finland.

According to **ECTA** [insert reference to specific comments section] the costs of number portability and switching support systems vary immensely between Member States, often with no demonstrable correlation to porting and switching volumes, the number of operators involved, and other items that would intuitively perhaps result in higher costs in some countries (including resilience and security parameters). In some Member States, number porting and broadband/bundle switching (and other functions, such as emergency calling support and directory services support) are integrated in a single or a few systems, in other Member States they are separate and indeed scattered.

ECTA believes that substantial efficiency gains are possible by identifying the most efficient systems from a techno-economic perspective. Sharing systems between Member States could also be considered, as long as the following three points already made are duly considered:

- 'If it ain't broke, don't fix It';
- it would not be justifiable to impose new costs where existing costs have not yet been amortized and the cost-benefit analysis does not justify intervention, and
- the situation of smaller operators always needs to be taken into consideration.

ETNO/GSMA does not suggest measures to improve the switching process, but states that it does not see a need to introduce new rules, since the new obligations for IAS and NB ICS in

the EECC are more than sufficient. ETNO-GSMA suggest that Member States apply the rules laid down in the EECC and refrain from adding rules where possible.

Similarly **Liberty Global** believes the consideration of further regulation to be premature. The EECC provides a set of regulatory measures to facilitating switching. We need to wait to see the impact of these measures (on both consumer and providers) to determine their effectiveness, and whether any changes or additional measures are needed.

In **Tele 2's** view the following requirements would enable switching processes that contribute to competition and consumer welfare:

- Portability should be led by the receiving provider, functioning as a one-stop shop;
- Processes should be automated and standardized;
- Rejection of a request should be motivated, and the transferring provider should be liable for undue rejection;
- Mobile number portability should be executed as soon as possible, but at the latest within 24 hours of a request made by the receiving provider; and
- All operators should be obliged to provide transparent information to their customers about number portability.

6.2. BEREC response

BEREC welcomes stakeholder's contributions on how to improve the switching process.

In particular, BEREC finds very useful the remarks provided by BEUC and TELE2 on the way to improve and speed up the portability process, most of them are already implemented in many Member States.

However, BEREC notes that as already mentioned elsewhere most respondents, rather than focusing on measures that providers of ECS could initiate to reduce or remove barriers to switching, in their documents stress that current measures and operators' practices are sufficient to address the problems that may arise during the customer switching process. Therefore, for these operators, there is no reason to burden them with new requirements.

BEREC wants to re-state that this report is not aimed at suggesting the implementation of new regulations or requirements, but at analysing the factors that impact the switching of provider or the termination of contracts however, if BEREC adopts recommendations, it will obviously take into account legislative and regulatory developments.

7. Other Barriers to Switching (Question 7)

Q:7. *Are there other barriers to switching that are not mentioned in the report? If so, please provide relevant details.*

7.1. Respondents' Views

AVM expresses the view that if the providers are allowed to declare WiFi router interfaces to be Network Termination Points, then switching provider forces the end user to also switch the WiFi router, which can be a barrier to switching, given the technical complexity. AVM GmbH also refers to recital 283 of EECC stating "While bundles often bring benefits for consumers, they can make switching more difficult or costly and raise risks of contractual 'lock-in'(...)".³

As already mentioned in section 4.2, **DT**, remarks that the practice of bundling rental with apartment rentals with cable TV services may introduce an important barrier to switching.

ECTA highlights some barriers to switching arising from procedures and agreements among operators at wholesale level. In the case that an order is rejected, or runs into delivery problems, due to small discrepancies in address notation, unforeseen delays in switching can arise with the consequence of abandon the switching process by the customers.

7.2. BEREC response

BEREC welcomes stakeholder's observations on additional barriers to switching that are not mentioned in the report.

In particular BEREC agrees that the requirement to replace the WiFi router can constitute a high barrier to switching and consequently thinks that it should be mentioned in the report.

³ According to AVM, this issue could be addressed by an appropriate regulatory definition of the Network Termination Point (see EECC Rec (19) and Art 2 (9)) being the (electrically or optically passive) connector to the local loop (EECC Art 2 (30)) the end user is free to choose a WiFi router product that interoperates with the networks irrespective of the service provider. Thus switching the provider does not require the end user to also change the terminal equipment. The end user is free to source this terminal equipment either from the service provider or from the EU single market.