



ecta RESPONSE

TO THE PUBLIC CONSULTATION BY BEREC

ON

BoR (21) 36

**DRAFT BEREC REPORT ON THE HANDLING OF THIRD-PARTY PAYMENT
CHARGES ON MOBILE PHONE BILLS**

16 APRIL 2021

Introduction

1. **ecta**, the **European Competitive Telecommunications Association**,¹ welcomes the opportunity to comment on the Draft BEREC Report on the handling of third-party payment charges on mobile phone bills – BoR (21) 36.
2. **Ecta's** members include mobile network operators and mobile virtual network operators, as well as other companies, but it does not represent companies that are in the business of offering premium-rated content or digital products and services that are charged for via mobile phone bills.
3. This **ecta** response is very brief, given that BEREC's Draft Report is essentially descriptive in nature and does not contain proposals for harmonization.

Comments

4. **ecta** appreciates the effort made by NRAs and by BEREC in developing this detailed Draft Report. It is informative, and – unsurprisingly – it confirms that national situations are extremely diverse. We welcome the fact that BEREC identifies the countries that have particular policy/legislation/regulation/codes of practice in place on the various topics addressed. The fact that the Draft Report identifies and lists countries by name or acronym is a welcome development, and we encourage BEREC to do so in all of BEREC's deliverables.
5. That being said, **ecta** is puzzled as to why BEREC needed to conduct this work item. **ecta** expressed its doubts in its responses to BEREC's 2020 and 2021 calls for input on the work programme, and in its responses to BEREC's 2020 and 2021 work programme consultations, including as follows: *“ecta is puzzled as to what the genuine origin of this workstream is, given that the EECC does not seem to require harmonization. Also, there is a real question on what BEREC might expect to achieve in practice. This does not appear to be a priority, also because much work already occurs at national level, and it is an area which is not readily suitable for harmonization given the diverse national situations and market trajectories.”*
6. With reference to paragraphs 11-13 of BEREC's Draft Report, we note that Art. 102(6), Art. 115, and Annex IV, Part A of the European Electronic Communications Code (hereafter 'EECC') do not result in relevant binding obligations on Member States or obligations placed on National Regulatory Authorities or on (other) Competent Authorities.
7. **ecta's** position is that the national situations on third-party payment charges reflect painstakingly achieved equilibria, usually involving both wholesale and retail regulation (e.g. selective prohibitions, price caps, charging principles, customer

¹ <https://www.ectaportal.com/about-ecta>

information principles, including in-call announcements, in-call cut-offs, etc.) which would be fragilized by attempts at harmonization or modification.

8. It should also be noted that the Value Added Tax treatment of the premium-rate services value chain is often complex, given that multiple (often 3, 4 or more) companies are involved in a transaction (often invoicing end-users and each-other at different times, e.g. when amounts are systematically withheld to discourage fraud, or punctually withheld in case of end-user complaints). This is an aspect that is not included in BEREC's Draft Report. Any attempts to harmonize or modify third-party payment charges could result in modifications of payment flows, and consequent modifications of Value Added Tax treatment, with potentially wide-ranging consequences. Therefore, **ecta** cautions against any action that could result in fragilizing painstakingly achieved equilibria.
9. This brings us to commenting on *Figure 1 – Schematic representation voice premium rate call* in the Draft Report. **ecta** considers that this diagram is inaccurate, because it tries to simplify matters to the extent that it does not correspond to reality, and certainly does not cover all types of payment flows. In particular, it omits legal and regulatory parameters, including aspects such as retail price caps and regulation of wholesale charges, differential treatment of different number ranges, and Value Added Tax treatment. BEREC itself recognizes in Footnote 14 of its Draft Report that only 10 NRAs accept the diagram as being able to capture the functioning of third-party payments in their country.
10. **ecta** also notes that internet-based offers are substituting premium-rate services to a large extent, and that online payments are substituting direct carrier billing. These trends are expected to accelerate as digital currencies receive wider adoption.
11. Based on the points articulated above, and noting paragraphs 18, 19 and 104 of the Draft Report (references to EECC transposition but tangible follow-up action being limited for the time being to considering a repeat exercise as part of the BEREC Work Programme 2023), **ecta** emphasizes that:
 - National situations are extremely diverse; they cannot even readily be captured in a single diagram.
 - The national situations reflect painstakingly achieved equilibria.
 - Value Added Tax is a complex additional factor, omitted by BEREC.

Therefore it would be wise for BEREC to exercise restraint in terms of potentially proposing follow-up work or even harmonization in the future – however well-intended – because this is certain to cause serious disruption. We note that BEREC has so-far not articulated potential benefits from relevant harmonization.

12. As regards the specific consultation questions 1, 2 and 3, [ecta](#) welcomes the information provided by NRAs and gathered by BEREC, but [ecta](#) has no specific observations on its substance, save to note the following:

In response to Q1(a): Complaints in respect to third party payments do not appear to be increasing (BEREC's data at paragraph 34).

[ecta](#) considers that no overall EU conclusions should be drawn from edge cases in certain countries or from non EU/EEA Member States.

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For further information, clarification or discussion, please contact Mr. Luc Hindryckx, [ecta](#) Director General.