



**Contribution to the
Public consultation for the draft BEREC Report on the handling
of third-party payment charges on mobile phone bills**

Non Confidential version



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**Draft BEREC Report on the handling of
third-party payment charges on mobile
phone bills**

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Introduction

W3 welcomes the opportunity provided by this consultation to submit its view about the needs of a proper handling of third-party payment services in order to grant a harmonized and sustainable growth of a single EU-wide market for such services.

For this reason, more than provide a contribution to the single questions related to the well-done report submitted, W3 wants to highlight the main concerns related to the PRS and Direct billing, even according to other initiatives, like the **BEREC** ones as:

- The introduction of a DB for Premium Number Ranges (https://berec.europa.eu/eng/about_berec/tasks/premium_number_ranges/) in order to help address issues related to roaming-related fraud experiences where visited networks find themselves unable to identify premium rate numbers abroad in the EU;
- the attention paid to VAS, including PRS, by the proposal for amendments of Roaming Like at Home regulation (current Reg. 531/12)

and the initiatives started by the Italian NRA (**AGCOM**) that recently issued a Decision (Delibera 10/21/CONS) with very strict prescription related to Direct billing.

The AGCOM decision 10/21/CONS includes two regulatory measures:

- a **default** barring on SIM cards, i.e. an inhibition to purchase that can only be removed by a prior and express manifestation of will on the part of the user who actually intends to subscribe to voice and SMS PRS services, and
- a procedure aimed at reinforcing the **proof of acquisition of consent** in order to make it documentable.

Resolution 10/21/CONS proposes - both for new SIM cards and for existing ones - the extension of the default block to all digital services with subscription content and seems including all types of DCB services.

With reference to the proof of consent, it is proposed that a single OTP of at least five digits have to be sent to the subscribing customers.

The Italian scenario

Wind Tre takes the opportunity provided by the "BEREC Report on the handling of third-party payment charges on mobile phone bills", to highlight the following aspects, with the aim of collaborating towards the achievement of a safe and balanced European regulatory framework for the entire EU reference market of PRS and Direct billing.

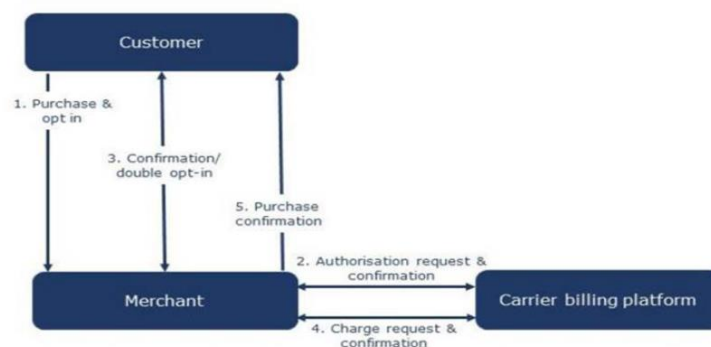
In Italy the current rules set by AGCOM (like Decision 10/21/CONS cited above) are integrated by a self-regulation code (in the following referred as **CASP**) updated several times according to the market evolution (currently the 4th revision is in force).

The CASP code rules several types of services that, according to what is described in the BEREC Report, are referable both to the PRS (Premium Rate Services) category and to the DCB category.

With specific reference to art. 1 of AGCOM Resolution 10/21/CONS, Wind Tre confirms that the application of barring (or preventive blocking of Premium Services) on the entire CB will be completed [*omissis*] .

The BEREC classification of DCB, define it as: "*when digital content services, or other products or services, are charged directly to the end-user's mobile phone bill*", but later on in the document Berec refers only to one model of DCB as described in fig. 2:

Figure 2 - Schematic representation direct carrier billing ¹⁵



In current market scenario another model for DCB is well established and shows several positive characteristics both for customers and Mobile operators.

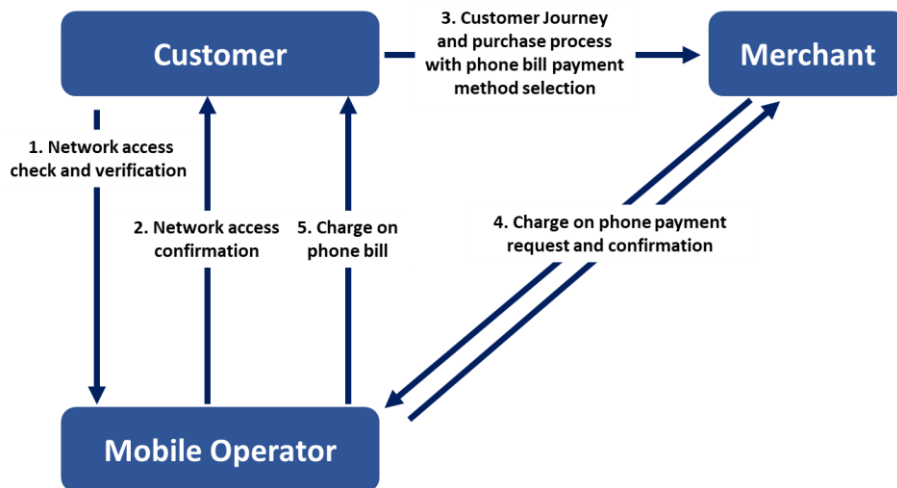
Such a model is not based on a number of the national numbering plan to be reached via phone call or SMS but is based on a third part application (App) or web / mobile site reachable via an internet access (IP address).

Such a model foresees the **establishment of a direct relation between the third party provider and the mobile operator's customer** through a registration process fully defined and managed by the third party that assumes full responsibility of the customer relationship (with the exception of the relationship between the customer and the Billing Operator as regards exclusively the management of payments and invoicing). The third party service provider also typically provides customers with **several** payment modes and typically among them can be listed charging on the phone bill.

Mobile operators in such a model have only two roles: i) provider of internet access service, ii) provide one of the charging methods typically available to the customers.

As described in fig. 3:

Fig. 3



W3 believes that it is therefore necessary to clarify that, on the basis of the above classification, the Italian market, but also a large part of the European market, sees all the models described above:

- PRS offered via phone call (voice call) or text message (SMS/MMS) which are charged to the mobile phone bill at a higher rate than normal phone calls or text messages. (see BEREC definition at point 20)
- DCB offered according to both:
 - the model described by BEREC in the document under consultation in fig. 2, but also on
 - the model above proposed by W3 in fig. 3.

The latter, has a crucial distinguishing feature: always include a mandatory Registration phase and the subsequent choice of a payment method from among those offered to the customer (CC, PayPal, Telephone Credit/Telephone Account);

This model has always offered secure and never unconscious activation, as evidenced by the substantial lack of complaints experienced by WindTre.

The differences between the two models, the one proposed by BEREC (in the following referred as “VAS” for sake of generality) and the DCB model described by W3 (in the following referred as DCB for sake of simplicity), are much more numerous and significant. It is worth highlighting them, in the following tables, in order to justify the hope that any regulatory corrections will be adequately addressed, without disregarding the peculiar characteristics of both categories of services.

VAS Services

- Offer customers low-value content, without recognised brands and with almost no value in the rights and licences value chain (with rare exceptions)
- Do not provide any Registration phase and subsequent authentication of the registered customer
- Provide for a Customer Journey of activation of a paid subscription or single content purchase based on a double dispositive action (double click), only recently reinforced by the insertion of a One Time Password.
- They provide the customer with a single payment method (phone credit/phone account).

DCB Services

- Offer the customer high value content, almost always belonging to recognised brands and with a clear and defined value chain of rights and licences to use (with a few exceptions)
- Always include a Registration phase and subsequent authentication of the registered customer
- They provide for a Customer Journey made up of multiple steps and actions: a Registration phase and the attribution of an Account (Username and Password), a phase of choice of offer or content, a phase of choice of payment method, and, finally, a phase of purchase through customer recognition thanks to increasingly advanced and secure forms and technologies (e.g. fingerprint or face ID recognition)
- They make several payment methods available to the customer (credit cards, PayPal, telephone credit/phone account).

According to the clarifications above, Wind Tre underlines that the presence of the registration/authentication process at the DCB service providers' platforms, in addition to availability of several payment methods, is a clear form of expression of customers willingness to enable the purchase of content.

The presence of the registration/authentication process can be assumed as equivalent to the removal of a default block that could be useful only for that services used on occasional basis and do not involve the creation of a stable relationship between the customer and the service provider.

In this regard, and by way of example, we report [*omissis*], the comparison between:

- the activation of a recurring subscription or the enabling of a purchase of VAS services, through the removal of the block of premium services (barring), and
- the enabling of the purchase of DCB services (Direct Carrier Billing) through registration at one of the most known platforms: *Google Play Store*.

In the latter case, the customer's awareness is crystal clear, since he has to go through a complex process that involves entering more data, verifying that he is a real customer (not a robot or hacking) and carrying out a high and consistent number of interactions.

In addition, in the case of the webstores of the leading smartphone and operating system manufacturers, (Google (Android); Apple (IOS)) advanced control and authorisation features for purchases through sophisticated security measures, such as PIN, fingerprint or facial recognition, are also available and increasingly widespread.

Plus, for DCB (Direct Carrier Billing) services, telephone credit and/or Telephone Account (debited from the invoice) complement other available payment methods, such as PayPal and Credit Cards, on which the service provider relies a significant part of its business.

Therefore, any form of preventive blocking of DCB services (default barring), **exclusively adopted in the case of telephone credit and/or telephone account**, would clearly seem to discriminate against this specific method of payment with respect to other authorised methods, such as Credit Cards and/or PayPal, given that whatever the method of payment chosen by the customer, **the customer journey to reach the choice of payment method is always the same**. Adding to the whole set of steps one more (*the block removal*) only for telephone billing would set up a discrimination able to impair the adoption of such payment method, damaging mobile operators and disadvantage customers that could evaluate phone billing much easier to use and control.

In light of the above, Wind Tre believes it is important to make clear distinctions between different categories of services, highlighting the fact that the application of the preventive block (default barring) to DCB services, involving an account creation, is not necessary.

PRS fraud opportunities due to missing harmonization of NNP (National Numbering Plans)

The harmonisation of numbering plans is definitively needed and urgent, because premium numbers ranges (meaning numbers ranges that at interconnection level has a higher charge compared to the one of fixed or mobile services) appear to differ too much from country to country; many value-added numbers have different definitions (Premium, VAS, Personal number, VPN etc) and pricing .

In terms of fraud opportunities, what gives the highest economic margin to fraudsters are all numbers whose wholesale termination charges are higher than others, not only premium numbers.

As an example, we can describe the roaming fraud phenomenon that took place **[omissis]**.

[omissis]

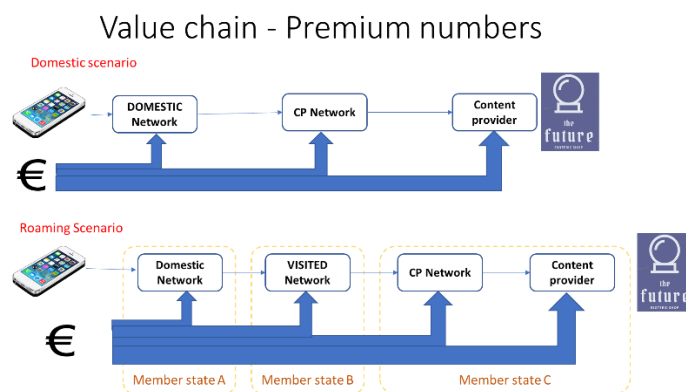
The numbering range in question is not declared as premium in the PRN Numbers List of March 2021 issued by BEREC:

Country	Country code	Code identifying the number range
ES	34	803
ES	34	806
ES	34	807
ES	34	905
ES	34	118

As mentioned in previous consultations, it is necessary to involve in debate and in regulation also the **wholesale carriers** and to reorganise the procedures for handling economic exchange in case of fraud between EU operators, as suggested in the section "Premium numbers: Warning points at wholesale level".

PRS accessibility when roaming in EU

Wind Tre underlines that, at least in Italy, Premium number services' value chain is the one described below, both at national level and, potentially, when accessed by a customer roaming under a foreign network:



Please note that when MS B and C are the same it is the case of roaming customers accessing premium numbers of the visited country.

In case of PRS access while in roaming more players add to the value chain: the visited network and the international carriers.

The company providing premium services **must expressly request that their services will be accessible by a roaming customer**, being aware that it could imply extra costs (or, in general, different conditions) compared with the domestic case, as already foreseen in art. 97 .1 of the EEC¹; such extra costs are due to the added element of the value chain: the **visited network**.

In the event that a roaming customer calls a Premium Number hosted in the home country, the visited network routes the call to the international carrier that, either directly or through other cascade carriers, routes the call to the CP network that terminates the call to the Content Provider. In this chain there will be a direct charge at wholesale level and the home operator must charge the calling customer. The charge could

¹ Article 97 - Access to numbers and services - 1. Member States shall ensure that, where economically feasible, *except where a called end-user has chosen for commercial reasons to limit access by calling parties located in specific geographical areas, [...]*

be higher than what is applied nationally and might not respect any national regulation on maximum charges applicable to PRS.

Therefore, can happen that:

- PRS numbers accessible in the domestic country could not be accessible while in roaming, and
- price paid by the final customer **cannot be the same paid in its domestic country**.

WindTre believes that before amending roaming regulation addressing specifically premium rated service numbers an investigation should be made on all the business model implemented across EU, **and a common business model shall be adopted in all EU countries**.

Only when a common business model will be well established across EU, can be evaluated the availability of national premium rated service numbers while in roaming.

Premium numbers: [Warning points at wholesale level](#).

Access to Premium numbers in the past created issues of fraud or bill shock **even at domestic level** that obliged NRA² to introduce default block for such services.

Opening premium services across EU even for roaming customers would exacerbate such criticalities, considering also the several different models adopted across EU.

Proper handling of such premium numbers should start at wholesale level, with the **harmonization of the EU national numbering plans** identifying specific numbering range that provide a clear separation among fixed and mobile numbers, *to which RLAH regulation apply*, from premium number ranges.

Should not be allowed situations like now where premium numbers (PRN) are in the same numbering range of fixed or mobile numbers (and often change very rapidly) inducing foreign operators to charge at retail level such calls in RLAH regime, while at wholesale level they are charged by the visited network at a much higher value, including the *premium*, than regulated wholesale cap.

Such a situation enable fraud that could heavily impact domestic operators. Content Provider (CP) (providing the premium service over fixed /mobile numbering ranges, often under a revenue share regime) with the (often involuntary) complicity of a visited network could drain value simply activating a set of SIM of an EU foreign operator that treat such numbers like personal numbers, therefore applying RLAH domestic fares. Detection of such kind of fraud is very cumbersome and imply relevant economic effort.

In Italy the National Numbering plan (PNN) divide clearly premium numbers, that start with 89x, from decades used for other services.

Nevertheless, fraud has been so relevant in the past that AGCOM had to strictly rule access to premium numbers. The regulation introduced, over the years, led to:

- A transparent organization of PNN including specific VAS numbers (89x)
- A strong monetary limit for each call, and a classification of VAS typology for each numbering sub-range (*Decreto Landolfi*)

² AGCOM introduced the Delibera 401/20/CONS and recently Delibera 10/21/CONS.

- An introductory message (in Italian language) which, on each VAS number, informs the customer about call costs and type of service offered
- A Technical Anti-fraud committee (established by Agcom Resolution 418/07/CONS) with main Italian Operators which has, among its main purposes, the purpose of preventing and combating fraud related to VAS numbers. (see par. “**Inter operator disputes**”)

The proposed creation of a **European database with premium number ranges** to be made publicly available with relevant termination rates at wholesale level, could be assumed as a temporary solution while pursuing the final solution described above. As a matter of fact, the maintenance of such a database involves the definition of strict rules, the first few identified could be:

- A premium number cannot be commercialized (made available to final customers) until it is present on the database
- An advance notification of at least 60 days for any DB update shall be sent to all EU operators to alert for the need to update charging tables
- Any customer complain should be handled by the domestic network with the support of its NRA that will have to interface with the NRA of the visited network and the NRA of the network serving the CP (they could be different).
- Such a data base shall be maintained only by BEREC with a strong support from all NRA and should be available 24/7/365 on line to roaming provider operators.

No obligations have to be imposed to domestic operator to open an EU premium number, (only obligation to negotiate a request for opening according to a precise FIFO handling, without strict terms and only if there is a commercial advantage even for the domestic roaming provider).

Inter operator dispute handling

Before allowing premium number access to roaming customers should be defined an EU harmonized procedure to handle dispute resolution among operators and Content providers (CPs) of at least three MSs at a time.

In Italy one of the most effective tool offered by the Italian regulation is the **anti Fraud committee** reported above that foreseen payments blocking between operators in case of fraud related to PRS numbers.

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Thanks to the above measures, in first year of activity PRS fraud decreased by 33% (2008 vs 2007) up to almost zero nowadays.

Opening PRS numbers for roamers all over Europe would expose operator to an uncontrollable fraud risk and Italian customers, in particular, to less efficient protection (compared to home scenario), without a procedure capable of preventing and blocking anomalous or fraudulent scenarios.

It should also be considered that foreign operators often ask to GSMA operators to block Premium numbers for their customers roaming abroad (communications available).

In case of EU premium number accessibility while roaming any dispute raising could involve several actors (**with the new entry of (potentially several) international carriers**) that makes more and more difficult compose the dispute, lowering final customer safeguards and increasing fraud economic loss for operators, therefore hampering sustainability of RLAH.

An EU wide harmonized procedure should be defined with the feature of being: timely, effective and able to stop fraud at the very set of their beginning, without requiring to involve subject different from: i) operators, ii) NRAs and iii) content providers iv) international carrier, [*omissis*] granting the possibility to stop payment of interconnection fee and premium value only providing evidence of anomalous traffic, until the potential fraud has been clarified, according to art. 97 comma 2 of the EEC that explicitly grant the possibility for the retail roaming provider to “**withhold relevant interconnection or other service revenues**”.³

Without an effective Inter operator mechanism able to stop frauds at they early beginning the opening of premium numbers from abroad or while in roaming could open to massive frauds and hamper sustainability of RLAH.

Premium numbers: Warning points at retail level.

- Information about the tariff that the final customer will pay **should be left to the CP**, that should be made capable to differentiate if a call is originated in the domestic country or from a foreign caller while roaming; tariff information should be provided at the beginning of the call and in the language of the calling customer.
- Domestic roaming provider **cannot provide such info on the Welcome message**, now too big and less important for customers since RLAH entry into force: **customers know they pay like at home !!!**
- the proposed solution to “*introduce an obligation that access to value-added services must be explicitly requested by the roaming customer (opt-in)*” would be the most effective in safeguarding customers and increasing their awareness of the higher rates of such services, **but it doesn’t safeguard domestic operators from the errors and frauds described in the wholesale section paragraph**, due to roaming provider’s unawareness that a certain number is a premium one.

PSD2 potentially related impact

The Directive (EU) 2015/2366 (the so-called PSD2 directive) has been applying since the 12th of January 2016. EU countries would have had to incorporate it into national law by the 13th of January 2018.

In Italy PSD2 has been transposed by Legislative Decree of 15th of December 2017, published in Official Gazette of 13th of January 2018, which amends the previous Legislative Decree no. 11/2010 concerning payment services.

The Decree specifies the negative scope, including payment transactions by a provider of electronic communications networks or services, which allow a subscriber to the network or service to pay through phone credit (pre-paid or post-paid) as long as the value of any single payment transaction shall not exceed EUR 50 and the cumulative value of payment transactions shall not exceed EUR 300 per month.

Such payment transactions shall be:

- directed to the **purchase of digital content and voice-based services**;
- performed from or via an electronic device within the framework of a charitable activity;
- performed from or via an electronic device for the purchase of tickets regarding the provision of services.

³ art 97 (2) : Member States shall ensure that national regulatory or other competent authorities are able to require providers of public electronic communications networks or publicly available electronic communications services to block, on a case- by-case basis, access to numbers or services where this is justified by reasons of fraud or misuse and to require that in such cases providers of electronic communications services withhold relevant interconnection or other service revenues.

Therefore, **it is fundamental to previously know which service is provided through specific numbers so as to technically implement measures to be compliant with thresholds of EUR 50 per transaction and EUR 300 per month on annual basis.**

Enabling Premium Numbers accessibility while roaming not only increases complexities and fraud risks but, simultaneously, makes it necessary to block the customer in case of PSD2 limit exceeding.

Transparency issues

- Due to the extreme dynamicity of the value added services market (Premium rate number change the price of the services often according to the market evolution or move from one operator to another in a short time) it seems extremely difficult provide info across all EU operators with the exact price at retail level.
- Information to be provided by the roaming provider to its final customer **should limit to general information** about a higher price to be paid compared with the domestic one when accessing a domestic value-added service.
- NO information can be provided by roaming provider for specific tariffs of domestic, visited country and third countries Premium numbers; such information has to be provided by the CP.
- Due to the small relevance of such a market all information obligation should be defined avoiding to impose unfair burden to operators , simply limiting information obligation to a webpage on the operator website and left to roaming providers operators, according to its premium numbers market dimension, the possibility to adopt more detailed solutions like Apps.
- W3 believes that the access to EU premium numbers while roaming cannot be performed until a specific **DB for the retail level** is not set by an EU institution specifying, for each number, at least:
 - MS of establishment
 - Domestic retail price
 - Foreign access retail price from **domestic fixed** and **mobile** networks (intra EEA calls) and from **mobile while roaming** (*being it necessarily different from the domestic one due to the different value chains*)
 - Contact point for complaints both at retail and wholesale level.
- The introduction of anti bill-shock measures, like the one for data consumption defined in art. 15 of the RLAH regulation, would introduce a safeguard for customers without limiting its capability to use the service, but **it is an unfair burden for operators** for the limited dimension of the market, and also **doesn't solve the issues at wholesale level** above illustrated that expose operators to potential fraud.

Any anti bill-shock measure shall be carefully evaluated as if really needed in a market for premium numbers, jointly with a detailed impact analysis.

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