



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

BoR (21)36

16 April 2021

Vodafone welcomes the opportunity to provide feedback to the **Draft BEREC Report on the handling of third-party payment charges on mobile phone bills**. We appreciate the thorough review and comparative insights provided by BEREC; indeed, this document provides a useful benchmark and insights into how Member States handle third-party payment charges on mobile phone bills. At the same time, we hope that this activity is not only a fact-gathering exercise but will also inform BEREC policy initiatives post-EECC¹ implementation, which can be reflected in its next annual Working Programme.

Executive Summary

Pan-EU operators that make use of single platforms and centralised legal entities for the provision of related services would welcome a harmonised regime across EU related to Premium Rate Services (PRS) and Direct Carrier Billing (DCB). We see this review as an opportunity for BEREC to further support the harmonisation of consumer protection principles, concept definitions, information collection and, most of all, DCB market growth.

As BEREC also observes, a fragmented legislative framework (including consumer protection measures) is visibly present across all EU Member States and we also illustrate this with examples from the EU markets where we operate. It still remains to be seen how the EECC adoption can stimulate DCB transactions and facilitate greater harmonisation moving forward.

It is inevitable to discuss on PRS and DCB without considering Directive (EU) 2015/2366² (PSDII) because this instrument plays a significant role in defining the current DCB market opportunities and operators' commercial considerations. Therefore, we would welcome a deeper assessment of the interplay between PSDII and DCB applicable requirements, in light of the existing (and future) use-cases and DCB market growth. In our view, mobile should be further promoted as an alternative payment mechanism and that is not an option if it's over-regulated. The Payment Services regulatory framework has already limited mobile operators' ability to compete and unlock the potential of DCB model in entering new payment segments; we deem that this market can do more to balance appropriate regulation with the promotion of new legitimate business interests.

When it comes to consumer protection measures, self-regulation industry initiatives (driven by good cooperation with regulatory authorities) have proven successful in some markets, addressing the lack of clarity and transparency concerns. As a result, the number of complaints has decreased significantly therefore we would like BEREC (and the NRAs) to continue supporting and promoting these.

The consultation is a good opportunity for BEREC to consider best practices that have been developed across markets and consult with stakeholders in the near future whether such examples (if needed) can be replicated more widely, to the extent that policy support does not come at the expense of market growth opportunities. We provide some more details on this and specifically look into the German approach as a good example of effective cooperation between the industry and the regulatory authority.

¹ European Electronic Communications Code, Directive (EU) 2018/1972

² Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC

We also provide additional observations regarding the existing consumer protection requirements across our footprint in Europe (not captured in the draft report). At the end we make a few suggestions with regards to new definitions that should be included in Annex 1.

Context

PRS have been around for a long time while DCB (or Charge to Bill – C2B) related market has grown in the last years and its likely to continue at such pace. As mobile phones become more essential for individuals DCB has evolved in a simple, flexible and reliable way of billing customers when they purchase 3rd party digital content and services.

Vodafone Group operates a payment processing service which enables mobile phone subscribers to pay for select third party goods and services through their mobile pre-paid credit or post-paid bill. As mentioned in the report, DCB is used predominantly for low value purchases of digital goods like games and apps, including content (e.g. video or music) subscriptions.

From a technical perspective and related integration with partners, DCB models set-up can be through operator API, partner API or an approved 3rd party integrator. Different models impact roles and accountability between network operator and service partner. In any case, for all of our partners (providers of digital goods and services, aggregators and app store operators), the DCB model reduces barriers to purchase, giving their customers a simple and virtually frictionless way to pay.

Having said that, please find below our detailed responses to the questions.

Question 1

Have you any specific observations in respect to the general overview of major issues as set out in section 3 of the report:

- a) **Complaints and Enquiries in respect to Third Party Payments?**
- b) **The presence and sources of definitions for PRS an DCB?**
- c) **Responsibilities regarding PRS Calls, SMS and DCB?**
- d) **Collection of Information in respect to PRS and DCB?**
- e) **Are there any other major issues that have not been considered in this report?**

Response:

a) Complaints and Enquiries in respect to Third Party Payments?

There are a number of examples of good practices across our footprint that have not been captured in full in BEREC's report. We set these out below, as they are directly relevant to the reduction in the number of complaints that we have received in this area.

The DCB business model in Germany is subject to a recently adopted decree³ of BNetzA developed in cooperation with German MNOs. Parties have worked together for more than a year to identify effective measures for customer protection. The decree specifies several measures that will increase the transparency and safety for customers and reduce fraudulent behaviors of third-party providers.

In UK the number of complaints has decreased substantially because of the following active mitigations:

- Inclusion of one-time pin (OTP) on all subscription services; real time fraud management on DCB; PSMS only used for media competition entries;
- Constant agent upskilling programme to direct customers to merchant for support;
- Vodafone actively monitors all PRS adverts in the UK via a third party to ensure compliance to fair and reasonable standards to avoid false expectations being set to the customers. This also ensures compliance to the Phonepaid Services Authority (PSA) Code.
- Customer refunds: automated merchant direct to bill refunds available and Vodafone credits directly clawed back from merchant has improved post-sales support.
- PSA as the sector regulator provides backstop consumer support where issues of fraud are identified.
- Furthermore, Payment Services Regulation of 2017 bars usage of services beyond single transaction of £40 and monthly cumulative amount of £240. Service are also captured in the Bill Capping requirements under the Digital Economy Act 2018⁴.

In Netherlands self-regulation and adoption of a Code of Conduct supported by the parties involved has helped to avoid issues and decrease complaints number of complaints⁵.

b) The presence and sources of definitions for PRS an DCB?

There are a variety of different definitions across our geographic footprint, which can vary between legislative instruments to industry self-regulation instruments. Similarly, in some market clear definitions exist, and in some others do not. So, for example,

- In Netherlands definitions are being discussed between market players in formal self-regulation groups (like *Vereniging COIN* for PRS calls and *Stichting Gedragscode Mobiele Diensten* for DCB);
- In Germany, PRS are defined in the German Telecommunications Act (TKG)⁶. A definition of DCB does not exist. But there are two laws which contain provisions that are applicable to

³“Allgemeinverfügung zur Festlegung von Verfahren zum Schutz von Verbrauchern im Bereich des Bezahlens über die Mobilfunkrechnung - Aufgrund von §§ 45d Abs. 4, 67 Abs. 1 Satz 1 Telekommunikationsgesetz (TKG) und § 35 Satz 2 Verwaltungsverfahrensgesetz (VwVfG)”

⁴ As this is expected to apply across all EU, where companies do not have a Payment Services licence, it was surprising to see the variety of responses in the report from NRAs.

⁵ More details can be found here <https://www.payinfo.nl/media/gedragscodes/97dd9786-982a-475d-b757-68b9a4887e99.pdf>

⁶ Services, in particular in the (0)190 and (0)900 number ranges, for which an additional service is provided in addition to the telecommunications service, which is billed to the caller together with the telecommunications service and which is not attributable to another number type

DCB although their scope is not restricted to DCB⁷ (including the Payment Services Supervision Act which reflects PSDII transposition). Also, there is no explicit definition of PremiumSMS.

- In UK there is a Controlled PRS definition in the 2003 Communications Act. DCB was caught under a voluntary industry scheme “*Pay For It*” that has been disbanded and replaced by individual operator codes with suppliers.

c) Responsibilities regarding PRS Calls, SMS and DCB?

We agree with BEREC findings that the roles and responsibilities for PRS and DCB monitoring vary from market to market. Some additional good examples, which are worth mentioning are listed below:

- In Netherlands, for PremiumSMS and DCB a compliance office supervises whether market players adhere to the Code of Conduct. In case of alleged violation, the compliance office will bring the case to an Enforcement Committee⁸.
- The German NRA has responsibilities regarding PRS, PremiumSMS and DCB according to the provisions in the respective telecommunications law. If the DCB transactions would exceed the thresholds of PSDII respectively the German Financial Services Authority would have responsibilities also.
- In UK, with regards to PremiumSMS and DCB, the merchant responsible for first line support and network acts to resolve issues. PSA as the sector regulator provides backstop consumer support where cases of fraud are identified.

d) Collection of Information in respect to PRS and DCB?

We overall agree with BEREC findings on this topic; there is a variety of information collected from market to market, and a considerable level of disparity between PRS and DCB information provision:

- In Germany, there are no specific provisions about collection of information with regard to PRS or DCB in the telecommunications law. BNetzA is however entitled in general to collect information from the network operators and service providers. It’s worth referencing the new process in Germany where information collection focuses on number of customer inquiries, number of refunds issued, and number of refunds declined (including the respective reasoning). From 2022 and onward the data provided to BNetzA must also contain all service providers that the complaint is referring to and differentiate between one-time-payments and subscription services. Cooperation with BNetzA on this topic has been highly effective and customer complaints related to DCB have significantly reduced.

⁷ Payment Services Supervision Act provides that: *Payment transactions by a provider of electronic communications networks or services provided in addition to electronic communications services for a subscriber to the network or service:*

a) for the purchase of digital content and voice-based services, regardless of the device used for the purchase or consumption of the digital content and charged to the related bill; or
b) performed from or via an electronic device and charged to the related bill within the framework of a charitable activity or for the purchase of tickets; provided that the value of any single payment does not exceed €50 and the cumulative value of payment transactions for an individual subscriber does not exceed €300 per month;

⁸ The Enforcement Committee is an independent expert body, established and empowered by the Code of Conduct. Participating parties in the Code of Conduct are operators, SMS and mobile Internet gateways and content providers.

- In UK, PSA is currently consulting to expand its formal data gathering powers. PSA already has detailed customer spend information and the ability to request information regarding specific services under investigation.

e) Are there any other major issues that have not been considered in this report?

1 - Overlap with PSDII

There is a noticeable overlap with PSDII and its micropayment requirements and the BEREC document findings related to PRS/DCB applicable limits in many markets. However, we observe that apart from stating that DCB is payment method, BEREC has not further discussed or, brought additional clarity, in this regard.

For example, in Italy the PSDII digital exclusion thresholds have entered into force through the Legislative Decree n. 218 of December 2017. These thresholds, which go back to PSDII requirements are effective for Germany as well and were implemented in German law in 2018 (“Zahlungsdiensteaufsichtsgesetz”).

PSDII updated the digital exclusion under PSD so that providers of electronic communication networks or services can provide certain goods and services, up to given limits, without needing to be authorised or registered (Article 3(l), PSDII). The goods and services that fall under the exclusion are:

- Digital content, such as music and digital newspapers.
- Voice-based services, such as premium rate phone numbers.
- Tickets.
- Charitable activity such as donations.

Physical goods do not fall within the exclusion. As the intention is for the exclusion to be used for lower-value and micro-payments, individual transactions are excluded only if they do not exceed EUR50 and the cumulative value of payment transactions for an individual subscriber does not exceed EUR300 per month.

These provisions have been replicated in several markets and influence the commercial activity and decisions of operators. It means that operators need to impose transaction limits and block transactions in accordance with regulatory requirements. Further on, they may have to send a notification to the regulator and provide an annual audit opinion, testifying that the activity complies with the said limits.

Vodafone Italy, for instance, has implemented these thresholds for all PRS and DCB purchased by mobile calls since 2019 and has put in place a monitoring system for the same services purchased by fixed calls in order to respect the PSD2 thresholds. In Italy, Vodafone reports to the Bank of Italy on annual basis the total amount of transactions in terms of volume of subscribers and value for purchase of the three categories above mentioned included all the digital and value-added services (DCB and PRS).

2- Other relevant issues not covered in the report

We observe the following in Italy, which have not been captured in the draft report:

- *PRS Unaware activations* – this issue has been extensively debated in the last years with the Italian Authorities. For that purpose, since 2016 operators have been sharing with NRA on a quarterly and monthly basis the data on PRS activations /deactivations/revenues and others. This has led to a decreasing trend regarding PRS activations, also considering the

measures adopted in order to address the issue. In February 2021, the Regulatory Authority adopted the new legislation regarding VAS (understood as PRS and DCB), setting out - both for new SIMs, and for the customer base - the default block to PRS and digital content services subscriptions charged directly on telephone billing. A series of services including televoting, mobile ticketing and banking SMS are excluded from this block.

- *Blocking* - regarding digital content services default blocking, in Italy operators are trying to challenge the extension of default barring to these services, considering that: (i) no customer complaints have been received; (ii) these services have a specific activation process that excludes the possibility of unaware activation
- *Consent* - The new 2021 NRA resolution set out a procedure which includes sending a One Time Password (OTP) on the subscribers' number which increases security and consumer protection.

Question 2

Do you have any specific observations on the consumer protection measures as set out in section 3? Please clearly reference the measure and paragraph number when responding to this question.

Response:

Section 3.3. – Available services

Paragraphs 60/61/64/65 – Deactivating PRS/DCB: It is not entirely clear what is meant by deactivation of the service⁹. Theoretically speaking, end-users cannot prevent third party service providers to use the bill of mobile service providers to charge for their products or services; however, they can achieve the same result simply by blocking PRS and DCB.

We observe the following in Portugal, which has not been reflected in BEREC's report:

- mobile service operators do offer end user the possibility to deactivate/block PRS in writing or via another durable medium (obligation set out in law) and DCB via customer area or customer support;
- a similar situation refers to Blocking Facilities (Paragraph 73): mobile service operators do offer end user the possibility to block specific number ranges (obligation set out in law) and specific types of DCB;
- Transparency (Paragraph 105): the mobile industry has managed to significantly reduce the number of complaints and customer dissatisfaction on these services by increasing transparency and the information provided to the end-user before the service subscription and implementing technical measures to ensure the end-users give their express consent to the use of their phone bill to charge third party services.

All of these have been achieved by a self-regulation instrument in Portugal – more specifically a *Code of Practice on Wap Billing (C2B services)* - which outlines several rules regarding the provision of these services, notably that the customer must be presented with a page stating the name of the service, its recurrence and price (amongst other information), before concluding the subscription of

⁹ According to the definition included in "Annex 1" of the Report "Deactivation" means *the facility for end-users to deactivate the ability of third party service providers to use the bill of a provider of an internet access service or a provider of a publicly available interpersonal communications service to charge for their products or services.*

these services. This Code of Practice in Portugal was adopted on April 2018 and since then the number of complaints has dropped significantly.

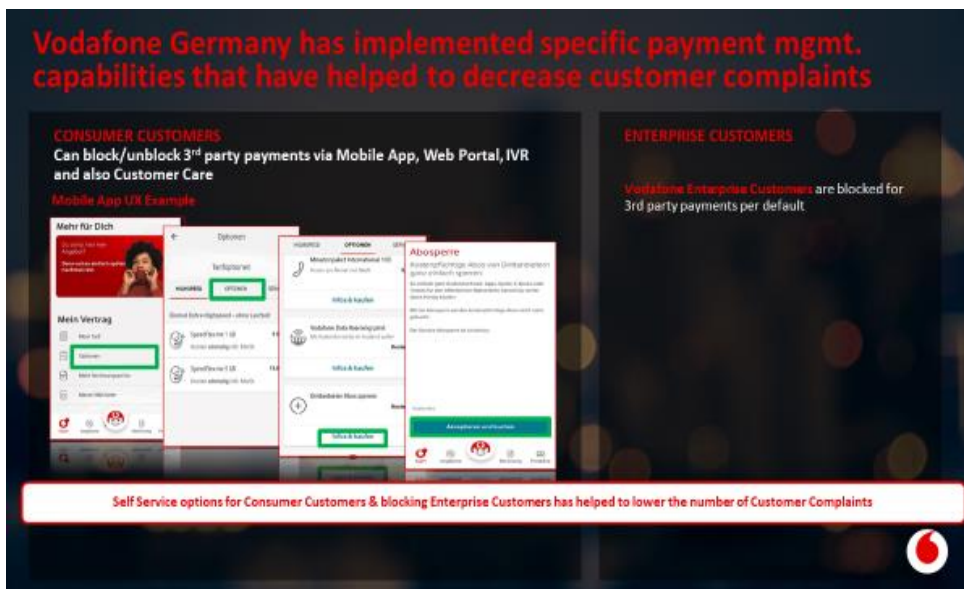
We observe the following in Italy, which have not been reflected in the draft Report:

- **3.3 Available services** –we provide customer support related to PRS and DCB, through My Vodafone App for services deactivation and for information related the charged services.
- **3.11 Guaranteed minimum service** - as for the obligation to give the subscriber the option to pay telecom services excluding PRS and DCB charges, Vodafone provides for invoices with separate costs ensuring billing transparency to its customers.
- **3.12 Refunds** -Vodafone Italy has in place an *ad hoc* policy – named “*Soddisfatti&Rimborsati*” – which allows customers to be reimbursed for PRS even without any evidence that the activation has been unaware/unconscious.

In addition to the measures that were already stated for the German market in the BEREC report, the following measures are in effect (and which were not highlighted in the report):

- **3.1(51) service acceptance process and 3.8 Consent** –The previously mentioned BNetzA decree demands that subscription services can only be charged, if the customer was redirected to an MNO landing page (*MNO-Redirect*) and has given his double consent on the MNO landing page¹⁰.
- **3.4 blocking** - Vodafone customers can conveniently block third party billing with different options:
 - Block all third-party providers from charging their mobile phone bill;
 - Block only subscription services but leave one-time payments available;
 - Block all third-party providers with nominated exceptions (e.g. AppStores)

They can manage these options conveniently in the “MeinVodafone App”.



¹⁰ Detailed information regarding the service and the price of the service are shown on the website of the third-party content provider and customer’s first consent is the buy-button on the website of the third-party content provider.

- *3.12 (98) Refunds – responsible party* - As stated in the BEREC report, the German MNOs are obliged to refund, but so are the third-party providers. In general, the third-party providers are responsible for handling customer complaints and they are obliged to refund amounts in question because the contractual relationship for the content purchase is concluded between the third party provider and the customer.
- *3.13 complaint filing* - Customers can file complaints at all authorities mentioned in the draft report. German MNOs are cooperating closely with BNetzA to resolve complaints filed to them. Information on how the complaint cases were resolved, if refunds were issued and if services were blocked from charging via DCB is reported to the BNetzA on every single case.

In UK there is a stop command already. The key to the complaint process is that the customer should go to the Merchant first. If the merchant cannot remedy, then the network acts as a backstop and recovers any refunds from the Merchant. At that point the customer also has access to the network's complaints process and Alternative Dispute Resolution. The regulators then provide ultimate backstops.

Question 3

Are there any additional relevant sources to consider, e.g. Reports/Studies /Position Papers

Response:

The German NRA issued a press release on 29th of December 2020, stating that regulatory actions were showing positive effects on the German DCB market:

„The Federal Network Agency's definition of specific requirements for paying via mobile phone bills came into effect in February 2020. As a result, the number of complaints about third party mobile services has fallen significantly. The level of complaints is currently around 25 complaints per month, which is only one third of the previous year's average. “

The full statement can be found here (in German):

https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2020/20201229_Rufnummernmissbrauch.html

Question 4

Are you of the opinion BEREC should amend, add or delete definitions contained in Annex 1? Please detail the changes you suggest and explain your answer.

Response:

Although these services are already defined in the report, we believe it would be helpful to include a definition of both PRS and DCB services in Annex 1. As an example, in Italy, the following definitions are being used:

- *Premium rate services (PRS): a subset of Value-Added Services as services 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.*
- *Direct Carrier Billing (DCB): digital content services, or other products or services, charged directly to the end-user's mobile phone bill. It can also be referred to as direct operator billing/third party billing.*

- It would be useful to add the definition of “Access Provider” as well; a useful example is provided in the Italian Premium Service Code of Conduct (CASP): *Access Provider - network operator who provides internet connectivity and / or mobile internet to the Customer issuing the billing invoices*

Furthermore, since the redirect to an operator’s payment page is an important measure in Germany in order to provide, track and verify the customers consent to a transaction, the **Redirect** should be also defined and explained in Annex 1.

Lastly, we would like to make a more general remark on the need to standardise the words/terms that are used in this area. For example, throughout the draft BEREC report there are numerous references to “blocking” and “barring” indistinctively, in a way that seems these two terms are being used interchangeably. If this is the case, unification of the terminology is welcomed to avoid different interpretations. If, however these words are meant to have distinct meanings, the two different definitions (*blocking* and *barring*), should be addressed and clarified in the Annex.

Other comments

Self-regulating practices

In Greece, the amendment of EETT’s “*Code of Ethics for the Provision of Multimedia Information Services*”, in force since 28/02/2020, has resulted in reduction of customers’ complaints for PRS charges.

Similarly, in Netherlands there is a self-regulation system (Code of Conduct) which has worked well so far. Misleading practices that occurred in the market a couple of years ago (mainly customers who were unknowingly subscribed to expensive services and were then charged via their invoice) were tackled and the amount of complaints received declined enormously. The Code was updated and detailed several times, mostly to tackle new misleading practices that occurred, but overall is working well¹¹.

In Spain Vodafone has already implemented controls to avoid bill shocks and provide information to customers about these services. The customer controls the access to these services and can easily block it at any time. Detailed information is included on the bill and obligations and responsibilities for operators and content providers are sufficiently clear.

Therefore, in our view and based on the feedback received from most of the local teams, these self-regulating practices – which aim at increasing consumer protection and transparency - are working well and should be encouraged and further promoted by BEREC and the regulators.

Successful cooperative practices for consideration

The BNetZA 3-pillar-model for DCB has been in place since 2020. This solution is based in the German telecommunications act which empowers/authorizes the NRA to define rules and requirements for DCB in order to achieve a good customer protection level. Based on feedback from our local team, this regulation is very effective and has reduced the customer complaints significantly. For that

¹¹ You can find the Code of Conduct here: <https://www.payinfo.nl/over/de-gedragcodes>

purpose, BEREC (and NRAs) may want to further consider the relevance of this model in markets which are in the process of (or considering) developing an appropriate DCB framework.¹²

German MNOs have agreed to use an evaluation model, based on three pillars, for all services that are connected to DCB APIs. Each service is sorted into one of these 3 pillars:

- **Trusted Partners:** Log-in services, where the customers need to create an account and actively log in, before transactions can be triggered. High level of trust and very low number of complaints → no redirect / payment page is required and provided by the trusted partner.
- **Subscriptions:** Subscription based services outside of the trusted partners list, usually with a higher number of complaints → MNO redirect for double consent is required.
- **One-time purchases:** depending on the service with very low number of complaints (parking tickets, public transport tickets, newspaper articles etc.) and sometimes with a high number of complaints → cash-back policy is in place.



We are happy to discuss this model in more details (e.g. refund conditions, cash back policy), if necessary.

DCB market opportunity

As mentioned, our view has always been that mobile should be further promoted as an alternative payment mechanism and that is not an option if it's over-regulated. The Payment Services regulatory framework has already limited mobile operators' ability to compete and unlock the potential of DCB model in entering new and appropriate payment segments; we deem that this market can do more to balance appropriate regulation with the promotion of new legitimate business interests. For that purpose we would welcome BEREC to consider in the next report (and the consecutive Work Programme) assessing the interplay between PRS/DCB services with PSDII scope and its limitations – including a discussion around existing micropayment cap limitations which inhibit the ability for DCB market to grow at scale.

¹² This may not be the case for markets which have already updated their PRS/DCB regulatory framework. For example, we are aware that in Italy there is a new regulation, as per NRA resolution 10/21/CONS, which has addressed market needs and consumer protection and operators have already taken the necessary implementation measures.

EECC role

With regard to the difference between the legal requirements before and after EECC transposition; at the date of this response 23 out of 27 MS have not yet transposed EECC in their national legislation, therefore we are unable to comment at the current stage. However, given the ongoing trends we don't expect major changes in local telecommunication laws that can impact DCB. That excludes some new requirements regarding the information to be given on the detailed bill (e.g. contact details like hotlines, webpages, e-mail-addresses) which may be challenging and require further considerations from the regulator.

Stakeholder information

Name (and website) of the organisation:

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Contact information (name, e-mail and/or phone number) for a contact person.

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