

**GSMA and Connect Europe response to the
draft BEREC Report on Switching and Termination of contracts**

January 2026

We appreciate the consultation on the draft “BEREC Report on Switching and Termination of contracts” (draft report). The draft report itself contains examples of how national rules are implemented and experiences from end-users and comes at a time where the proposal for a **Digital Networks Act (DNA)** has just been published.

The draft report can be perceived from various perspectives. As stakeholders that are directly impacted by the many rules governing our industry, the draft report reflects some of the inherent challenges that we face as an industry, and which we anticipate being resolved in the DNA.

Our industry faces many challenges and our ambitions for the DNA is to have a framework that will prioritise and incentivise network investment and infrastructure-based competition based around the following core principles:

- 1) Promoting competitiveness
- 2) Simplifying and streamlining regulation
- 3) Harmonisation / Completion of the single market

The revision of the current Code’s chapter on end-user protection plays an important part of these principles and the aim should be to simplify current rules and secure harmonisation and completion of the Single Market. This was to some degree also intended in the European Electronic Communications Code (EECC) as expressed in the introductory article to the end-user protection chapter of the EECC defining the level of harmonisation, stating that after December 2021, EU Member States were not to maintain or continue to apply more stringent national consumer protection provisions diverging from those laid down in Articles 102 to 115. The relevant articles in the draft report sit within this range of articles; namely Articles 105-107.

The draft report appears to neglect somewhat the intentions expressed in Article 101 of the EECC, with BEREC stating that “differences in implementation...do not necessarily indicate a lack of harmonisation”. Harmonisation as set out in Article 101 EECC is intended to ensure a consistent level of consumer protection throughout all Member States. Differences regarding the level of consumer protection therefore represent specific cases of non-harmonisation, particularly when Member States introduce regulations that exceed the requirements of the EECC (national gold-plating). While operators should continue to be allowed to consider the operational implementation, the outcome of such implementation should not differ across Member States.

Another point is the lateness of the transposition of the EECC across EU Member States, for which the deadline was December 2020. The majority of EU Member States only transposed the EECC in 2022 with a few pushing it into 2023 and as late as 2024. We are therefore again reiterating our call for proper harmonisation as well as simplification on the end-user protection chapter of the EECC. As highlighted in the BEREC Report, consumer protection is a key

component of a competitive environment. However, end-user markets are already highly competitive, as reflected in particular by the fact that sector-specific regulation focuses on wholesale markets. Consumer protection must therefore not become a source of unnecessary hurdles and excessive bureaucracy, but should be as simple and functional as possible, and harmonised across the EU. Otherwise, consumer protection itself will become an obstacle to existing end-customer competition.

With regards to Articles 105-107 of the EECC, we are specifically not calling for a deletion of Articles 105-107 concerning Contract Duration and Termination (Art. 105), Provider switching and Number Portability (Art. 106) and lastly, Bundles (Art. 107). We believe that articles 105-107 secure competition in the market between providers, but we do not see a continued need to regulate providers down to the smallest detail while most of the provisions can be covered by existing horizontal law such as the Consumer Rights Directive. Considering that Over-the-Top (OTT) players have been permitted over the last decade to offer services clearly substitutable with traditional telecom services, without any noticeable regulatory intervention, although the EECC allowed for this, should reflect that simplification and harmonisation should be sought without the detriment to consumers.

Given the fact that the Commission's proposal for a Digital Networks Act (DNA) has now been published, we unfortunately, do not see substantive changes going in the direction that we are advocating for in relation to Articles 105-107 and their equivalent in the DNA (Articles 97, 98 and 100). We would therefore, like to reiterate our position in this respect.

Ad Art. 105 – Contract duration and termination (DNA - Article 97)

As noted in the draft report (chapter 2.1.1.), contract periods vary considerably across EU Member States. We do not mind that contract periods differ, but we believe that it should not be for the State to decide but should be freely determined by operators and the market. For instance, longer contract periods should be supported as they are beneficial for consumers who pay by instalments. The variation in contract periods also plays a role in ensuring competition between providers. In the end, a 24-month contract period is explicitly allowed in the EECC and is also common in other sectors. Restricting the discretionary scope would lead to a loss of flexibility in contract design, ultimately affecting consumers.

We support clear conditions and procedures for contract termination in order to avoid that they act as a potential disincentive to changing provider but again, we support cross-border harmonisation of such rules. Contrary to the draft report, however, indexation clauses (price adjustments in line with the consumer price index) do not pose an obstacle. On the contrary, they are helpful in ensuring that generic cost increases can be passed on to end customers in an unbureaucratic way. Once again, the freedom to design contracts in an unbureaucratic and flexible way is particularly beneficial to consumers. Therefore, indexation clauses should be explicitly allowed.

The current wording allowing providers of electronic communication services to make unilateral contractual provided that they comply with a specific process and conditions are important to maintain, and similarly, the conditions in Article 105(4), which secures an opt-out principle for consumers in case of contractual or pricing changes.

Ad Art. 106 – Provider switching and Number Portability (DNA – Article 100)

We call for a simplification of Article 106 through a deletion of Article 106(8) on compensation to end-users and 106(9) on information requirements on compensation. Today, we see EU Member States laying down unnecessarily complex and costly rules and extending beyond the parameters of the EECC through gold-plating. There is no need for such disproportionate sector-specific rules and sector-specific penalties. In particular, the automatically triggered compensation systems discussed in the draft report are following the general trend of designing ‘compensation’ de facto as contractual penalties, fixed without any reference to the actual damage incurred. This is inherently contradictory to the concept of compensation, as compensation is intended to compensate for a specific loss or damage; without reporting a specific loss or damage, it is virtually impossible to assess what needs to be compensated, meaning a compensation cannot be calculated. In the end, this will only lead to higher retail prices, as providers need to pass on the costs of such excessive regulation to their end customers. Number portability has been in place across EU Member States since the late ‘90s to early 2000s with solutions ranging from full industry solutions to other solutions where authorities have had a degree of involvement. Since the major investments have been made and can be considered sunk costs, we are calling for leaving the systems as they are. Any changes made will be pure costs, which are unlikely to bring any further benefits to end-users.

We also note some degree of confusion of terminology between “switching” and “number portability”. Switching would refer to an end-user terminating their contract and moving to another provider, whereas “number portability” refers to the transferring of a number from one operator to another for the purpose of the end-user retaining their current number, when signing a contract for services with another provider. We therefore caution against unclear usage of terms such as “switching” and “number portability” (e.g., in the Conclusions of chapter 3, p. 40).

Ad Art. 107 – Bundled offers (DNA – Article 98)

Art. 107 should remain except for sub-paragraphs (1), (4) and (5); (1) duplicates requirements under the Consumer Rights Directive, and (4) extends consumer rights to SMEs and NGOs; (7) allows for EU Member States to introduce further requirements, creating fragmentation in the Single Market. There are considerable variations in how EU Member States apply Article 107 and even extends the definition of types of services, which are impacted by article 107 (Hungary) effectively broadening the application of the EECC.

We question why an example of business-users is included in the report (chapter 2.1.4), as companies would typically be negotiating their terms and conditions with a provider of their choice. It is a basic principle that consumers are regarded, individually, to have less negotiation power, which is why there should be (and is) a framework to specifically protect this group of customers.

In chapter 2.1.5 an issue is raised that, in case of switching, the customer cannot be guaranteed that they will have an identical “bundle” with the new provider. We question why this example has been included since providers are individual companies that compete with one another, with different products and services. It must be the customer’s responsibility to seek out information about the bundle they have preference for in the buying process.

The report remains very unclear about the problems with switching providers of individual components within a bundle. "Everything from a single source" is a consumer preference, which is why bundled offers have become so prevalent in the market. Finally, components of a bundle are usually also offered individually.

Customer win-back activities

With regards to win-back activities, we believe that this represents a legitimate part of competition between providers. If the transferring provider has the opportunity to offer his customer a better value proposition if they decide to stay, this may have benefits for the customer and should not be interpreted as an attempt to constrain competition. In fact, many customers take advantage of new terms offered by their existing provider; this 'battle' for end customers is a sign of healthy competition. Therefore, national regulators should only engage with this process to prevent improper conduct that might harm consumers, e.g., harassment or misrepresentation.

Concluding remarks

The European telecom sector needs to have a regulatory framework that is conducive to deploy networks and provide services on a Europe-wide basis, where individual providers so wish, thereby aiming for opportunities to scale. For this to happen, cross-border barriers need to be removed, and rules need to be effectively harmonised. A deregulatory approach is therefore necessary to reduce fragmentation and reducing the complexity of operating in different markets. Any remaining rules, and for which we are in support of adjusting Articles 105-107 of the EECC, should be fully harmonised, prohibiting any gold-plating at national (EU Member State) level.

Where cases of non-compliance with the framework and/or horizontal law are observed, this should be regarded more as a matter for national authorities to ensure enforcement. Here, NRAs have sufficient enforcement rights and powers, meaning that the legal framework does not need to be amended with regard to enforcement. In fact, practice shows that NRAs sometimes fail to properly exercise their enforcement powers; for example, in one specific case, the German NRA, the BNetzA, improperly exercised its enforcement powers under German telecommunications law, resulting in the decision being overturned in court.

The draft BEREC report, unfortunately, demonstrates that currently there is a very high degree of fragmentation and a certain degree of gold-plating, representing an obstacle to building a true Digital Single Market for telecommunications services.