

Comments on the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets

January, 2013

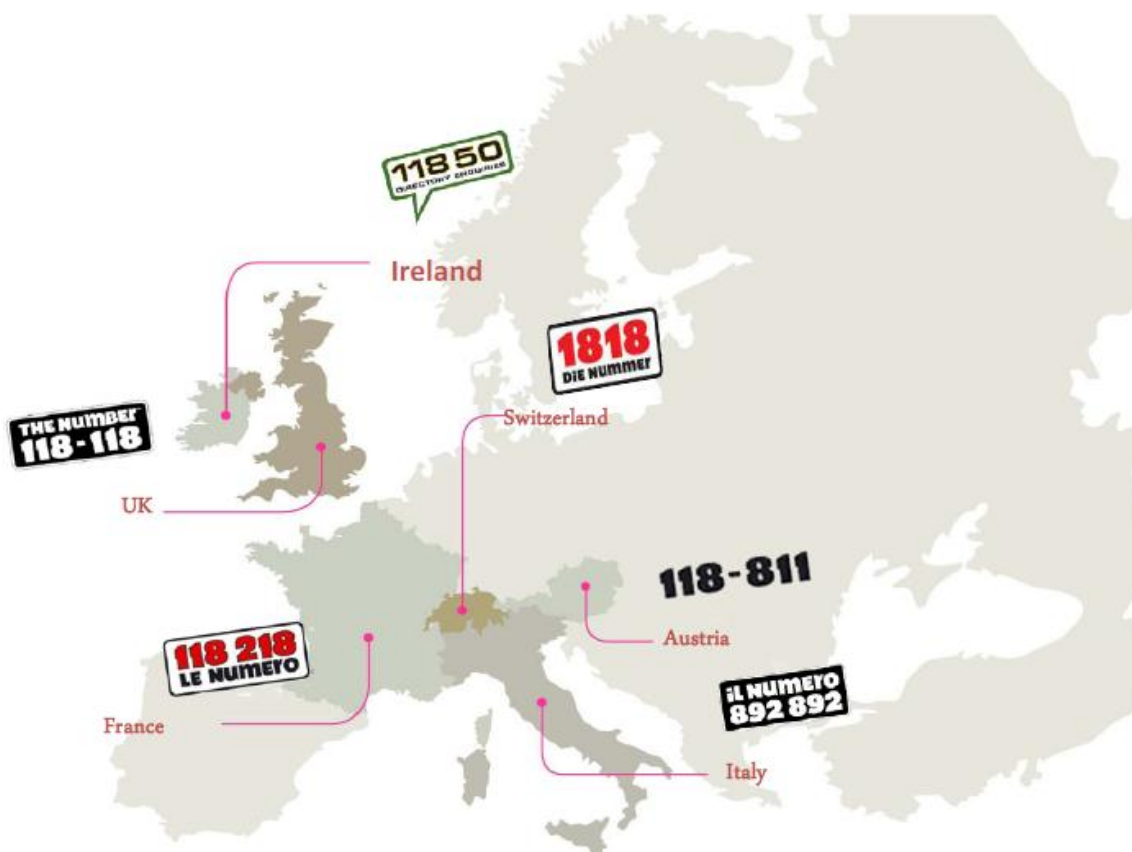


THE NUMBER



INTRODUCTION TO THE NUMBER

The Number and its group companies are the largest independent providers of directory enquiry (DQ) services in the world. In Europe, the group has entered six markets (UK, France, Italy, Austria, Switzerland and Ireland) offering new, competitive and high quality services to end users. We use live operators to handle enquiries and today employ more than 6.000 people in our European operations. The companies have invested heavily in the development of enhanced databases and innovative new services (such as two-way SMS services).





PRELIMINARY REMARKS

The Number welcomes the opportunity to comment on the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets (hereafter 'the Consultation'). More details can be found in The Numbers' responses below.

We thank you in advance for taking consideration of these views. Feel free to contact Simon Grossman, Director, Government and Business Affairs – Europe for The Number, by phone (+44 7971 050 001) or e-mail (simon.grossman@118118.com) should you need further information.

DETAILED REMARKS

Question 13: On the basis of the three criteria test carried out at EU level, can any other markets be identified that should be added to the list in the revised Recommendation, from an ex ante perspective? If yes, please provide comprehensive reasoning thereof.

The Number believes that the European Commission should use the revision of the Relevant Markets Recommendation to add a mobile/fixed origination market to special rate services (SRS)/ value added services (VAS) and to provide instruments that allow immediate regulatory intervention before further and worse damage is done across the European Union.

The addition of this market in the Recommendation would not oblige a national regulatory authority (NRA) to regulate it, if for example the national circumstances do not indicate that regulation is required, but it would allow each NRA to take the appropriate ex-ante measures if required. This is further justified by the fact that these SRS/VAS, and specifically directory services, have been specifically referred to in the Explanatory Note to the current Relevant Markets Recommendation.¹

The European Commission pointed out that:

*"(...) it is possible to define a single cluster retail market that includes access, national, international and roaming calls and SMS. In addition, this retail cluster may also include calls to value-added services (in particular, directory enquiries). **Against this background,***

¹ "Some NRAs have defined a distinct market for wholesale call origination to non-geographic numbers in order to address the conditions of competition for calls to value-added services (in particular, directory enquiries). Others have relied on Article 5 of the Access Directive or the Universal Service Directive, or indeed on specific national regulatory provisions concerning premium rate services to address the issue. In these instances the NRAs have sought to address concerns they had about mobile operators imposing high prices in relation to specific services within the retail offer, or about restricting the ability of service providers to control their retail prices." See European Commission. (2007). *Commission Staff Working Document. Explanatory Note. Accompanying Document to the Commission Recommendation on Relevant Product and Service Markets Within the Electronic Communications Sector Susceptible to Ex Ante Regulation in Accordance with Directive 2002/21/EC of the European Parliament and of the Council on a Common Regulatory Framework for Electronic Communications Networks and Services* [SEC(2007) 1483 final], p. 41 (footnote 42). Retrieved at, http://ec.europa.eu/information_society/policy/ecomm/doc/library/proposals/sec2007_1483_final.pdf.



account may have to be taken of any particular circumstances surrounding access to value-added services." – emphasis added.

Though it is true that directory services are a specific type of service in the non-geographic numbering plan from a social value perspective (services recognised as having a specific social value, justifying their inclusion in the Universal Service Directive (2009/136/EC)), directory services and all other VAS face the same market dynamics at wholesale level as regards mobile call origination.

Both VAS and **directory service providers require the availability of reasonable, objective, transparent and non-discriminatory access.** However, fit for purpose access is not currently available, particularly from mobile network operators.

Mobile network operators control the access to a very large proportion of the users of directory services and are unaffected by competitive forces as, given the relative insignificance of VAS and directory services in end-users' telecommunication bills, it is unlikely that end-users will change operator based on the access conditions to these services. As a result, **mobile network operators impose abusive terms on VAS and directory service providers for access across Europe.**

The Number believes that the figures hereafter offer a striking illustration of the consequences of these abuses, as they apply to directory services in several Member States, indicating that **the issue at stake is structural, and hence requires an approach that addresses the problem at the source.**

Two main issues can be identified:

- 1) Figure 1 depicts the fact that mobile network operators apply charges between 2 and 50 times to connect calls to directory services, compared to the same access charges applied by fixed network operators. **The result is that end-users can end-up paying double the intended retail price for accessing the service.**
- 2) Figure 2 exemplifies that large network operators (e.g. Vodafone or T-Mobile) charge substantially different access prices from one Member State to another, even though it is highly unlikely that the objective underlying cost base can justify such a **fragmented approach.**



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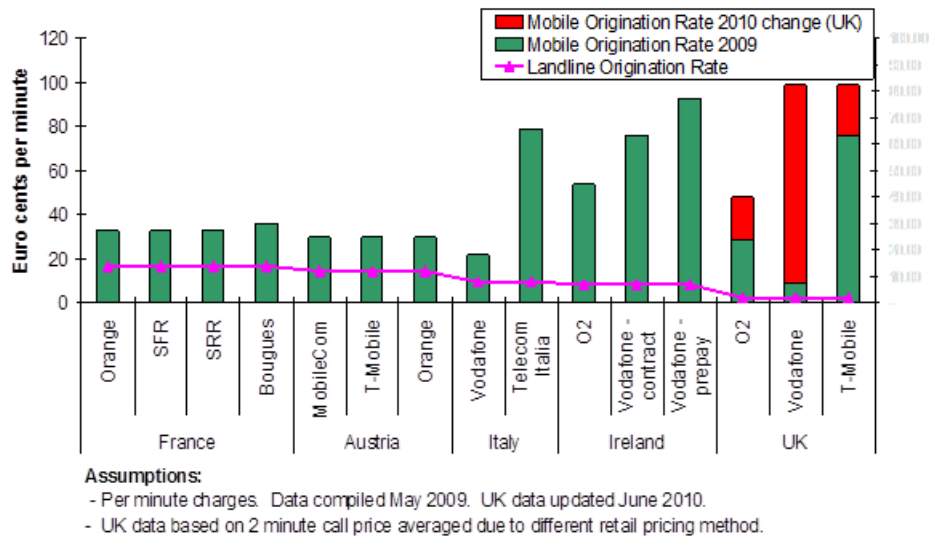


Figure 1: Comparison by country of origination charges and retail mark-ups applied to directory services in the EU

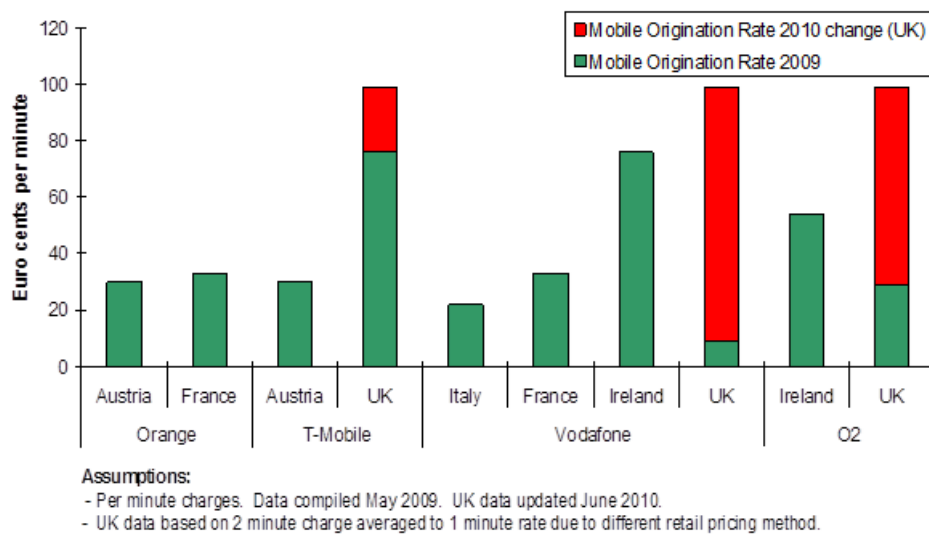


Figure 2: Comparison by operator of origination charges and retail mark-ups applied to directory services in the EU

THE NEED TO DEFINE A SPECIFIC RELEVANT MARKET

The European Commission's Relevant Markets Recommendation previously defined a Market 15 for wholesale mobile access and origination necessary for the provision of competitive standard mobile cluster services (voice calls and SMS). It overlooked other types of access which are necessary for the provision of distinct retail services, such as VAS and directory services. In other terms, **under the old Relevant Markets Recommendation, mobile origination was interpreted as a tool to enable mobile virtual network operators (MVNOs) access by one operator to one network, and not as a tool to enable access by all service providers to every mobile network.**



Indeed, the wholesale access product for mobile services purchased by MVNOs demonstrates different competitive characteristics to the **wholesale access product purchased by VAS and directory service providers** and should **justify a different analysis and different *ex ante* remedies**:

1) The wholesale product required by VAS/directory service providers and MVNOs is different.

MVNOs require full access to one mobile network in order to be able to sell and provide standard mobile services under their own brand. The mobile network operator's (MNO) network is integrated into the MVNO's own service offering.

In comparison, VAS and directory service providers purchase call origination from MNOs, consisting in the routing of national and roaming calls to the systems of a VAS or directory service provider together with the invoicing of the calls by the MNO. The MNO's network remains a third party access platform.

2) VAS and directory service providers need access to all MNO's network, MVNOs only to one MNO's network.

MVNOs can negotiate with all MNOs to obtain one network to operate as its 'host' network. MVNOs can sell their service to any member of the public.

In comparison, VAS and directory service providers can only sell their services to customers of MNOs on whose network their number has been opened. VAS and directory service providers need to access all MNOs because:

- (a) A substantial portion of VAS and directory service calls are made from mobile phones; and,
- (b) VAS and directory services are a high volume business requiring access to the maximum number of users possible (as recognised by Analysys in its Report to the European Commission on the liberalisation of the directory services market in 2002)².

3) Users will not change mobile network operator based on their VAS and directory services usage and hence MNOs are conferred a monopoly power.

Whereas consumers will compare standard mobile communications offers of M(V)NOs in choosing their mobile services provider, purchases of the ancillary or tied VAS and directory

² See Analysys. (2002). *Final Report for the European Commission. Regulatory Framework and Market Developments Concerning Directory Services in EU and EEA Member States* [Analysys Final Report No. 02-226]. Retrieved at, http://ec.europa.eu/information_society/topics/telecoms/regulatory/studies/documents/regfwkandmktdev_final_report_public_version.pdf.



services will be made afterwards and are of a subsidiary importance (indeed, our data shows that directory calls represent on average less than 0.1% of mobile usage). Consumers are, therefore, highly unlikely to take VAS and directory service prices into consideration when they choose or change network operator.

Consequently, the consumers' choice of network operator confers on the chosen M(V)NO a form of monopoly power, as in the case of mobile termination with regard to the conditions it imposes on third party service providers (in The Number's case, directory services) who wish to provide services to their customers. This situation bears close comparison with roaming (VAS and directory services are ancillary services which do not affect the consumer's choice of network operator) with a **non-negligible** difference: with roaming the **detriment** was only **experienced by** consumers, in this scenario **both consumers, VAS and directory service providers are subjected to abusive prices.**

THE THREE CRITERIA TEST

The Number considers that defining a market for wholesale mobile call origination to VAS (including directory services) meets the European Commission's three criteria test, namely:

1) Barriers to entry

It is well-known and recognized that radio spectrum limitations impede entry into the mobile market as a fully-fledged MNO. Furthermore, **it makes no commercial sense for a VAS or directory service provider**, who is not in the business of building fixed or mobile networks, **to establish its own alternative access network** for its users, or to enter into an MVNO agreement which would only make its services accessible from a single network.

2) No tendency towards effective competition

There is clear evidence throughout the European Union (see illustrations above) that MNOs apply non-competitive conditions for wholesale call origination to VAS and directory services. The Body of European Regulators for Electronic Communications (BEREC) also observed these excessive retail mark-ups in its Report on Special Rate Services.³ This may be due to a lack of inter-network competition, but the result is the same: **abusive access conditions.**

Moreover, the BEREC Report quotes the SEO Economic Research Report commissioned by the Dutch national telecommunications regulator OPTA which states that "*each originating fixed*

³ See BEREC. (2012). *BEREC Report on Special Rate Services* [BoR (12) 55]. p. 8 (paragraph 24), 32 (figure 5). Retrieved at, http://berec.europa.eu/eng/document_register/subject_berec/reports/338-berec-report-on-special-rate-services.



and mobile network has a monopoly on the market for call origination from the associated subscribers".⁴

3) Lack of efficiency of competition law

Market power abuses have been prevalent for many years, and have not been dealt with by competition law. **Wholesale call origination conditions need to be regulated *ex ante***, in order to:

- (a) avoid various types of anti-competitive behaviour by MNOs, whether they themselves have activities in the downstream VAS or directory service market or not;
- (b) provide legal certainty for VAS and directory service providers when setting the terms for their retail products across dozens of different mobile networks throughout the European Union; and,
- (c) enable the establishment of non-abusive wholesale charges (National Competition Authorities usually do not intervene on pricing).

In France, these limitations of competition law were recognized by the Competition Court (Conseil de la Concurrence) itself, in an Opinion issued on 31 March 2008,⁵ in which **the Court** examined the functioning of the VAS sector and identified the existing dysfunctions in the mobile origination practices of MNOs in relation to access to VAS, including directory services, and **stated that *ex ante* intervention was required**. In fact, the French Competition Court stated in its conclusions that:⁶

"82. L'ensemble des constatations sur le fonctionnement des marchés liés aux SVA soulignent les faibles incitations reçues par les différents acteurs en faveur d'une compétition par les prix au profit du consommateur. Néanmoins, l'intervention directe du législateur sur les niveaux de ces prix devrait rester l'exception, l'animation de la compétition sur les marchés de détail devant de façon prioritaire être recherchée par un fonctionnement plus concurrentiel des marchés de gros.

83. En particulier, la vente en gros de prestations d'appel aux fournisseurs de services, telle qu'elle est déjà pratiquée par les opérateurs fixes, permet au consommateur de bénéficier d'un accroissement de la pression concurrentielle sur la composante

⁴ See BEREC. (2012). *Ibid* [BoR (12) 55]. p. 10, and SEO Economic Research. (2011). *Buying power for the purchase of call Origination to 0800 numbers*. p. 22. Retrieved at, http://berec.europa.eu/files/news/berec_seo.pdf.

⁵ See Conseil de la concurrence. (2008, March 31). *Avis n° 08-A-03 du 31 mars 2008 relatif au fonctionnement des services téléphoniques à valeur ajoutée*. Retrieved at, <http://www.autoritedelaconcurrence.fr/pdf/avis/08a03.pdf>.

⁶ See Conseil de la concurrence. (2008, March 31). *Ibid*. p. 21.



communication de certains SVA, pour lesquels il existe des services concurrents. Cependant, l'apparition d'une offre de gros de départ d'appel sur les réseaux mobiles à destination des SVA ne peut être attendue du seul fonctionnement concurrentiel des marchés, du fait de la position monopolistique occupée par les opérateurs de réseaux sur les marchés concernés. Cette situation justifierait la mise en place d'obligations ex ante." – emphasis added

The fact that a European Competition Council itself acknowledges the need for *ex ante* rules in this matter is a striking illustration of the failure of competition law to address the issues at stake.

ITALY: AGCOM'S ATTEMPT TO DEFINE MARKET 15BIS

Prior to this Opinion of the French Competition Council the European Commission issued in February 2007 a 'serious doubts' letter⁷ concerning **AGCOM's**, the Italian national telecommunications regulator, **proposal to define a specific market** (Market 15bis) for wholesale mobile call origination services to non-geographic numbers in Italy. The **European Commission's objections** centered on the perceived lack of evidence on market definition, market failure and significant market power (SMP).

The European Commission sought to rely on a mixture of considerations, some specific to the Italian case (which we will not examine in our response as they are not relevant). In respect of the non-specific considerations, the European Commission's main points **seem to rely on one-sided a priori arguments**, such as the observation that all MNOs appeared to have an incentive to provide access to a provider of VAS and that competition was allegedly healthy at the retail level since there had been directory service market entry since liberalization.

We consider this analysis misses certain nuances at various levels:

- (a) **The analysis did not refer to the MNOs' countervailing incentive to exploit their market power in the provision of the wholesale origination services** for information services (especially when it can do so in a non-transparent way and with the service providers 'taking the blame' for the high charge) by turning VAS into 'cash cows' and in certain cases giving preferential treatment to their own services or preferred partners;

⁷ See European Commission. (2007, February 7). Case IT/2007/0575: Mobile call origination services towards nongeographic numbers in Italy. Opening of Phase II investigation pursuant to Article 7(4) of the Framework Directive [SG-Greffe (2007) D/200602]. Retrieved at, [http://circa.europa.eu/Public/irc/info/ecctf/library?l=/commissionsdecisions/commissions_decisions/2006_575-
_phpdf/ EN_1.0 &a=d](http://circa.europa.eu/Public/irc/info/ecctf/library?l=/commissionsdecisions/commissions_decisions/2006_575-
_phpdf/ EN_1.0 &a=d).



- (b) **The analysis did not consider the ineffectiveness of competition at the retail level** (high prices, lack of price transparency, seriously reduced demand, etc.); and,
- (c) **The analysis simply did not examine the empirical evidence of abusive charges**, evidence which has since been highlighted at length by the BEREC in its Report on Special Rate Services.⁸

The Number considers that the European Commission has not properly evaluated the specificities of the market for mobile origination to VAS and directory services.

In looking at the bargaining power of VAS and directory service providers versus mobile network operators, the European Commission looked more generally at all service providers. Obviously, the situation of premium content providers when they negotiate with an MNO cannot be compared to that of a directory service or small VAS providers. In the case of a directory service provider, the situation is often rendered more complex as it is very often competing with the directory services provided either directly by a mobile network operator itself or indirectly by its fixed line parent. In other terms, MNOs would prefer their own directory services to be the only one left standing and in the process of killing the competitors make margins of 50% and more. In terms of wholesale access to mobile networks, The Number's experience in five EU Member States and Switzerland shows that directory service providers, to survive, require that at the very least the subscribers of the two main mobile operators in every Member State (which usually represent about 80% of the market) use their service.

These arguments do not seem to have been properly addressed by the European Commission in its examination of AGCOM's proposal.

Moreover, the main objection by the European Commission seemed to relate to its assessment of the proposed remedies by AGCOM. This in turn seems to have led to a general veto (because the Commission does not have the power only to veto the remedies) due to the fact that the Italian NRA was proposing to impose cost-orientation, and not just the prohibition of excessive prices (as has been done by ARCEP, the French national telecommunications regulator, with the acceptance of the relevant EU authorities) or a mix of remedies as the BEREC proposed in its Report on Special Rate Services.⁹

⁸ See BEREC. (2012). *Ibid* [BoR (12) 55].

⁹ See BEREC. (2012). *Ibid* [BoR (12) 55].



FRANCE: ARCEP'S USE OF ARTICLE 5 OF THE ACCESS DIRECTIVE

In France, ARCEP has imposed an *ex ante* obligation to charge reasonable wholesale mobile origination charges to VAS (including directory services), based on Article 5 of the Access Directive (2002/19/EC, as amended by the Citizens Rights Directive (2009/140/EC)), which establishes the requirement of NRAs to:

“encourage and where appropriate ensure, in accordance with the provisions of this Directive, adequate access and interconnection, and interoperability of services, exercising their responsibility in a way that promotes efficiency, sustainable competition, and gives the maximum benefit to end-users.

In particular, without prejudice to measures that may be taken regarding undertakings with significant market power in accordance with Article 8, national regulatory authorities shall be able to impose:

(a) to the extent that is necessary to ensure end-to-end connectivity, obligations on undertakings that control access to end-users, including in justified cases the obligation to interconnect their networks where this is not already the case;”

In compliance with the procedure provided under Article 5, ARCEP notified its Decision¹⁰ to the European Commission. It should be noted that the European Commission issued an observation on 10 April 2007 which indicated that *“the findings of ARCEP according to which certain service providers have faced difficulties while entering into interconnection agreements with originating operators and according to which undue delays, or even **refusals to grant access** occurred, seem to presage the existence of problems concerning the end-to-end connectivity”* (emphasis added).

This use of Article 5 of the Access Directive to impose reasonable tariffs for wholesale mobile call origination was confirmed by the changes introduced in the Review of the Electronic Communications Framework to Article 25 paragraph 3 of the Citizens' Rights Directive (2009/136/EC) amending the Universal Service Directive (2002/22/EC), which stipulates that:

“Member States shall ensure that all end-users provided with a publicly available telephone service can access directory enquiry services. National regulatory authorities shall be able to impose obligations and conditions on undertakings that control access of

¹⁰ See ARCEP. (2007, April 16). *Décision n° 2007-0213 de l'Autorité de régulation des communications électroniques et des postes en date du 16 avril 2007 portant sur les obligations imposées aux opérateurs qui contrôlent l'accès à l'utilisateur final pour l'acheminement des communications à destination des services à valeur ajoutée.* Available at, http://www.arcep.fr/uploads/tx_gsavis/07-0213.pdf.



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end-users for the provision of directory enquiry services in accordance with the provisions of Article 5 of Directive 2002/19/EC (Access Directive). Such obligations and conditions shall be objective, equitable, non-discriminatory and transparent.”

This Article must be read in light of Recital 38 of the Directive, which adds that:

“(…) the provision of network access under reasonable and transparent conditions, should be put in place in order to ensure that end-users benefit fully from competition, with the ultimate aim of enabling the removal of retail regulation (…)”

Aside from the **legitimation** this gives **to an ex ante approach that ensures that wholesale access fees enabling directory services (and VAS generally) are objective, equitable, non-discriminatory, transparent and reasonable**, it also confirms that Article 5 of the Access Directive is one of the tools NRAs can use to achieve this result and that the issue must be addressed at wholesale level. However, as stated by the BEREC, **a mix of retail and wholesale interventions is the only option to create a viable solution to the problems faced by service providers in the SRS/VAS market**, and Article 5 can therefore only bring part of the solution. Moreover, recent developments in the French market have evidenced that the use of Article 5 of the Access Directive alone is not full-proof and does not solve structural market dysfunctions.

Question 14: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of the relevant markets(s) you propose to add on consumers (users), competition, and development of the internal market. Please provide separate reasoning on the impacts for each market you propose to add to the list.

The Number considers that the market dysfunctions (see question 13) arising from the strong position of (mobile) network operators versus directory service providers have consequences on 1) consumers, 2) service providers and 3) originating operators themselves.

The Number believes that the Relevant Markets Recommendation, both in how it is revised and how its interpretation is encouraged by the European Commission, could certainly play a role in tackling these dysfunctions.



Consequence n°1: Where directory service providers are not allowed to set the retail charge paid by consumers (e.g. the UK), the market is not working for consumers.

In countries such as the UK, The Number is concerned regarding 1) the high retail charges, 2) the lack of pricing transparency and 3) complaints and consumer confusion. The Body of European Regulators for Electronic Communications (BEREC) shares these concerns, as it remarks in its Report on Special Rate Services (hereafter 'SRS Report') that:¹¹

*"An effect of high OTRs [originating total revenue] will be high prices of special rate services relative to standard services. After all, a high OTR is a cost for the SP [service provider]. The SP will – at least partly – pass-through this higher cost and cause an upward pricing pressure on the retail price of SRS [special rate services]. **This is harmful for consumers who will pay more and as a result also call less.**" –emphasis added*

It is reasonable for consumers to expect that when dialling to any directory service the call will work on any originating network and that they will pay a similar amount for it, regardless of which network they are dialling from. This is not to say that there should be an expectation that prices must all be the same and consumers do expect mobile calls to be somewhat more expensive than fixed line. **The truth is that there is no consistency in pricing and no clarity on charge levels and relationships between them and what is being promoted by service providers. The result is consumer confusion and resentment.**

Consumers typically assume that it is the directory service provider that sets the retail price, when in reality it is the mobile network operator (MNO) that sets it. Price differences arise from the application of mark ups by originating operators over which The Number has no control and from which it gains no benefit, as it receives exactly the same amount of money for a call, whether it is made from a fixed or a mobile network. **The result is over-charged consumers, damage to The Number's reputation and continuing discouragement of consumers from using directory services.**

Complaints show that customers very often do not understand the nature of these pricing issues and that they are liable to be misinformed about the cause of excessive charging if they ask their network operator for an explanation.

Complaints received by The Number that relate to excessive charging for calls made by customers on mobile phones account for a significant proportion of total complaints. These instances also account for a considerable proportion of refunds made for complaints, so The Number could be refunding an

¹¹ See BEREC. (2012). *Ibid* [BoR (12) 55]. p. 11 (Para. 38).



amount far greater than their intended charge per call (and indeed far greater than the revenue received from the customer for that call).

In addition, particular consideration must be given to those customers who do not have access to broadband internet and who do not have a fixed line. For these consumers, the only alternative to directory services when looking for a number is a print directory (or possibly mobile Internet), which are often not available (particularly to those without a fixed line) and are less up to date than the databases of the various directory service providers. These groups are least able to afford the higher charges that arise when calling a directory service provider from a mobile network.

It is also important to note that the form of harm outlined above is not 'cured' if the excess profits made by mobile operators on directory service calls are partially channelled back to mobile customers, as a result of a waterbed effect. Either non-transparent prices lead to poor purchasing decisions or a vulnerable group of customers may be disproportionately targeted.

Consequence n°2: The market is not working for service providers.

The Number is concerned about the effects of the strong market position of originating operators vis-à-vis service providers, as this leads to 1) the reduction of demand and 2) the loss of service innovation and diversity.

The BEREC concluded in its SRS Report that “high prices and the often low transparency will lead to a reduction of demand for special rate services” and that “some SPs services may disappear because of low demand or not get developed at all (less innovation incentive for SPs)”,¹² based on its findings that:¹³

“OOs [originating operators] typically offer SRS [special rate services] themselves. In this situation, the OO would have incentives for charging high rates for the calls to competitors' services. This would damage the competing SP [service provider] and benefit the OO's own SP affiliate. One example could be directory inquiry services; some OOs offer this information service directly through their own numbers. In the latter case they have an incentive to set higher rates for calls from their network to directory inquiry services provided by other operators or SPs. Another example is that some OOs block calls to competitors' services.”

¹² See BEREC. (2012). *Ibid* [BoR (12) 55]. p. 12 (Para. 40).

¹³ See BEREC. (2012). *Ibid* [BoR (12) 55]. p. 10 (Para. 32).



Therefore, **if the European Commission were not to intervene this would obviously have adverse impacts on competition**, thereby stifling choice, as certain services stop existing due to the current market dysfunctions, and innovation to the detriment of consumers. Such innovation should allow to change the value proposition to deliver added benefit from calls and also reduce prices.

The distortion of competition damages incentives for third party providers to invest in their business. First, the returns to any investment will be lower if you are not able to be price competitive with your close competitors. Second, if you do introduce a successful innovation, the MNOs have the option to mimic that innovation whilst pricing the successful innovator out of the market. The vertically integrated nature of an originating operator providing its own directory service creates a structural advantage over any standalone directory service provider trying to innovate. The result is that directory service innovation and investment is severely disincentivised, encouraging the perpetuation of a utility based service and threatening the very existence of standalone directory service providers.

This has already adversely impacted a number of potential services that The Number wished to offer. For example, in the United Kingdom (UK) The Number spent considerable sums on its 'restaurant service', creating the largest restaurant database in the UK, including searchable menus for more than thirty thousand restaurants, enabling customers to choose restaurants and make reservations. However, the service increased call duration considerably and was launched at the time O2 moved pricing to £1.50/minute. The Number did not think it reasonable to expect consumers to pay high mobile charges for longer calls to such a service (and O2 was the largest customer base on any network in the UK). The result was that The Number had no option but to withdraw the service, despite the considerable effort and investment put into its development. The total wasted investment by The Number in developing this service was £4.5m.

Consequence n°3: The market is not working for originating operators.

The Number considers that the negative effects resulting from the strong market position of originating operator create an inefficient outcome, also for the originating operators themselves. The BEREC shares the same concern, as it identifies in its SRS Report that:¹⁴

"(...) individual price setting (...) may not always be profitable for the OOs [originating operators] themselves. Where the OOs individually have incentives to raise the OTR [originating total revenue], the increased prices and potentially reduced level of

¹⁴ See BEREC. (2012). *Ibid* [BoR (12) 55]. p. 12 (Para. 43).



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transparency is not an outcome that seems to be profitable for all OOs as a collective set, because it leads to lower usage of SRS [special rate services]."

From a consumer relation perspective, the 'bundled' nature of the retail charges which originating operators levy mean that they can have difficulty in explaining to consumers how any individual cost might have been incurred. Moreover, originating operators will receive complaints about high call charges similar to those of The Number. Again, if there was a clear and standardised industry-wide regime in place it would generate tangible benefits and ease of understanding for originating operators, directory service providers and consumers alike.

From a pan-European perspective, The Number considers that it is interesting to note that of all the European markets in which it operates, it is only the UK and Ireland which employ the same directory service charging regime and it is only the UK and Ireland which have witnessed the same level of increased retail charges, the same level of originating operators margins being applied, the same level of threats between networks and service providers and the same bill-shock issues for consumers.

So, in some instances, originating operators may have increased their retail charges for all directory services (except notably their own) in order to prevent calls to directory services of some of our competitors becoming loss making.

For all of these reasons, it seems clear that **an unbundled charging structure, involving a simple, uniform access charge will benefit originating operators as much as anyone else.** It will require them only to understand and communicate their own access charge, leaving any other questions to the VAS and directory service provider. It will also mean that they can maintain a steady de-risked access charge, rather than feeling that they have to alter it, in response to price changes from some, but not all, directory service providers. This could be part of the remedies imposed as a consequence of the designation of a relevant market.