

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

Voxbone, January 2013

Voxbone welcomes the opportunity to comment on the European Commission's Public Consultation on the Revision of the Recommendation on Relevant Markets (hereinafter referred to as "Consultation").

Question 1: What are the technological developments in the electronic communications sector at the EU level as of 2007 that have an influence on how the markets should be defined in the revised Recommendation from an ex ante perspective?

The electronic communications sector in the EU has tremendously evolved since 2007 and is marked by three major developments: the demand of always faster data connections from all devices (either fixed or mobile) by consumers; the switch by those consumers from fixed telephony to mobile telephony; and the development of an alternative offer to mobile and fixed telephony, complementary to data connection: VoIP services, which offer today high definition voice calls.

Two decades only after the launch of the first digital cellular networks in Europe, the European mobile markets have been marked by an extensive growth, combined with a decline of the European fixed markets. European mobile markets are now mature markets typically characterized by high barriers to entry and an oligopolistic market structure for basically a national market. These market characteristics lead to high service rates, in particular for transnational services such as international roaming. Attempts to increase the level of competition by fostering the development of MVNOs (Mobile Virtual Network Operators) have only been partially successful and in many markets, MVNO growth is now stagnating.

The use of "Over-the-top" (hereinafter referred to as "OTT") VoIP and telephone over Internet connections has been around for some time now. In Western Europe, the number of fixed VoIP line is estimated conservatively at around 35 million. Market demand increasingly originates from mobile users today, and players such as Viber, Google and Skype are getting traction with their VoIP applications for mobile devices and smart phones.

With the increased penetration of mobile data connectivity, innovative OTT services have now become a realistic additional source of increased competition for MNOs (Mobile Network Operators). They are a realistic source, but it is not a fact yet: providers of innovative services need access to mobile numbering resources in order to enable them to offer services that can truly and effectively compete with established MNOs.

According to a study conducted by Infonetics released in June 2011, the mobile broadband subscribers surpassed the wireline broadband subscribers in 2010 (558 million vs. 500 million)¹. Hence, analysts expect that the growth of VoIP over the next 3-4 years will mainly be driven by the broad adoption of mobile VoIP services and will result in an active user base of approximately 30

¹ <http://www.marketwire.com/press-release/infonetics-research-mobile-broadband-subscribers-overtake-fixed-broadband-1523962.htm>.

million users in Western Europe by the end of 2015.

Juniper research predicts that mobile VoIP users will exceed 100 million by the end of 2012 and InStat projects 288 million subscribers by 2013.² The rise of VoIP is to the benefit of the end-user as it will drive down the price of mobile voice communications, as it did for fixed voice communications.

Mobile VoIP differs from circuit switched mobile telephony in that a dedicated end-to-end connection between two carriers does not need to be established. With mobile VoIP there is no dedicated end-to-end link required for the duration of the call, thereby resulting in a far cheaper mode of voice carriage for the end user.

Combined with this evolution, another important evolution has to be underlined: the development of SMS, or text messaging. Today, SMS represents one of the most important communication media of the mobile market. According to a recent study of Portfolio Research, the worldwide mobile messaging market in 2011 was worth USD 202 billion³. SMS has established itself as the simplest and easiest means of personalised one-to-one communication - and has long been the most popular messaging service and has helped MNOs significantly offset the effects of falling voice revenue.

Even though the usage of SMS is being challenged by 'free' OTT messaging services, SMS is still king in terms of revenues generated by worldwide messaging as it yielded the highest revenue for operators in 2011. SMS still rules the mobile messaging market in both traffic and revenue terms. It made the highest contribution to worldwide mobile messaging revenue in 2011 with a 63.5 percent share.

Not only person-to-person private communications are explaining this exponential growth, push SMS applications for mobile marketing⁴ are particularly triggering the growth of SMS traffic. Other applications, with increased interaction by the user through SMS, also participate to this growth: Marketing campaign tracking and analysis by which SMS interaction is a way to track success of non-online advertising; Mobile couponing applications through which consumers receives a SMS on their smartphone that can be used as a mobile coupon; Tracking & tracing application of a courier package whereby the combination between originating and destination phone number identify the right package; Mobile authentication whereby the combination between originating and destination phone number as a unique key for authentication to a certain application; Low cost interactive apps based on SMS interaction for healthcare or public sector services.

OTT service providers may play a significant role in these evolutions, taken into account the high demand of the market for such applications, but only if some regulatory and market adaptations occur. If not, it would result in a missed opportunity. Therefore, the above should be taken into account when defining the markets in the revised Recommendation.

² https://talkfree.com/_datasheets/mobileGrowth.pdf, page 18.

³ <http://www.portioresearch.com/en/reports/current-portfolio/mobile-messaging-futures-2012-2016.aspx>.

⁴ Mobile marketing is a set of practices that enables organizations to communicate and engage with their audience in an interactive and relevant manner through any mobile device or network.

Question 2: What are the changes in structure and functioning of the relevant markets (e.g. supply and demand side developments, bundles, convergence, geographic scope), which should be reflected in the revised Recommendation from an ex ante perspective?

Changes mentioned under answer to question 1 regarding the growth of mobile VoIP and SMS in the electronic communications sector are to be taken into account, and the collative demand coming from the consumers.

Question 3: Can you identify any market bottlenecks which in your view cannot be addressed by ex ante regulation via a revision of the Recommendation alone? How in your view can such market bottlenecks be addressed?

Based on the changes that are taking place on the mobile VoIP and SMS market, Voxbone identifies two bottlenecks that cannot be addressed by an ex ante regulation only. Denial of direct allocation of mobile numbering resources by NRAs to electronic communication service providers based on requirements of spectrum or SIM cards, which are not necessary for the provision of OTT mobile services applications, represents a barrier to entry that relies on old technical reality.

In principle, and as the principle is embedded in the new Telecom package⁵, all electronic communication services should have access to an allocation of mobile numbers. This is particularly important for OTT mobile service providers that are able to provide innovative services with mobile numbers, but for which the entry of the market is denied because of excessive and out-of-date requirements.

In the United States today, every service provider may be allocated with mobile numbers without restrictions related to SIM cards, spectrum or agreement with MNO.

Unfortunately contrary to the US, a number of EU Member States are reserving the allocation of mobile numbers to operators controlling mobile spectrum (MNOs) and/or to operators or service providers offering mobile services on the basis of a contractual arrangement with an MNO, such as MVNOs, and/or to providers providing services based on a SIM card. Such approach precludes providers offering OTT mobile services from effectively competing with the MNOs. Argument put forward by these EU Member States for imposing such requirements is generally relying on their position that VoIP services should be provided based on fixed numbering resources, which may be allocated to such services.

While this statement is correct in most countries, it denies overall the development and existence of

⁵ **Article 10 of the Framework Directive** provides the following: “1. Member States shall ensure that adequate numbers and numbering ranges are provided for all publicly available electronic communications services. National regulatory authorities shall establish objective, transparent and non-discriminatory procedures for granting rights of use for national numbering resources. 2. National regulatory authorities shall ensure that national numbering plans and procedures are applied in a manner that gives equal treatment to all providers of publicly available electronic communications services.”; **Article 5(2) of the Authorization Directive** provides that : “(...) the rights of use for radio frequencies and numbers shall be granted through open, objective, transparent, non-discriminatory and proportionate procedures.”; **Article 6(1) of the Authorization Directive** provides that : “(...) rights of use for numbers may be subject only to the conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent (...)” The relevant conditions listed in **section C of the Annex** are the following : “1.Designation of service for which the number shall be used, including any requirements linked to the provision of that service and, for the avoidance of doubt, tariff principles and maximum prices that can apply in the specific number range for the purposes of ensuring consumer protection in accordance with Article 8(4)(b) of Directive 2002/21/EC (Framework Directive).’2. Effective and efficient use of numbers in conformity with Directive 2002/21/EC (Framework Directive). 3. Number portability requirements in conformity with Directive 2002/22/EC (Universal Service Directive). (...)”

mobile VoIP services on the European markets. Restricting OTT VoIP providers to allocation of fixed (nomadic) numbering resources, impede them to access to the mobile market. One of the key component to allow mobile users from the “traditional” mobile networks to communicate with mobile IP users is missing today: a telephone number. The use of mobile numbers is essential to allow mobile VoIP service providers to offer PSTN connectivity and thus effectively enter the mobile market.

Furthermore, fixed numbers often do not support the routing of SMS messages. Only a limited percentage of the fixed telephone devices are capable of sending and receiving text messages. In addition to that, most people do not associate fixed phone numbers with texting, hence the success of SMS using fixed numbers would be very limited.

A second alternative to mobile numbers would be short numbers. To date, they are the only SIM-less mobile phone numbers available in most countries. Short numbers, nevertheless, have various limitations by nature. Firstly, the access to short numbers from international networks is fairly limited to non-existing, whilst an increasing number of users want to access services and information from abroad. Moreover, such types of numbers are network dependent, meaning that they only work on the network of the MNO to which the short number is allocated. Secondly, access is often too expensive for applications requiring the service to be free or affordable, such as advertising campaigns, business applications or public services. Thirdly, short numbers are rare and their use is often limited in time. Some applications provided based on OTT mobile services require high volumes of numbers (advertising) or need phone numbers to be assigned exclusively for a long term. And lastly, in most cases, short numbers only support SMS and they do not allow voice. All these reasons make short numbers not a viable option for OTT mobile service providers.

Mobile phone numbers, conversely, ensure mobile VoIP connectivity with the PSTN and overcome the inconveniences of fixed numbers and short numbers as described above. Mobile numbers support SMS texting, are not network dependent (moreover, they can be ported from one network provider to another) and, by definition, access from abroad poses no problems. In addition, texting to these numbers cost the same as texting to any other number.

Therefore, and in order to allow more competition and the realization of a true pan-European mobile market, it is imperative that Member States allow SIM-less OTT mobile service providers without spectrum or contractual arrangements with MNOs to be allocated with mobile numbering resources.

Question 9: On the basis of the three criteria test carried out at EU level, should any of the markets listed in the Recommendation be removed from the list in the revised Recommendation? If yes, please provide comprehensive reasoning thereof.

No, no market should be removed from the list in the revised Recommendation.

Question 11: On the basis of the three criteria test carried out at EU level, should any of the markets regulated by NRAs on the basis of national circumstances (such as SMS termination or broadcasting transmission services) be added to the list in the revised Recommendation from an ex ante perspective? If yes, please provide comprehensive reasoning thereof.

Yes, SMS termination market should be defined as a relevant market at European level. Non-regulation of SMS termination at European level leads to serious competition problems.

In the few countries where OTT service providers are allocated with mobile numbering resources, MNOs are tending to refuse interconnection and access for those types of electronic communications providers as no obligations are imposed over them and they face those new entrants as competitors. Therefore, in order to solve those competition problems, a new relevant market should be identified: SMS termination market.

Member States should thus impose to the operators being in a situation of significant market power for the termination of SMS on their own network to allow all reasonable access and interconnection request relating to SMS interconnection offers; to ensure transparent and non-discriminatory access and interconnection service relating to SMS interconnection offers; and to control the tariffs for the access and interconnection services relating to SMS interconnection offers in the form of costs orientation.

Indeed, termination market for SMS should be defined as a relevant market because it is affected by entry barriers for new entrants. On the one hand, the denial of allocation of mobile numbers to SIM less mobile operators without spectrum or contractual arrangements with MNO does constitute impossibility for OTT mobile providers to enter the mobile market. A second barrier is that new entrant faces impossibility to ensure connectivity to their mobile numbers in terms of SMS as MNOs have no obligation to allow interconnection. Such type of services and providers are perceived as competition (as already the case on the voice market), thus time is not of the essence for an evolution towards interconnection. Furthermore, competition law alone cannot adequately address this problem.

Question 12: If the answer to the previous question is yes, please specify the qualitative and quantitative impact of adding those market(s) 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.

Yes, SMS termination market should be defined as a relevant market at European level.

First of all, in defining the SMS termination market as a relevant market, competition on the SMS market would be enhanced, as MNOs would not have the possibility to deny access and interconnection for SMS purposes to competitors.

Secondly, consumers would have the possibility to enjoy full mobile OTT VoIP services, which would reduce their communication bills, enjoying SMS and voice services over a data connection.

Furthermore, a combination of access to mobile numbers by mobile OTT VoIP providers and a regulated SMS termination market would alone bring more innovation in the European mobile sector than any other measure that could be contemplated. It would be a possibility for the EU to erase the gap in mobile innovation with the US, and allow the EU to be back at the forefront of mobile innovation.

Lastly, in order to create a real internal market, relevant market should be defined as European level and as the examples of Denmark, France, Poland and Gibraltar prove the necessity, SMS termination market needs to be regulated.

About Voxbone

Voxbone is a service provider offering VoIP services through local, national and toll free phone numbers from 50 countries to businesses and communication service providers from around the globe. Amongst its 700 customers, Voxbone serves a large number of global Internet telephony service providers, such as Skype, Rebtel and Tru. These service providers make use of phone numbers in many countries in order to make their VoIP services locally reachable from traditional fixed and mobile telephony networks (or other VoIP networks). Instead of dealing with local regulators and network operators in every single country, they choose to work with a global service provider such as Voxbone for simplicity and efficiency reasons (“one stop shop” model).

Contact

Should you wish to contact Voxbone regarding this document, you may contact Voxbone’s legal and regulatory affairs by email: regulatory@voxbone.com or by phone: +32 2 808 00 37.