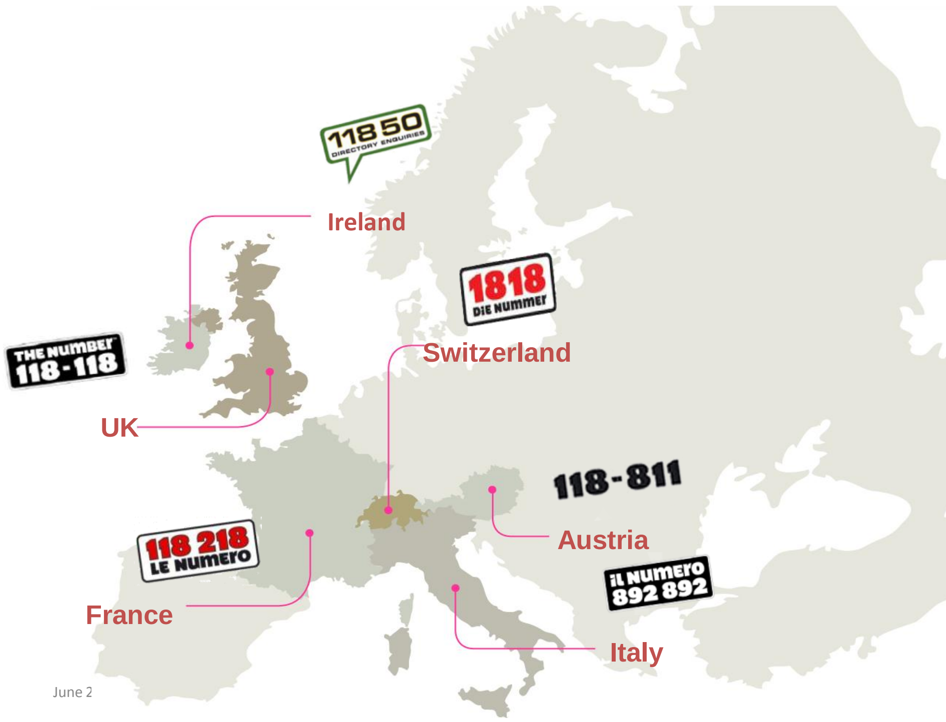
Response to the European Commission consultation:

Draft Recommendation on Regulated Access to Next Generation Access Networks (NGA)

THE NUMBER

Introduction to The Number

The Number is the largest provider of directory enquiries services in Europe with operations in 5 EU Member States and Switzerland.



1. PRELIMINARY REMARKS

The Number welcomes the opportunity to comment on the European Commission Consultation on the Draft Recommendation on Regulated Access to Next Generation Access Networks (hereafter "the Recommendation").

As a directory enquiries provider, the Number has the status of an Electronic Communications Service Provider, has its own infrastructure and interconnects with access operators (either physically or logically). One of the main drivers of its costs are the origination tariffs due to the access operators that connect their customers to the directory services of The Number, mobile origination costs being especially high.

Aside from its personal contribution to this consultation, The Number, as a member of ECTA, would like to stress that it fully endorses the position taken by this association regarding the present consultation. The purpose of this contribution is therefore not to specifically re-iterate every argument developed in the ECTA position paper but to focus on The Number's specific areas of concern to further assist the European Commission in this matter.

The Number would however briefly like to outline that it specifically shares ECTA's concerns as they relate to:

- The use in some parts of the Recommendation of language that could be interpreted by NRAs as implying that duopolies or oligopolies are an acceptable outcome of the switch to NGAs
- The emphasis given to the risks taken by the operators investing in NGA seems to indicate that the electronic communications sector has some kind of specific set of circumstances whereby upgrading one's infrastructure and adapting to demand is unusually risky and should be rewarded, whilst sweating out obsolete assets that were largely funded by taxpayers should be seen as the norm. Incumbents are facing heavy investments because they have, to a large extent, not invested enough in the past. The switch from copper to NGA will require investment but entails marginal risks when incumbents (as is the case in most if not all Member States) continue to have a predominant market share and control over the last mile bottleneck.

2. SPECIFIC COMMENTS

This Recommendation arrives at a crucial time and will play a critical role in the interpretation given by market players, regulators and courts of the rules that will apply to the migration to and setting up of next generation infrastructure.

As stated by J.K. Galbraith in "The Great Crash": "*One of the oldest puzzles of politics is who is to regulate the regulators. But an equally baffling problem,(...) is who is to make wise those who are required to have wisdom*". Through this Recommendation, this role is bestowed upon the Commission.

For a service provider such as The Number, the following issues must be addressed by the Commission through this Recommendation and any guidance given to policy-makers and regulators:

- **Open access** must be ensured as services and applications migrate from legacy PSTN to next generation infrastructure.
- **Fair competition** must be preserved and enhanced.
- **Seamless switching** must be ensured during the migration from legacy PSTN

- **Cost-orientated access**, and rebalancing mechanisms to guarantee that the levels of charging for voice services do not increase on either the legacy PSTN or next generation infrastructure
- A clear **prohibition for regulators to inflate the costs** of legacy PSTN/copper costs in order to fund next generation access.

A. NGA DISCRIMINATION PRACTICES: a reality that must be addressed today

The focus of these Guidelines should be on a continued access for consumers to an infrastructure that is open and ensures choice and the possibility for Communications Providers to deliver new services to consumers over it as innovation occurs. This approach is equally true for next generation infrastructure at core and access levels.

Considering the definition of NGA put forward in this Recommendation, i.e. as covering not only fibre but also scenarios where the infrastructure still relies on the copper networks but switches from PSTN to IP with a "significantly" higher bandwidth, it is crucial to understand that this Recommendation must be drafted in order to address situations already occurring today, and not only heavy fibre roll-out scenarios that will (or not) occur in a remote future.

Considering this, it is very important to ensure at the wholesale level competitors' ability to provide new services is not foreclosed and that independent service providers have **fair open access** to Next Generation Networks, with the ability to bill for services and set fair and consistent prices for all customers. Without this, competition in telecoms is threatened and consumers suffer through lack of service availability and increased prices.

The Number, as a directory service provider operating in 5 Member states, exists purely by virtue of its service to consumers. Our future, as well as the future of many independent service providers is, however, under threat.

This is illustrated currently in the UK, where the incumbent operator BT is using the move from one technology (voice over legacy PSTN) to another (managed VoIP/VOB) to restrict consumer choice and to restrict competition.

Consumers using BT's managed VoB service (BT Broadband Talk) are being denied the right to access services such as 118118 (the most called phone number in the UK) that are available via traditional PSTN calls on BT's network. BT has "*over two million registered consumer customers*"[1] for its VoIP-based services of this kind. Only 118500, BT's own Directory Enquiries

[1] BT Group - 2008 Annual report

(DQ) service is available for customers of BT Broadband Talk. BT does not accept that it has an obligation to enable third parties to provide Directory Enquiry services to customers of BT Broadband Talk – instead treating it as a product where wholesale access is to be negotiated on a purely 'commercial' basis.

After a year of negotiations, the lowest proposed charges to The Number for BT customers to be able to call 118118 from BT's managed VoB access services are over 15 times the level of charges today levied by BT for their customers to call 118118 from traditional landline services.[2]

This is an example of an incumbent's approach when it believes it is 'outside' regulation for wholesale and retail services. The commercial wholesale access pricing is prohibitive and competition between services such as DQ services is eliminated. **Regulators should pay close attention to the risks associated with deregulating the voice retail markets, as incumbents switch to an all-IP environment.** Regulatory rules on BT's traditional landline network have been clear and have delivered open, non-discriminatory access to service providers like The Number to offer their services to customers. BT charges a regulated, cost-orientated price for BT to bill their customers for 118118 calls made from traditional fixed lines. A similar situation must be replicated when incumbents leverage their market dominance into the IP environment, especially as access will remain an enduring bottleneck.

Achieving open access will **extend** consumer access to improved communications services and content. Failure to create this environment now will mean large operators stifle innovation and competition, and consumers will suffer.

Consumers want phone services that work and are affordable. They do not care about the technologies and regulations that underpin them. Policy and ensuing regulation must focus on how to enable reliable services to be available from phones of any kind, and require regulation that achieves that goal.

B. MIGRATION (Recitals 47, 48 and 49 and Articles 43 to 46): a critical phase that requires prior NRA intervention

Consumers today use electronic communications infrastructure for 3 main purposes: (1) voice (fixed or mobile); (2) SMS and (3) broadband.

Switching to next generation infrastructure should be, for consumers, beneficial for these three services because they either become better (e.g. higher bandwidth in broadband) or cheaper.

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[2] BT's best proposal to date involves paying all of the same charges that are levied today by BT Wholesale and Retail for calls to 118118 by BT customers (2p for the most common type of call), with an additional 30p per call charge on top for callers using BT's managed VoB services to call 118118.

At worst, these 3 services should continue to offer the same benefits as today when used via NGA, with added benefits gained from new services in addition. If the move to NGA is managed in such a way that causes consumers to end up with fewer benefits than today for these 3 core communication services, then the policies are flawed and consumers will rightly feel cheated.

In parallel, from an operator's point of view, it is considered that the 3 main NGN drivers for incumbents are: (1) reduce operational costs (typically between 30% and 40%); (2) enable new services (e.g. HDTV) and (3) protect the realm / the desire to win back market share through leveraging from bottleneck assets and historic advantages.

Voice is typically a service that will not benefit from a surge in quality due to the transition to next generation infrastructure. More importantly, it runs a serious risk of becoming more expensive, both on the legacy PSTN infrastructure and on the new fibre infrastructure, if cost calculations continue to rely on LRIC, without rebalancing mechanisms.

In other words, the Number believes that the Recommendation should be more detailed as regards the issue of migration much further and safeguards must be put in place to ensure that service providers such as directory providers do not end up being squeezed out of the market. This includes specifying that migration should be conducted under the supervision and with the **prior approval** in many instances of the regulator, and that there is a thorough analysis by that same regulator to ensure no double counting or wrongful attribution of costs or risks occurs between copper/PSTN and fibre networks. For example, regulators should not allow for costs to, on the one hand, include a "risk" factor based on low penetration expectations for NGA and on the other, an increase of the legacy PSTN costs based on the assumption that demand (including self-supply) for unbundling and bitstream will reduce significantly.

AT PSTN LEVEL:

NRAs should take care not to allow over-recovery on traditional PSTN networks on the basis of arguments that traffic has reduced yielding linear effects in static cost models. Price calculations are generally smoothed and should already have factored in asset lives or should be appropriately forward-looking. This implies that, where the copper network is expected to be phased out, the regulators take into account the ensuing decrease in value of the concerned copper loops, and the reduced asset lifecycle, to avoid over-recovery by incumbents.

AT NGN/NGA LEVEL:

Logically, since next generation infrastructure should imply additional capex costs (but decreased opex) but also higher functionality than the legacy PSTN, operators must utilise the new functionality to collect revenue from a wider range of services, thereby ensuring an economically viable investment. This is why many operators have a "triple play" strategy, involving delivery of Internet, television (Video on Demand, VOD or Live Stream) and voice on the next generation infrastructure.

Determining a “cost based” price for voice on an NGN will be difficult using the conventional economic (LRIC) approach and, if implemented, may lead to pricing anomalies between voice and broadband NGN services, which may not be priced on the basis of network resource usage, if incumbents are allowed to use charging mechanisms that rely on the perceived value of a service to the end-user rather than the real cost associated to that service.

For example, Video-on-Demand (VOD) may use massive bandwidth resources, but the service price is likely to be set by the comparable cost of hiring a DVD or subscribing to a conventional television service. In comparison, Voice over Broadband may use very little bandwidth, but may be of much higher value to the end user than VOD on a per kbit/s basis. Incumbents argue that if NGN voice service prices were regulated to a very low level, based on network resources used, the impact on the market could be a corresponding reduction in the ability of operators to invest and to re-coup their existing investment in widespread broadband infrastructure.

Such reasoning must be explicitly excluded by the NGA recommendation. If regulators simply consider the cost of delivering a VoIP call to an IP user today, they will find that it is principally borne by the called line in terms of its ongoing broadband access and traffic charges. In fact, in some scenarios, a VoIP service supplier need implement little or no physical network to deliver its service, indicating a significant paradigm shift from the PSTN environment.

We also understand that certain claims have been put forward by incumbents and even policy-makers to artificially increase the cost of voice traffic over the legacy PSTN network once migration is initiated and we would like to address 2 of the main claims.

<u>False claim n°1: the claim that so-called incentives must be set in place for providers to switch from legacy PSTN to next generation access, and that if copper/PSTN remains too cheap, voice providers would never switch to NGN.</u>

In terms of the risk of not creating sufficient incentives for providers using the legacy PSTN network to switch to next-generation networks should the price of the legacy PSTN network not be increased, it is clear that if operators are serious about rolling out next generation infrastructure, the legacy PSTN voice network will not last forever and will be switched off over time, making full migration inevitable.

This raises the issue of the withdrawal in due time of a legacy SMP product and the fact that the SMP operator should bear the burden of proof to justify this withdrawal[3] and that clear timetables and processes must be set, and controlled by the regulator.

[3] Some of the arguments that could be considered relevant if sufficiently demonstrated include the fact that providing the service over its legacy network has become uneconomic, or that the SMP operator no longer has SMP in a relevant market after a market review has been undertaken.

The incentives should moreover be set to encourage SMP operators to upgrade their networks. Ensuring notably that there is no excessive return in the pricing of the legacy copper loops above cost is important in setting in place the right incentives for SMP operators, who will be encouraged to upgrade their networks in order to make potentially higher returns through fibre.

False claim n° 2: the claim that legacy PSTN revenues should be artificially increased or kept high to generate extra revenue that would in turn fund the next generation infrastructure

Such reasoning would imply that in order for mobile operators to switch from 2G to 3G infrastructure, mobile customers should pay more...Practice shows this is not the case and regulators have tended to regulate mobile operators more over the last years regardless of the required investments in 3G. At the same time, roll-out of 3G, though cautious, has not seemed impossible nor required heavy taxes or "risk premiums".

Such reasoning would imply that stringent regulation would be put into place to force the incumbent operators to effectively invest the additional revenues per minute from copper into the next generation infrastructure, and only if the upgrade to NGN and NGA is proven to be efficiently done.

In conclusion, the regulators will play a vital role in determining the success of the transition – including through establishing the right regulatory framework to encourage fair competition and seamless switching. Regulators will also need to understand the incumbents' plans, provide for transparency with affected parties and carefully manage the transition including by addressing questions over the pace of transition, cost recovery and any requirements for parallel running of networks. In setting prices, it is also vital for regulators to ensure that cost-savings are passed on in a non-discriminatory manner and that costs in establishing interconnect and access are not loaded onto service providers.

We thank you in advance for taking consideration of these views. Feel free to contact Nik Hole, Executive Director, Government and Business Affairs – Europe for The Number, by phone (+44 7973 748952) or email (nik.hole@118118.com) should you need further information.

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