

*NON-CONFIDENTIAL VERSION*

**RESPONSE OF**



**TO THE COMMISSION'S PUBLIC  
CONSULTATION ON  
TERMINATION RATES**

September 10, 2008

# NON-CONFIDENTIAL VERSION

## 1. Our Group

The Number, Le Numéro, Il Numero, Die Nummer and Conduit are part of the same group of companies which together form the largest independent provider of directory enquiry (DQ) services in the world. In Europe, our companies have entered six markets (UK, France, Italy, Austria, Switzerland and Ireland) offering new, competitive and high quality services to end users. The group uses live operators to handle enquiries and today employs [...]. Furthermore, our companies have invested heavily in the development of enhanced databases and innovative new services [...].

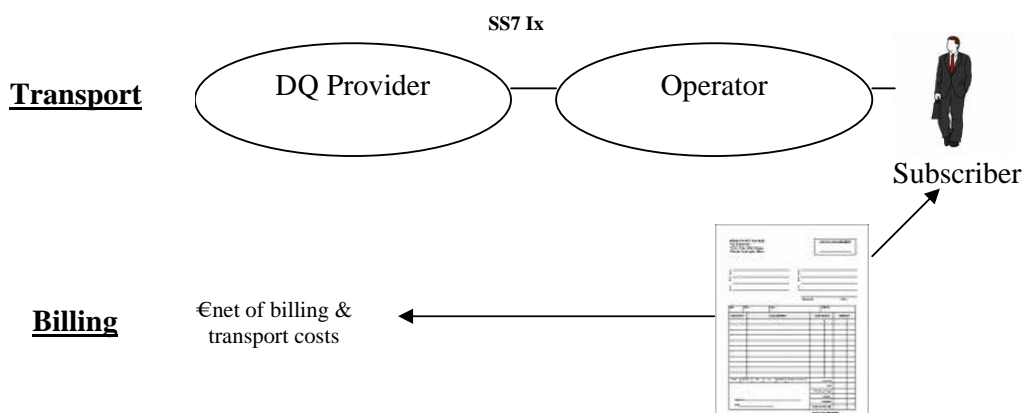
## 2. The issue that concerns us - interconnection for DQ services

The Commission's consultation document fails to address an interconnection service which shares the exact same features as those standard user-to-user call termination services analyzed in Section 2 of the document and which equally requires consistent and effective regulatory intervention throughout the EU: DQ connection services.

As represented in Figure 1 below, DQ connection services consist in the set-up and routing of voice calls between end users and providers of DQ services whose call centers are interconnected to the PSTN and provide information over the telephone to the customer. Technically, from the point of view of the use of the telephone operator's network resources, there is no difference at all with a standard user-to-user call.

The only added feature is that the telephone company controlling access to the end user will bill the end user for the use of the DQ service on behalf of the DQ provider (since the service is provided by the DQ provider and, given the *ad hoc* nature of DQ services, there is no ongoing contractual relationship between the DQ provider and the end user which would permit billing).

Figure 1



## ***NON-CONFIDENTIAL VERSION***

Exactly like standard user-to-user call termination services, DQ connection services are non-substitutable interconnection services which DQ providers must purchase from each and every network operator. This distinguishes them from standard access services needed for services like carrier selection or virtual network operator services where alternative networks can be substitutes.

Like telephone companies, DQ providers need to be able to offer their services with full interoperability with public telephone networks and connect with any end user. In the same way that a telephone user needs to be able to be reached by any other telephone user on any network, so a DQ service needs to be reachable by any telephone user on any network. Indeed, DQ is a service which, as a matter of regulatory policy (in fact, DQ forms part of universal service), as well as commercial demands,<sup>1</sup> needs to be available over all networks. This means that, just like an operator purchasing call termination services, a DA provider needs to be able to access all end users and, therefore, purchase interconnection services from all operators.

Hence, as in the case of call termination services, the operator controlling access to the end user has an absolute monopoly power conferred on it vis-à-vis DQ providers who have to offer a service to that customer.

Furthermore, the end user, which needs to be connected and which chooses the operator who will provide connection services to other operators or service providers, does not influence the wholesale charges set by the operator. This is so in the case of a standard terminated call because the end user does not contribute to the cost of the call (CPP principle) and, therefore, has no incentive to change its network provider even if charges are raised. This is also the case for DQ calls because users are unaware of the wholesale charges imposed by its operator on DQ providers and their choice of mobile network is not influenced at all by the pricing of DQ services.<sup>2</sup> Consequently they also have no incentive to change network if the price of wholesale DQ connection services are increased.

As a result of this monopoly power, operators are free, save in the event of regulatory intervention (which may occur in the case of fixed incumbents as part of their RIO requirements), to set abusive interconnection terms and conditions. In the case of DA connection services, unregulated mobile networks operators (“MNOs”) set highly excessive charges which normally bear absolutely no relation to either equivalent fixed DQ connection service or cost-oriented mobile termination services. We provide some tariff data in the Confidential Annex to this submission.<sup>3</sup>

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<sup>1</sup> *Analysys* observed in its report to the Commission on DQ liberalization in 2002 that DQ is a high volume, low margin business.

<sup>2</sup> This is so because the relative search costs for DA services are so high as to have no bearing on a user’s choice of network at any particular time (see, for example, the National Audit Office’s survey on the DQ market in the UK, 18 March 2005). [...]

<sup>3</sup> [...]

## ***NON-CONFIDENTIAL VERSION***

Furthermore, MNOs use their monopoly power to impose other abusive terms on DA providers (for instance, they do not allow DA providers freely to set the price of their service).

As explained in the Commission's consultation document, this per network monopoly situation has been sufficient to trigger a stringent and continuous effort by NRAs and by the Commission to control standard user-to-user call termination services. This is the case (without any empirical study of the effect of termination prices on retail prices for telephone calls) on the logical basis that excessive wholesale charges have a negative impact on the retail price to be charged to the end user and should, therefore, be brought down to efficient and homogeneous levels. However, identical evidence of a bottleneck situation and far more grievous charges in the case of DA mobile connection charges has not been considered by the Commission or NRAs in its review of interconnection services. The result is very high and disparate charges for DQ mobile connection services across the EU and a serious distortion of the DQ market to the detriment of consumers.<sup>4</sup>

There has been recognition of this problem by national authorities (e.g. the Italian NRA, AGCOM, supported by the Italian NCA, which proposed regulation of connection services on a per network basis and filed a notification to that effect to the Commission in 2006 pursuant to Art. 7 of the Framework Directive, or the French Conseil de la Concurrence which emitted an opinion to that same effect on 31 March 2008), as was noted by the Commission in the Explanatory Note to the new Markets Recommendation.<sup>5</sup>

The failure of the Commission (and the majority of NRAs) to address this interconnection service which is so vital for DQ services breaches fundamental requirements on regulators to ensure non-discriminatory treatment of electronic communication service providers (DQ providers pay many times more than telephone companies for an identical interconnection service), to ensure the full benefit of competition to end users (excessive wholesale charges impact on retail prices) and to ensure a coherent application of EC regulation (the treatment of this issue varies from State to State impeding the internal market in DQ services), as required by Articles 7.2 and 8 of the Framework Directive.

### **3. Benefits of regulatory intervention**

Intervention by NRAs to address DQ interconnection services would permit EU consumers to receive greater benefits of DQ competition such as:

- uniform and transparent tariffs across all networks in all countries (since DQ providers would be free to set their own retail prices and base them on reasonable cost structures);
- a reduction of current DQ retail prices across Europe making them more affordable; and

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<sup>4</sup> It should be borne in mind that mobile calls represent the majority of DQ call volumes in many Member States.

<sup>5</sup> Footnote 42 of the Explanatory Note.

## *NON-CONFIDENTIAL VERSION*

- an increase in investment and innovation in new information services, in particular, pan-European services (which require homogenous and reasonable access charge regimes).

Furthermore, it would contribute to Lisbon goals of growth and jobs. The DQ industry is a significant employer since calls are answered by live operators. [...] If excessive wholesale mobile connection charges are allowed to continue, the industry will be forced to cut jobs, switching to lower-quality automated services. It will also be driven to reduce R&D in innovative services and improved databases.

It is also vital at this point in time that the Commission send out the right messages concerning the benefits of DQ liberalization to both consumers who use these services and the industry who invest in them. The DQ market has been liberalised in only 9 out of 27 EU Member States and has suffered dramatic reduction in demand in liberalised markets. At the same time, the Commission and certain Member States are considering the possibility of removing DQ from the scope of universal service in order to allow competition to deliver on goals of affordability, availability and minimum quality levels. This is a laudable aim which fulfills the requirement to permit the market to deliver on public service goals wherever possible and, indeed, competition in liberalized markets has demonstrated that new entrants are able to offer universally accessible, high quality services which consumers want to buy. Nevertheless, it is also necessary first that abusive charging by operators who control access to clients be addressed, as has been done in the case of termination of user-to-user calls.

#### **4. Recommendation**

In conclusion, we urge the Commission to include DQ connection services in the Recommendation it finally adopts since they share identical characteristics with user-to-user call termination services (and display more worrying excesses). The current failure to deal with this issue (which, for now, has fallen through a lacuna in the regulatory framework) constitutes a discrimination against providers of DQ services like ourselves. Taking this opportunity to address this issue in some way within the proposed Article 19 measure would contribute to removing the huge disparity in treatment of this service throughout the EU, to preventing monopoly rents being extracted from DQ providers, to allowing the full benefits of DQ competition to be passed on to consumers, to supporting job creation and innovation in the EU and to permitting the removal of universal service requirements.