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ERG-IRG: Work Programme 2005
Universal Service / International DQ / Cross-border access to subscriber data

Dear Mr. Andersen,

thank you very much for the opportunity to provide you with our opinion on the above mentioned matter.

This consultation input intends to focus on European/international DQ services and their wholesale costs: The major driver for high wholesale costs and therefore resulting high retail prices for European DQ services is the cross-border access to incumbents' comprehensive subscriber databases.

Introduction

telegate is a specialised provider of telephone directory enquiry (DQ) services. Founded in Germany in late 1996, telegate provides national and international DQ services in four EU member states: Germany, Austria, Spain and Italy. telegate will also enter France in 2005, after the French Regulatory Authority has been ordered by the Conseil d'Etat to liberalise the French DQ market in line with existing EU and (derived) French telecommunication legislation. Very similar and despite the regulatory European framework, the majority of EU member states still has not liberalised its DQ markets.

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Discrimination for access to subscriber data between national and European directory services still exists in the EU. Costs of providing a European directory service are up to a hundred times higher than providing a national DQ service.

Network operators are still abusing their super-dominant position in subscriber data (and often the connected voice DQ market) by charging up to 100 times more than they are allowed to charge according to European law.

In summary, regulation exists but implementation is lacking. Not only in the new EU Member States but also in many of the 15 'old' Member States. A clarification of the existing regulation might facilitate correct implementation.

Finally, effective harmonisation of such an important service as international DQ is not in sight. We are still far away from implementing a pan-European DQ service that could facilitate communication among EU citizens.

Comprehensive Subscriber Databases

With the introduction of mobile services, many incumbent operators[1] in the EU were required to build up a **comprehensive database** that includes also other (mobile) operators subscriber data. Such an obligation became necessary because sometimes incumbents did not want to facilitate the generation of traffic to competitors networks, sometimes because mobile operators did not trust the incumbent not to misuse the data. Such a comprehensive database today includes also other fixed operators´ subscriber data.

Online access to this comprehensive database is vital for a consumer friendly and affordable provision of European directory enquiry services. All the more as such a system is already existing as we will show in the next section.

European Subscriber Data Access

Before liberalisation of any telecommunications services, incumbent operators published at their own initiative telephone books and offered voice DQ services to generate more traffic on their networks. As Europe grew together, incumbents enlarged this initiative and established a system allowing the mutual use of their voice directory enquiry services. Mutual access to their DQ service offers was for free.

[1] Exceptions still exist in reality; cf. 10th Implementation Report (p. 26): "The Commission services are examining concerns that have arisen in a number of Member States (e.g. Greece, Spain, France, Malta, Poland, Portugal, Slovenia) with the production of a universal directory. They appear to have stemmed in particular from the fact that alternative operators have either refused to provide their subscriber data to the designated undertaking or that the latter has not presented its competitors' data in a non-discriminatory manner in the directory. The presentation in the universal service directory of competing operators' directory enquiry numbers has also been an issue in the United Kingdom. In Italy, the issue relates rather to delays in putting in place the necessary regulations."

In the 1990s, incumbents formed the EIDQ association to develop and maintain a common protocol for direct access to their respective subscriber databases. Again mutual access to these databases was for free.

In the late 1990s some Member States liberalised the provision of directory enquiry services and new entrants such as Conduit (from Ireland) and telegate also wanted to facilitate communications between European citizens. They became prominent members of the EIDQ association to further the development of the access protocols. Incumbents granted telegate and Conduit access but the vast majority of incumbents charged them excessively high prices for this access. They abused their monopoly in two dimensions: discrimination and abusive pricing. At the same time, the new entrants' respective competitors, eircom and DTAG, continued to receive the same access for free (old price cartel).

For example, PT Luxembourg is charging 0.256 EUR/TRX against telegate; thus, on average more than 1 EURO (!) as wholesale costs are needed to provide one subscriber information to callers in Germany when asking for number information about residents in Luxembourg (on average, four TRX are needed for one successful DQ call). Thus, it is not surprising that the retail price of a single international DQ call is more than 2 EURO (!) in many EU member states.

The EIDQ association realised quickly that this practice was discriminatory and recommended to its members to conclude formal contracts among each other. However, the majority of incumbents tried to continue with the old system. After being forced by their NRAs, some incumbents also gave other incumbents access only against a fee. This led to a new price cartel, intended to cover up the abuse.

The new price cartel among incumbents in the EIDQ has emerged in the last couple of years after telegate complaints in Germany, Austria, Spain, the Netherlands, Belgium etc.: Today, most incumbents are charging "political" prices against each other. The discriminatory system works as follows: Depending on the total number of transactions (=dips into the database – similar to clicks in the Internet), a pricing scheme on a mutual basis guarantees a more or less balanced cash flow of incumbents. For example, Belgacom produces more transactions (TRX)[2] on German subscriber data (online access at DTAG) and therefore pays a lower price per TRX to DTAG while DTAG pays a high price per TRX to Belgacom. As an example, we have confirmation on at least three different political prices charged by DTAG against other DQ providers for exactly the same kind of access (online, E.115):

- against German DQ providers (NDIS agreement): 0.035 EUR per TRX
- against Telekom Austria: 0.23 EUR per TRX
- against Belgacom: 0.11 EUR per TRX (search).

Such prices are the result of political bargaining; they are both discriminatory and simply not cost-oriented in the light of Art. 25 USD. This is underscored by the fact that incumbents do not make use of existing alternatives for access to German subscriber listings. Alternatives offer the same quality for a significantly lower price.

[2] „more" than DTAG produces TRX in Belgacom's comprehensive database.

Not only this system is against European law but the current prices in general are breaching EU legislation as only the costs of provisioning the subscriber data can be charged by the incumbent for the relevant information and reasonable, non-discriminatory costs for additional data.

ECJ ruling C-109/03:

The European Court of Justice in Luxembourg ruled in the case C-109/03 that operators are only allowed to charge the marginal costs of making subscriber data available vis-à-vis DQ providers. This decision confirmed OPTA's point of view in the Netherlands and is also a clear confirmation of telegate's opinions in many legal and regulatory battles against incumbent operators that are still ongoing. Clearly, cost orientation for the provision of subscriber data as mentioned in Art. 25 (2) USD (earlier: Art. 6 ONP 98/10) should now become reality in all EU member states.

When telegate confronted incumbents in Austria, Belgium and the Netherlands with ECJ C-109/03, the answer was that "cost orientation" would only apply to their own subscriber data (subscribers of Telekom Austria, Belgacom, KPN, etc.) but not to online access to their comprehensive subscriber database. From our legal point of view, this is wrong: In fact, the Luxembourg court provides a clear concept for subscriber data that are not a natural result from operators' "normal" telephony business: These data can be regarded as "additional data" in the ECJ concept (cf. C-109/03):

> *With regard to additional data which such a supplier is not bound to make available to third parties, the supplier is entitled to invoice, apart from the costs of making that provision, the additional costs which he has had to bear himself in obtaining the data provided that those third parties are treated in a non-discriminatory manner.*

Thus, the logic is as follows: If an incumbent operator like Belgacom holds a comprehensive database and offers online access (EIDQ/E.115), it can be estimated that more than 90% of subscriber listings derive from Belgacom (fixed and mobile) while less than 10% of subscriber listings derive from alternative operators. For Belgacom's "own" subscriber listings, only the costs of making these data available (to telegate) can be applied. For other operators' listings, the costs of obtaining these data (Belgacom's costs) can be transferred to DQ companies like telegate. But as other operators provide their listings to Belgacom also on a cost-oriented basis (i.e. only the costs of making these data available) the price per listing that can be charged by Belgacom vis-à-vis telegate is still cost-oriented !

This concept has not yet been applied at all. In the Belgium example, BIPT refuses to take any action and Belgacom still charges incredible 0.19 EUR/TRX against telegate. Thus, the average wholesale costs for a single international directory call in Germany or Spain to receive number information on residents in Belgium sums up to 0.76 EUR (with 4 TRX/call).

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Effect of the Excessive Prices

Retail prices for a European directory enquiry service are much higher than it would have to be because directory enquiry service providers must recover the excessive data costs of about 1 Euro per call. Thus, in many Member States information about subscriber listings from other EU Member States costs more than 2 Euros per call. According to the research of Pelorus group international DQ was a disappearing breed due to the "prohibitive tariffs". They resume[3]:

> International DA pricing clearly underscored the problem. Call volume was 2 to 3 percent of the DA total in most countries and at a typical tariff of more than two or three Euros, international call volume was plummeting fast. ...
>
> Tariffs for international DA were in the high range across Europe, typically costing over Euro 2.0 per call. More often, the prices were outright prohibitive, over Euro 4.0 in countries like Finland and Switzerland. Very low volumes, at less than 3 percent of overall DA volume, combined with substantial operational costs contributed to the high price levels.

The non-implementation of European legislation on subscriber prices is thus leading to excessively high prices for European DQ services that seriously affect the demand for these services. This is deliberate and scornfully laughing at the intention of the European regulator to facilitate communications between its citizens.

Scope of Universal Service – European DQ

Following the Universal Service Directive (USD), DQ services are an essential tool to facilitate communication among EU citizens. Call centre assisted services like telegate's telephone DQ offerings are the oldest service in the history of telecommunications and are regarded as a universal service internationally.

Clearly, DQ service providers like telegate would like to enhance communication from one member state to another by offering pan-European DQ services on the basis of a pan-European subscriber database. Unfortunately, such a vision is far from reality.

In order to ensure the access to facilitate communication between EU citizens, the European Union has provided that "Member States shall not maintain any regulatory restrictions which prevent end-users in one Member State from accessing directly the directory enquiry service in another Member State." (Art. 25 para. 4 USD).

However, the interconnection of national DQ services to other member states is not realistic today. In fixed networks, a service offering like +49-11880 (telegate's German DQ code) accessible from all member states, is confronted with severe market entry barriers from fixed network incumbents (interconnection, billing). Furthermore, closing interconnection and billing agreements with all fixed operators in the EU-25 is unreasonable for a company like telegate. In mobile networks, international roaming charges make an offering like +49-

[3] The Pelorus Group (August 2003): European DA/DQ Markets.

11880 (calling e.g. from Italy) too expensive for European consumers. To conclude, Art. 25 para. 4 USD has not become reality yet.

Therefore, both incumbent DQ operators as well as new entrants like telegate rely on the "old" system of international DQ services, offered in one member state only. This system was accepted in former times by the consumer due to easy numbering (when legacy codes were still in place) and due to low retail charges (when incumbent operators were required to subsidise their DQ services).

Conclusion for the ERG and the Revision of the Universal Service Directive

The above mentioned countries are only an example. Abuse of dominant position to charge excessive prices and discrimination between incumbents and new entrants, between national and European data access is current practice in most EU Member States.

Although telegate is trying hard to convince incumbents and respective NRAs on a national level to regulate prices for cross-border access to subscriber databases (on the basis of Art. 21 Framework Directive), there is a need for **common action within the European Regulators Group** as excessive and discriminatory pricing hinders European communication. In the interest of European consumers, European DQ retail prices should decrease significantly. This is only possible when the system of "political" prices (wholesale costs) for European DQ data ceases to exist and prices are regulated by NRAs in line with current EU legislation.

A clarification of the Universal Service Directive might be useful, if the above mentioned legal interpretation is not clear enough: As Art. 25 para. 2 USD refers in its pure wording to data from each operator, incumbents might use this as an excuse for continuing the excessive pricing for comprehensive subscriber data. Thus, an amendment on comprehensive access to European DQ data access might be necessary.

We would be very grateful if you could refer to us with any feedback and please do not hesitate to contact us directly if you need any further information.

With kind regards

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