



Executive summary
for
Study on pan-European market for premium rate services

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and
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Study on a pan-European market for premium rate services

EXECUTIVE SUMMARY

I. PAN-EUROPEAN PRS MARKET¹

The market for premium rate services (PRS) is a growing market, currently accounting for 5% to 7% of the national market volume for voice telephony services, i.e. between 4.5 and 6.5 billion euro in the European Union. At present, cross-border PRS represents only a marginal share of the overall PRS market volume, mainly because market players are focused on domestic markets that still present high growth opportunities. The market potential for pan-European PRS is however expected to be significant, with a good number of services likely to attract a pan-European audience and business opportunities for all the market players of the PRS value chain. This potential is estimated at about 0,5 to 1 billion euro in the short to medium term and more than 1 billion euro in the long term.

A pan-European PRS market can take various forms. The report describes four scenarios representative for the main alternatives and their respective advantages and challenges. It assesses, for each of them, whether regulatory intervention is needed to facilitate their development. These four scenarios consist in the provision throughout the European Union of PRS by a single content provider via:

- 25 country specific access numbers and 25 PRS platforms (scenario A);
- 25 country specific access numbers and a single pan-European PRS platform (scenario B);
- a single access number belonging to the national numbering plan of a particular country (accessed from other countries by dialling the country code of that particular country) and a single pan-European PRS platform (scenario C). A variation of scenario C can be the use of a special prefix in the national numbering plan for international access to national PRS numbers (scenario C+);
- a single pan-European access number (from ETNS or ITU – see below) and a single pan-European PRS platform (scenario D).

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Scenarios A and B adapt international content to the individual national environments and can be implemented more quickly and easily than the others as they fit relatively well with the existing operational and regulatory environments.

Scenarios C and D represent a more genuine pan-European approach whereby services may be made available across all Member States with a unique telephone number and identical price. Scenario D, which is based on a specific numbering prefix for pan-European PRS, appears to be the most realistic solution even if it requires extensive preparations both by regulators and operators. This is because some of the problems that have been identified by the report cannot realistically be solved under scenario C.

II. EXISTING REGULATORY FRAMEWORKS

A. At Community level

In the absence of a specific Community instrument on PRS, the report examines which existing Community measures apply to PRS.

The new regulatory framework on electronic communications does not apply to content and can therefore only apply to the transportation elements of PRS. The high degree of integration between transportation and content however creates uncertainty as to how the new framework should be applied to PRS. The report looks at some of the provisions of the new regulatory framework that could be of particular relevance for PRS, in particular those on numbering, access to non-geographic numbers, consumer protection, significant market power, billing and interconnection.

The Electronic Commerce Directive applies to the PRS that qualify as information society services. Although there are uncertainties around this question, the authors of the report take the view that some PRS fall under the definition of information society services, services which involve storage and processing at both ends such as downloading of ring tones, and services which include storage and processing only at the platform provider level such as services that are delivered from audiotex platforms.

The report also describes the main other Community instruments that apply to PRS, i.e. the Distance Selling Directive, the Unfair Commercial Practices Directive and the sixth VAT Directive.

B. At national level

The annex to the report provides an atlas of the national implementations of PRS. It shows wide divergences between Member States on almost every single aspect of PRS, including on the definition of PRS itself. In particular there are national differences on the following questions:

- **Numbering.** Although many countries have implemented the 09xx range for PRS services, there is little commonality on how this range is used in terms of content categories and/or charge bands. Rules also differ on which organisations can be allocated PRS numbers and on allocation to foreign operators.

- Pricing. Most countries have established different number ranges for PRS to which different pricing rules apply. There are also differences on who determines the price for certain number ranges.
- Billing. Many countries place a regulatory obligation upon the incumbent operator to perform third party billing, while other countries have no specific obligation in that respect. Among the first group of countries, there are also variations in the level of compensation for billing, be it with or without bad debt responsibility.
- Call barring. The possibility to bar a telephone from being able to dial PRS numbers is available in most countries. However, there are differences on whether the barring is based on opt-out where the default is that PRS is open or on opt-in where the default is that all PRS numbers are barred. There are also national variations on whether call barring is an obligation that applies to all operators or only to some of them.
- Content. Member States have very different national regulations on the types of content that can be conveyed by PRS and on the conditions under which they can be offered.
- Action against fraud. In many countries, there is no specific complaint mechanism for PRS and the general complaint mechanisms for telecommunications services or consumer protection are used instead. The powers of the responsible authority to take action against misleading and fraudulent practices and to apply penalties also vary greatly from country to country.

III. RECOMMENDATIONS FOR THE DEVELOPMENT OF A PAN-EUROPEAN PRS MARKET

To be implemented, scenarios C and D require a number of actions, both from market players and from public authorities. These actions are presented in the form of recommendations that specify the conditions that need to be put in place to create a regulatory and commercial environment favourable to the development of a pan-European PRS market. They are based on an examination of the adequacy of current EU and national regulatory measures that apply to the provision of PRS and of the way a number of issues that are key for the provision of PRS are being or would be dealt with in a cross-border environment.

The recommendations are structured around the following main building blocks. Many of them seek to ensure fraud prevention and consumer protection. Others are more of a commercial nature and stem from the complexity of the value chain on which PRS are based.

A. Pan-European PRS numbering plan

The report explains that PRS numbers which are based on the existing individual national numbering plans are not well suited for cross-border access to PRS services in other countries. It recommends that a pan-European PRS numbering plan should be set up, for example based on the European Telephony Numbering Space (ETNS) or on Universal International Premium Rate

numbers (UIPRN) of ITU. It should allow specification of content categories and retail price information.

Common conditions for the eligibility of a party to get pan-European numbers should be specified. Non-discriminatory access to numbering resources for PRS should be ensured in all EU countries, including to numbers in the pan-European numbering plan (for scenario D).

B. National regulatory authority for PRS

The national regulatory authority for electronic communications plays a significant role regarding PRS provision in all countries with its particular responsibility for numbering and interconnection activities. However, there are significant differences across Europe with regard to which authority or organisation is responsible for content and consumer protection issues. Some countries have specific regulators or other types of organisations or bodies for PRS services. Other countries have permanent self-regulatory bodies.

A pre-condition for a pan-European PRS service is that PRS regulators exist in each Member State and that they have clearly defined powers. In particular, the primary responsibility for consumer protection for PRS should be clearly assigned to a single organisation.

Responsibilities of these regulatory bodies should include recommendation on allocation of pan-European PRS on the basis of common conditions, monitoring and enforcement powers and handling of complaints.

C. Preventing and taking action against fraud

A coherent and efficient policy on the prevention and fight against fraud is essential for the development of a pan-European PRS market as fraud in PRS is a very significant problem in some countries. The range of misleading and fraudulent schemes is very broad and includes traffic creation against PRS numbers, wrong price information, unsolicited service subscriptions and use of international numbers from high cost countries. Detection of fraud in PRS raises particular problems because normal payment procedures provide an opportunity for fraud to go undetected for long enough to make it profitable.

To prevent fraud in PRS in a pan-European environment, the authors of the report recommend:

- agreement at EU level on a catalogue of fraudulent practices to be prohibited without further assessment;
- availability of a coherent set of sanctions to all PRS authorities. Sanctions should include the possibility to block a service;
- responsibility of PRS authorities to monitor pan-European PRS. In particular, a regulatory authority that is responsible for a platform provider that offers pan-European PRS should have continuous watch 24 hours per day 7 days per week. It should inform PRS regulatory authorities from other Member States of identified misleading and fraudulent practices;

- freezing of payments to content providers for pan-European PRS for a certain period in order to be able to detect fraudulent activity and to prevent them from reaching fraudulent content providers.

Measures and procedures that allow actions to be taken against a fraudulent PRS should also be available.

- PRS regulatory authorities that are responsible for platform providers that offer pan-European PRS should be able to close down a PRS service within a stated time limit in case of fraud. They should be able to accept requests for action from PRS regulators in other Member States according to established procedures. The procedures should be streamlined in cases of practices agreed at EU level as always having to be considered as unfair.
- PRS platform providers should be required to communicate to PRS regulatory authorities on request data allowing the identification of the content providers with whom they have agreement.
- minimum requirements should be established for complaint handling of pan-European PRS, including in particular procedures for handling cross-border complaints between PRS authorities.

To provide an incentive to platform providers to cooperate with PRS regulatory authorities and also to give them a legal basis to block access to fraudulent practices, the authors of the report recommend that PRS platform providers should not be held liable for fraud in PRS provided by content providers with whom they have agreements, upon condition that they disable access to alleged misleading and fraudulent practices when informed of their existence.

It should be stressed that fraud in PRS represents a problem not only for consumers and customers, but also for operators. Most exposed are the access operators, who normally have the billing relationship with the subscribers and therefore receive complaints when problems arise. The above recommendations should also benefit these operators.

D. Consumer protection

The report makes a number of recommendations that seek to ensure adequate consumer protection. They mainly relate to information requirements and call barring.

It stresses that there is a need to clarify the information requirements that apply to pan-European PRS and that this clarification should specify:

- all the information to be provided, including on the basis of existing Community directives;
- language requirements in particular for price announcements;
- price information on each of the components of PRS: content, conveyance and taxes.

In relation to the information requirements required by the Distance Selling Directive, the report recommends that the way they have to be provided for contracts concluded over the telephone needs to be clarified. It also takes the view that the derogation to the written confirmation requirement in favour of services that are supplied on only one occasion and invoiced by

telecommunications operators should be extended to cover all PRS, so as not to discriminate between PRS according to the way they are billed.

The report explains that when considering scenario C and D, probably only scenario D can support call barring in a satisfactory way. The authors recommend that call barring should be available to all numbers that provide access to pan-European PRS and that no action should be taken to encourage pan-European PRS for which call barring is unavailable as a consumer protection measure. Call barring should include a general option for opt-out, supplemented by a requirement for opt-in for certain categories of services, based on price and/or content.

E. Country of origin principle

Because Member States have very different national regulations on PRS and because, under existing rules, PRS providers may have to comply with the legal requirements of the Member States of their customers, the study suggests that the pan-European provision of PRS would benefit from a country of origin principle. According to this principle, service providers would be allowed to offer their services in all the Member States by solely complying with the regulatory environment of the Member State in which they are established.

To get political support, establishment of this principle would have to be complemented by harmonisation of certain areas that are key to the provision of pan-EU PRS, as explained in other recommendations. It would also be essential that Member States are allowed to block on an ad-hoc basis a specific PRS that is in breach of their fundamental policy objectives.

F. Pricing

A number of recommendations are provided on pricing related issues. They relate to the extent to which there should be pricing regulation, the determination of the price of PRS, communication of price information between partners in the PRS value chain and VAT.

The study recommends that there should only be light ex-ante regulations for the pricing of pan-European PRS. An option of individual pricing should be provided, at most protected by a ceiling in terms of per minute cost and/or total cost of an individual call.

It also takes the view that the content provider must be able to determine, in cooperation with the platform provider, the price and/or the charge band to use.

The price of a PRS, once defined must be communicated to the partners involved in the value chain providing the PRS. Because there is currently no suitable standard for exchange of PRS price information across national borders, price information will have to depend, in the short term, on the price implications of the numbering plan. In the longer term, the study however recommends to develop a suitable standard.

Because of the complexities of VAT legislation, it is recommended that the European Commission should clarify how VAT rules apply to pan-European PRS. The study highlights that compliance with current VAT rules represent a highly complex task that is difficult to manage for international

PRS because it requires, in a system of online billing², that the access provider identifies for each call whether the user is a business user or a consumer and what is the country of the supplier.

G. Interconnection

There are very few interconnection agreements today that include provisions for international PRS calls. National interconnection services for originating PRS calls from abroad or for terminating PRS calls abroad are normally missing. It may be questioned whether the new regulatory framework on electronic communications provides any basis for requiring ex ante requirements for international PRS provision and the study considers that this appears not to be possible.

Because of the difficulty of concluding all the necessary interconnection agreements for cross-border PRS due the number of players involved, the study suggests that pan-European PRS requires a form of ‘hubbing provider’ in each country. Such an organisation would undertake to provide transit for PRS calls between access providers and platform providers in their own country. In addition, it would have interconnection agreements with “hubbing providers” in other countries enabling them also to provide transit between access providers in their home country and platform providers in other countries. “Hubbing providers” cannot be created on the basis of regulatory obligations, - their establishment must be driven by commercial interests.

From a regulatory perspective, it is recommended that there should be unbundling between interconnection for conveyance of pan-European PRS and commercial agreements for content payment. While existing interconnection regimes should apply to the conveyance part of pan-European PRS, commercial freedom should be left for agreements defining the sharing of revenues for the content.

H. Billing

The study explains that it is reasonable to rely on online billing in the first phase of developing a pan-European market for PRS because of its wide acceptance and its proven operational procedures for PRS on national levels. It however considers that respective policy actions should enable offline billing³ rather than explicitly discriminate against it or hamper it and that in a later phase, offline billing could be used as an alternative model if the market so decides.

According to the study, where a choice is to be made between online and offline billing, it is to be made by the platform providers and where offline billing is selected, access providers should be required to provide billing information to platform providers on request.

On third party billing, the report explains that many countries have imposed special obligations, but that it is not clear whether such obligations can be retained under the new regulatory framework without country-specific or EU based legal justification. It suggests to examine whether the market for billing services could be considered as a candidate for a new relevant market.

² Online billing means that it is the access network provider who calculates the charge to be paid by the customer for a PRS call. It is the system most commonly used in the EU.

³ Offline billing means that the charge is calculated by the platform provider.

It is also recommended that PRS should not be confined to services paid over the telephone bill. Payment by other methods should be allowed.

I. Developing attractive content

The report explains that getting access to particularly valuable content for the development of pan-European PRS may in some cases be problematic. Three examples are given: access to content protected by intellectual property rights, access to sports rights and access to subscriber data for directory enquiry services. In the latter case, the report suggests that specific action may be needed to ensure non-discriminatory cross-border access to comprehensive subscriber databases compiled to meet the requirements of the Universal Service Directive.

J. Consumer confidence

To give consumers confidence in pan-European PRS, it is recommended to advertise the pan-European PRS number ranges as a trustmark guaranteeing compliance with a number of consumer protection requirements.

IV. IMPLEMENTATION STEPS

The report suggests that the above recommendations require the elaboration, after consultation of all interested parties, of a Community instrument (e.g. a directive) on PRS to be accompanied by a code of conduct for pan-European PRS and possibly a memorandum of understanding between PRS-responsible authorities.

The code of conduct would define the specific rules applicable to such PRS. The authors of the report recommend to make acceptance of this code a prerequisite for number allocations in the pan-European PRS numbering plan so that its rules become binding for all these operators without the need for legal transposition of fairly detailed requirements across all Member States.

Once these common conditions are in place at EU level, the report suggests that a country-by-country development of pan-European PRS should be possible, with regulatory authorities that meet the set of defined requirements on oversight, regulatory powers, sanctions and complaint-handling being allowed to recommend allocation of pan-European PRS numbers to the numbering authority responsible for the pan-European PRS numbering range.