



## **Joint GSMA-ETNO response to BEREC Consultation on BEREC draft Report on contractual simplification**

7 November 2018

The GSMA and ETNO associations, which represent the interests of telecoms operators, welcome the opportunity to comment on BEREC's draft report on contractual simplification. We hope the following detailed comments can serve as a constructive contribution to BEREC's deliberations on its draft.

### **1. Do you have any comments or observations regarding the summary of NRAs initiatives and measures, set out in Section 2, to assist consumers to better understand their ECS contracts?**

- We fully support that consumer contracts need to be concise and easy to read. Also, it needs to ensure legal clarity for both, the consumer and the provider.
- The challenge of contracts that are difficult to understand due to legal language and length is clearly not sector-specific. Therefore, it is one of the issues intensively discussed in the scope of the REFIT of horizontal consumer protection by DG JUST, including considerations on self-regulation. Work is ongoing, including by telecom operators.
- Simplification of contracts has the potential to strongly interfere in contractual freedom and required legal certainty for providers and consumers.
- Any approach to facilitate that contracts are easier to understand must not be sector-specific but needs to be horizontal, avoiding an approach that leads to fragmentation – to the detriment of consumers and providers of ECS. Therefore, BEREC should anticipate horizontal discussions and chose a more cautious approach.
- The EECC provision on contract summaries is clearly limited to the objective to provide a short summary of information and does not intend to define how to generally simplify contracts.
- The summary of the contract adds another layer of information, on top of the pre-contractual information and the contractual information to be submitted after contract conclusion. These pieces of information are already extensive, also since ECS providers are required to provide a long set of information due to sector-specific regulation. Further overload and further duplication of information has to be avoided as much as possible. Therefore, instead of duplicating information requirements the contract summary should remain really short and present only a short selection of some key information. The summary must not replace the legal contract document and a long summary will make it less likely to be read by consumers.
- On this basis, BEREC should concentrate on better transparency of contractual information, which is what is truly relevant for consumers. Across services and product markets, the following general objectives appear equally crucial:
  - Improve consumers' knowledge of key elements of the individual contract, such as name and address of the provider, main characteristics, prices, duration of the contract and the conditions for its renewal and termination and the extent to which the products and services are designed for disabled consumers. The level of information provided under each of the

key elements should be limited to core important information and not seek to reproduce the whole of the contract or details of the service.

- Enable consumers' informed choice between different offerings, while ensuring that businesses keep required flexibility to present specific differences in their offerings,
  - Avoid additional burdens on businesses, but enable them to easily inform the consumer about essential elements of the agreed contract, taking into account the good solutions in this regard that already exist.
- Concerning publication of contract summaries, this should only encompass standard contract summaries or summaries reflecting the majority of customers.
  - When specifying the format of the contract summary, providers should be granted a reasonably high flexibility to also customise the document. This is required for various reasons:
    - Branding of summaries and including them into corporate design schemes
    - Integration into undertakings' specific sales channels
    - Adjustments which become apparent in providers' daily contact with consumers and that have not been considered by decision-makers upfront
    - Adjustments required due to adapt the template to changing needs of users and the rapid development of technology.
  - According to recital 233(a) of the EEC, such a contract summary should be concise and easily readable, ideally no longer than the equivalent of one single-sided A4 page or, where a number of different services are bundled into a single contract, the equivalent of up to three A4 pages. BEREC needs to base its views on this and not consider to diverge, as indicated by the presented questions in the draft paper.
  - Given that EEC Art. 104(1-4) applies to all ECS with the exemption of transmission services used for M2M, it is worrying that the report seems to analyse only whether provisions are applicable to NB-ICS. The final report should emphasize the regulatory requirement on providers of NI-ICS equally, as foreseen in the EEC. This is also the best way of achieving a sound level playing field between competing operators.
  - The analysis of BEREC relies heavily on a summary of quantitative reporting, but lacks in its analytical part. Also, the desk research has only been undertaken with inputs from NRAs without any discussion or analysis of which information providers see matters most to their customers in their daily contact with them. The views of ECS providers should also be sought to help provide insight on the importance of information elements. We therefore encourage NRAs and BEREC to adopt a collaborative approach with ECS providers, to take advantage of industry's exhaustive experience and improve consumer friendly interpretation of regulatory obligations. In this respect, we welcome the European Commission's ongoing efforts to agree a voluntary contract summary with industry<sup>1</sup>.

## **2. Do you have any comments or observations regarding the summary of NRAs ranking of the key information elements, set out in Section 3?**

- A compilation of various national examples does not necessarily reflect the most important set of key information that should be available for consumers across the EU.
- As a matter of principle, the summary should cover only the main elements that should be indicated. It should not entail specific details that are only relevant with regard to some specific services.
- It will not be possible to list all the various tariff elements, for example out of bundle charges, relevant in the scope of a contract as this may lead to a lengthy summary. Tariffs that go beyond

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<sup>1</sup> DG Just, "Draft recommendations for better presentation of information to consumers".

the contract (e.g. optional handset insurances or TV channels, available routers required for the IAS usage, available value added services and premium services, narrow band connection available over a voice service) should not be included.

**3. Do you agree with the NRAs views on the rankings of the key information elements for the summary template?**

- We believe that the summary should indicate key information elements that are the most important for the consumer, without detailing all these key information. Otherwise the summary will very quickly become very complex, difficult to read and lengthy;
- Where appropriate, (ECS) providers should have flexibility to be able to signpost customers for details of certain information as needed. For example, if up to date information exists on their websites or if consumers are interested in specific details, they need to look into the more detailed contract documents. The summary cannot reasonably replace this, but should, of course, contain links to specific terms and conditions where more detailed information can be obtained, where applicable.
- The key information elements included in the summary should not go beyond what is outlined in Art. 102(3) of the EECC.

**4. Do you have any views on how a contract summary should be drafted, addressing the following aspects in your response:**

**a. Size and number of pages on which the summary should fit**

- This is already clearly regulated in the EECC text and BEREC should not suggest to diverge from the regulatory obligations: fitting on one page and in case of bundles, not longer than 3 pages.
- The size of the page should be A4 in principle.
- Some flexibility concerning the format should be granted with regard to specific sales channels such as smaller font or size of the summary document, e.g. small packages provided at gas stations.
- The longer the “summary”, the less likely that consumers will read it

**b. Font size and contrast of key information elements**

- See comments in 1<sup>st</sup> section: Providers should keep some flexibility
- The font or the size of the font may differ, but it is important that the language of summaries must be concise and easy to understand.

**c. Layout or order in which the key information elements should be presented**

- See comments in 1<sup>st</sup> section: Providers should keep some flexibility to allow for customization related to each company’s corporate design schemes and branding.
- Depending on the sales channels, different layouts are necessary to ensure a consumer-oriented approach. Since the amount of key information needs to be strictly limited, the order of information is not of high relevance. Each information provided as part of a limited set of key information should be sufficiently legible for the consumer.

**d. A single contract summary for each category of ECS or for multiple ECS**

- Providers should have flexibility over whether one contract summary is preferable for multiple ECS, so that they can communicate with their customers most effectively and clearly.
- This does contradict with the need that information on IAS will differ from those on ICS (e.g. based on the TSM provisions in Art. 4)
- Information on NB ICS and NI ICS should in principle be the same, considering that service characteristics such as prices, contract duration or quality of service are not

related only to the use of a phone number; however, information on portability of numbers would only be relevant with regard to NB ICS

**e. Particularities that should be considered with regard to disabled citizens**

- Any summary will need to be made available in accessible formats to disabled.
- In line with the regulatory obligation on summaries in the EECC, we agree that such information should be indicated in a summary, avoiding too many details in order to avoid that summaries become lengthy.

**f. Any other elements you consider important to be included in the contract summary**

- See general comments in section 1
- **Ensure evidence based approach:** Suggestions to simplify contracts with regard to better readability should be evidence based. Before stating that contracts need to be simplified, evidence from consumers and industry is required to ensure an effective approach, for example through trials. This should be done horizontally, and not limited to ECS. BEREC's draft statement that consumers need to better understand has to be more elaborated.
- **Summary as extract from full contractual document:** Summaries must not go beyond the information provided in the regular contract document, including terms and conditions, as based on EECC Art. 102. This includes the categories of information as well as the degree of detail of information.
- **Horizontal approach required:** We encourage decision makers to facilitate the offering of contract summaries horizontally, to not limit benefits deriving from reasonably short summaries to consumers of ECS. BEREC should encourage decision makers to seek for a more consistent approach.
- **Do not confuse with unfair contract terms:** Providing transparency on the contractual agreement must not be confused with the identification of unfair contract terms and the discussion needs to be kept strictly separate. The latter is covered through e.g. the Unfair Commercial Practices Directive and, with regard to ECS, additional sector law and enforcement.
- **Ensure plain language and readability:** Selected information may be linked to jointly agreed symbols. This may include easy to recognise symbols linked to a specific information (placed e.g. next to the relevant information) as well as symbols that replace the actual written information. Icons could refer to e.g. prices, customer service, contract duration or with regard to Electronic Communication Service whether the contract includes e.g. voice services, broadband or TV. Providers should have flexibility to decide if such symbols will help their customers understand the contract better.
- **Focus on consumers only:** BEREC's reference to "end-users" is confusing, keeping in mind the regulatory provision does not cover all end-users. The commitment would only apply to consumers, who are the most vulnerable end-users. Additionally, Art. 102(2) extends provision to micro and small businesses and not-for-profit organisations. Business customers are clearly exempted from the scope of Art. 102 and would thus not have a right to get contract summaries based on this joint commitment. However, individual companies could, according to individual decision, provide contract summaries to their business customers if they so wish.
- **Comparability instead of standardisation:** Providers need to keep some flexibility in specifying information, as stated above. Enabling consumers' informed choice requires that information provided is easy to compare with other offerings. While this demands some standardisation, businesses also require flexibility to present differences in their offerings. This is particularly important with regard to a horizontal approach that covers a broad variety of services and products. Flexibility for businesses is also crucial to advertise specific benefits in offerings, promoting competition. Therefore, contract summaries should reflect joint clusters of information that allow consumers to easily have an

overview of the main elements of the offerings (e.g. possibly based on the same headlines). Details, however, should be defined more individually.

- **Annex 3:** The information requirements listed in Annex 3 seems to go clearly beyond regulatory obligations as included in EECC Art. 102. BEREC should not start to benchmark based on compiling all the national practices, which may be required due to very specific national circumstances by suggesting to introduce information requirements across the EU that go beyond EECC Art. 102.
- **Submission process:** Since EECC Art. 102 defines when and how the contract summary is to be made available to the consumer, BEREC should only concentrate on specifying the format and content of the summary.