

Removing Administrative Barriers from Business Communications Service Providers - AT&T Recommendations to BEREC

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Introduction

As part of the revisions to the EU Regulatory Framework in 2002, the requirement for telecom licences was removed and replaced with a general authorisation regime, as mandated by the EU Authorisation Directive.¹ Authorisation systems, such as individual or class licences, involving prior approval, explicit decisions or administrative acts by governments or regulators permitted under the previous Licensing Directive² are now prohibited.

AT&T believes that this licence streamlining has been a positive step towards facilitating and encouraging market access, with minimal barriers to investment and innovation. This has facilitated the ability of AT&T and other providers to provide consistent services to business customers across all the EU Member States, even as technology and customer needs have expanded. Indeed, AT&T has encouraged governments and regulators elsewhere in the world to adopt this light-touch EU approach. However, although the concept is highly commendable, AT&T's experience is that general authorisation regimes have not been implemented in a harmonised or consistent way across EU Member States, causing unnecessary complexity and inefficiency for providers of pan-European services and regulators monitoring these services, and hampering the growth of the single market. AT&T therefore welcomes the following statement regarding Business Communications Services in BEREC's Work Programme for 2011:

"In 2011 BEREC will shift its focus on the inefficiencies market players claim to experience due to administrative barriers. BEREC will analyse the substance of these inefficiencies and if substantial, search for ways on how to resolve these."³

In this paper, AT&T describes some of the administrative inefficiencies and their impacts that we experience, and we make recommendations for BEREC's consideration on how the problems might be resolved. AT&T believes that implementing improvements in this area will:

¹ Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ("the (EU) Authorisation Directive")

² Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licences in the field of telecommunications services

³ *Work Programme 2011 BEREC Board of Regulators*, (BoR (10) 43 Rev1) at 3.5



- further simplify market entry;
- reduce administrative costs for providers and NRAs;
- facilitate information sharing and comparative market analysis by national regulatory authorities (NRAs) and the European Union institutions;
- give effect to the new regulatory Framework's requirements regarding cross-border services;
- enhance the digital Single Market, and contribute towards realising the objectives of the Digital Agenda.

Although AT&T's recommendations (summarised at Annex 1) are from the perspective of a provider of business services to the world's largest multinational corporations, on a pan-European and global basis, we believe that some of our proposals would also benefit providers serving other business customer segments, as well as those providing services to consumer customers in multiple Member States.

AT&T in the EU

AT&T has considerable experience of operating under telecom licensing regimes globally, including the EU general authorisation framework. Operating globally under the AT&T brand, AT&T's parent, AT&T Inc., through its affiliates, is a worldwide provider of Internet Protocol (IP)-based communications services to businesses and a leading U.S. provider of wireless, high speed Internet access, local and long distance voice, and directory publishing and advertising services, and a growing provider of IPTV entertainment offerings. AT&T operates one of the world's most advanced global networks and has operations in countries that cover 97% of the world's economy. Within the EU, AT&T is a competitive provider of business connectivity and managed network services, and has affiliate companies in 26 of the EU's Member States. These AT&T companies operate under the general authorisation regimes, as transposed from the EU Authorisation Directive into national legislation, and as implemented and enforced by the NRA in each Member State.

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Administrative Barriers

1. Notification Requirement

The Authorisation Directive requires Member States to ensure the freedom to provide electronic communications networks and services. Specifically, the Directive requires that electronic communications networks and services providers be allowed to launch services without any explicit decision or administrative act on the part of the national regulatory authority. Under this general authorisation regime, any procedural requirements must be limited to requiring providers to submit a

notification or declaration to the NRA that networks and/or services are (to be) offered. In practice, AT&T is aware of two NRAs, Ofcom in the UK and NITA in Denmark, which decided not to impose a notification requirement. To AT&T's knowledge, the absence of a notification requirement has not caused any difficulties for the NRAs in the UK and Denmark in regulating the national markets (or obtaining fees from eligible network and service providers in the case of the UK).

Recommendation 1: BEREC should explore further the Ofcom and NITA experience of operating a general authorisation regime without a notification requirement, and identify the scope for the (voluntary) abolition of notification by more or all EU NRAs.

2. Notification Process

Very few NRAs facilitate the online filing of notifications, which is possible in, for example, Austria, Finland and Ireland, but not in most Member States operating a notification requirement. Some of the offline notification processes are quite cumbersome, e.g., application of company seals required (Greece); time limits on notification validity (Italy); regular notification updates required (Spain); details required on shareholder ownership, network architecture (with diagrams) and technology (Portugal).

Recommendation 2: BEREC should explore the scope for simple online notifications to be made possible in all countries operating a notification requirement.

3. Notification Categories

Under the Authorisation Directive, notifications must not entail more than a declaration by the provider of the intention to commence service or operations, and “minimal information which is required to allow the national regulatory authority to keep a register.”⁴ An overview of AT&T's experience of notification categories and other aspects of notification regimes is shown at Annex 2.

AT&T's experience is that notification requirements vary significantly between Member States as regards the categories of networks and services that may be declared. Some notification regimes have over 50 potential categories, while, for example, Sweden's PTS has one of the most straight-forward, “user-friendly” notification regimes with just 8 categories. The result of this variation in notification approaches is that, although AT&T offers identical services across the EU Member States, we are registered in quite different categories in each Member State. Not

⁴ Article 3(2) of the Authorisation Directive



only does this variance create complexity for service providers, it must impede the ability for Member States to compare information about their markets. A simplified and consistent set of categories would improve both situations.

Recommendation 3: BEREC should explore the possibility for a consistent declaration form to be adopted by all NRAs requiring notifications.

4. Cross-border Business Services

The revised EU Regulatory Framework imposes an obligation on the newly established BEREC:

“to deliver opinions aiming to ensure the development of common rules and requirements for providers of cross-border business services.”⁵

Furthermore, the revised Framework also includes the following amendment to the Authorisation Directive by way of an addition to Article 3(2):

“Undertakings providing cross-border electronic communications services to undertakings located in several Member States shall not be required to submit more than one notification per Member State concerned.”

AT&T believes that the decision to introduce these additions to the Framework was in part reflective of the challenges presented by the current situation, whereby operators providing identical services on a pan-European basis, cross-border basis are required to notify individual NRAs using inconsistent national categories to declare identical services, in multiple languages. This complicates the provision of pan-European services and hinders the development of the EU Single Market.

Recommendation 4: To facilitate the development of cross-border services, BEREC should consider the scope for including a pan-European or cross-border service provider category in any agreed common EU-wide notification form.

AT&T is deeply respectful of the language and cultural traditions of the EU Member States, but would urge NRAs to consider the boost to market access and the reduction in complexity that could be achieved by having more elements of national general authorisation regimes available in languages other than the official language(s) of the Member State in question.⁶ Combined with a drive towards a

⁵ Article 3(m) of Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (“the BEREC Regulation”)

⁶ In Belgium, for example, notifications can be made in French, Dutch or English.

more harmonised general authorisation regime and notification requirements, there would be scope for inter-NRA assistance in creating such language resources.

Recommendation 5: To facilitate the development of cross-border services, BEREC should consider the scope for improvements in the availability of national notification arrangements, compliance reporting obligations, and guidance in languages other than the official language(s) of the Member State.

5. Administrative Fees

The Authorisation Directive provides that the payment of both administrative charges and universal service fees can be legitimate conditions attached to the enjoyment of a general authorisation. To date, universal service fees are only levied in a limited number of EU Member States. Administrative charges, however, are levied in most Member States and are mostly related to revenue from electronic communications, although some NRAs apply a flat fee or fees related to the type of service provided.⁷ However, where revenue-based fees are applied, the precise basis and calculation of such charges varies significantly. Some NRAs require fees to be based on total electronic communication service revenues, while others apply a 'net revenue' or 'value added' approach (with fees based on revenue after deduction, respectively, of telecom or total costs). AT&T believes that it would be more efficient if NRAs adopted a consistent and exclusively revenue-based system for the calculation of administrative fees where these are applied.⁸

Recommendation 6: BEREC should investigate the scope for all NRAs levying fees to adopt a common revenue-based system for the calculation of fees.

The evidence required to certify accuracy of declared revenue (where this is the basis for administrative fees) also varies significantly between Member States. In some Member States, providers are required to submit audited accounts or statements, or auditable accounting methodologies.⁹ This can often create a dilemma for operators of either making over-payments (by paying on the basis of total revenues, rather than pure electronic communications revenue), or incurring

⁷ In **Belgium**, IBPT/BIPT levies fees based on the category of network or service provided rather than revenue. In **Italy**, a service-based fee (based on population covered) is payable to the Ministry of Communications, with a separate a revenue-based fee payable to Agcom. In **France**, the administrative fees are flat charges (see <http://www.arcep.fr/index.php?id=8090>), while universal service fees are based on a percentage of revenue. In the **UK**, **Cyprus** and **Finland**, fees are based on revenue bandings with all providers in the same band paying a fee as if their revenue were at the bottom of the applicable band.

⁸ Any thresholds for exemption from fees or the application of revenue bands would still need to be determined at a national level, as, of course, would the percentage of revenue payable as a fee.

⁹ This is the case in, for example, Cyprus, Finland, Greece, Ireland, Netherlands, Poland, Portugal, Romania, Slovak Republic and Spain.

significant costs to build accounting systems to satisfy the specific audit requirement. AT&T asserts that such costs represent a disproportionate burden, particularly for providers not subject to accounting separation requirements pursuant to an SMP finding. In several Member States, however, it is possible to self-certify¹⁰ revenue (with such certification subject to possible verification or further investigation at the NRA's discretion), but without the need to provide audited financial information.

Recommendation 7: BEREC should explore NRAs' experience with self-certification of revenue, and consider the scope for all EU NRAs to adopt this approach.

6. Reporting Obligations

NRAs require electronic communications network and service providers to complete multiple financial, statistical and market analysis reports. There is little consistency in the format or data categories of these requests, and there are significant variations in practice. A number of NRAs impose virtually no reporting obligations, while others make substantial requests.¹¹ The consequence is that a provider of cross-border services will expend hundreds of person hours to complete inconsistent forms in multiple languages. All of this adds cost and complexity of providing cross-border services.

AT&T respectfully recognises that NRAs need full and accurate market information to carry out their functions, but we believe that action could be taken to encourage more common and targeted reporting obligations, through, for example, the use of common reporting forms with consistent numbering of sections (which would greatly assist providers who have to complete forms in multiple languages). A more consistent approach to reporting would also facilitate data gathering and comparative analysis work by, for example, COCOM and the European Commission.

Recommendation 8: BEREC should explore the scope for establishing common forms and approaches for the reporting of financial, statistical, service category and other market information by electronic communications networks and service providers.

Wherever possible in such a common reporting regime, and consistent with the new obligation on cross-border business services in the BEREC Regulation, the ideal default position would be that cross-border business providers are exempt from the requirement to provide data, unless the NRA decides explicitly that particular categories of information are necessary from such providers.

¹⁰ This is the case in, for example, Austria, Belgium, Bulgaria, Czech Republic, Hungary, Latvia, Luxembourg, Slovenia, Sweden and UK.

¹¹ An NRA from one of the smallest Member States requires 6 reports comprising nearly 1000 questions in total.

7. Consumer Protection Obligations

A number of NRAs seek to impose consumer protection obligations which have little relevance or applicability to larger enterprise customers, for example, requirements regarding publication of prices, terms and conditions, as well as consumer codes of practice or service charters; availability of consumer complaint-handling procedures, alternative dispute resolution schemes and compensation arrangements. It is difficult to see the relevance of these obligations in the context, for example, of heavily negotiated contracts that follow competitive tendering processes with large enterprise customers. In the case of cross-border providers of business communications services, these contracts are for multi-country solutions and the arrangements for such matters are not specific to any country or geography. Furthermore, the contracts are usually negotiated with the full involvement of the legal services of both the supplier and customer, so the concerns behind such consumer protection requirements do not arise, or are specifically managed in the contract. It is a different circumstance from mass market consumer services.

AT&T fully recognises that consumer protection and user confidence are crucial elements for the future development of the market for communications services, but we believe that NRAs could be more pragmatic about which obligations are relevant to particular enterprise segments and recognise that the protections offered in individually negotiated contracts with business customers may often exceed those available to individual consumers, but do so in a way tailored and targeted to the needs of the customer.¹² In this regard, AT&T commends the approach taken in the UK's general authorisation regime in which certain obligations relating to consumer protection are expressly exempt in the case of customers other than consumers or small business customers.¹³

Recommendation 9: BEREC should explore the scope for a common, pragmatic and flexible approach to the application of consumer protection obligations to providers of services to large enterprise customers, drawing on current NRA best practice. Where the underlying policy to the consumer protection obligation is not applicable in the large enterprise customer context, the obligation should not be applicable.

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¹² In some cases, the national transposition

¹³ See, e.g., Conditions 9 and 14 of the UK General Conditions of Entitlement in *Notification setting general conditions under Section 45 of the Communications Act 2003*. Latest version of General Conditions as at 30 July 2010 available at: <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>



Conclusion

AT&T hopes that BEREC will find these recommendations of assistance in addressing its 2011 work programme item on Business Communications Services. AT&T believes that successful implementation of improvements in the areas identified could contribute to the reduction of administrative barriers and inefficiencies that impede both business service providers and NRAs. AT&T would be pleased to respond to any comments or questions on these recommendations.

AT&T
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Summary of AT&T Recommendations

1. BEREC should explore further the Ofcom and NITA experience of operating a general authorisation regime without a notification requirement, and identify the scope for the (voluntary) abolition of notification by more or all EU NRAs.
2. BEREC should explore the scope for simple online notifications to be made possible in all countries operating a notification requirement.
3. BEREC should explore the possibility for a consistent declaration form to be adopted by all NRAs requiring notifications.
4. To facilitate the development of cross-border services, BEREC should consider the scope for including a pan-European or cross-border service provider category in any agreed common EU-wide notification form.
5. To facilitate the development of cross-border services, BEREC should consider the scope for improvements in the availability of national notification arrangements, compliance reporting obligations, and guidance in languages other than the official language(s) of the Member State.
6. BEREC should investigate the scope for all NRAs levying fees to adopt a common revenue-based system for the calculation of fees.
7. BEREC should explore NRAs' experience with self-certification of revenue, and consider the scope for all EU NRAs to adopt this approach.
8. BEREC should explore the scope for establishing common forms and approaches for the reporting of financial, statistical, service category and other market information by electronic communications networks and service providers.
9. BEREC should explore the scope for a common, pragmatic and flexible approach to the application of consumer protection obligations to providers of services to larger enterprise customers, drawing on current NRA best practice. Where the underlying policy to the consumer protection obligation is not applicable in the large enterprise customer context, the obligation should not be applicable.

Notification Regimes in the European Union¹⁴

Country	Categories					Form or Explanation in English?	Online Notification Possible?
	Services	Sub-categories	Network	Sub-categories	Total ¹⁵		
Austria	5					No	Yes
Belgium	7				7	Yes	No
Bulgaria	11		5	14	25	No	No
Cyprus	8	23	6	14	37	Yes	No
Czech Republic	6	29	6	27	56	Yes	No
Denmark	No notification requirement						
Estonia	7				7	No	No
Finland	7	14			14	Yes	Yes
France	8		3	9	17	No	No
Germany	20	48	7	3	58	No	No
Greece	33	4	22		136	Yes	No
Hungary	30		10		40	No	
Ireland	6		7		13	Yes	No
Italy	13					No	No
Latvia	9		4		13		
Lithuania	5	14			14	No	
Luxembourg	6	21			21	Yes	No
Netherlands	3	31	6		37	Yes	No
Poland	19	6	9		34	No	No
Portugal	14	3	9	4	28	Yes	
Romania	6	35	4	31	66	No	Yes
Slovak Republic	6		8		14	No	No
Slovenia	8	20	3	11	31	No	No
Spain	6	32	2	3	35	No	No
Sweden	3	5	2	3	8	Yes	No
UK	No notification requirement						

¹⁴ This table reflects AT&T's experience of notification regimes in 26 EU Member States. It is not intended as a definitive description, but rather an indication of the degree of variation observed.

¹⁵ Totals do not always reflect cumulative sum of other columns, reflecting differing interactions between main categories and sub-categories.

Regulatory Reporting in the European Union¹⁶

Country	Number of reports analyzed by AT&T for 2010				Total Number of Questions Asked and Analyzed for Relevance to AT&T	Total Number of Questions Answered and Relevant to AT&T Operations	Languages
	Annual	Bi-annual	Quarterly	One-Off			
Austria	2				8	6	German
Belgium		2			502	34	Dutch, French, German
Bulgaria	2				1,400	180	Bulgarian
Cyprus	2		4		1,400	120	Greek
Czech Rep.	1	2			178	33	Czech
Denmark	1	2			1,050	37	Danish, English
Finland	1				12	12	Finnish, English
France	4		4		2,296	231	French, some English
Germany	1			3	201	54	German
Greece	1	2			4,528	32	Greek
Hungary	2		4	1	4,166	103	Hungarian
Ireland	1		4		1,945	69	English
Italy	2				32	25	Italian
Latvia	3	4		1	259	45	Latvian
Luxembourg		6		1	3,725	156	French
Netherlands	2		3	1	400	78	Dutch
Poland	4			1	2,051	131	Polish
Portugal	5				292	57	Portuguese, some English
Romania	2	2		1	442	82	Romanian
Slovak Rep.	2	2		1	2,238	54	Slovak
Slovenia	2		4	1	938	64	Slovenian
Spain	3		4		3,986	180	Spanish
Sweden	1	1		1	803	58	Swedish, English
UK	1		4		798	44	English
Total	45	23	31	12	33,650	1,885	in 19
Yearly Total	111				questions	relevant	languages

¹⁶ This table reflects AT&T's experience of reporting in EU Member States. It is not intended as a definitive description, but rather an indication of the degree of complexity observed.