



**BEREC Guidelines on the application of Article 3 of
the Roaming Regulation -
*WHOLESALE ROAMING ACCESS***

27 September 2012

1. Introduction

According to Article 3 of the Regulation, mobile network operators (MNOs) must meet all reasonable requests for wholesale roaming access, comprising direct wholesale roaming access and wholesale roaming resale access. Direct access means that the retail provider contracts directly with a foreign EU/EEA visited network for the purpose of allowing roaming customers to access the roaming services of the retail provider. It is worth noting that “direct” access is not necessarily physical. The concept also includes the possibility of a direct charging agreement between retailer and visited network operator, in conjunction with physical access negotiated with a host MNO. Resale access means that the retail provider bases its retail service on the wholesale service provided by an MNO usually, but not necessarily, in the end user’s home country.

While Article 3 is drafted in general terms, it is expected that most direct access agreements will be broadly in line with the classical wholesale roaming agreements negotiated between MNOs. The existing access agreements between MNOs, on the one hand, and MVNOs/resellers, on the other hand, are (to the extent that they deal with roaming) generally domestic commercially agreed resale agreements. As from 1 July 2012, the roaming aspects of these agreements fall within the scope of Article 3. Moreover, requests for other variants of direct or resale access must be met, provided only that they are reasonable, irrespective of whether the access seeker is an MNO, MVNO or reseller without systems.

This document contains the guidance which BEREC is required under the Regulation to publish relating to the operation of Article 3 in practice. It describes the main obligations for MNOs (and corresponding rights of access seekers) concerning the provision of roaming access services. The guidance is not legally binding. Nevertheless, NRAs are required to take the utmost account of it in resolving any disputes or taking any enforcement action concerning Article 3. In particular, where NRAs make a decision which departs from this guidance, they will be expected to state objective reasons for the departure.

The Guidelines apply to “regulated” roaming services, as defined in the Regulation. Except where the Regulation explicitly applies to other services, it means services where the roaming customer¹ is roaming within the EEA².

BEREC expects that these Guidelines will be a living document and will be updated from time to time in the light of experience.

2. Entry into force

Guideline 1

As from 1 January 2013, MNOs must offer services on the basis of a Reference Offer based on these Guidelines. The basic obligation to meet reasonable requests for access

¹A ‘roaming customer’ is “a customer of a roaming provider of regulated roaming services, by means of a terrestrial public mobile communications network situated in the Union, whose contract or arrangement with his roaming provider permits Union-wide roaming”.

² The Regulation applies immediately to EU member states. It is expected to be extended shortly to the other states of the European Economic Area (EEA). Until such time as those states (Iceland, Liechtenstein and Norway) have incorporated the Regulation into national law, rights and obligations described by these Guidelines do not apply to market players based in those states.

nevertheless applies from 1 July 2012 the date of entry into force of the Regulation. It would be a prima facie breach of the Regulation to delay dealing with requests for access until the Reference Offer is published.

Existing access agreements, to the extent that they deal with regulated roaming services, need to be updated as necessary from 1 July 2012 to make them consistent with the Regulation.

3. Types of access service offered

Guideline 2

MNOs must be prepared to offer both direct and resale access, as defined in Article 2 of the Regulation, irrespective of whether they currently offer such services.

Subject to any limitations on the services the MNO provides to its own customers, access shall be sufficient to allow the access seeker to offer both prepaid and postpaid services.

4. Granting or refusal of request

Reasonable requests

Guideline 3

Article 3 of the Regulation requires MNOs to grant all reasonable requests for access which may be necessary to allow the access seeker to provide a roaming service (and relevant ancillary services) of reasonable quality and specification. In judging reasonable quality and specification, NRAs will have regard to the nature of the roaming service provided by the MNO in question and by other roaming service providers with their own networks more generally.

Whether or not a request is reasonable will always be judged on the merits of the case. But as a general rule, BEREC expects that any request which does not require deployment of an undue level of resources to implement it and where it is reasonable to foresee that the implementation costs will be recovered within a reasonable period would be regarded as reasonable.

Requests for access to provide services which are not regulated roaming services are not covered by the Article 3 obligation or by these Guidelines. Except where there is national regulation of such access in individual Member States, any such requests fall to be negotiated on commercial terms.

Identity of access seekers

Guideline 4

Any undertaking which is entitled, under the law of the Member State in question, to provide roaming services to roaming customers in that Member State enjoys the right to wholesale roaming access under the terms of Article 3, in order to serve EU roaming customers. This includes MNOs, full and light MVNOs and resellers. BEREC expects that requests for direct access will be limited for technical reasons to MNOs and full MVNOs.

BEREC takes the view that a 'roaming customer' is identified by EU numbering resources assigned to the mobile service.

BEREC considers that operators of hub aggregation services who do not directly serve end users who are EU roaming customers are nevertheless entitled to negotiate access sufficient for and limited to the purpose of serving EEA providers of regulated retail roaming services. The access provider is entitled to specify reasonable standards, procedures and protocols for such access. As a general rule, each party will bear its own costs of connectivity and access.

Both, access seeker and access providers are entitled to request that the wholesale service is to be provided via a hub. In the case that the connection via a hub is to entail additional costs for the other party (as monthly fees or any additional fee to be paid to the hub), the party requesting to connect via the hub will carry these additional costs for the other party. When both parties, the access seeker and the access provider request the use of a hub to connect and it is not possible to reach an agreement on hubs interconnection, the access seeker will have priority in using the hub of their preference for service provision.

Refusal of requests

Guideline 5

Requests for access may not be refused except for objectively justified reasons, backed up by evidence where appropriate. The MNO may not, during consideration of the request, seek information on the commercial nature of the services which the access seeker plans to offer. Refusal on the basis of an unfounded suspicion of a particular behaviour or outcome is not justifiable. Full reasoning for any refusal must be provided in writing to the access seeker.

Neither explicit nor constructive refusal on the basis that access would be available from another provider is justifiable.

Guideline 6

Without prejudice to the generality of Guideline 5, BEREC does not envisage that any in the following indicative list would constitute legitimate reasons for refusal of a request:

- network or signalling saturation
- network planning or releases
- limitations in billing or "back office" systems
- the necessity to make significant investments to support access, unless it is reasonable to foresee that the investment costs cannot be recovered in a reasonable period
- size of the access seeker or of its customer base
- existence of equivalent roaming offers or supply in the same Member State where roaming is requested

Guideline 7

Request for resale of regulated roaming services may not be refused on the basis that the access seeker is not currently hosted on the MNO network.

Prioritisation of requests

Guideline 8

It is understood that prioritisation of requests may be necessary. Nevertheless, requests must be dealt with according to a non-discriminatory process. The commercial interests of the access provider should not be a relevant consideration in deciding on prioritisation.

5. Information required from access seeker

Guideline 9

MNOs must inform the access seeker promptly and in a timely manner on the information needed to make an adequate specified access request (including necessary facilities). Information required by access providers shall be limited to the minimum necessary to allow them to provide an efficient access service, together with any evidence which may be necessary under the relevant national law to establish that the access seeker is entitled to seek access under Article 3. Information may be required at the outset of discussions about access. Further information may be required throughout the life of the access agreement.

Information required before signature of an access agreement

Guideline 10

BEREC expects that non-technical information will be limited to that which commercial parties would normally seek from one another at the outset of any agreement. Access seekers should in particular not be expected to provide any details of the service they expect to provide where these might reasonably be regarded as commercially sensitive.

Required technical information for resale of roaming and direct access services must be limited to technical information on for example interfaces and protocols used by the access seeker which is needed to assess compatibility with the services offered by the access provider. Any technical information that is not needed to assess compatibility with the requested services by the access seeker is not required in advance of negotiations.

In case of direct access for roaming services additionally it might be required to give an initial estimate of traffic volumes to assess necessary connection capacities. Failure to deliver given volume estimates should not lead to penalties in any form such as downgrading of services or negatively changing agreed terms. Prohibition on penalties does not preclude the negotiation of charges which are volume-related.

An efficient method of establishing communication between the parties so that access requests can be processed and implemented without delay should be established at the outset.

Information required on an ongoing basis

Guideline 11

The access provider may lay down a reasonable procedure for the regular supply and updating of forecasts by the access seeker of its future demand (including, where appropriate, the geographical nature of that demand), where this is necessary to allow the access provider to dimension its service efficiently or to provide the necessary resources.

The degree of foresight or precision required should not be excessive. It should be understood and accepted that demand is inherently uncertain and will depend in particular on the commercial success of the access seeker's retail service.

6. The minimum set of wholesale access services offered in respect of regulated roaming services

Direct access

Guideline 12

MNOs must offer all wholesale roaming services which are necessary for an MNO or full MVNO to offer retail roaming services and which have typically been offered under wholesale roaming agreements on regulated terms in the period before the current Regulation came into effect.

This does not preclude requests either from a wider range of access seekers than in the past or for a wider range of access services.

The price for the bundle of services (including both set-up and ongoing charges) must not exceed the limits set out in Articles 7, 9 and 12 of the Regulation, subject (where appropriate) to the currency exchange rules in Article 1.

Where the access seeker reasonably requests a service to be configured in a different manner from that set out in the Reference Offer, fair and reasonable charges may be levied to cover any additional costs.

Resale access

Guideline 13

MNOs must offer:

- (a) The minimum set of wholesale roaming services required to allow a retail provider with its own systems for handling all retail functions to provide a retail roaming service of satisfactory quality. This shall include services provided by visited network operators and other third parties together with services provided by the access provider itself. Without prejudice to the generality of this requirement, this shall include in particular:
 - i. Access to the wholesale roaming services provided by visited network operators with which the MNO has a wholesale roaming access agreement
 - ii. Access to transit services used by the MNO for its own roaming business
 - iii. Access to all information on end-user usage
 - iv. Access to all wholesale functions and facilities provided by the MNO and used to supply its own retail roaming business, in particular contract negotiation and implementation, signalling, authentication, data clearing, billing interconnect, fraud handling, provisioning, Global Roaming Exchange, IP Exchange
- (b) Other wholesale services without which a retail roaming service would not be practical or economic. This shall include in particular resale of termination of

incoming voice calls and outgoing SMS messages, neither of which is commonly included in wholesale roaming agreements.

- (c) Retail functions which can practically or economically be provided only by the access provider.

In addition, they may offer:

- (d) Any other services, at their own discretion.

The price for the bundle of services under (a) must not exceed the limits set out in Articles 7, 9 and 12 of the Regulation, subject (where appropriate) to the currency exchange rules in Article 1.

The price for services offered under (b) and (c) shall be fair and reasonable. Services offered under (d) will be subject to commercial negotiation.

Where a new wholesale roaming agreement is negotiated, existing resale access agreements will automatically be extended to cover access to the new visited network. Similarly, if a wholesale roaming agreement is varied or terminated, the relevant changes shall apply automatically to existing access agreements.

Guideline 14

Without prejudice to the general nature of the obligation, MNOs shall offer services in the following indicative list:

- a) open access to technical interfaces, protocols or other core technologies which are required for the interoperability of the services necessary for a reseller to carry out for itself necessary retail functions (in particular, billing, control of pre-pay credit, control of bill shock, transparency obligations)
- b) access to operational support systems or equal software systems which are necessary to implement resale of roaming services.

Guideline 15

Charges for services provided under Guideline 14 shall be limited by the caps defined in Articles 7, 9 and 12 of the Regulation, subject to the currency exchange rules in Article 1.

7. Other wholesale access services

Unregulated roaming services

Guideline 16

Section 6 shall also apply to unregulated roaming services (e.g. roaming calls to and/or from a state outside the EEA), with the sole exception that charges are not covered by price caps and should be fair and reasonable.

Termination of incoming calls and outgoing SMS

Guideline 17

The wholesale roaming charge does not normally include the costs for termination of outgoing roaming SMS or incoming roaming voice calls. Therefore these termination services cannot be considered to form part of a wholesale roaming **resale** service. These services must nevertheless be offered to resellers of wholesale roaming access under the terms of Guideline 13(indent (b)). Fair and reasonable prices may be charged.

Retail functions which can practically or economically be provided only by the access provider

Guideline 18

MNOs shall offer all services commonly provided to resellers of roaming services. Without prejudice to the generality of this requirement, this shall include:

- a) Billing of post-pay services
- b) Credit control for pre-pay services
- c) Control of data bill shock
- d) Services to implement retail transparency obligations

The provision of any of these services may not be offered subject to a restriction that other services shall be taken in addition. Prices for such services shall be fair and reasonable in accordance with Section 8.

8. Fair and reasonable prices

Guideline 19

Where these Guidelines specify “fair and reasonable” prices, compliance with this requirement will often necessitate consideration of the individual circumstances of the case. In dealing with any complaint about non-compliance or any other dispute, NRAs will in particular take into account the following considerations:

- whether there is a “market rate” for such services (or broadly comparable services). Any charge significantly in excess of the market rate is unlikely to be reasonable
- the cost of provision and the magnitude of the resulting return to the MNO. Such returns should not be excessive
- the need to minimise the overall cost of resale access, in order to facilitate the objectives of the Regulation to promote retail competition, including via resale.

In the case of resale of non-EEA roaming, resale prices which allow an efficient reseller to offer retail tariffs which are competitive with those of the access provider will normally be considered to be fair and reasonable. However, any price rises will be expected to be capable of objective justification.

The basis of fair and reasonable charges must be made available to the access seeker on request. This does not imply that the access provider needs to provide commercially sensitive information to the access seeker.

Fair and reasonable charges for resale of termination of incoming calls and outgoing SMS

Guideline 20

A fair and reasonable charge for termination of incoming calls may be levied to recover the costs to the MNO arising from termination of calls received by customers of the reseller.

A fair and reasonable charge for termination of outgoing roaming SMS shall take account of income received by the MNO for termination of incoming roaming SMS received by customers of the reseller, taking account of any commercial agreement for sharing of such income.

Objective justification of the basis of the charge must be made available to the access seeker on request concerning the necessity of such a charge to avoid providing services at a loss and the reasonableness of the level.

Where the average termination charge paid per outgoing SMS is significantly less than the average termination charge levied on incoming SMS, a charge to resellers is unlikely to be justifiable.

There should be no charge for termination of incoming SMS to resellers having resale access.

9. Non-discrimination

Guideline 21

Where services are required to be offered in accordance with these Guidelines, all terms and conditions of supply (except price) must be equivalent to those relevant for the provision of services to the MNO itself.

Without prejudice to the generality of this requirement, it applies in particular to:

- a) the availability of access services and necessary facilities;
- b) maintenance periods;
- c) repair times in case of malfunctions;
- d) process of ordering and delivery;
- e) process of announcing new or redefined access services;
- f) process of supply of information.

10. General requirements for Reference Offer

Guideline 22

BEREC expects that most access will in practice be granted in line with the access provider's standard Reference Offer which is required to be published not later than 1 January 2013. This should cover all the aspects described below in sufficient detail for access seekers to understand the nature of the service offered. The Reference Offer will also include any additional services which the access seeker wishes to provide to any requesting party, over and above those which are regarded as necessary.

The terms and conditions of the Reference Offer shall be constructed in accordance with these Guidelines and any relevant regulatory requirements. To the extent that this would not

be in conflict with these Guidelines or relevant regulatory requirements, the Reference Offer shall also be constructed in accordance with normal commercial practice.

The Reference Offer shall be sufficient to allow any access seeker to replicate the retail service of the access provider.

The maximum charge for each regulated service offered shall be stated explicitly. Lower charges and/or discounts (calculated on the basis of volume or other factors) may be negotiated individually.

Charges shall not be levied as a consequence of failure to meet a volume forecast submitted for planning purposes or failure by the access seeker to take some action within the timescale requested. The withholding of a negotiated discount as a direct consequence of the access seeker's failure to meet a relevant volume target is not to be construed as a penalty for this purpose.

The Reference Offer shall be prepared and finalised in accordance with standard national procedures for the preparation of reference offers under the European Regulatory Framework. BEREC expects that in all cases the views of access seekers will be sought and taken into account during the formulation of the Offer.

The Reference Offer shall be published on the MNO's web-site in such a way that it will be easily accessible. Planned modifications shall be notified by a secure means to undertakings which have current access agreements or are in active negotiation for such agreements.

The access provider may also be prepared to negotiate bespoke agreements with individual access seekers. These are not required to be covered by the Reference Offer.

11. Specific requirements of the Reference Offer

Agreement on performance

Guideline 23

The Reference Offer shall incorporate a Service Level Agreement which sets out clearly the standards of service which the access seeker can expect in the case of direct and resale wholesale access. Where absolute benchmarks are not available, in particular where the quality of service in question depends on the performance of other network operators, it is acceptable to define standards by reference to those experienced by the MNO's own retail customers. The Agreement shall incorporate Service Level Guarantees, with appropriate compensation in the event of failure to meet those guarantees, on all aspects of performance which are critical to the provision of the access seeker's own retail service. In particular, BEREC considers that minimum service levels should generally be specified for ordering, delivery, normal operation, maintenance and repairs. The specified minimum service levels should be at least as good as those normally achieved by the MNO in respect of services provided to itself and should, in addition, be consistent with best industry practice.

Compensation for failure to meet agreed minimum service levels should be appropriate to incentivise achievement of those levels and should not be less favourable than in the case of normal commercial practice.

MNO must supply without delay a regular quality report to the access seeker, capable of demonstrating whether or not the specified quality parameters have been met and the extent of any non-conformity. The report shall show the quality levels achieved in respect of services provided to each of the following:

- The access seeker in question
- All access seekers in aggregate
- The MNO itself

Procedures shall be established for the automatic payment of any compensation due at the same time as the production of the Report.

In order to minimise unnecessary costs, the degree of detail reported may be limited where there is no prior reason for concern over quality and where problems would be readily apparent. In contrast, where there is a history of quality problems within the responsibility of the access seeker, a great level of reporting detail is likely to be justified.

Interconnection

Guideline 24

If applicable, as for instance for direct access or real time connections in case of resale, the MNO must implement procedures for traffic and network management for ensuring the orderly transport of traffic in case of malfunction or overflow. Suitable procedures may include alternative traffic routes to repair access service during malfunctioning or overflow.

Interoperability, interfaces and protocols

Guideline 25

MNOs must use acknowledged technical standards, protocols and methods which must be fully described either in the Reference Offer or must be fully available free of charge to access seekers in documents, existing industry databases, processes or de facto standards. Where there is no such standard or method, MNOs must avoid approaches which are unduly burdensome for the access seeker.

Implementation of CAMEL protocol for direct access

Guideline 26

The Reference Offer will include as a minimum access to CAMEL (Customised Applications for Mobile networks Enhanced Logic) phase I functionalities allowing access seekers a basic call management of prepaid calls.

Guideline 27

When the operator has at its own disposal more advanced phases of CAMEL (or DIAMETER), the Reference Offer will include the use of these functionalities as an optional feature.

Testing procedures

Guideline 28

The Reference Offer must describe transparent and flexible procedures for testing, in particular of interconnection, interoperability, forecasting, ordering and delivering services. Timescales must be consistent with the maximum permitted implementation period.

Security and data privacy

Guideline 29

The Reference Offer may set out reasonable provisions on these issues consistent with the requirements of the European Regulatory Framework.

The parties are subject to terms of protection of personal data to the applicable legal provisions. For that it is necessary that both parties commit themselves to observe the secrecy rules and maintain the data secrecy according to the applicable law.

Each party's obligations shall be discussed and agreed on and documented in the contract. These obligations shall be within the regulations and laws of the respective countries.

Fraud prevention procedure

Guideline 30

Procedures to prevent fraud may be imposed to the extent necessary to comply with legal obligations or in accordance with normal commercial practice.

Both parties shall lay down and agree on fraud prevention procedures concerning fraudulent or unauthorized use by Roaming Customers to comply with legal obligations.

Contract duration including any break clauses

Guideline 31

The duration of the contract may be set to suit both parties. However, neither party is entitled to insist (or to specify terms which have the same practical effect as insistence) on a contract which is either unduly short or long. BEREC expects that most contracts will be negotiated (or reviewed, with the possibility by the access seeker to break) on an annual basis.

An MNO is not allowed to cease an already allowed access service without objective justification, in which case an appropriate period of notice must be given. In resolving any dispute on cessation of service, an NRA shall take into account all relevant factors, including the following:

- The reasonableness of the period of notice, taking into account the reasons for cessation
- The availability of suitable alternatives
- The equivalence of treatment with that relevant to the MNO's own services
- The appropriateness of any migration procedure offered.

Restrictions on conduct of business

Guideline 32

The contract shall not impose any restrictions on the access seeker except those which are fully described in the Reference Offer, those which are required by law or those which would be regarded as normal commercial practice. Restrictions on the freedom of the access seeker to conduct its business as it sees fit in accordance with the law shall generally be inadmissible. Technical restrictions may be imposed only where there is objective justification for the restriction. Where the access seeker imposes restrictions, it shall readily provide objective justification on request.

Supply conditions which deter entry

Guideline 33

Access providers may impose safeguards to assure payment for services provided or to assure recovery of investments undertaken specifically to provide access. Any such safeguards must be proportionate, such as would be standard commercial practice between willing buyer and willing seller and should be discontinued when they are no longer necessary. They should not have the effect of imposing insuperable barriers to entry especially for small players.

Contractual requirements which seek to impose exclusivity clauses or bundling of services or other requirements which have anti-competitive effect are unacceptable unless there is exceptional justification.

Management and implementation of new roaming agreements

Guideline 34

The contract shall be concluded in written agreement and include terms and conditions and all necessary specifications to enable both parties to fulfil their rights and obligations in compliance with law. Any changes, amendments and/or additions that arise during time shall be agreed on and documented.

The specifications shall include all processes, e.g. installation, configuration, running, testing and making necessary changes to ensure the implementation of direct wholesale roaming access or wholesale roaming resale access compliant to Article 3.

In case of any update or new roaming agreement available the alternative roaming provider shall be informed by the MNO without undue delay. Both parties shall evaluate the impact of any such change for their customers and shall agree on the necessary actions to be performed.

Update of Reference Offer

Guideline 35

The Reference Offer will need to be updated at least every year in order to update regulated prices. Apart from that, it should be updated as soon as possible:

- (1) In order to be compliant with a decision of the NRA or with an update of the BEREC Guidelines; or
- (2) When the existing Reference Offer no longer properly or fully describes the services on offer

The Reference Offer must describe a reasonable procedure for the processing of requests for new methods of roaming access (including necessary facilities) and the resulting modification of the Reference Offer.

Timing issues

Guideline 36

The time limits set out in the Regulation should be regarded as maxima. Notwithstanding the time limits, access providers should make reasonable efforts to respond as soon as possible. Where the access provider requires information from the access seeker in order to proceed and there is a delay in provision, the period of any such delay shall not count towards any relevant time limit.

Responses to requests for access

Guideline 37

The MNO must process an initial request for wholesale roaming access (including necessary facilities) in a timely fashion (2 weeks should be sufficient, barring exceptional circumstances) and professional manner (i.e. acknowledging acceptance of request, requesting missing information and specifying the missing information). If necessary or requested the MNO must to grant the possibility to orally discuss the access request with the access seeker.

New and modified services

Guideline 38

New or modified services shall be offered (or provided to the MNO itself) in a timely manner and the Reference Offer amended accordingly.

Negotiation time

Guideline 39

A draft contract should be made available to the access seeker for signature within one month of the access request. The draft shall remain open for signature until such time as the Reference Offer is amended.

Implementation time

Guideline 40

An access agreement should be implemented as soon as possible but in any case within 3 months of contract signature, subject to any delays on the part of the access seeker.

Dispute resolution

Guideline 41

In accordance with the Article 17 of the Roaming Regulation III in the event of a dispute between undertakings providing electronic communications networks or roaming services in a Member State, the dispute resolution procedures laid down in Articles 20 and 21 of the Framework Directive should be applied fully.

In the event of a dispute between a roaming subscriber and his retail provider which is a reseller concerning an issue falling within the scope of the Regulation, MNOs should provide any co-operation which the reseller may reasonably require, including in respect of out-of-court dispute resolution procedures laid down in Article 34 of the Universal Service Directive.