

**BEREC Guidelines on Regulation (EU) No 531/2012,
as amended by Regulation (EU) 2015/2120 and by
Regulation (EU) 2017/920
(Wholesale Roaming Guidelines)**

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1. Introduction

These Wholesale Roaming Guidelines replace the BEREC Guidelines of 2012 (BoR (12) 107) which concern the wholesale roaming access obligations for MNOs and the rights for access seekers on the application of Article 3 of Regulation (EU) No 531/2012¹ (hereafter “Roaming Regulation”)². The revision of the BEREC Guidelines of 2012 was necessary to include the changes to the Roaming Regulation as set out in Regulation (EU) 2017/920 of the European Parliament and of the Council of 17 May 2017 amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets.

This document contains the guidance which BEREC is required to publish under the Roaming Regulation relating to the application of Article 3. The guidance is not presented as an official legal interpretation. Nevertheless, NRAs are required to take the guidance into utmost account when resolving any disputes or taking any enforcement actions 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.

According to Article 3 (1) Roaming Regulation, mobile network operators (MNOs) shall meet all reasonable requests for wholesale roaming access, comprising of direct wholesale roaming access and wholesale roaming resale access. Direct access means that the retail provider contracts directly with a foreign 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.

As from 1 July 2012, the roaming access agreements have fallen within the scope of Article 3 and its later amendments and request 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.

The Guidelines apply to “regulated” roaming services, as defined in the Regulation. Except where the Regulation explicitly applies to other services, the Regulation applies immediately to EU Member States. The Roaming Regulation also applies to the EEA EFTA states Iceland, Liechtenstein and Norway. The amended obligations in Regulation (EU) 2017/920 will also apply when they are incorporated in the EEA agreement.

¹ Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the Union amended by Regulation 2015/2120 and by Regulation 2017/920

² Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No. 531/2012 on roaming on public mobile communications networks within the Union

2. Wholesale roaming provisions

Guideline 1. Entry into force

The basic obligation to meet reasonable requests for access has been unchanged and nevertheless applies from 1 July 2012, the date of entry into force of the Roaming Regulation.

As of 1 January 2013, MNOs must offer services on the basis of a Reference Offer based on these Guidelines. MNOs need to update their Reference Offers to take account of the 2015 and 2017 amendments to the Roaming Regulation.

Existing access agreements, to the extent that they deal with regulated roaming services, need to be updated as necessary from 15 June 2017 to make them consistent with the amended Roaming Regulation.

Guideline 2. Types of access services offered

MNOs must offer both direct and resale access, as defined in Article 2 (p) and (q) Roaming Regulation.

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.

Guideline 3. Reasonable requests

Article 3 (1) Roaming 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 be implemented 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 Roaming Regulation obligation or by these Guidelines. Except where there is national regulation of such access in individual Member States, any such requests have to be negotiated on commercial terms.

Guideline 4. Identity of access seekers

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 request wholesale roaming access under the terms of Article 3 Roaming Regulation in order to serve EEA 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 considers that operators of hub aggregation services which do not directly serve EEA 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 seekers and access providers are entitled to request that the wholesale service is to be provided via a hub. In the case that a connection via a hub entails 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. When both parties, the access seek and the access provider, request the use of a hub to connect and it is not possible to reach an agreement on the hub's interconnection, the access seeker will have priority in using the hub of its preference for service provision.

Article 2 (2) (g) Roaming Regulation defines 'roaming customer', which is an end user of a roaming provider of regulated roaming services, by means of a public mobile communications network situated in the Union. BEREC considers that, a roaming customer could for example be identified by numbering resources from EEA Member States and which are in accordance with the E.164 ITU Recommendation or E.212 ITU Recommendation.

Guideline 5. Refusal of requests

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 other than to verify that the roaming service in question will not be used for purposes other than the provision of regulated roaming services to roaming providers' customers while the latter are periodically travelling. 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 within a reasonable timeframe. BEREC considers that a reasonable timeframe could be one month after the initial receipt of the request by the mobile network operator (as in the case of providing a draft contract in accordance with Article 3 (5) Roaming Regulation).

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

Without prejudice to the generality of above-mentioned, BEREC does not envisage that any of the circumstances specified 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

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's network.

Guideline 6. Prioritisation of requests

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.

Guideline 7. Information required from an access seeker

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 national law to establish that the access seeker is entitled to seek access under Article 3 Roaming Regulation. Information may be required at the outset of discussions about access. Further information may be required throughout the duration of the access agreement.

Guideline 8. Information required before signature of an access agreement

BEREC expects that non-technical information will be limited to such information 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 e.g. interfaces and protocols used by the access seeker which are 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.

It might be additionally required to give an initial estimate of traffic volumes to assess necessary connection capacities. Failure to deliver given volume estimates might delay the process (Guideline 39), but 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.

Guideline 9. Information required on an ongoing basis

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.

3. Wholesale Roaming Access Services

Guideline 10. Direct access

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 amendments of the Roaming Regulation come 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 (1), 9 (1) and 12 (1) Roaming Regulation subject (where appropriate) to the currency exchange rules in Article 1 Roaming Regulation (see Guideline 46).

When negotiating wholesale roaming access for the purpose of providing retail roaming services, operators can, if both parties explicitly agree, negotiate innovative wholesale pricing schemes which are not directly linked to volumes actually consumed, such as flat payments, up-front commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. The negotiating parties can therefore, according to Article 3 (4) Roaming Regulation, agree not to apply the maximum regulated wholesale roaming charges set out in Articles 7 (1), 9 (1) and 12 (1) Roaming Regulation for the period of validity of the agreement. This would exclude for this period the possibility for either party to subsequently request the application of volume-based maximum wholesale charges on actual consumption, as set out in Recital 11 Roaming Regulation (EU) 2017/920. This alternative should be without prejudice to obligations as regards the provision of regulated retail roaming services in accordance with the Roaming Regulation.

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.

Guideline 11. Resale access

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 (1), 9 (1) and 12 (1) Roaming Regulation, subject (where appropriate) to the currency exchange rules in Article 1 Roaming Regulation (Guideline 46).

The price for services offered under (b) (see Guideline 16) 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 must apply automatically to existing access agreements.

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

- 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)
- access to operational support systems or equal software systems which are necessary to implement resale of roaming services.

Charges for the services mentioned in the paragraph above shall be limited by the caps defined in Articles 7 (1), 9 (1) and 12 (1) Roaming Regulation, subject (where appropriate) to the currency exchange rules in Article 1 Roaming Regulation (Guideline 46). BEREC notes that particularly in light of offering roaming services at domestic prices, the wholesale charges do not necessarily have to be set at the level of those caps, as those caps are meant as an upper limit.

When negotiating wholesale roaming access for the purpose of providing retail roaming services, operators can, if both parties explicitly agree, negotiate innovative wholesale pricing schemes which are not directly linked to volumes actually consumed, such as flat payments, up-front commitments or capacity-based contracts, or pricing schemes that reflect variations of demand across the year. The negotiating parties can therefore according to Article 3 (4) Roaming Regulation agree not to apply the maximum regulated wholesale roaming charges set out in Articles 7 (1), 9 (1) and 12 (1) Roaming Regulation for the period of validity of the agreement. This would for this period exclude the possibility for either party

to subsequently request the application of volume-based maximum wholesale charges on actual consumption, as set out in Recital 11 Roaming Regulation (EU) 2017/920. This alternative should be without prejudice to obligations as regards the provision of regulated retail roaming services in accordance with that Roaming Regulation.

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 should be levied to cover any additional costs.

Guideline 12. Unregulated roaming services

BEREC considers that Guideline 10 and Guideline 11 should 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.

Guideline 13. Termination of incoming calls and outgoing SMS

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 11 (indent (b)) and Guideline 16. BEREC considers prices for these services should be fair and reasonable.

Guideline 14. Retail functions which can practically or economically be provided only by the access provider

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
- e) Information that might be needed to implement the Fair Use Policy (FUP) such as information about log-on data
- f) Information required for disputes with customers
- g) Fraud prevention

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 Guideline 15.

Guideline 15. Fair and reasonable prices

Where these Guidelines specify that “fair and reasonable” prices should be charged, 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) or charges applied to other access seekers. 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.

BEREC considers that, 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 by the access provider.

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.

Guideline 16. Fair and reasonable charges for resale of termination

A fair and reasonable charge for termination of incoming roaming calls should be levied to recover the costs to the MNO arising from termination of calls received by customers of the reseller whilst roaming. Any charge in excess of the weighted average of the mobile termination rate according to Article 6e (2) Roaming Regulation is unlikely to be reasonable. The average mobile termination rate is supposed to be a cap at retail level for surcharges applied for regulated roaming calls received; therefore the wholesale charge should be below this level. For off-net calls a reasonable charge could be the difference between the revenue the host MNO receives for the termination less the cost charged for the termination by the visited MNO.

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 regarding 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 of the charge.

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

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

Guideline 17. Non-discrimination

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.

Guideline 18. Value-added services

According to Recital 43 Roaming Regulation, the Roaming Regulation does not apply to the whole tariff that is charged for the provision of premium rate service (PRS3) but only to the tariff component corresponding to the connection to such services. This would allow for applying the charges set out in Articles 7 (1), 9 (1) and 12 (1) Roaming Regulation for voice calls, SMS and data services respectively that are solely limited to the connection to PRS and not the service of the content provider itself.

³ BEREC considers that a value added service in the context of the Roaming Regulation is a service where the charge for the voice call, or SMS, or data transmission is bundled with the price of a specific service being purchased, e.g. a ring tone, and that bundled price is fully billed by, and paid to, the roaming customer's roaming provider.

4. Reference Offer

Guideline 19. Obligations to publish a Reference Offer

Art 3 (5) Roaming Regulation requires access providers to publish their standard Reference Offers. That Reference Offer should cover all the aspects described below in sufficient detail for access seekers to understand the nature of the service offered. The Reference Offer shall also include any additional services which the access provider 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.

No charges shall 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 Reference Offer.

The Reference Offer shall be published on the MNO's website 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. BEREC considers it a good practice that MNOs inform the NRA about the publication of the Reference Offer.

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.

Guideline 20. Agreement on performance

The Reference Offer shall incorporate a Service Level Agreement which clearly sets out the standards of service which the access seeker can expect in the case of direct and resale wholesale roaming access. Where no absolute benchmarks are 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.

MNOs 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.

Guideline 21. Interconnection

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.

Guideline 22. Conversion of megabytes to gigabytes

In order to take account of the expected increase in the usage of domestic and roaming data services and the corresponding reduction of the costs per unit of data consumed, the maximum wholesale charge for regulated data roaming services will decrease each year and be set in Euros per gigabytes where a gigabyte is equal to 1000 megabytes according to Recital 17 Roaming Regulation (EU) 2017/920. This implies that the maximum price per MB, which can be also used in the contracts, as of 15 June 2017 is 0.0077 Euros and will decrease according to Article 12 (1) Roaming Regulation.

Guideline 23. Interoperability, interfaces and protocols

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.

Guideline 24. Implementation of CAMEL protocol phase I for direct access

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 25. Implementation of CAMEL protocol advanced phases for direct access

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.

Guideline 26. Testing procedures

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.

Guideline 27. Security and data privacy

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

Guideline 28. Information to include about permanent roaming

The Reference Offer may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access from part of the access seeker's customers.

These conditions may include:

- the specific measures that the visited MNO may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access;
- the objective criteria on the basis of which such measures may be taken. Such criteria may refer to aggregate roaming traffic information. They shall not refer to specific information relating to individual traffic of the access seeker's customers.

Guideline 29. Measures to prevent permanent roaming or anomalous or abusive use

The Reference Offer may include measures to prevent permanent roaming or anomalous or abusive usage. The Reference Offer may include a condition enabling the visited MNO to ask the access seeker to provide information allowing the determination whether a significant share of its roaming customers engage in permanent roaming or whether there is anomalous or abusive use of wholesale roaming in the visited MNO's network. Such information is to be collected on the basis of objective indicators in accordance with the detailed rules on the application of a FUP in the Commission Implementing Regulation (EU) 2016/2286 (CIR).

Operators could also include in their Reference Offers measures that are less stringent than the measures set out in Recital 12 Roaming Regulation (EU) 2017/920, for instances by using higher wholesale charges which do not exceed the maximum wholesale caps provided in the Roaming Regulation for volumes exceeding an aggregated volume specified in the agreement.

Less stringent measures could also consist of a commitment by the access seeker to adopt, revise or enforce the fair use policies applicable to its customers in accordance with the detailed rules in the CIR. The visited MNO can also request that the wholesale roaming agreement is revised.

The Reference Offer may, as a last resort, provide for the possibility to terminate the wholesale roaming agreement where less stringent measures have failed to address the situation.

The visited MNO shall establish, based on objective criteria, that permanent roaming by a significant share of the access seeker's customers or anomalous or abusive use of wholesale roaming access is taking place. The visited MNO has to inform the access seeker accordingly.

Guideline 30. Procedure prior to unilateral termination of wholesale roaming agreements in case of permanent roaming or abusive or anomalous usage

The Roaming Regulation requires that the unilateral termination of wholesale roaming agreements may only take place upon prior authorization by the relevant national regulatory authority. The visited MNO can terminate the wholesale roaming agreement on the grounds of permanent roaming or anomalous or abusive use of wholesale roaming access after having received clearance from its NRA.

The termination is preceded by a request of the visited MNO to the relevant NRA, which must also consult the NRA in regard of the access seeker. The procedure for clearing a request for termination of a wholesale roaming agreement by the NRA of the visited MNO must not take longer than three months from the receipt of the request of the visited MNO. The Commission must be informed accordingly.

The respective NRAs of both, the visited MNO and of the access seeker may each request BEREC to adopt an opinion with regard to the action to be taken in accordance with the Roaming Regulation. BEREC shall adopt its opinion within one month after receiving such a request.

In cases where BEREC is consulted, the NRA of the visited MNO must await and take the utmost account of BEREC's opinion before deciding whether to authorise the termination of the wholesale roaming agreement. The three-month period must in any case not be exceeded.

The NRA of the visited MNO must make the information concerning the authorization to terminate the wholesale roaming agreement available to the public, e.g. on their website, subject to business confidentiality.

These Guidelines shall be without prejudice to the power of an NRA to require the immediate cessation of a breach of the obligations set out in the Roaming Regulation, pursuant to Article 16 (6) Roaming Regulation and to the right of the visited network operator to apply adequate measures in order to combat fraud.

Guideline 31. Organised resale definition

Organised resale occurs when a number of SIM cards have been the object of organised resale to persons not effectively residing or having stable links in the Member State of the access seeker for purposes other than periodic travel. Such organised resale may lead to permanent roaming as referred to in Guideline 29. In that case, the visited MNO may take the measures foreseen in the wholesale roaming agreement with the access seeker such as the measures described in Guideline 29 and Guideline 30.

Guideline 32. Fraud prevention procedure

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.

Guideline 33. Contract duration including any break clauses

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;
- the evidence of permanent roaming or anomalous or abusive use;
- the application of less stringent measures to prevent permanent roaming or anomalous or abusive use.

This is without prejudice to the specific case where visited network operators are allowed to unilaterally terminate a contract in case of permanent roaming or anomalous or abusive use of wholesale roaming access upon prior authorisation by the visited network operator's NRA (see Guideline 30).

Guideline 34. Restrictions on conduct of business

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 provider imposes restrictions on the access seeker, it shall readily provide objective justification on request.

Those restrictions that can be carried out as a consequence of the evidence of organised resale or permanent roaming or anomalous or abusive use of wholesale roaming services should be described in the Reference Offer (see Guideline 28 and Guideline 29).

Guideline 35. Supply conditions which deter entry

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.

The proportionality of these safeguards could be related to projected volumes or actual volumes corresponding to the billing cycle. For example, bank guaranties or prepaid contracts are tools to safeguard those services provided at wholesale level.

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

Guideline 36. Management and implementation of new roaming agreements

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 legal provisions. 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 Roaming Regulation.

In case of any update or new roaming agreement available the access seeker 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.

Guideline 37. Update of the Reference Offer

The Reference Offer should be kept up to date to reflect the 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; or
- (3) According to the provisions in the amended Roaming Regulation.

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.

Guideline 38. Timing issues

The time limits set out in Article 3 (5) Roaming 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.

Guideline 39. Responses to requests for access

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 grant the possibility to orally discuss the access request with the access seeker.

Guideline 40. New and modified services

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

Guideline 41. Negotiation time

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.

Guideline 42. Implementation time

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.

5. Disputes and NRA intervention

Guideline 43. Modifications of Reference Offer by NRAs

If necessary, NRAs shall impose changes to reference offers, including the specific measures that the visited MNO may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access, and the objective criteria on the basis of which those measures are imposed to give effect to the obligations laid down in Article 3 Roaming Regulation.

Guideline 44. Dispute resolution

In accordance with Article 17 of the Roaming Regulation, 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 Framework Directive should be applied fully.

Disputes between access providers and access seekers on the rates applied to wholesale roaming services necessary for the provision of regulated retail roaming services may be referred to the NRA pursuant to Article 20 or 21 Framework Directive. In such a case, the

NRA may consult BEREC about the action to be taken in accordance with the Framework Directive, the Specific Directives or the Roaming Regulation to resolve the dispute. Where BEREC has been consulted, the NRA shall await BEREC's opinion before taking action to resolve the dispute.

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 Universal Service Directive.

Guideline 45. General intervention of NRAs apart from unilateral termination and disputes

NRAs may intervene on their own initiative in order to ensure compliance with the Roaming Regulation. In particular according to Article 16 (5) Roaming Regulation, they shall, where necessary, make use of the powers under Article 5 Access Directive to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, for example where customers are unable to exchange regulated roaming SMS messages with customers of a terrestrial public mobile communications network in another Member State as a result of the absence of an agreement enabling the delivery of those messages. Where an NRA finds that a breach of the obligations set out in the Roaming Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

Guideline 46. Charges in currencies other than the Euro

Articles 7 (1), 7 (2), 9 (1) and 12 (1) Roaming Regulation set out the applicable wholesale caps. When converting these caps to currencies other than Euros, operators should use the method set out in Article 1 (6) Roaming Regulation as there were no changes due to the amended Roaming Regulation. This means that the values shall be determined by applying the reference exchange rates published by the European Central Bank in the OJEU on 1 May of the relevant calendar year.