

**P4, Polish mobile network operator, input and comments to BEREC questions regarding “BEREC Guidelines on Roaming Regulation (Articles 4 And 5 on Separate Sale of Roaming Services)”.**

Poland, Warsaw, 31/05/2013

Q1: Do you consider that a period of 4 months is sufficient for MNOs as well as for ARPs to prepare the functionalities for decoupling in order to allow ARPs to provide retail roaming services on 1st of July 2014? If your answer is no, please specify what period should be sufficient and provide justification why the period should be longer.

The 4 months is not possible to be achieved. The Regulation defines 2 phases: the first one says DSP is obliged to provide a draft of agreement within 1 month, the second phase says DSP has to technically connect access seeker within 3 months. However, there is no information regarding negotiations timing – since there is no specific deadline for negotiations, the implementation cannot be concluded before contract is signed. Since the negotiations process usually lasts a couple of months, the proposed 4 months is only theoretical one and absolutely finds no justification in practice.

The closest process describing connection of access seeker (ARP) to DSP, is the process of MVNO implementation. P4 as leader of MVNO hosting on Polish market understands clearly that the process, negotiated in good will and with full resources support, takes from 8 to 12 months. The timeline, therefore, is at least twice longer than described in the Guideline 1.

P4's proposal is to completely remove the timelines and leave it for bilateral agreement between DSP and access seeker. In case the timing negotiations fail, it could be escalated and arbitrated by local NRA where DSP is present.

Q2: Is there any additional provision to be considered regarding the use of standards, reference documents and access to documentation by access seekers?

It is still necessary to clearly force access seekers to follow worldwide standards. Majority of access seekers are not part of GSM Association where majority of standardisation requirements are placed, based on roaming wholesale access agreement. The Guideline 3 says: “Any relevant reference documents developed by market participants may be applied as long as they are free of charge for any potential access seeker and there are no limitations in their use”. However, those documents are either confidential or the access to them is

restricted for non-GSMA entities. DSP cannot be responsible for providing such standards and documentation since those are confidential and access seekers should be obliged to acquire them.

Therefore, it needs to be clearly defined that the responsibility to fulfil the standardisation and to be in line with its requirements is in access seeker hands. We suggest that Guideline 3 should clearly state that access seekers need to fulfil obligations and requirements placed by the standards, especially those included in International Roaming Agreement used for wholesale access seeker. It also needs to clearly define responsibility of access seeker, to be up to date with the latest standardisation versions and keep fulfilling its changing requirements.

Q3: Do you have any concerning the authorization regime for the ARP?

It needs to be clearly define the authorisation regime of which member state in each specific case. We suggest below solution:

1. In case of reseller, it should be local law where DSP is placed.
2. In case of LBO it should be local law where the LBO service is provided.
5. Fraud management and M2M services (Guidelines 7,8)

Q4: Is there any additional issue that should be considered in the BEREC guidelines for interception and data retention, fraud management and M2M services?

We strongly disagree with the statement of both parties “responsibility for taking any necessary measure to avoid fraud”, since it clearly requires from DSP to control customers who decided to move their services to ARP. However, since those customers are no longer DSP customers, it shall be fully and undoubtedly ARP’s liability and need for a proper reaction in case of any fraud scenario happens. DSP may rather support ARP advising, but such consultation should be based on specific commercial agreement and pricing in Reference Offer. Summing up - it is ARP that is required to take proper actions and to take full responsibility for ARP (reseller) customers actions.

Q5: Do you consider that the fallback from ARP providing local data roaming services to the previous roaming provider needs more clarification? Is there any additional issue that BEREC should take into account in the guidelines regarding the switching process from local data roaming services to traditional roaming and the rights of the customers when using local data roaming services?

Customers who decide to roll back to regular roaming, should be also informed by LBO provider about billshock roll back as well, every time they decide to go back. The LBO

provider should also send specific notification to customer in case the customer or its handset accidentally switched to another, non-LBO, network.

Q6: Do you consider that there is any provision in the regulation supporting obligations for MNOs to provide wholesale services to other stakeholders for allowing them to provide local data roaming services? If so, please provide your justification based on the regulation.

Yes, there is such scenario, and it should be strictly highlighted. There are situations where MNOs in EEA still do not have international roaming agreements in place, mostly late entrants. So, in case MNO would like to start providing LBO services as VPMN, then HPMN should allow all international roaming services, not only for DATA, but also voice, SMS and other services defined by a wholesale access agreement – we are referring to Article 3 of the Roaming Regulation.

Q7: Do you consider that the guidelines should address any additional issues about using local data roaming services outside the EEA or by non EEA customers? (Please, consider in your response that the roaming regulation does not apply to non EEA operators)

P4 believes that LBO could definitely be offered for all customers who would like to use it, despite the fact the customers are from EEA or not. Since the Roaming Regulation breaks GSM Association rules (BA.47) about marketing communications to visiting roamers, the non-EEA roamers may also purchase such DATA services from VPMNs. Since the BA.47 is still valid outside of EEA, customers of EEA will not be informed by any marketing activities and will not be able to purchase LBO.

Q8: Do you consider that there is a technical constraint pointing a different model for allowing by default the use of the Universal APN? If so, please explain.

We do not consider a technical constraint, however, there should be an alert in case of APN swap, from end-user perspective and service usage experience.

Q9: Do you consider that the BEREC guidelines should consider any additional exception for barring and/or blocking? If so, please explain and justify the compliance of the proposal with the regulation.

No comment.

Q10: Should BEREC consider any other issue about traffic steering? Please describe and justify the need according to the regulation.

No comment.

Q11: Is there any additional issue or obligation to be considered in the guidelines about manual selection of networks in the terminal and about rights for donor roaming providers to perform automatic restoration?

It must be underlined – not all handsets have the possibility to change APN via

- OTA (Over The Air)
- manually (e.g. in case of iPhones)

The same issue is related to APN original settings restoration. Unfortunately, at the moment, we have no suggestion how to fix the issue, and a sub-group responsible for interfaces in Roaming Platform should look much closer in to the topic.

Q12: Do you consider that ARPs providing local data roaming services are to take any other responsibilities regarding the restoration of APNs? If so, please provide justification based on the regulation.

Transparency measures should be extended for LBO users. Especially for the scenario when end-user leaves coverage of LBO network provider, then a notification about the fact should be delivered immediately to the end-user.

Q13: Do you consider that it is necessary to use a real time interface between ARPs providing local data roaming services and donor roaming providers for switching off steering and selected barring?

Absolutely not, otherwise, it will make the LBO setup extremely difficult and would require massive workload and unnecessary complex network setup nearly impossible to maintain, between all 100+ roaming partners in EEA.

Q14: Do you agree with the fallback model stated in the guideline? Are there any additional issues BEREC should take into account with regard to the process described in the Guideline?

There is unclear situation when a customer has post-paid contracts signed with more than one ARP which from legal perspective is valid? To be more precise, we would like to example the scenario:

- customer has 2 post-paid contracts with 2 different ARPs. The contract signed as the last one is valid, but customer decides to terminate it.
- so, the customer should fall back to the second contract in the line?
- or, termination of the last contract means the customer falls back to DSP anyway, despite the fact if there are other contracts with ARPs in place?

The situation definitely requires clarification and description in BEREC Guidelines.

Q15: Is there any reason justifying a different approach for the separate sale of roaming services than for wholesale roaming access pursuant to Article 3? If so, please provide a justification.

No comment.

Q16: Do you agree with BEREC's general approach to refusal of requests? Do you have any specific suggestions on how the guidance in this area could be strengthened so as to deter refusals on spurious grounds while not constraining the right of ARPs on the basis of careful objective justification?

The reasons when DSP may refuse a request is not in line between Guidelines 27 and 28. The clash is specifically in those 2 statements:

- Guideline 27: "But as a general rule, BEREC expects that any request which does not require deployment of an undue level of resources to implement it would be regarded as reasonable."
- Guideline 28: "The domestic provider may not, during consideration of the request, seek information on the commercial nature of the services which the ARP plans to offer. Refusal on the basis of an unfounded suspicion of a particular behaviour or outcome is not justifiable."

Therefore, in case ARP decides to make a retail offer which requires from DSP "undue level of resources" which of those guidelines prevail? Those 2 guidelines require clarification.

Q17: Do you agree with BEREC's approach to prioritisation of requests?

Any decision of DSP to make a prioritisation line for ARPs will be wrong - the ARPs at the end of the queue will always complain about discrimination. So, either Guidelines specifically describe the non-discrimination rules, or should leave it in hands of DSP and ARP negotiations.

Q18: Do you consider that the time limits are reasonable? If not, please explain and justify why?

Following Q1, the 4 months is not possible to be achieved. The Regulation defines 2 phases: the first one says DSP is obliged to provide a draft of agreement within 1 month, the second phase says DSP has to technically connect access seeker within 3 months. However, there is no information on negotiations timing – since there is no specific deadline for negotiations, the implementation cannot be concluded before contract is signed. Since the negotiations process usually lasts a couple of months, the proposed 4 months is only theoretical and absolutely finds no justification in practice. Additionally, the timing is even

more challenging by number of ARPs which would like to connect to DSP “as soon as possible” which actually means “the same moment”.

The closest process describing connection of ARP to DSP, is the process of MVNO implementation. P4 as MVNO leader on Polish market understands clearly that the process, negotiated in good will and with full resources support, takes from 8 to 12 months. The timeline, therefore, is at least twice longer than described in the Guideline 1.

Q19: Do you agree with BEREC’s approach on wholesale bundled offers?

No comment.

Q20: Do you agree with the obligation for domestic providers and host operators stated in the guidelines? If not, please explain.

No comment.

Q21: Do you agree with the suggested level of information required from access seekers? Is there any reason why this level of information may either not be necessary, or may be inadequate?

The level and information details should be sufficient to the level which allows proper setup between DSP and ARP. Therefore, the information exchange should be bilaterally agreed in good faith.

Q22: Do you agree with BEREC’s approach regarding the customer profile? If not, please provide a justification based on the regulation. If you have any proposal or comments on issues to consider in the guidelines about interfaces between ARPs and domestic providers for prepaid or postpaid services, please include this in your response.

Currently, many DSPs have no solution to keep 2 profiles (pre-paid and post-paid) in parallel for the same, single customers. Therefore, BEREC should include the demand to Guideline 43 “Functionalities to be provided by domestic providers on request” as a mandatory service but “fair and reasonable” price and it should be allowed to charge ARP for double profile (pre-paid and post-paid) of the same customer if ARP has no billing functionalities.

This is a significant investment into functionality which is not provided by most of DSPs in EEA and if ARP requests for double profile functionality it may be implemented but duly charged. The only exception is a situation when ARP has its own billing system and is requesting for support and provisioning only.

Q23: Should BEREC consider additional functionalities to be provided for free? If yes, please explain?

No comment.

Q24: Do you agree with BEREC's approach for termination of incoming calls and outgoing SMS? (If not, please explain and justify)

No comment.

Q25: Do you agree with BEREC's approach on roaming outside the EEA and on special rate services? (If not, please explain and justify)

It is impossible to define and follow special-rate services pricing and decide on daily basis which of them are in line or below regulation price caps. The special-rate services are extremely high risk for fraud and it should be a subject to bilateral negotiations between ARP and DSP in terms of pricing, anti-fraud measures and list of special-rate services provided. In general, all the services provided by DSP for its customers, should be allowed for ARP customers as well, but the ARP needs to secure all possible anti-fraud solutions (following answer in Q4).

It also needs to be perfectly described, without any doubts, the special-rate services cannot be in any way connected with regulated price caps and there cannot be a guideline or obligation for DSP to provide the high rated services according to conditions given for regulated services.

Q27. Should BEREC consider additional rules beyond normal commercial practices for the separate sale of roaming services or do you consider any reason to apply different rules for decoupling functionalities than for wholesale roaming access pursuant to Article 3 of the Regulation?

Following Guideline 47 - it is absolutely not possible to provide a SLA for ARP since DSP has no SLA with its roaming partners. Such SLA was never introduced by GSMA or any other standardisation body. Therefore, ARP customers will have exactly the same level of service as DSP customers, however, without any specific deadlines or timelines for fixing any issues which may be encountered. Any trouble shooting should follow current international roaming services based on best efforts of both parties.

Q26. Is there any additional issue to be considered about switching of domestic provider by customers?

The swap to ARP is something new and end users may be afraid of. Definitely, all customers should be aware of all benefits, threats but also negative and positive effects they may experience. The information should be provided not only by ARP, but also on NRAs websites in each specific country. Information is the key to make the roaming decoupling as successful as possible.

Q28. Do you consider that the Guidelines should cover additional issues or should any of the draft guidelines be further developed?

No comment.

Q29. Do you have any other comments on the draft Guidelines?

How the latest “free-roaming” initiative of Commissionaire Ms. Neelie Kroes should be introduced or addressed by BEREC regarding Roaming III regulation? Should operators hold implementation, tenders and preparations for Roaming III, and wait to clarify final view on international roaming market?