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Comments to

“BEREC Guidelines on Roaming Regulation Articles 4 and 5 on Separate Sale of Roaming Services”

Tele2 Group Response

3 June 2013

Tele2 AB (“Tele2”) welcomes the opportunity to comment on BEREC’s Consultations concerning International roaming regulation, BEREC guidelines on Roaming regulation, Articles 4 and 5 on separate sales of roaming services.¹

In this response Tele2 would firstly like to outline some general comments regarding the consultation and the practical implications of the new Roaming Regulation², secondly reply to some of the questions outlined in BERECs draft Guidelines concerning Article 4 and 5³ and also finally comment on some of the Guidelines which are not covered by any questions.

Currently, all mobile network operators/MVNO’s in Europe are investing vast amounts of resources in order to ensure compliance to the Roaming Regulation, meant to lead to increased competition in the roaming market. At the same time political statements are being delivered both by the Commission and the European Parliament about again changing the roaming regulation in Europe. From an investment perspective it is utterly important that all Regulation in the telecommunication sector provides for long terms predictability and foreseeably. Roaming Regulation III is currently being implemented why it may be considered unwise to propose further/new regulation before the current Regulation has come into effect.

¹ BEREC Guidelines on Roaming Regulation (EU) NO 531/2012 (third roaming regulation) Articles 4 and 5 on Separate Sale of Roaming services, BoR (13) 54.

² Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union, hereafter referred to as the Regulating.

³ BEREC Guidelines on the separate sale of Regulated retail roaming services and the implementation of separate sale of regulated retail roaming services under article 4&5 of the roaming regulation – a consultation. BoR (13) 53

Tele2 welcomes that BEREC's starting point for the Guidelines is to build on the Guidelines of Article 3.⁴ Furthermore Tele2 is pleased to see BEREC clearly outlining that the Regulation neither includes extra-EU services nor universal APN for non EEA roamers – due to the fact that these obligations are not part of the scope of the Regulation. Tele2 would like to suggest that BEREC outline the exact scope in the Introduction of the Guidelines.

On a general note Tele2 is worried that BEREC generally underestimates the complexity and the needed resources from Mobile Network operators (MNO)/MVNO's to fulfill the obligations outlined in Regulation. Tele2 has been very active in the Industry Forum, a joint working group with participation both from the European Commission, BEREC, trade associations, potential alternative roaming providers and individual operators. One of the great outcomes from the Industry Forum, apart from in a very short amount of time being able to agree on the High Level Technical Specifications, has been the ability to openly discuss and outline all the technical and regulatory queries which the Regulation has resulted in – there has been numerous questions and discussions. Overall Tele2 is very pleased with the set up and work of the Industry Forum, however the fact that informal questions to the Steering committee, the European Commission and BEREC have sometimes taken a long time to reply to, has led to the work of the Platform being delayed. Tele2 would like to underline this delay since the fulfillment of the obligations of article 4 and 5 will be dependent of the outcome of the Industry Forum.

Concerning the outcome of the Industry Forum, Tele2 was of the impression that the technical specifications would have been annexed to the Guidelines. Tele2 welcomes the fact that the Guidelines outline that Alternative Roaming Providers need to comply with the output of the Industry Forum, however we believe that this obligation would have been strengthened if the documentation, especially the High Level Technical Specifications produced by the Industry Forum would have been part of the Guidelines as appendixes.

Tele2 is of the opinion that BEREC in its guidelines goes beyond the obligations of the Roaming Regulation and beyond what has been agreed in the Industry Forum, such as the non-EEA traffic (Guideline 41), the obligations concerning the Value added services (Guideline 42), functionalities (Guideline 43), and Service level agreements (Guideline 47). All these concerns will be outlined in more detail below.

Additionally, Tele2 understands that the Guidelines preferably shall use the terminology as outlined in the Regulation, however for many provisions this creates more uncertainty and ambiguity than necessary. Tele2 would therefore strongly recommend that the Guidelines rather use the terminology outlined in the High Level Technical Specifications and then in order to be fully in line with the Regulation, use the definition list of the Guidelines' to link those definitions to the exact definitions of the Regulation. For example the usages of domestic service provider - DSP: an undertaking that provides a roaming customer with domestic mobile communications services – mobile network operator or a Mobile Virtual Network Operator.

Also in regards to Local Break Out (LBO) provider, instead of using the term alternative roaming provider (ARP) also when talking about a local break out provider we would strongly encourage BEREC to clearly define and use "*LBO provider*" in the Guidelines. The current usage of ARP for all type of decoupled service providers makes the text vague. By clearly defining LBO and LBO provider and linking the definitions to the Regulation, we believe the text would become much clearer. In

⁴ BEREC Guidelines on the application of Article 3 of the Roaming Regulation - Wholesale Roaming Access, BoR (12) 107

avoidance of doubt, the obligations for an alternative roaming provider providing local break out services shall remain the same even if they are referred to as LBO's providers.

General questions and comments on the Guidelines

Guideline 1 – time for implementation

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.

Tele2 would like to emphasise the fact that there are still quite substantial outstanding technical issues when it comes to the detailed implementation. Although the High Level Technical Requirements have been established mobile operators across Europe are still bewildered on how all the different aspects of Article 4 and 5 requirements shall work in practice. Tele2 has so far used a vast amount of resources and will continue to do so in order to ensure we will be able to fulfil the obligations. However despite this we are still concerned about the very tight deadline, which in reality will be less than one year from when the Guidelines have been finalized.

Due to the technical complexity of launching structural roaming as from 1st of July 2014, it is essential that ARP's and LBO providers delivers initial information about his wish to become an ARP to the Domestic Service Provider ("DSP") as soon as possible, but no later than six months before 1st of July 2014. This shall also apply to potential LBO providers. Tele2 is of the opinion that four month notice/contracting period will not be sufficient for the first time setting up the technical solution for the alternative roaming service. Extra time for cooperation between ARPs/LBO providers and the DSP for the initial launch will assist both the DSP/LBO providers and the ARPs to make the planning in a joint manner and potentially carry out pre-launch tests, something which is believed to be needed in order to be able to launch the separate roaming service in the most efficient manner.

Guideline 2 – access documents

Tele2 believes that Guideline 2 shall not outline that it is *good practice* to use and publish a Reference offer. The obligation to publish a Reference offer is, like BEREC points out, not an obligation in the Regulation for article 4 and 5. Hence it shall be for the mobile network operators to decide on their own if to make the ARP contracts publicly available.

Guideline 3 – standardisation and documentation

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

We are pleased to see that BEREC outlines an obligation to base the interfaces on commonly used standards. Tele2 is of the opinion that the High Level Technical Requirements shall be explicitly outlined as such *widely recognized standardization*. Furthermore Tele2 is of the opinion that the High Level Technical Requirements shall be a part of these Guidelines as an appendix. It is essential that the documentation produced by the Industry Forum is easily available to all parties, Tele2 therefore encourages BEREC to facilitate for the document in order for any actor who seeks access can contact BEREC. Furthermore BEREC shall also ensure that, on reasonable request from stakeholders, the

documents are updated. Any update needs to take place in a manner that takes into consideration the views and expert opinions of the relevant stakeholders.

Guideline 4 – authorisation regime for ARPs

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

Tele2 supports the outlined regime for authorisation. However in order for DSPs to be able to verify that the notification obligation has been fulfilled, it shall be outlined that when an Aggregator/Enabler is the contracting party with the DSP, however is representing ARP's' it shall be the ARP's that has the notification obligation under Article 4. The Aggregator/enabler will in such situation have an obligation to share the information of the identity of the ARPs to the mobile network provider.

Guideline 5 – identity of access seeker

The Regulation outlines in Article 2 that the definitions that apply to an undertaking wanting to provide roaming, must obey to the Access Directive, the Framework directive and the USO directive. This means that a requesting undertaking wanting to provide roaming services must oblige to these Directives, something which stipulates a wider obligation than what is stated in Guideline 5. Therefore Guideline 5 shall be altered to be in line with the Regulation.

Guideline 6 – ARP services used by customers

Concerning the provision as such, we do not have any comments. However the term *customer* is used in a way that creates questions. A customer according to the definition of the Regulation (Article 2(g)) is the person (legal or physical) who have a contract with the roaming provider. For a business customer this is the legal entity, which may have many different end-users. Since each end-user may be able to have one ARP the sentence is not correct. It shall be altered so that it is clarified that an end-user can only have one ARP at the same time. Again Tele2 would suggest that BEREC align the terminology and used the terminology stated in the High Level Technical Specifications.

Guideline 7 – Fraud management

Fraud has been identified as a great risk with the new structural solution; therefore it is utterly important that there are sufficient safeguards to protect against it. Such guidance should include obligations for the ARP to be able to fulfil a minimum set of Fraud prevention and protection mechanism. The guidelines shall therefore in a clearer manner outline the exact responsibility which the ARP alternative the DSP has. Furthermore Tele2 is of the opinion that guidance shall be provided concerning the division of liability. In order to ensure that DSP's are able to be financially recouped, if fraud occurs and the ARP has not taken adequate preventive measures, security measures such as bank-guarantee and/or parent company guarantees shall be linked to Guideline 7.

Additionally Tele2 sees a need for the Guidelines to promote the ability for a mobile network provider to use so called *shadow fraud control*, in cases where the ARP cannot or is unwilling to fulfil a stated minimum level of fraud prevention/protection. The Guidelines shall state that the DSP can act on behalf of the ARP to detect fraud behaviour, in situations when it is required due to inability by ARPs. Shadow fraud control means that the network mobile operator uses its own fraud control on the roaming traffic generated by the ARP. In Tele2's opinion this is essential in order for the network mobile provider to protect its networks and business

Guideline 8 – M2M services

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

Guideline 8, concerning M2M services, although in line with the general obligation under the Regulation, does not provide a realistic obligation and expectation for M2M customers. There are several M2M services which, for technical reasons, cannot work with LBO since manual configuration would be impossible.

Furthermore there is a need for some M2M services to have a data connection with the DSPs GGSN in order for the M2M to function, i.e. to provide the service. If the M2M customer, for such services, would chose to use an ARP or a LBO provider the M2M service would no longer function. Tele2 would therefore like to propose that there shall be clear exceptions to some specific obligations for M2M services, due to above, and ask that these exceptions shall be clarified in the Guideline.

General Question on LBO

Tele2 has a general note about the LBO providers' obligations which according to our opinion have not been outlined clearly enough. Namely, LBO providers' obligation to obey to the Transparency obligations as stated in Article 15 of the Regulation.

Guideline 9 – fallback scenario

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?

Tele2 agrees with the general aim of the guideline, however we consider it to be quite vaguely written. In addition it is utterly important that the end users get clear information *prior to the contracting with the LBO* provider of any services which will not be available to the end-user when connected to the LBO service, such as MMS, VPN or other proprietary services.

An additional remark, which is utterly important, is the obligation for the LBO providers, who are using an Application based solution, to store the DSP's APN in the application. This in order to assist customers restoring their settings after using the service (fallback to the DSP). It is particular important this obligation is clearly outlined since there is otherwise a risk there will be problems for customers to understand how to shift APN. A clear obligation about this LBO provider obligation will assist in providing a user friendly solution. In scenarios when the end-user device does not support applications (App's), the LBO provider must take other safeguards in order to assist the customer with restoring the settings APN.

Finally the Guideline shall clearly state that an LBO provider shall not be allowed to alter the APN for MMS, in situations when the mobile device has a separate APN configuration for MMS.

Guidelines 11 & 12 – LBO outside EEA and use of universal APN by non EEA roamers

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)

Tele2 is of the opinion that both guideline 11 and 12 shall be deleted since they, as BEREC also points out, go beyond the scope of the regulation.

Guideline 15 – Barring and Blocking

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.

Tele2 generally agrees with the Guideline, and the outlined exceptions. However we believe it needs to be clearly outlined that the end-user can only use services from an LBO provider which is connected to/or is a mobile network provider with whom the DSP has a roaming wholesale agreement. Only under this scenario will the end user be able to connect to the LBO provider (also indicated in guideline 19).

Additionally, Tele2 believes that the Guidelines need to clearly state somewhere that manual selection, carried out by the customer/end-user shall not be over-ruled by the ARP/LBO.

Guideline 16 – Traffic steering

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

Tele2 is of the opinion that this Guideline needs to be altered in order to make it clearer. The thing which needs to be clarified is the definition of customer. This can be done either in the Guideline or in the definitions. We assume that the customer – as outlined in the guideline - is either *the end-user* or *the contractual subscriber*.

Guideline 17 - Manual selection of networks in the terminal

Tele2 understand that the Guidelines cannot oblige the handset manufactures to assist in manual selection of networks, however Tele2 would like to make BEREC aware of the fact that handset manufactures sometimes block APN changes. In such scenario it is outside the control of DSP to assist the end-user/customer with configuration.

Guideline 20 – supply of other services

This guideline must be clarified since the meaning/purpose as of now is unclear. It seems that BEREC believes it is acceptable for a LBO provider to provide data to a roaming customer even if it is not able to supply, at the wholesale level, voice and SMS. In practice this would mean that the end user would only have a data service. Tele2 wonders how BEREC considers this Guideline to be in line with Article 5 (g) – *user friendliness* obligation? Furthermore Tele2 would like to point out that in this scenario the end user will not be able to reach 112, emergency number. Tele2 therefore believes that it shall be outlined that an LBO provider must meet the technical requirements for the end-user

to continue to have all services (voice and SMS) at all time. If this requirement has not been met the DSP shall have a right to bar the traffic for such provider.

Guideline 22 – Bill shock

It shall be clearly outlined that the transparency obligations outlined in both the Regulation and the Implementing Regulation also applies to LBO providers. Furthermore it is important that the guideline clearly outlines that the billing information is not sent via the DSP (i.e. the visited network shall not be allowed to send TAP files to DSP when LBO is used), hence the last sentence must be altered to read: *shall, if the parties has not commercially agreed on an alternative set-up, not be sent to the donor provider-*

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?

Guideline 23 – LBO notification

Tele2 sees clear benefits in having a LBO provider using a notification interface and is therefore supporting this interface. Such an interface will assist the DSP in providing a high level of customer care in case of problem, since the DSP will be able to assist customers when they have issues concerning roaming data usage. This may particularly be important when the customer/end-user has a problem with an LBO provider. From an end-user perspective the interface shall be used.

Guideline 24 – switching between roaming providers

Tele2 believes that the timeframe shall be clarified. The Guideline shall state that the ARP shall not forward a request to the DSP concerning an end-user switching until the end-users has verified the wish to switch in the manner outlined in Guideline 26.

Guideline 25 Fallback to regulated roaming supplied by the domestic provider

In order to also in cases of customer termination of contract ensure high level of fraud prevention, the ARP shall in the notification to the DSP include special information about fraud if the terminating customer was fraudulent.

Guideline 26 – ARP subscription procedure

It is important that the guideline does not distort competition in anyway, hence the obligations for ARP Subscriptions shall be identical of those obligations that a DSP has. Therefore the ARP has to comply with common rules on consumers' contract subscription. This procedure has to be established at national level, one of the aspects is to match the obligations stipulated with current national switching processes.

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

Guideline 32 – MVNOs and resellers being DSP

Guideline 32 describes the obligation to provide de-coupled roaming service obligation in an ambiguous way and provides a new type of obligation on mobile network providers/MVNOs. Tele2 agrees with BEREC on the fact that mobile network operators and MVNO has an obligation to provide a technical solution which allows structural separation. This obligation is clearly stated in Article 2.2 (b) Regulation. Furthermore, we agree on the fact that any national provider of mobile services, regardless if they are a MNO, MVNO or reseller has an obligation to ensure that their end-users are able to choose an alternative roaming provider. However we do not agree that the MNO/MVNO provider also has an obligation to ensure that their wholesale customers' end-users are able to choose an alternative roaming provider. Tele2 is of the opinion that this scenario falls outside the obligation stated in the Regulation. .

Article 32 shall outline that in cases where a domestic provider is unable to on their own ensure the functionality so that their end users are able to use an alternative roaming provider (since they are a light MVNO/reseller), they have an obligation to contact their domestic wholesale provider to ask for assistance in ensuring functionality. Any technical solution which may be needed will be set up between the MNO/MVNO and the reseller/light MVNO using commercial negotiations.

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?

Guidelines 34 –Type of information required before conclusion of an access agreement

The way the Guideline is written could be interpreted as if there are many different technical solutions available for the ARP to choose from. In practice the mobile network providers are expected to use the interfaces and technical solutions outlined in the High Level Technical Specification. Hence the information which will be shared and requested by the mobile network provider is the technical information required to adhere to these set Specifications. In order to clarify this in the Guidelines we propose to alter the text so that it states: *[...] must be limited to technical information provided by the DSP[...]*.

Guideline 37 – Functionalities to be provided free of charge

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

The obligations outlined in Article 5 of the Regulation and recital 7 of the Implementation Regulation⁵, state that the DSP shall provide the ARP with access to the network elements and services necessary free of charge in order to fulfil the obligation of structural solutions. This obligation must be read strictly, meaning that any additional services, which is not necessary in order to provide the structural separation shall not be seen to be covered by this rule and the DSP shall be allowed to charge the ARP for such supplementary services. Already the obligation to provide the

⁵ Commissions implementing Regulation (EU) NO 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union.

necessary elements in order to fulfil the obligation stipulated in Article 5 will cause significant costs for mobile network operators, therefore it is utterly important that the scope of what shall provide for free is not widened.

Tele2 is of the opinion that bullet point two goes beyond the scope of the Regulation, furthermore it is not in line with the High level technical requirements, and therefore this bullet shall be removed.

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

Guideline 41 – Extra EEA services to customers roaming in the EEA

As BEREC states, extra-EEA services fall outside the scope of the regulation. Despite this Guideline 41 states that *access for decoupled services must include extra EU* services. Since it is agreed amongst all parties that there is no such obligation in the Regulation BEREC cannot widen the scope by outlining this obligation in Guideline 41. If a DSP would like to offer extra-EEA services to an ARP this shall be done on the basis of commercial agreement. Therefore Guideline 41 shall be deleted.

Guideline 42 – special rate service

Again Tele2 would like to emphasise that special rate services as such are explicitly excluded from the Roaming regulation, see recital 43 and 67. If a DSP would like to provide the ARP a possibility to provide special rate services, this shall be done on the basis of commercial agreement. In any case, Tele2 would like to state that due to technical complexity, special rate services cannot be *individually provided*, meaning that if the DSP provides special rate services to the ARP, the ARP will get all special rate services which the DSP provides (including liability for all services).

Guideline 42 shall be deleted, for the reason stated above.

Guideline 43 – functionalities to be provided on request

The Regulation states that the DSPs have to provide interfaces, so that the ARPs are able to provide equal retail services to those which the DSP offer its own retail customers. There is no additional obligation stating that the mobile network provider shall, in situations when the ARP simply request additional service, also have to provide such services. Guideline 43 clearly lays down a new obligation which does not exist in the Regulation. Hence Guideline 43 shall be deleted.

Guideline 44 – fair and reasonable prices

Tele2 means that as a minimum *fair and reasonable* shall mean that the mobile network providers are able to cover the full costs they have which are related to the offering of the service, including any costs which is associated with the service on a visited network, transit costs as well as any internal costs which is related to the provision of the service.

Guideline 47 – Service Level Agreements (SLAs)

The obligation for mobile network providers to include Service level agreements in the ARP contract is not stipulated in the Roaming regulation hence it shall be seen to fall outside the scope of what is regulated. Tele2, as well as other GSMA members, provided arguments against the SLA obligation also in BEREC's Guideline for Article 3. The reason, amongst other things, is that SLA's are not

commonly applied on wholesale roaming agreements which mobile network operators have among themselves to provide roaming services.

There is a general obligation of non-discrimination, as outlined in Guidelines 45, which shall apply and be obeyed to by the DSP's, Tele2 is of the opinion that shall be seen as a sufficient safeguard.

Guideline 48 – MMS prices at wholesale level

The Regulation stipulates as a basic rule that a mobile network provider does not have to provide technical solutions for services which they do not offer their own customers (outlined in 37). Therefore, if the mobile network provider is only offering per unit pricing, an ARP will only be provided with interfaces supporting this type of pricing also for the ARP's retail customer. If any additional requests are made by the ARP, such request shall be handled as a commercial agreement between the parties. Guideline 48 shall be altered in accordance with above.

As indicated within Guideline 37, DSPs should not be requested to provide services they do not provide to their own customers. In addition, according to the Industry Forum technical document, it is up to the DSP to decide the billing method for MMS at wholesale level.