

**Telecom Italia response to
BEREC Consultations
on
BEREC Guidelines on the separate sale of regulated roaming services (Articles 4
and 5 of the Roaming Regulation)**

3th June 2013

Executive Summary

Telecom Italia (TI) welcomes the opportunity to respond to the public consultation on BEREC Guidelines on the separate sale of regulated roaming services (Articles 4 and 5 of the Roaming Regulation).

The obligations and rules imposed on the operators should not go beyond what the Regulation provides for. In particular, it should be made clear that the unbundling obligation (art. 4) is limited to the calls within the EU and should be applied only to mobile operators and roaming providers which are authorized in EU Member States and respect the European regulatory framework.

In the past months, the Industry has been actively involved in the definition of the technical requirements and specifications for the implementation of the structural solutions identified in the Implementing Regulation. The whole process has been carried out under the close supervision of the Commission and BEREC. It is therefore of the utmost importance that BEREC Guidelines reflect what it has been agreed by the Stakeholder Forum and endorsed by the Steering Committee. TI regrets to notice that in some cases BEREC Guidelines go beyond the requirements defined in the outcome of the Industry Platform (e.g.: obligation for LBO providers to notify the donor/domestic provider when a customer contracts for or finishes using local data roaming services).

BEREC must consider that the implementation of the structural solution, as it has been designed by the Industry Platform, is already very challenging both in terms of timing and costs. Costs in particular have proved to be extremely higher than the initial forecast (when the solution had been imagined as a mere resale to domestic competitors on the existing model of national MVNOs). Timing is a very critical issue as well and no anticipated availability in respect to July 2014 can now be envisaged in BEREC Guidelines.

TI strongly recommends that the technical documentation produced by the Industry Platform in collaboration with BEREC be annexed to the Guidelines as a BEREC approved documentation, considering that it often interprets, from the technical deployment point of view, the regulatory requirements.

If the technical documentation is not made binding, there is the risk that in Europe each involved commercial entity, i.e. Domestic Providers (DP) and ARPs, would choose a different solution implementation.

The Guidelines should also specify that the technical documentation produced by the Industry Platform may be modified from time to time as technology evolves or in case the need to solve unpredicted issues arises.

Also the formal endorsement of such technical documentations by European recognized Standard Development Organisation (ETSI) should be assured by BEREC and EC.

TI prefers commenting the single guideline rather than answering the single question of the consultation questionnaire. Anyhow in the text the questions of the questionnaire are as well inserted.

Answers to the general questions

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.

Guideline 1 – Time for implementation of the decoupling method

The discussions of the technical groups within the stakeholder forum have showed that the implementation of the structural solutions, especially the single IMSI, is more complex and expensive than expected. Moreover the technical requirements and the final BEREC Guidelines will be only available 12 months before the 1st July 2014.

It is not viable to introduce at this stage a further anticipation of the solutions implementation in respect to July 2014, since operators' investment and deployment plans cannot be further compressed. Telecom Italia foresees that from July 2014 any DP will be ready to nationally define the separated roaming provision with each interested ARP, with test and trial as necessary to enable concrete ARP offers.

It will be very challenging for domestic operators to have all the necessary facilities for testing the separate sale of roaming services ready before July 2014 or as early as February 2014 (4 months in advance of the date defined in the Regulation).

Moreover, it must be considered that the first testing usually requires more time compared to what it is required at operating speed and that it is very hard to forecast what kind of difficulties might arise in the process.

Guideline 2 – Access documents

No specific comment.

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

Guideline 3 – Standardisation and documentation

TI supports the need for ARPs and Domestic Providers to be compliant with commonly used mobile standards as well with the output of the Industry Platform.

In this regard, the work achieved within the Industry Platform under the umbrella of the European Commission and BEREC should be endorsed by EC as a binding specification for separated sale of roaming provision.

That means that only the functionalities included in the available version of the specifications (in the future further revision of specification should be assured, if needed) can be provided by DP and required by ARP, at least regarding regulated roaming feature provision.

The European framework provides for that only the European Commission can make the technical specifications binding and generally their definition is delegated to ETSI. Therefore TI suggests an EC Decision defining the standards or the inclusion of the technical documents defined by the Industry Platform in the list of standards and/or specifications for electronic communications networks, services and associated facilities and services pursuant art.17 of the Framework Directive.

Indeed, leaving the specifications to the voluntary application of the involved parties cannot be a simple and viable solution, since any international specification can be interpreted and subject to dispute.

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

Guideline 4 – Authorisation regime for ARPs

TI agrees with BEREC that the providers of regulated roaming services in the EEA have to comply with the same rules as MNOs; in particular ARP should be obliged to obtain a suited national roaming service reselling authorization. TI notes that it is not always easy to nationally define new authorization in terms of obligations and rights on the basis of the art. 3 of the Authorization Directive and the related Annex, as nationally transposed; so some harmonized guidelines for NRAs, regarding the national authorization requirements to apply to ARP, could simplify the effective applicability of Roaming Regulation.

For instance ARP will use, although only for the roaming provision abroad, the numbering (both for IMSI and E.164 numbers) that are indeed nationally assigned to the DP and completely in charge of the DP which must respect the relevant national regulation. In our view, this sort of numbering rights of use sharing is not explicitly defined in the European regulatory framework and therefore in the national legislations.

TI believes that BEREC should give guidelines specifying which numbering conditions and obligations must be respected by each party. Although the numbering rights of use are assigned to national DP, the ARP should become, when it provides the roaming services abroad, completely responsible of the numbering used by their customers. Nationally a specific regulation is usually defined for public numbering assignment and use (IMSI E.212 numbering and E.164 numbering) and this new case of responsibility shared with ARP is to be recognized in the authorization regime, also regarding the obligation to respond directly to the pertinent Administration and Justice Authority requests.

In TI's view, to face such issue, some specific conditions on numbering use should be included in the authorization for roaming reselling and the BEREC Guidelines should provide the appropriate indications on this.

Another issue is related to the aggregators/enablers authorization to get access to the new Roaming Regulation for the separated sell of the roaming. Usually, aggregators and enablers do not directly provide electronic communication services and do not have a commercial relationship with the end users. If BEREC wants to include also such commercial entities in the separate roaming provision, a specific authorization should be identified at national level with the appropriate and associated rights and obligations.

Differently, if aggregators and enablers can just access roaming services provision on behalf of an authorized ARP, BEREC Guidelines should clarify that the complete responsibility of the roaming services provision is not in charge of the aggregator/enabler but always of the associated ARP, with whom the aggregator has a commercial agreement.

Guideline 5 – Identity of access seeker

TI agrees with BEREC that any undertaking entitled to provide retail roaming services to roaming customers in a Member State enjoys the right to access facilities and related support services relevant for the separate sale of roaming services. The undertaking should be based in EU and maintain a permanent establishment in a Member State for the duration of the operations.

The Regulation is to benefit retail EU end-users and should therefore not be used to by-pass commercial negotiations relating to non EU traffic. It is essential to ensure that the caps granted for wholesale roaming access are not requested to by-pass extra-Europe IOTs. This would indeed be very detrimental to EU operators versus operators from the rest of the world.

Regarding the enabler/aggregators, the Guidelines should better specify how the enabler/aggregator can prove it acts on behalf of an ARP. Indeed there is the risk the enabler/aggregator resells the traffic to companies not established inside the European Union.

Moreover it is important to specify that, to benefit from the Regulation, the enabler/aggregators should be based and operate within the EU.

Guideline 6 – ARP services used by customers

No specific comment.

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 7 – Fraud management

The current commercial practice foresees that operators use NRTRDE services for fraud prevention. The support of such a service and the alternative solutions for fraud prevention, as described in the technical specification document, by the access seeker is a necessary precondition for getting the roaming access.

Commercial practices, timescales, legal and commercial responsibilities will be disciplined within the agreed contract, abiding to the standards.

Guideline 8 – M2M services

We would like to take this opportunity to once again stress the differences that exist between the human and the M2M markets and highlight that the application to the latter of rules that have been clearly designed to address the human market might lead to unwanted consequences.

In many cases, a customer using a M2M service is not even aware of the traffic it is developing as the service he/she has purchased is not a telecommunication service. Just to make an example, when a customer buys a dishwasher that includes assistance in case of failure/damage, he is not even aware of the presence of a SIM card (that could belong to a domestic as well as to a foreign mobile operator) within his dishwasher that communicates to the manufacturer. It is therefore unsuitable to apply to this service the same rules as those applied to a person travelling around Europe.

The business model that has been constructed for these kind of services does not rely merely on the developed traffic (which in many cases is close to zero or zero when it is exclusively based on signalling) but on the provision of a turnkey solution that rewards the value added for the customer.

Telecom Italia would therefore strongly suggest that rules adopted for the human context do not automatically apply to the M2M world.

Without the intent to be exhaustive, M2M specific needs include coverage, traffic consumption patterns, vertical applications role, permanent roaming situations, quality and customer support constraints, IP and telephony identities evolution/management and terminal capabilities.

Having said that, with specific reference to this guideline, it must be considered that there are specific technological standard evolutions, like the well-known eSIM explicitly studied and under design for the M2M context, that results in contrast with the Single IMSI assumed developments and interfaces, being vice-versa the eSIM pointing toward a multiple-IMSI M2M (worldwide) market flexibility. One of the major GSMA industry needs in the M2M context is to improve the possibility to identify M2M type of access from the human one, and the first solution under adoption is based on APNs, aspect that clearly indicates the deep IP role in the current and future M2M market. So even the basic fact the Single IMSI solution is addressing a rigid bundle of circuit voice, sms and data, whereas the M2M market is mainly influenced by IP data evolution, creates, if the regulation were applied to M2M context, inefficiencies and in some cases totally useless implementation efforts.

This guideline should, therefore, be amended to take into account the specificities of M2M framework, the different level of maturity of M2M market and the fact that a circuit/bundle solution imposition could be a nonsense in a context clearly driven only by IP network evolution.

Answers to questions on LBO

Q5: Do you consider that the fall-back 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?

Guideline 9 – Customers’ right to return to the default roaming mode

TI agrees that ARPs should not prevent roaming customers from returning to the default roaming mode when customers wish so.

Nevertheless, an automatic roll back to the default mode/environment is only possible in case the LBO provider itself has notified the donor/domestic operator that the local data roaming service has terminated and no contract with another LBO provider is in place (as the customer is allowed to contract more than one local data roaming service at the same time).

Without any such notification (which is currently not envisaged in the technical requirement document agreed by the Industry Platform), TI deems it unwise to leave to the operators the interpretation of the customers’ will.

As the customer has modified the settings of his/her mobile phone to access the local data roaming service, it should be the customer, possibly facilitated by a specific application, to consciously roll back to its default mode.

TI maintains that the only case in which the domestic provider might automatically rolls back to the original settings - not related to roaming setting but simply to enable the use of the data service in the domestic environment – is when the customer returns to his/her home country.

With regard to the new possible implementing solution raised during BEREC public hearing (APN configuration in the network as opposed to in the terminal), it should be noted that the technical specifications of the LBO solution already defined and agreed by the Industry Platform does not provide for this option.

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.

Guideline 10 - Provision of local data roaming services by third operators

TI agrees that the Roaming III Regulation and the Implementation Regulation do not envisage any obligations for visited MNOs to provide wholesale services to other stakeholders for allowing them to provide local data roaming services. This does not exclude commercial negotiation amongst the parties.

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)

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

No specific comment

Guideline 13 – Rights to publicise and sell services by the ARP providing local data roaming services

No specific comment.

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.

Guideline 14 – Universal APN in the HLR

TI agrees that the universal APN cannot be used by the donor roaming provider to supply traditional roaming data services while the customer is abroad. Indeed this rule allows the terminal to easily make a selection between the local data roaming service and the local data service provided by the donor: if the customer is abroad and the universal APN is set, the terminal uses the local data service, if the home APN is set, the terminal uses the data service provided by the donor.

Guideline 15 – Barring and Blocking ARPs providing local data roaming services

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.

TI disagrees that exceptions to barring and blocking in case of non-fulfilment of reasonable technical conditions, non-payment of services or other objectively justified reasons should be applied to local data roaming only. The non-fulfilment of these conditions should be valid reasons to deny roaming access in all cases.

Local data roaming service can be offered only on the basis of an underlying roaming agreement. If an operator has been considered eligible to sign a roaming agreement in the first place, there is no reason to block it only when it starts offering local data roaming service.

We therefore suggest rephrasing the last paragraph as follows “Exceptions may be considered entitling home networks to bar ARPs due to non-fulfilment of reasonable technical conditions, non-payment of services or other objectively justified reasons” and move it to guideline 19.

Moreover this guideline contradicts guideline 20, which states that a local data roaming provider can provide data to a roaming customer even if he is not able to supply voice and SMS at the wholesale level, as long as the customer is transparently informed and makes an informed choice.

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

Guideline 16 – Traffic steering

TI agrees that Traffic steering mechanisms should not prevent customers from connecting, choosing and exploiting local data roaming, being totally in line with Art. 4 of the Regulation. Technically different approaches are possible (e.g. automatic recognition of Location Updating manual selection), specifically aiming at finding a balance between the goal of minimizing both LBO solution effort and customer choice interference.

It is not clear which is the aim of providing information to the customer on how to avoid traffic steering if it is already guaranteed that the traffic steering does not interfere with the local data roaming service.

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?

In order to entirely fulfil guidelines 17 and 18, also Manufacturers (terminals and handsets) should be involved.

Guideline 17 – Manual selection of networks in the terminal

No specific comment.

Guideline 18 - Automatic reconfiguration of the terminal

Reference should be made to Domestic Provider instead of donor roaming provider as in the LBO scenario the donor provider might be an ARP.

Guideline 19 – Conclusion of roaming agreements with ARPs

No specific comment.

Guideline 20 – Supply of other services when customers are using local data roaming access

No specific comment.

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.

Guideline 21 – Restoration of APNs by local access provider

While TI agrees that the local data roaming provider should inform the customer on how to restore the original APN, TI believes that BEREC is going beyond the requirements of the Regulation by imposing the local data roaming provider to provide an app with APN restoration facilities.

Apps could certainly help customers and they will for sure be developed when possible but they should not be considered mandatory also considering that the installation of software could require an agreement with the terminal vendor which may not be easy (or even possible) to obtain (i.e. Apple).

Guideline 22 – Separate Bill shock measure for local data access

TI agrees that local data roaming provider is in charge of complying with the anti-bill shock measures for its retail roaming customers.

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 – Local data access notification to donor roaming providers

TI notes that with this guideline BEREC is imposing an obligation (notification) that has been debated at length by the Industry Platform and, for the sake of speeding up the implementation time and reduce costs, has been considered an un-necessary hurdle in the first implementation phase although it might be considered at a later stage.

TI indeed agrees that a real time interface between ARPs providing local data roaming services and domestic roaming providers would be useful for allowing the domestic roaming providers to switch off the steering and therefore enhance the customer experience. Anyhow, one should note that the final recipient of the notification should not be the donor roaming provider but the domestic operator which is the only one allowed performing the steering.

Nevertheless, for the above mentioned reasons, it would be preferable to not oblige the operators to implement the real time interface in the first phase.

Without notification, the only case in which the domestic provider could roll back the roaming service automatically to the default mode (meaning changing the APN) is when the customer returns to its home country (as per guideline 9).

Answers to questions on “Single IMSI”

Guideline 24 – Switching between roaming providers

The Roaming Regulation states that the switching between roaming providers should occur in the shortest possible period of time, not exceeding three working days. The implementing Regulation of the European Commission drastically reduces that maximum time to one working day. BEREC considers it to be 24 hours on the following working day after receiving the request.

One working day was more than challenging for operators to meet. This one working day should be counted as from the receipt of the request from the ARP. It should also be counted over normal working hours: a request received at 8pm on Tuesday would be processed through one working day, normal working hours, of Wednesday and come into effect on Thursday.

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

Guideline 25 – Fall-back to regulated roaming supplied by the domestic provider

TI believes that the customer should automatically fallback to its previous tariff if not otherwise required by the customer. On the one hand this is more customer friendly and on the other hand it simplifies the process and reduces costs of the solution implementation.

Guideline 26 – ARP subscription procedure

No specific comment.

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.

Guideline 27 – Reasonable requests

TI does not share the BEREC opinion that requests for decoupling which are not requested with the purpose of providing regulated roaming services fall to be negotiated on commercial terms. No obligation of any kind can be derived from the Regulation with regard to the above mentioned requests for decoupling as also stated in the guideline.

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?

Guideline 28 – Refusal of requests of decoupling

In addition to BEREC proposal, a request could be considered as unreasonable in case:

- the ARP does not comply with the documents as mentioned within Guideline 3, especially standards commonly applied in the industry and defined for the structural solutions;
- the ARP threatens network integrity or security rules;
- the ARP raises risks of unfair use of the regulated access (fraud for instance);
- the ARP does not commit to financial safeguards;
- the ARP is insolvent or unable to pay its debts or is deemed to be unable to pay its debts;
- the ARP has entered into liquidation either compulsory or voluntary;
- an administrator, administrative receiver, receiver or manager, liquidator or similar officer has been appointed in respect of the whole or any part access seeker's assets and/or a winding up petition has been issued against the access seeker;
- the ARP has proposed to enter into any composition or arrangement with its creditors generally or any class of creditors or into any kind of insolvency procedure;
- the ARP does not objectively have a sufficient financial standing to ensure the due performance of the access agreement and meet expected invoices.

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

Guideline 29 – Prioritisation of requests

TI share BEREC's view that prioritisation of requests may be necessary. The Operators should be free to determine the criteria for the (necessary) prioritization of the access requests.

Indeed, the application of the non-discrimination principle is not required by the Regulation and once again BEREC is using the Guidelines to unduly impose additional obligations on operators.

Guideline 30 – Timing issues for requests after 1st of July 2014

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

While the Roaming III Regulation does not provide for any specific time limits to implement a single IMSI access once requested, BEREC proposes to impose the same timing as defined by the Regulation for wholesale access, meaning draft contract within a month and implementation within 3 months.

This goes beyond the terms of the Regulation. In addition, TI does not consider this time limit as being proportionate since the single IMSI access is much more complex to introduce than the wholesale access. For instance, it requires implementing provisioning interfaces, which is not the case for wholesale roaming access.

As a consequence, TI considers that the time limits should be modified to ensure that the access has to be granted within a reasonable period not exceeding 6 months from the conclusion of the contract.

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

Guideline 31 – Bundling of services

The guideline should make clear that in case the ARP wishes to offer only a subset of the bundle of services, the ARP must inform the subscribers that they will lose the other services. In this situation, there is no obligation on the DP to support the services that the ARP chooses not to offer.

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 domestic provider

TI shares BEREC interpretation of the Roaming III Regulation according to which the “domestic provider” category covers MNOs and also MVNOs and other providers of roaming services to EU customers, as clearly stated by article 2.2.b of the Regulation. This means that customers of those players are allowed to switch roaming providers.

However TI does not shares BEREC's view that the obligation for providing the necessary functionalities extends to the service providers capable to provide these functionalities.

The Regulation clearly states that the obligation lies on the provider of the roaming retail services.

In case the roaming retail service provider needs the support of the facilities of host MNO, they can negotiate it on commercial term.

Indeed many MVNOs have their own network elements through which they could provide the interfaces needed for the implementation of the decoupling solution.

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 33, 34 and 35 – Required information

The ARP should communicate the DP any relevant information to ensure a secure and smooth functioning of the roaming services. In that sense, TI considers necessary that the ARP commit to comply with relevant standards, technical requirements for implementing the structural solutions and relevant rules ensuring network security and integrity while mitigating the risks of fraud.

The minimum set of information the access seeker must provide to the domestic provider is not limited to technical information but shall include all information a MNO normally seeks at the outset of any agreement, such as: the license, the company registration number, the shareholding structure, bank established in the same territory as the access seeker registered office, power of attorney, GSMA membership, documentation as proof of economic solidity, account statement,

bank guarantees, commercially relevant documents (coverage, customer base), minimum set of non-compliance acceptable for launch in case of network or billing test failure.

Moreover the roaming provider should commit to provide reliable forecast, necessary for dimensioning the network resources. Indeed the roaming provider could have a high incentive to provide an extremely low forecast to reduce the level of safeguards (i.e. bank guarantee).

Any commercial or technical modification should be promptly communicated, considering the necessary timing for implementation.

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 post-paid services, please include this in your response.

Guideline 36 – Customer profile

The Industry Platform has worked on a standardised hybrid profile solution allowing domestic provider to implement it.

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

Guideline 37 – Functionalities to be provided free of charge

TI agrees with BEREC that the functionalities that the domestic provider has to provide are the minimum required to allow the ARP to provide the retail services.

In particular the functionalities should be restricted to the interfaces between the domestic provider and the ARP, including on-line charges and billing, as defined in the output of the Industry Platform.

TI supports the statement that domestic provider is not obliged to offer the ARP more services than they have for their own customers, for instance pre-paid services.

Guideline 38 – Maximum wholesale charges

It should be specified that also MVNOs and ESPs should supply ARPs all wholesale regulated roaming services at prices below the regulated caps. Should MVNOs and ESPs set their prices above the regulated caps this would entail a serious damage for their customers wishing to change roaming provider since they should pay the additional wholesale costs at retail level.

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

Guideline 39 – Termination of incoming calls and outgoing SMS

The Guidelines should not be used to impose obligations additional to those foreseen by the Regulation. Anyhow TI acknowledges that some services are necessary for the reseller to provide its own retail services such as the resale of termination of incoming calls and outgoing SMS.

TI accepts that these services should be offered at fair and reasonable prices on commercial basis, but without any obligation on MNO to provide objective justifications of the applied charges.

Moreover the price of outgoing SMS should not be bound to the income or average price of the incoming SMS termination.

Guideline 40 – Voice mail service

No specific 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)

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

As highlighted by BEREC, extra EEA traffic is not covered by the EU Roaming Regulation. There is therefore no obligation for DPs to provide it to ARPs.

The decision to whether or not to provide extra EEA services should be left to the operators as it affects the underlying technical solution (where the call control lies) and therefore costs.

The operators are obliged to implement the solution without extra EEA services because an ARP could always ask to have access only to intra EEA services not being forced to take on board also extra EEA services. It would be not justified to impose on the operators the obligation to implement one solution with extra EEA services and one solution without extra EEA services.

Guideline 42 – Special rate services

The special rate services are not covered by the Roaming III Regulation, see recitals 29, 43 and 67. TI considers there is no obligation to provide those services to ARPs. This would moreover be very complex, due to tariffs list update, and would dramatically raise the risks of fraud. This Guideline 42 should therefore be deleted.

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?

Guideline 43 – Functionalities to be provided by domestic providers on request

DPs have to provide the minimum set of interfaces allowing ARPs to sell roaming services to end customers. The Regulation does not foresee any obligation for DPs to provide additional services.

TI therefore asks BEREC to delete this guideline or, in alternative, to modify the wording from “Domestic provider shall offer” to “MNOs may offer”, as the choice of offering additional services depends on commercial agreement between the parties.

Guideline 44 – Fair and reasonable prices

As said regarding guideline 39, there is no justification to impose on the domestic provider the obligation to make available to the access seeker the objective reasons of the applied charges.

Guideline 45 – Non discrimination

The obligation of non-discrimination and internal/external equivalence of treatment is not included in the Regulation. These Guidelines are introducing additional obligations on domestic providers.

The imposition of non-discrimination, as mandated under art.10 of the Access Directive¹, would previously require a market analysis and the identification of an SMP operator.

TI proposes that this guideline be removed.

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

Guideline 46 – Loss of service when switching domestic provider

No specific comment.

Guideline 47 – Service Level Agreement (SLAs)

TI strongly disagrees with the application of SLAs and penalties as they are not imposed within the Roaming III Regulation and not commonly applied on the wholesale roaming markets. Moreover the SLAs implementation would add additional cost since it requires an *ad hoc* monitoring system.

In the case the host MNO does not have SLAs in the agreement with the visited network, the provision of SLAs to the ARP is impossible since the service level is beyond host MNO's control. In

¹ 2009/140/CE

this case, the host MNO would be subject to unfair penalties when the visited network does not comply with the requested service quality level.

In any case, SLAs can always be commercially agreed among the parties.

Guideline 48 – Charges for MMS at wholesale level

BEREC Guidelines should conform to the technical solution identified by the Industry Platform, which, for the sake of simplicity and cost reduction, has agreed that it is up to the DP to decide the billing method for MMS at wholesale level.

Moreover as indicated within Guideline 37, DPs should not be requested to provide services they do not provide to their own customers.