

Belgacom Draft Answer

We thank BEREC for this opportunity to contribute to this consultation.

Before answering the questions of the consultation, we would want to set out some main principles which we believe are important in evaluating the guidelines.

Firstly, this consultation has as goal to assist the commission with the development of technical elements with regard to the separate sale of regulated roaming by alternative operators as it is foreseen in the Roaming Regulation (No 531/2012). It should, however, not be used by BEREC to take stricter measures than what is foreseen in the regulation.

Secondly, we believe that all measures presented by BEREC should be compliant with the proportionality principle¹ and that consequently their benefits for society should outweigh their cost of implementation. Given the latest speech of Commissioner Kroes who makes it her objective to wipe out roaming in the EU as from 2014, any additional cost of implementation (not foreseen in the regulation) would be a waste of money.

Related to this, we believe that MNOs should be able to recoup all costs that incurred for e.g. terminating incoming calls, outgoing SMS, etc.

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 regulation states that the MNO needs to give a draft contract within one month and that after signature of the contract 3 months are being granted for implementation. For ARP access we believe that the 3 month period (for implementation) as a general rule (without exception) might be too short for implementation. (Cf. Guideline 30)

It is not an option to extend the 4 months implementation period if July 1st 2014 is maintained as ultimate implementation date, as at present the implementation window for the unbundling solutions by the MNO is already very challenging! Complexity to adapt all systems to allow multiple ARPs to connect to them as from July 1st 2014 should not be underestimated.

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

We recommend BEREC not to adopt additional requirements which deviate from what is foreseen in the documents from the technical workgroups. Otherwise, the timely implementation of the structural solutions by 1 July 2014 could be jeopardized. We would like to ask BEREC to underwrite as soon as possible these technical documents and attach them as annex to their final guidelines. The sooner operators have certainty about the technical specifications that need to be implemented, the sooner they can start to implement and the more likely they are to have their solution operational on 1 July 2014.

¹ Cfr. Article 5 (point 3) of the regulation, where it is clearly written that the measures should be cost effective.

Q3: Do you have any concerns concerning the authorization regime for the ARP? (Guideline 4)

What is meant with authorization regime in this question is not 100% clear.

First interpretation is that “authorization rules” could refer to trade practices. Indeed, with regard to trade practice, we believe that each ARP should follow the rules of the country in which its product is commercialized.² This is in line with the regulation which states that the National Regulatory Authorities (NRA) shall monitor and supervise compliance with the regulation within their territory. This is only possible when the NRA monitors the ARP/LBO based on the National applicable regulation and laws. This will guarantee the maximum protection for the customer.

Second interpretation could refer to the authorization rules at wholesale level between the domestic provider and the ARP. Here we believe that the process described in the technical document should be followed. This process defines that the ARP should follow the authorisation rules applied by the domestic provider. Once again we believe this is the only way in which the NRA can monitor the correct implementation of the roaming unbundling and intervene if necessary.

Q4: Is there any additional issue that should be considered in the BEREC guidelines for interception and data retention, fraud management and M2M services? (Guidelines 7,8)

No comments.

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)

We agree with BEREC’s point of view that an ARP offering local data access should not prevent his customers from swapping back to his previously chosen roaming contract or to another roaming offer. The ARP should facilitate this by providing the customer the right information on e.g. how to restore the APN.

However, the first sentence of this Guideline is confusing as it states that customers “automatically” fall back to the regulated offer. From a commercial perspective we agree with the statement that the client should be entitled to use regulated roaming services from the moment he is no longer using an LBO solution. However, in practice it is up to the client to reconfigure his APN either manually, through an App he has received from his ARP or with the help of his LBO provider. The domestic operator is not able to restore the APN of the client. Firstly, there are some technical challenges in doing so. Secondly, a customer who has LBO agreements in several countries and moves from one country to another should not need to reset his International APN, any intervention of the domestic operator would be considered as unnecessary and intrusive.

² For ARP or LBO offers on the internet BEREC should clarify which rules apply.

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)

No. Such an agreement should be based on commercial negotiation. This type of access would require additional investments from the MNO. This is also the position BEREC took in its previous consultation on the matter.

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)

No. All roaming outside the EU is not regulated and is therefore not part of the authority of BEREC.

For non-EU clients to be able to access local data through an ARP their SIM card should be provisioned with an International APN by their domestic provider this cannot be imposed by the regulation.

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)

This guideline guarantees that a customer who has chosen an LBO, but for some reason is not (or no longer) connected to the network of his LBO provider, will not use data in traditional roaming.

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. (Guideline 15)

This guideline says that both network and customer barring are in general not allowed. The guideline continues by giving exceptions to this rule. We would like to highlight that the given exceptions limit themselves to the barring of networks. BEREC should clarify that a domestic provider can block all services (including roaming) from a customer for non-payment of national services. If the domestic provider cannot do so this customer could continue to roam for voice and SMS (on his LBO network).

Not having Camel should be seen as non-fulfilment of reasonable technical conditions, without Camel voice and SMS services might not work. To include this in this guideline, we believe that guideline 20 should be adjusted. A domestic provider should be able to bar an LBO provider who can at wholesale level not provide voice and SMS services. If he cannot do so his customer will not be able to use his voice and SMS for which the customer has a contractual agreement.

Q10: Should BEREC consider any other issue about traffic steering? Please describe and justify the need according to the regulation. (Guidelines 16)

In the following sentence 'avoid' should be replaced by 'overcome'.

"Upon request of the customer, the domestic provider must supply information on how to **avoid** steering in order to use local data roaming services."

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? (Guidelines 17, 18)

See our answer for question 5.

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)

The LBO provider needs to inform the customer in a clear way on how to restore his APN (when he goes back to his home country or when the customer wants to shift back to regulated roaming). The NRA in the country where LBO is offered should monitor whether the ARP complies with this obligation.

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? (Guidelines 23)

Belgacom does not support the real time interface as we do not see how selective barring or selective steering of a limited amount of customers can be achieved.

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? (Guidelines 25)

We agree that it is not up to BEREC to impose a fallback tariff. A customer can “deliberately choose” (from his domestic provider) a special roaming tariff which suits his consumption better than the Eurotariff³. A customer with such a tariff may not want to cancel his chosen roaming tariff when he takes an ARP offer for e.g. a couple of days. It is, therefore, Belgacom’s view that each customer is responsible for cancelling his special roaming tariffs. Only then should the domestic provider put him on the Eurotariff.

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. (Guidelines 27)

The question is not entirely clear as it covers more than what is covered by guideline 27. We do not have any comments regarding this guideline.

But, we do think that NOT ‘all’ BEREC’s guidelines for wholesale roaming access should simply be copied for the ARP access (like question 15 makes us believe). The regulation foresees the following:

“It is considered that, for the separate sale of regulated retail roaming services to be fully effective, such sale needs to be combined with the wholesale access obligation for the provision of roaming services to facilitate market entry by new or existing players including cross-border roaming services providers.”

³ The customer knows best his consumption and his expectations regarding roaming.

For Belgacom this clearly means that basic obligations for the provision of roaming services should be granted to the ARP and more in specific the access to roaming at regulated prices. There is, however, no economic justification for the inclusion of e.g. roaming calls made to outside the EU (cf. question 25) or for supporting ARPs with their billing (cf. question 26). For MVNO access we understand BEREC's economic justification for some of these points, but we believe that these arguments are not valid for ARPs.

We would also recommend BEREC to drop the last sentence of this guideline as it is only applicable to MVNO access and not to ARP access.

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? (Guidelines 28)

The general approach is clear and no additional clarification is needed. For Belgacom the same reasons for refusal as for wholesale access for MVNOs could be followed.

Q17: Do you agree with BEREC's approach to prioritisation of requests? (Guidelines 29)

No comment.

Q18: Do you consider that the time limits are reasonable? If not, please explain and justify why? (Guidelines 30)

We expect that the implementation of some ARP can be very complex. This is why we believe that (cf first question) 3 months as a general rule without exceptions is a too short time span.

Q19: Do you agree with BEREC's approach on wholesale bundled offers? (Guidelines 31)

No comment.

Q20: Do you agree with the obligation for domestic providers and host operators stated in the guidelines? If not, please explain. (Guidelines 32)

We confirm that MVNO customers should be able to benefit from ARP offers. Yet, we think that BEREC should not impose the host provider to do the entire implementation for free. If the MVNO wants his host provider to support him for MNO access, both operators should come to a commercial agreement.

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, 35)

No comment.

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. (Guidelines 36)

Belgacom is ready to comply with the technical requirements set out by the technical workgroups. These have provided technical specifications in order to make hybrid profiles possible.

Q23: Should BEREC consider additional functionalities to be provided for free? If yes, please explain? (Guidelines 37)

The regulation states that only the access to the network elements and services which are 'necessary' for the separate sale of the regulated retail roaming services should be provided free of charge. We believe these necessary elements are limited and should by no means exceed the list of requirements BEREC gave in its wholesale access document. No additional functionalities should be added.

Note that the new regulation obliges donor providers to sell roaming at regulated wholesale prices, whereas at the same time it limits the negotiation power of this provider at wholesale level by lowering the steering and barring opportunities. Adding free functionalities will generate additional costs, which the donor operator will not be able to recoup.

Q24: Do you agree with BEREC's approach for termination of incoming calls and outgoing SMS? (If not, please explain and justify) (Guidelines 39)

We agree with the basic philosophy of BEREC, in that we believe that all the termination costs that are being incurred by the MNO can be charged at the ARP. The ARP should, therefore, pay for the termination rate for both an outgoing SMS and for an incoming call.

We don't understand the reasoning held by BEREC with regard to resellers. BEREC just states the following without justification. "There should be no charge for termination of incoming SMS to resellers having resale access." As a rule, as the reseller gets the revenues from offering roaming services he should also bear its costs.

Q25: Do you agree with BEREC's approach on roaming outside the EEA and on special rate services? (If not, please explain and justify) (Guidelines 41, 42)

Roaming towards countries outside the EEA

BEREC clearly states that international phone calls are not part of the regulation. The regulation itself says that it (only) foresees the separate sale of "regulated roaming services". Adding this obligation is increasing the scope of the regulation and is not the authority of BEREC.

We know that in its wholesale access guidelines for MVNOs BEREC also included roaming calls to outside the EEA. For MVNOs this decision can be justified from an economical perspective. If the host MNO would not grant this access, the MVNO would not be able to serve his customer, so this could be seen as a kind of market foreclosure.

For the separate sale of "regulated roaming services" though, there is no threat of market foreclosure by the domestic provider. Without this service, the ARP will still be able to offer a competitive roaming product, and the end-user will still have access to a full commercial offer.

We understood during the public hearing that BEREC considers that calls to outside the EEA should be offered by the ARP as it improves the customer experience. We believe that this solution would not guarantee a decent customer protection. Customers will be attracted by ARPs with good tariffs for EU roaming, but might not know the tariffs the ARP asks for calling outside the EU. On the contrary, if the customer takes these services from his domestic provider, he will be able to find the tariffs that apply on his domestic provider's website in a language that he is able to understand. Moreover, if any problems regarding for these calls would arise, it is easier to contact the domestic provider than the ARP he took during e.g. holiday.

Roaming outside the EEA

Even though neither Guideline 41 nor Guideline 42, deal with roaming outside the EEA Question 25 speaks about Roaming outside EEA. This falls outside of the scope of the regulation.

Wholesale of special services

Belgacom believes that these services should not be included in the guidelines. Firstly, there can be technical difficulties in making a distinction between the regulated part and the non-regulated part. Secondly, domestic providers could have objective reasons (e.g. fraud prevention) not to offer special services. The domestic operator should in this case not be obliged to provide these services to the ARP clients. Lastly, the special services have not been included in the working assumptions of the technical group.

Q 27. 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? (Guidelines 44, 45)

We follow BEREC in that we do not believe the extremely detailed guidance should be given with respect to what is fair and reasonable.

Q26. Is there any additional issue to be considered about switching of domestic provider by customers? (Guidelines 46)

We agree with this comment. Technically it is almost impossible to guarantee that an ARP contract can still work when the customer changes operators at national level.

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

We still see some major domains which are not (sufficiently) being covered:

- *Customer protection:* When a customer subscribes to an ARP offer, he should contact his ARP when problems arise. Yet, we think that in practice customers will continue to contact their domestic provider when they cannot get (sufficiently good) help or information from their ARP. Therefore, the NRAs need to monitor the information that ARPs provide to the customer. This will limit calls to the domestic provider who may not be able to solve the problem.

In these guidelines, there should be a clear indication on the language that needs to be used in ARP contacts and offers. Terms and conditions of an offer should e.g. be made in the language of the customer or at least in a common language (eg English).

We would also want to ask from BEREC to highlight which customer protection rules are applicable. Especially, for contract bought on the internet.

- VAT rules: where for B2C transactions place of residence of the service provider defines the VAT tariff applied but for telecom this should change as of January 1st 2015 to country of residence of the person acquiring the service, clear rules should be established on VAT rate that should be applied by ARP and LBO. It should be avoided that operators in countries with higher VAT rates are structurally disadvantaged versus ARP/LBO providers in countries with low VAT rate.
- Trade practices: which practices are being applied (with e.g. products sold on the internet)? Can contracts be binding (according to the regulation the customer should be able to switch easily between ARPs or from an ARP to the domestic provider.) Is there a maximum contract duration foreseen?

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

Guideline 13 (footnote): Can landing pages only be used when the customer is using the Universal APN or can this also be done when he is using his normal APN? We recommend the first. If not any customer can be redirected by a landing page to the site of an LBO provider. We believe this could be problematic for the customer as it opens possibilities for fraudulent behaviour. The domestic provider will most probably be contacted to handle complaints from the customers.

Guideline 19: As stated above. Not all the wholesale conditions are applicable to the ARP.

Guideline 20: We think the domestic provider can bar LBO providers who cannot support voice and SMS in wholesale. This is in line with the regulation.

The regulation foresees that “the technical solution to implement the separate sale of regulated retail roaming services shall meet the following criteria:

(a) consumer friendliness

(b) ability to serve all categories of consumer demand on competitive terms, including intensive usage of data services;

...”

If the LBO provider does not provide voice and SMS on wholesale level, the technical solution that he offers is not consumer friendly nor does it offer “all categories” of consumer demand. Therefore, we believe BEREC should bar the reference to LBO providers who are not able to provide voice and sms at wholesale level.

Guideline 22 should highlight that the LBO provider needs to send the bill shock notification.

Guideline 24 does not foresee any exceptions where the switch could take longer than 24 hours. The implementation regulation says that the switch should be done without undue delay, meaning that it should not take more time what such a switch should take in the home country.

In general, we believe that 24 hours should be enough. But, there might be exceptions.

Guideline 26 is too vague.

Guideline 43

We disagree with the statement of BEREC that the Domestic Provider shall offer such services like billing, credit control, etc.

Firstly, this has not been foreseen in the technical document provided by the technical workgroup. This document foresees that every ARP implements its own billing and that the MNOs give all the accesses to the ARP to do so. If the workgroups need to rewrite all the specifications the technical specification will be available even later, the implementation becomes almost impossible.

Secondly, we are not sure that the costs related to the implementation of the additional features allowing the MNO to provide the ARP such services like billing, credit control and control of data bill shocks, will be offset by the benefits of additional competition.

Thirdly, given that there are many potential ARPs (from many different countries) and that each can have several tariff plans which could change every day, imposing this obligation could lead to a tremendous amount of work at the domestic provider.

We would recommend BEREC to change the guideline as follows:

“Domestic providers **can** offer on request of the ARP all services commonly provided. Without prejudice to the generality of this requirement, this **could** include

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

Prices for such services shall be under commercial agreement.”

Guideline 48 A domestic provider should be allowed to use his usual way of billing these services in wholesale. He should not be obliged to make investments in new ways of billing for MMS given this is an old service.