



BoR (13) 53

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

Poste Mobile and Fastweb
- Response to the Public Consultation -

3rd June, 2013

INTRODUCTION TO POSTEMOBILE and Fastweb RESPONSE

Acting as MVNOs in Italy, PosteMobile and Fastweb have welcomed the issue of the Roaming Regulation 531/2012 ("RR") and its structural measures aimed at improving the level of competition in Europe on roaming services.

In the process of standardising a common technical solution for the provision of decoupling, in both Single IMSI and Local-Break-Out ("LBO") modalities, though, we have encountered several difficulties based mainly of the uncertainty of application of certain RR provisions.

As well known, MVNOs have widely contributed with a great boost to all markets they entered in, both by reducing prices and by increasing customers' penetration and innovation. Still the RR provisions, if misinterpreted, might introduce undue level of investments, altering the capability of MVNOs to develop business and compete. Poste Mobile and Fastweb therefore call for a correct interpretation of the RR and implementing measures, to be read in the light of a better competition and better services for final customers.

In this light, in particular, we would like BEREC to underline that the obligation to supply decoupling functionalities only applies to operators owning or controlling related networks and facilities, i.e. only MNOs. In fact, the Implementing Regulation 1203/2012 ("IA") specifies that only domestic providers operating a terrestrial public mobile communication network (or part of it) shall provide the necessary technical elements that would allow the resale of retail roaming services. It follows that a MVNO, which does not have or manages the necessary network elements needed to ensure decoupling, but instead relies on a host MNO to enable decoupling, has no obligation to supply decoupling functionalities.

Given that, all the guidelines referred to the provision of decoupling obligation should be considered applicable only to MNOs, without any fall back on MVNOs, as far as only the former own and control networks and facilities necessary for the implementation of decoupling. MNOs are the only responsible for the implementation of decoupling (even for MVNO's customers who have to be treated on a non discriminatory basis,) and for the related adjustments or upgrade (if any). Any question about costs should therefore be handled considering that **re-charge by the host MNO of any additional costs for the provision of decoupling to an ARP on MVNOs shall not be allowed.**

The following response has to be considered in that light.

GENERAL QUESTIONS

1. Time for implementation of the decoupling method (Guideline 1)

BEREC has discussed the timing of the provision of the decoupling solutions and whether there is any scope for implementing the decoupling solutions in a different timeframe than 1 July 2014. Pursuant to Article 4 of the Regulation the separate sale of roaming services (including access to local data roaming services) have to be provisioned from 1 July 2014. BEREC is aware of the complexity of implementing the decoupling solutions and understands that the burden may be high particularly when operators face no wholesale access requests. As the Regulation does not set out a time frame for implementation, BEREC considers a period of 4 months after receipt of an access request to be reasonable. This is in line with the time frame set out for processing wholesale access requests pursuant to Article 3(5) of the Regulation.

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.

Answer to Q1:

We believe the implementation period of 4 months not to be sufficient in order to (i) agree the decoupling solution, (ii) sign the wholesale access agreement (iii) prepare all the necessary functionalities and (iv) complete all the necessary preliminary tests in order to allow an ARP to provide separate retail roaming services. The minimum period to be considered is – in our opinion – at least 6 months before the due date of July 2014 1st.

2. Standardization and documentation (Guideline 3)

BEREC considers that interfaces necessary for decoupling should be based on common standards developed and used by generally recognized standardization organizations as well as on the output of the stakeholder forum, where the standardization organizations also take part. Any relevant reference documents developed by market participants may be applied as long as they are free of charge for any potential access seeker and there are no limitations in their use. Such documents shall be in line with the provisions set out in the Regulation and the Implementing Act.

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

Answer to Q2:

We agree in principle with the position of BEREC, which should also precise that any fora, organization or platform where such documents are discussed and agreed should be open and accessible freely and without costs by all stakeholders.

3. Authorization regime (Guideline 4)

BEREC believes the authorization regime for ARPs to be the same as the one for any other ECS provider and no “EU licence is required. ARPs should follow any notification procedures defined by the Member States where the service is contracted.

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

Answer to Q3:

We do agree with BEREC position.

4. Fraud management and M2M services (Guidelines 7,8)

With regard to fraud management, BEREC is of the opinion that the DP and the ARP are responsible for taking any necessary measure to avoid fraud and the misuse of roaming services. Those measures should comply with legal obligations or should be in accordance with normal commercial practice.

On M2M services, BEREC considers that the regulation on separate sale of services applies also for M2M services based on a public communication network as defined in Article 2(d) of the Framework Directive (Directive EU 2002/21).

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

Answer to Q4:

In the event of a MVNOs acting as DSP, all necessary measures to avoid fraud and misuse of roaming services have to be handled by the Host MNO that is the only entity capable of controlling all the roaming traffic and manages the (direct) relationship with the Visited network. Therefore, the responsibility should lie only with the Host MNO.

QUESTIONS ON LOCAL DATA ROAMING SERVICES

5. Customers' right to return to the default roaming mode (Guideline 9)

Customers contracting local data roaming services in the visited network are to be automatically provided with their default roaming services when they terminate the use of local data roaming upon return to the home country or travelling to another country. This means that ARPs should not hinder roaming customers from returning to the roaming default mode so that customers can switch to traditional roaming any time. BEREC advises that ARPs provide their customers with all necessary information such as prices, contact details in case of problems, standard terms and conditions, as well as services that may not be available when using local data roaming.

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?

Answer to Q5:

We believe that no more clarification is needed.

An additional issue to be considered is the opportunity to notify the customer of the fallback any time it is automatically provided and certainly in the event that the coverage of the visited network fails (or is not technically available)

6. Provision of local data roaming services by third operators (Guideline 10)

The Regulation and the Implementing Act do not include an obligation for visited networks to supply the necessary wholesale services to ARPs to provide local data roaming services. On the other hand there is no legal obstacle which would prohibit visited networks from settling wholesale agreements with MVNO and resellers. BEREC expects stakeholders do so.

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.

Answer to Q6:

In order to clarify this question, one should distinguish the supply of wholesale roaming access and supply of decoupling functionalities respectively.

Pursuant to art. 3 RR, in combination with its Art. 2,2, §§o and p, any MNO is obliged to supply wholesale roaming access to ARPs, i.e. to undertakings wishing to provide regulated retail roaming services. The notion of MNO under article 3 is wide and general and it does not exclude specific categories of operators. Therefore, all visited networks are caught by such provision and are subject to all related obligations. Should BEREC maintain that art. 3 RR does not apply to visited networks, we would expect a clear and grounded legal justification for that.

Because of the above assumptions, any ARP, including MVNOs, has the right to ask wholesale roaming access to visited network/MNOs with the purpose to provide regulated data roaming services to incoming customers in a LBO scenario. Additional services (like re-routing, see our answer to Question 28) should be considered as ancillary services of the access obligation, not decoupling. The decoupling relationship takes place between donor and recipient operators (in this case: DSPs and MVNOs/ARPs), while the visited network basically only supplies connectivity.

And in fact, DSPs may not prevent MVNOs to serve their customers with regulated roaming services, as recognized by Art. 4 RR whereby: “Neither domestic or roaming providers shall prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider”. In fact, the “ARP” definition contained by art. 2.2,c of the RR include both MNOs and MVNOs without distinction (“alternative roaming provider” means a roaming provider different from the domestic provider).

We are aware that there are uncertainties and diverging opinions about the ambit of application of access and decoupling functionalities in the scenario when an MVNO is using the connectivity of a visited network to intercept incoming customers from other DSPs and ARPs. In our opinion, BEREC should seek the interpretation that better reflects the scope of the RR, i.e. increasing competition in order to structurally address the tariffs roaming issue within the European Union. This solution should therefore avoid the creation of an asymmetric regime (i) discriminating MVNOs, who – as known - have given a great boost to all markets they entered in by reducing prices and increasing customers’ penetration and innovation, and (ii) permitting MNOs to continue restrict competition, and enjoy abusive margins on roaming traffic.

In light of the above, BEREC should recognize the obligation for MNOs/visited networks to allow MVNOs to serve incoming customers in a LBO scenario, as far as the request is justified with the supply of regulated roaming services. Such obligation is clearly covered by the access obligation provided by Art. 3 RR (together with additional ancillary services) and reflects the spirit of the Commission that aims at improving competition and increase customers benefits from a better competitive landscape.

7. Local data roaming services outside the EEA and use of universal Access Point Name by non-EEA roamers (Guidelines 11, 12)

The Regulation does not cover the provision of local data roaming services in countries outside the EEA. However, BEREC considers that domestic providers can freely settle commercial agreements to allow their customers to use local data roaming services outside the EEA and also considers that there is nothing in the Regulation preventing voluntary extension outside the EEA.

The Regulation also does not include any provision prohibiting non-EEA customers from using the universal APN in EEA countries.

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)

Answer to Q7:

No, We do not consider that guidelines should address any additional issue about local data roaming service outside EEA or by non EEA customers.

8. Universal APN in HLR (Guideline 14)

Local data roaming requires the use of the universal APN. All operators that have a HLR must add the universal APN into their HLR in order to allow customers to use it by default. The universal APN cannot be used by the donor roaming provider to supply traditional roaming data services while the customer is abroad. The Universal APN is EUInternet.

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.

Answer to Q8:

The requirement to use an Universal APN for local data roaming must be coupled with specified technical solution that would ensure the identification of the data traffic managed by the MVNO - under LBO model - and the visited network one. In that scenario, the visited network acts as host provider and should guarantee the correct re-routing of the traffic in order to allow the local data roaming services offers by MVNOs.

Regarding to the issue of the default use of the universal APN, we agree with BEREC position providing that by 1st of July 2014 all operators have the obligation to add the Universal APN into their HLR, in order to allow the customers to use it, given that the activation by default has to be provided only in case of LBO subscription.

9. Barring and blocking ARPs providing local data roaming services (Guideline 15)

The Regulation provides that customers are free to sign up to local data roaming services with any ARP of their choice. Therefore the host network is not allowed to bar, block or disrupt ARPs that provide such services to roaming customers. This also applies to any potential customer that may want to use local data roaming services.

However there may be exceptional cases when barring can be justified, such as when the ARP does not meet the necessary technical conditions or fails to pay for contracted services or other objectively justified reasons.

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.

Answer to Q9:

The guidelines should not consider any additional issue about barring and/or blocking ARPs providing local data roaming services.

A further clarification is needed with reference to the exceptions indicated in the guidelines considered that in an LBO contest the ARP could have no relationship with the Home network and therefore the mentioned cases would not be applicable.

10. Traffic steering (Guideline 16)

Retail customers should not face difficulties when selecting a visited network for local data roaming services. As a result traffic steering and other mechanism applied in the home network or in the terminal shall be configured to allow selection of a visited network. In order to make effective use of local data roaming services, customers should not be disconnected from their chosen network due to traffic steering or any other mechanism. Customers should also be informed by the domestic provider about how to avoid traffic steering upon request.

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

Answer to Q10:

No additional issues about steering rules have to be considered. It has to be noted that customers, in order to reach the LBO offer (e.g. MVNO acts as LBO provider), must select manually the network (i.e. the Visited network that Host MVNO) and force the terminal to stay in manual network selection, due to steering mechanism applied automatically by SIM and/or terminal.

At the same time, the presence on the market of operator's pre-configured terminals to access internet will force the LBO provider to establish specific procedures, to be selected manually, or to develop applications in order to overcome the steering mechanism.

It also highlights that all capabilities to remove or modify the traffic steering, already present in the SIM and/or terminal, are handled by MNOs. The MVNOs have no possibilities to modify mechanism already present on SIM and/or terminal.

It is clear that, any specific action addressed at removing steering policies from the User Equipment (Handset + USIM) shall be non discriminatory toward hosted MVNOs customers and that related costs shall not, in any case, be borne by hosted MVNOs (that are clearly not responsible for traffic steering policies, therefore cannot be called to borne additional costs stemming from Hosting Operators commercial choices).

11. Manual selection of networks and automatic reconfiguration of the terminal (Guidelines 17, 18)

Restricted usage of terminal equipment could hamper the take-up of local data roaming services. For that reason domestic providers or ARP shall not apply any restrictions or limitations in the terminal equipment and SIM.

Donor roaming providers can reconfigure the customer's handset once it is connected to the network of the donor roaming provider in the home country.

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?

Answer to Q11:

No additional issue has to be considered.

12. Restoration of APNs by local data access providers (Guideline 21)

BEREC believes that customers should have easy access to local data roaming services, i.e. to contract and select a visited network as well as to easily return to their roaming default mode. This can only be achieved when APN restoration facilities are included in the applications that are provided to those customers using local data roaming services, and customers are provided with the necessary information for manual restoration. It is clear that automatic restoration procedures shall not conflict with the manual configuration chosen by the customer.

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.

Answer to Q12:

No additional responsibilities have to be taken by LBO providers.

13. Local data access notification to donor roaming providers (Guideline 23)

When customers make use of or terminate local data roaming services in a visited network, the donor roaming provider can request to receive a real-time notification. This notification can be used to perform selective barring of the local data access provider for users of traditional roaming not willing to use local data roaming services to suspend steering or to update the SIM for users who want to use local data roaming services.

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?

Answer to Q13:

A real time interface is necessary not only for switching off steering and selected barring but also to handle the customer's termination of local data roaming services subscription.

QUESTIONS ON SINGLE IMSI**14. Termination of Single-IMSI roaming (Guideline 25)**

BEREC discussed various options for such cases when customers terminate their contract with an ARP. Similar to the terms and conditions set out in most of the retail contracts in other markets, customers shall automatically fall back either to the tariffs agreed previously with their domestic provider before switching to the ARP or to the Eurotariff. BEREC prefers not to make a choice for the customer with regard to the specific fall-back-tariff, as either the Eurotariff or

an alternative roaming tariff of the domestic provider could be the best possible option. It is clear that the ARP has to inform the domestic provider about the termination of the contract.

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?

Answer to Q14:

No additional issues should be considered.

15. Reasonable requests (Guideline 27)

According to Article 5(1) of the Regulation domestic providers have to meet all reasonable requests with regard to access to decoupling functionalities where the purpose is to offer separate regulated retail roaming services. The same principle is set out in Article 3 of the Regulation, where MNOs have to meet reasonable access requests with regard to wholesale roaming access. In its Guidelines on Article 3 BEREC has set out a general rule on how reasonable requests are to be interpreted. It states that any request which does not require deployment of an undue level of resources would be considered as reasonable. In order to be consistent, it makes sense for this principle to be applicable also when processing access requests in connection with decoupling.

It follows that requests for decoupling which are not intended to providing regulated roaming services are not covered by Article 4 and 5 of the Regulation, the Implementing Act or by these Guidelines.

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

No, We believe the approach should be the same, although it is useful to keep clearly distinct wholesale roaming access and access to decoupling functionalities respectively.

16. Refusal of requests of decoupling (Guideline 28)

As set out in its Guidelines on Article 3, BEREC is concerned about the potential for reasonable requests to be refused on spurious grounds such as delaying market entry. Similar to refusing reasonable wholesale access requests, refusal of requests for decoupling could obstruct competition in the roaming market and counter the idea of establishing more competition. For the same reasons set out in its Article 3 Guidelines, this guideline is attempting to minimise the scope for the use of tactics to delay or impede market entry. BEREC would welcome advice on how this risk could be reduced further.

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?

Answer to Q16:

We agree with BEREC's general approach on refusal of requests. We do not have any specific suggestion. However, it should be clarified that MVNOs, when acting as DSPs, are not subject to wholesale roaming access obligations (Art. 3 RR) and must comply with decoupling obligations only for those interfaces and facilities they control directly (with no intervention by Hosting Operators) and own.

17. Prioritisation of requests (Guideline 29)

BEREC considers that prioritisation of requests may be necessary. Hence requests should generally be processed applying the non-discriminatory principle. BEREC would like to point out that the commercial interests of the domestic provider do not provide any grounds for prioritisation.

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

We agree with BEREC's position that a prioritisation of requests may be necessary. The prioritisation process may be based on customer's request date. For example if a request is received by more than one ARP, the most recent customer's will has to be considered on a priority way.

18. Timing issues for requests after 1 July 2014 (Guideline 30)

Requests for decoupling and local data services can be received after 1 July 2014, because there may be several reasons for delaying the offer of separate roaming services. BEREC considers that access to decoupling and local data roaming should be processed within a reasonable period as set out in Article 3 of the Regulation. This principle is also to be applied to requests that are filed after 1 July 2014. It follows that the ARP is to be provided with a draft contract in a maximum period of one month after filing the request and access is to be granted within a reasonable period not exceeding three months from the conclusion of the contract.

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

The time limits provided do not consider a given time inclusive of the negotiation and the execution of the decoupling agreement. That might result in an indeterminate timing to set up the complete process.

We therefore suggest to define the period of time including all phases of the requested access process. Furthermore, the timing requested to handle the process should be in line with that provided in Guideline 1.

19. Bundling of services (Guideline 31)

According to Article 4(1) of the Regulation the ARP must be able to allow its retail customers to subscribe to regulated voice, SMS and data roaming services as a bundle. As a result, the domestic provider is required to provide the corresponding regulated wholesale roaming services as a bundle to ARPs.

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

Answer to Q19:

Yes, we agree.

20. MVNOs and Resellers being domestic providers (Guideline 32)

BEREC understands that stakeholders discussed the question whether the obligation for decoupling also includes MVNOs and resellers. Article 4(1) of the Regulation sets out that domestic providers shall enable access to decoupling. In this regard, BEREC considers that domestic providers can be MNOs as well as MVNOs, resellers or any other undertaking offering retail mobile services in the customer's home country.

For decoupling to work it is clear that the necessary decoupling functionalities are to be provided. In such cases where the domestic provider is technically not able to meet the decoupling request, the necessary functionalities are to be supplied by the hosting network, which is capable of doing so. Naturally this is the provider located further upstream in the value chain.

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

Answer to Q20:

BEREC should precise that the supply of decoupling functionalities only concerns operators owning and controlling related networks and facilities, i.e. only MNOs. The IA specifies that only DSPs operating a terrestrial public mobile communication network (or part of it) shall provide the necessary technical elements that would allow the resale of retail roaming services. It follows that a MVNO, which does not have the necessary network elements for allowing decoupling, but instead relies on a host MNO to enable decoupling, has no obligation to supply decoupling functionalities.

Therefore, the wording of the GL should be drafted accordingly. Rather than focusing to the "ability" to offer the required functionalities, the GL should simply state that the decoupling obligations subsists only upon the operators owning and controlling the facilities and network to allow the separate sale. The concept of "ability" is misleading because it may be interpreted as source of fault from the side of the concerned party, whereas the choice to invest less or more in networks is a legitimate industrial decision fully recognized by the RR.

Given that, all the guidelines referred to the provision of decoupling obligation should be considered applicable only to MNOs, without any fall back to MVNOs, as far as only the former own and control networks and facilities necessary for the implementation of decoupling. The MNO is the only responsible for the implementation of decoupling (and on a non discriminatory basis) and for the related investments (if any). **Therefore, the re-charge by the host MNO of any additional costs for the provision of decoupling to an ARP on MVNOs is deprived of factual and legal grounds.**

21. Required information (Guidelines 33, 34, 35)

Domestic providers are entitled to request necessary information for decoupling requests by ARPs. This is a similar principle that BEREC considers relevant for wholesale roaming access requests and this is based on the notion of the information required in normal commercial agreements. The domestic provider can ask for relevant information prior to signing a decoupling agreement with ARPs as well as on an ongoing basis. Reasonably, commercially sensitive information should not fall under the information required from ARPs. In turn the domestic provider has to make sure that ARPs receive necessary information on time to allow them to make adequate access requests.

Information that is required on an ongoing basis can be depicted in a reasonable procedure to be developed by the domestic provider. BEREC advises that the degree of foresight or precision should not be excessive so as to delay market entry by ARPs.

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?

Answer to Q21:

We agree with BEREC's position.

22. Customer profile (Guideline 36)

According to the Regulation retail customers should have access to regulated voice, SMS and data roaming services. As this entails ARPs offering pre-pay or post-pay roaming services to their customers, this means that no restriction on the billing profile of the customer that uses an ARP is allowed.

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.

Answer to Q22:

We agree with BEREC's position, but it is important to underline that the application of the different billing profiles shall depend on the availability of the related interfaces at a DSP level.

23. Functionalities to be provided free of charge by domestic providers (Guideline 37)

BEREC understands that domestic providers must supply a minimum set of functionalities for decoupling for free in order to allow ARPs to provide separate retail roaming services to their customers. On the other hand all services that domestic providers do not provide for their own customers do not have to be offered to ARPs. For instance does the domestic provider not have to support pre-pay functionalities if it does not have a pre-pay platform.

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

Answer to Q23:

We agree domestic provider must supply a minimum set of functionalities for decoupling for free and we believe the following capability has to be added to the list addressed in Guideline 37:

- Support for providing customer's localization data (necessary to inform the ARP that one of its customers has started to roam or has changed network).

24. Termination of incoming and outgoing SMS (Guideline 39)

The wholesale roaming charge does not include costs for incoming voice calls or termination of outgoing roaming SMS and therefore these services cannot be considered to be part of a wholesale service. As these services are nevertheless to be offered to ARPs, BEREC considers that fair and reasonable prices may be charged by domestic providers for them.

BEREC follows the same approach here as for requests for wholesale roaming access pursuant to Article 3.

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

Answer to Q24:

We agree the Wholesale roaming charge should not include cost for incoming voice or termination of outgoing roaming SMS because these services cannot be considered to be part of a wholesale roaming service.

The principle of fair and reasonable price will be applied for call and sms termination, in an agreement with ARP so as to allow a unique bill at the retail level.

25. Extra-EEA services to customers roaming in the EEA and special rate services (Guideline 41, 42)

BEREC considers that access to decoupled services must include extra-EEA roaming for mobile originated calls from EEA to outside EEA and mobile terminated calls from outside EEA to the EEA when requested by the ARP. The domestic provider shall apply fair and reasonable charges for these services. BEREC believes that customers would find it inconvenient to have separate suppliers for intra-EEA and extra-EEA roaming while roaming in the EEA.

As for special rate services, BEREC notes that only the wholesale part is subject to the wholesale caps set out in the Regulation. Where ARPs request access to such services, domestic providers are to apply the prices that shall not exceed the wholesale caps.

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

Answer to Q25:

We agree that the access to decoupled services must include extra-EEA roaming for mobile originated calls from EEA to outside EEA and mobile terminated calls from outside EEA to the EEA when requested by the ARP.

In relation to special rate services, considering that they are specific services offered by DSP via (commercial) agreement with service provider, we believe that no cap has to be applied even on a wholesale level.

26. Fair and reasonable prices and non discrimination (Guidelines 44, 45)

BEREC sets out general principles which it considers to be sufficient to allow parties negotiating in good faith to reach reasonable agreements, as laying down detailed guidance covering the meaning of fair and reasonable charges risks being over-prescriptive. This follows the principle laid down in BEREC's Guidelines on Article 3.

The non discrimination principle applies to decoupled services as well. It follows that all terms and conditions must be equivalent to those that the domestic provider grants itself. In this regard Guideline 47 makes reference to certain services.

Q26. 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?

Answer to Q26:

We agree with Berec provision on fair and reasonable prices and we consider the general principles set sufficient to negotiate in good faith.

Moreover, we consider that wholesale conditions, to be complied with a non-discrimination principle, applied to MVNOs shall allow them to replicate the MNO offer maintaining an adequate margin.

27. Loss of service when switching domestic provider (Guideline 46)

BEREC cannot expect that customers maintain all contracted services when they switch the domestic provider. In such cases customers are to be informed by the ARP that they may lose their alternative roaming service.

Q27. Is there any additional issue to be considered about switching of domestic provider by customers?

Answer to Q27:

We agree with BEREC's position.

28. Further questions

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

Answer to Q28:

We believe that BEREC should include further guidelines to specify the roles of DSP, visited network and MVNOs in a scenario where an MVNO intends to provide regulated roaming services to incoming customers, acting as LBO Provider. As stated above in our answer to Question 6 (GL10):

- visited networks shall always provide connectivity to MVNOs by virtue of art. 3;
- DSPs/providers shall not prevent customers getting roaming services by MVNO in a LBO scenario;
- additional activities by visited network should be considered as ancillary services covered by art. 3, not decoupling.

We therefore suggest the following wording.

Local data service subscription

ARPs, different from Visited network operators, shall be allowed to sell LBO services to inbound roamers and shall permit LBO services offered to their customers as well as a Visited operator.

Visited operators shall provide the ARPs with all capabilities needed to allow LBO selling process.

In the event of a MVNO, acting as LBO provider, the LBO subscription could not be possible through SIM registration process, therefore, to allow inbound roamers to select the MVNO's LBO offer the Visited network has to provide the following solution:

- *inbound roamers shall be able to access a captive portal page (e.g. "Welcome page" or "Landing Page") provided by Visited network and select preferred Visited/MVNO LBO offer .*

Domestic Providers shall configure the HLR profile in an appropriate way so that EU APN set up is compliant with LBO process.

Please find below Use Cases and operators obligations in a MVNO/ARP scenario:

Use Case

- *User (e.g. from Germany) roams in Italy, under any VPLMN coverage*
- *User makes a valid registration: domestic HLR provides VPLMN network with profile information including EU APN. Domestic specific roaming restrictions are also sent to VPLMN network*
- *User selects Universal EU APN*

- *User initiates data session on Visited Network*
- *Session is redirected to captive portal by Visited Network*
- *User selects MVNO's LBO offer*
- *User selects payment method and provides all needed information to complete the acquiring process including the MSISDN*
- *MVNO send login and password by means of an SMS*
- *End User inserts login and password on Visited Captive Portal*
- *MVNO Platforms validate login and password*
- *MVNO Platform unlock redirection to captive portal*
- *User enjoys data session*
- *MVNO Platform terminates the User Session once the acquired credit is finished*

Visited network obligations toward MVNO

- *Visited network (GGSN GW) shall redirect all inbound roaming session, associated to EU APN, to a MNO Captive Portal.*
- *Visited network Captive Portal shall interface the MVNO authentication system.*
- *Visited network GGSN GW shall interface the MVNO Platform via diameter. Based on the interaction between GGSN and MVNO platform, the GGSN component shall insert MVNO identifier in the associated CDR.*
- *Visited network is responsible for all mandatory provisions (i.e. lawful interception of communications and traffic data record), related to LBO data session*
- *Visited network shall provide MVNO with LBO CDRs to document the LBO transactions for wholesale reconciliation.*

Requests for decoupling functionalities for LBO use

Request for decoupling functionalities for LBO use may not be refused on the basis that the LBO provider is not currently hosted on the MNO network.

It has to be underlined that in the event of a MVNO, acting as LBO provider, the LBO subscription might not currently be possible through SIM registration process as the current solution for mobile roaming allows only the display of the visited PLMN code. We are not aware of any reason why such current solution cannot be upgraded so as to enable the display of additional ARPs onto the screen of the visiting customer. Therefore, we suggest, in order to ensure that final customers have the largest choice among different providers of local data roaming services, the above wording.

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

With regard to GL 38, it should be précised, for the sake of clarity, that the notion of "domestic providers operating a terrestrial public mobile communication network" does not include MVNOs and resellers.