



Europe

**GSMA Europe response to the BEREC consultation on
BEREC Guidelines on the separate sale of regulated roaming
services (Articles 4 and 5 of the Roaming Regulation)**

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Introduction

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

The implementation of structural solutions has been a significant challenge from the outset. While the Roaming III Regulation¹ sets the principles, the Implementing Regulation adopted last December by the European Commission defines the two structural solutions to be implemented, namely the Single IMSI and the Local Break Out (LBO) solutions. However as from that date, the technical specifications and requirements still needed to be entirely defined; this has been the task of the Industry Platform created last year under the umbrella of both the European Commission and BEREC. The GSMA and its members have been strongly involved in the works of that Platform and its different working groups. The Industry Platform has managed in a particularly short period of time to agree on those technical specifications, also based on informal feedbacks from BEREC. However, with the BEREC final Guidelines to be published this summer, it leaves mobile network operators (MNOs) with less than a year to implement the structural solutions in their systems. This calls for appropriate recognition by National Regulatory Authorities (NRAs) of the challenge faced by undertakings in meeting the implementation deadline when carrying out compliance assessments and enforcement activities.

Implementing the structural solutions in such a short period of time remains challenging; it will continue to require a tremendous amount of internal resources and substantial investments by the industry in a weak economic climate. During this period of implementation, it will also be important to have regulatory stability and visibility.

With respect to the draft Guidelines, we welcome the fact that BEREC highlights the need for alternative roaming providers (ARPs) to comply with the output of the Industry Platform. It is indeed essential that all actors comply with those rules. While many of the Guidelines reflect the outcome of the discussions within the Industry Platform and do not raise specific comments, further alignment is needed for others to avoid any interpretation issues and delay in implementation. In addition, BEREC should avoid inserting measures that would go beyond the terms of the Roaming III Regulation. Several Guidelines indeed currently either contradict the High Level Technical Specifications - such as Guidelines 8 (M2M services) or 21 (restoration of APNs) - and/or go beyond the provisions of the Regulation - such as Guidelines 30 (timing issue after 1st of July), 41 (non EEA traffic), 42 (value added services), 43 (additional functionalities), or 47 (SLAs). We would also invite BEREC to better take on board the definitions used in those technical documents to avoid confusion.

The GSMA contribution covers the two documents published by BEREC, namely the questionnaire² and the draft Guidelines³.

¹ Regulation (EU) No 531/2012

² BEREC Document BOR (13) 53

³ BEREC Document BOR (13) 54

General questions

Guideline 1 – time for implementation

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

Any ARP request to launch services from 1st of July should be made sufficiently in advance of that date. As there may be unexpected problems at the beginning of such process, a four month notice period is not sufficient for the domestic providers (DPs) to assess and define the relevant process, planning and volumes at stake. BEREC should better take on board the complexity of the requirements, the very limited time frame for implementation of the technical solution in the first instance and the likelihood of an ARP entering negotiations on the draft agreement that they are offered.

Therefore ARPs planning to launch services as from 1st of July 2014 should give notice 6 months in advance on the 2nd of January 2014.

Given the overall complexity and the fact that the technical requirements and the final BEREC Guidelines will only be available 12 months before the 1st July 2014, it is not appropriate to require DPs to have implemented the necessary facilities for testing the separate sale of roaming services from the start of the prior notice period. In other words, the prior notice period is essential to give better visibility for the DPs, but testing won't necessary start at the beginning of that period.

Guideline 2 – access documents

As indicated by BEREC there is no obligation to publish a Reference offer or a draft contract, leaving DPs the choice on the best way to inform potential ARPs.

Guideline 3 – standardisation and documentation

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

We support the need for ARPs to be compliant with commonly used standards, as well as with the High Level Specification Requirements of the Industry Platform. We consider the work achieved within the industry Platform under the umbrella of the European Commission and BEREC to be binding. BEREC should clarify that, in case of disputes between parties, NRAs will also have to take the technical documents into account.

In that sense, it appears that some of BEREC Guidelines should be modified to be better aligned with the technical requirements defined within the Industry Platform; this relates for instance to Guidelines 8, 21, 42 or 43⁴.

⁴ See the TRG Industry platform comparison table between the High Level specifications and the draft BEREC Guidelines

The Industry Platform has defined interfaces⁵ by reusing existing protocols, but there is also a need to maintain supporting definitions that identify and explain the architecture and requirements in which the interfaces exist. The documents produced by the Technical requirements group and subgroups amount to Stage 1 and Stage 2 definitions (as per the ITU-T three layer standards approach). These documents need to be maintained in a suitable standards forum so that they are kept up to date, and are available to all parties that might need to refer to them and implement network functions based on the definitions they give.

The GSMA recommends that ETSI or 3GPP should maintain these documents. ETSI is a recognised standards forum for telecommunications with a European remit, whilst 3GPP is the mobile telecoms industry standardisation partnership, within which ETSI is a full partner.

Guideline 4 – authorisation regime for ARPs

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

We agree with BEREC: ARPs as providers of regulated roaming services in the EEA have to comply with the same rules as MNOs regarding notification and possible need for establishing a legal entity in the country where the DSP is located.

In addition, the BEREC Guidelines should also make clear that ARPs that rely on an aggregator will also have to comply with the Roaming III Regulation and rules applied to electronic communications services. In that sense, aggregators have to inform DPs about who they are representing.

Guideline 5 – identity of access seeker

The rights defined by the Roaming III Regulation are granted only to entities compliant with the electronic communication framework and whose activity is only to serve roaming customers.

Regarding the last sentence of Guideline 5, BEREC should clarify whether the contract would then be closed between DP and aggregator or DP and ARP (commissioned by the aggregator). It seems also at this stage unclear how the market will structure around aggregator; according to the Roaming III Regulation, the minimum set of functionalities have to be delivered free of charge to access seeker but at the same time, the aggregator may decide to charge it to the ARPs they work for.

Guideline 6 – ARP services used by customers

We do not have any specific remark on the proposed Guideline.

⁵ See the Industry Platform document: EU Roaming regulation III - Structural Solutions - High Level Technical specifications

Guideline 7 – fraud management

BEREC should make it clearer that ARPs have to ensure they comply with commonly used rules to prevent fraud, as defined, in the output of the Industry Platform and the GSMA. Liabilities in different scenarios will have to be outlined in a clearer way.

Guideline 8 – M2M services

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

During the discussions within the Industry Platform, BEREC's informal guidance on M2M was that the obligations "may apply to certain services". However, Guideline 8 appears to impose the obligations on all M2M services.

However, for some types of M2M devices, the extent to which support of Local Breakout service could be used is severely limited. As some devices have no intuitive User Interface by which the EUInternet APN could be configured, it would be difficult to manually configure the device to enable LBO, making the dynamic support of LBO by some devices impossible. Taking into account the volumes and revenues at stake for M2M services, BEREC should also ensure that the proportionality test is met for those services.

Guideline 8 should, therefore, be amended to take into account the specificities of M2M and the fact that some M2M services won't be eligible for LBO.

Questions on LBO

Guideline 9 – fallback scenario

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

The GSMA agrees with BEREC's statement that ARPs should not prevent roaming customers from returning to the default roaming mode. Provided the customer hasn't indicated a wish to the contrary (eg. to move to another ARP), the GSMA believes the process will be designed to ensure the customer defaults back to their DP upon the correct reconfiguration of their mobile device as per Guideline 21 and Guideline 18.

It shall be noted that the fallback cannot be fully automatic from technical point of view. It shall be initiated by the customer making changes on APN setting, activating the default APN mode of traditional roaming, thus enabling the fallback to the default roaming mode.

It is essential that customers are informed in a clear manner prior to concluding a contract with the LBO provider about data services that may not be available such as MMS, VPNs or proprietary services supported by the donor roaming provider.

In addition, since the LBO providers are providing a data roaming service, it should be clear that they are required to meet all obligations within the Roaming III Regulation. They shall therefore:

- inform the subscriber of pricing information at the beginning of roaming service;
- provide a mechanism whereby the subscriber can request pricing information during the duration of their contract with the LBO provider;
- provide a mechanism to ensure the anti bill shock system are in place as indicated within Guideline 22 and in line with article 15 of the Roaming III Regulation.
- provide their customers with all necessary information how to make changes on APN settings to restore default roaming mode.

The provisions made in Guideline 9 for information to be sent to the customer about services that may not be available should be considered to be in addition to those laid out in the Roaming III Regulation.

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 specification of the LBO solution have been clearly defined in the output of the Industry Platform and they should be considered binding for all parties requiring unbundling under the LBO solution.

Guideline 10 – LBO by third operator

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.

The GSMA agrees with BEREC's statement that there is no provision in the Roaming III Regulation supporting obligations for MNOs to provide wholesale services to other stakeholders for allowing them to provide local data roaming services. This does not exclude the potential for commercial negotiations, but there is clearly no right granted to third parties.

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

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

As the Regulation is not valid outside EU/EEA, the BEREC Guidelines should stick to the Roaming III Regulation scope without going beyond. Therefore Guidelines 11 and 12 do not appear to be relevant.

Guideline 13 – ARPs right to publicise and sell services

We agree with BEREC's general approach to ARPs providing local data services being entitled to carry out marketing activities in full accordance with Article 13 of the Directive on privacy and electronic communications.

It should also be made clear in the Guidelines that pursuant to Article 13 of the Privacy Directive, ARP providing local data services is not entitled to send direct marketing messages via, including but not limited to, SMS, e-mail and landing pages to the customers of current roaming provider unless the ARP providing local data services has received a prior consent from such customers. Customers shall not be spammed or confused, as they are already receiving a message of tariff information from the current roaming provider due to obligations of Article 15 of the Roaming Regulation

Guideline 14 – Universal APN in the HLR

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.

The Guidelines shall not explicitly mention the HLR where the universal APN shall be provisioned, as there can be different implementations even without HLR.

Instead the Guidelines shall refer to the provisioning of local data roaming subscription data towards the local data roaming provider (visited network). The subscription data shall be provided according to the output of the Industry Platform. According to that, the data will contain the Universal APN EUInternet and technical parameter allowing the usage of local data roaming.

Local data roaming provider shall respect the local data roaming subscription data provided by home network and shall not offer the service if such a subscription does not exist.

In general, the default setting of the EUInternet APN is suitable for most subscribers. However, in some cases (most notable, where the entity that pays the bill for mobile service is different from the individual that has the device in the possession, i.e. a corporate contract) the authority that maintains the contract with the domestic provider may wish to restrict the use of LBO for all or some of the subscribers that they are responsible for. If EUInternet APN is configured for these subscribers, LBO service could be used against the wishes of the bill paying authority. Thus, subscriptions of this type should only have EUInternet APN configured with the express permission of the bill payer.

- Within Guideline 14, we wonder why BEREC proposes to restrict the use of the Universal APN only to LBO - 'This Universal APN cannot be used by the donor roaming provider to supply traditional roaming data services'. Such an APN could be useful also for DPs in some circumstances and prohibiting its use per se does not seem justified.

Guideline 15 – Barring and Blocking

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

Before an end user can switch to a LBO provider, an agreement has to be reached between the DP and the LBO provider. As indicated in Guideline 19, a wholesale contract has to be agreed before the service is activated and available to end users.

The GSMA agrees with BEREC's statement that exceptions are to be considered, entitling DPs to bar ARPs providing local data roaming services due to non-fulfilment of reasonable technical conditions, non-payment of services or other objectively justified reasons. Such exceptions apply however more broadly to any kind of wholesale agreement, and are not limited to relationships with LBO providers only.

There should also be other cases where blocking is possible, such as non-payment of services, a results of a customer's request or other objectively justified reasons. Some customers, such as companies that do not want their employees to access other data services than those directly provide by the DP, might want to block LBO possibilities. In this case, it should be possible to block this APN when the customer explicitly requires it.

Guideline 16 – Traffic steering

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

We do not have any specific comment.

Guidelines 17 & 18 – Manual selection of networks and automatic reconfiguration of the terminal

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?

BEREC should clarify Guideline 18 to indicate that the DP is allowed to reconfigure the users' terminal once the terminal is outside the reach of the LBO provider (eg. moving to another country), and not only once the terminal is connected to the DP network in the home country.

While Guideline 18 is important, it should not impact negatively on Guideline 21, according to which LBO providers have a responsibility to clearly inform and offer mechanisms for the subscriber to reconfigure their terminal.

It shall be noted that the possibilities of Donor operator to influence the capabilities of customer equipment, incl. manual network selection and automatic restoration of internet access settings in the terminal are very limited by terminal manufacturers.

Guideline 19 – conclusion of roaming agreements with ARPs

As DPs are under the obligation to "*conclude a roaming agreement with the visited network*" that wants to provide LBO, it should be made clear that this wholesale agreement is a pre-requisite before an end user can switch to a given LBO provider.

To avoid any confusion, we also invite BEREC to re-use the terminology used in the Industry Platform technical documents, such as DP or DSP.

Guideline 20 – supply of other services

The requirement on the LBO provider to inform the subscriber if their voice and SMS service is restricted as a result of selection of LBO service should be however considered in the same way as the requirement to inform the subscriber of limitations to MMS, VPN etc., as identified in Guideline 9.

Guideline 21 – restoration of APNs

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.

As raised at BEREC public hearing, Guideline 21 is confusing as it seems to mandate the development of apps allowing LBO customers to return to traditional roaming services, while at the same time indicating that customers must be informed how to restore the APNs manually. Apps could indeed help customers and will certainly be developed by the market but they should not be considered mandatory. There is no such obligation in the Roaming III Regulation to deliver an app, which has neither been discussed or designed within the Industry Platform.

As a consequence, BEREC should allow the market to organise itself to allow customers to switch to and from LBO providers but should absolutely insist on the need for LBO providers to clearly inform their customers on how to restore APNs.

Guideline 22 – Bill shock

In accordance with Article 15 of the Roaming III Regulation and the Implementing Regulation, recital 27, it is up to the LBO provider (section 3.3) to provide the anti-bill shock measures to its retail roaming customers.

Section 3.3 of the BEREC Guidelines should also include the other obligations the ARP has to comply with in terms of customer information, see comments on Guideline 9.

Guideline 23 – LBO notification

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?

The GSMA's position on support of an interface between LBO provider and DP is neutral. Some operators see benefits in supporting this interface whilst others do not. The Industry Platform has not defined any standardised LBO notification process.

Without prejudice to the above comment, if BEREC were to maintain Guideline 23, the final recipient of the notification should not be the donor roaming provider, but the DP.

Questions on single IMSI

Guideline 24 – switching between roaming providers

The Roaming Regulation states that the switching between roaming providers shall be 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.

The switching time period that is challenging for operators to meet, should be counted:

- as from the receipt of the request from the ARP;
- and 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.

Guideline 25 – Fallback

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?

The GSMA agrees with the fallback model described by BEREC. It is of high importance to ensure continuity of services for the end users.

However, it seems preferable for the customer to automatically fall back to its previous tariff plan, if not otherwise required; it would be more customer friendly and it would simplify the process. ARPs should inform the DPs about the termination of the contract in a swift manner, as soon as possible and without undue delay.

Guideline 26 – ARP subscription procedure

This procedure has to be discussed at national level to match with current switching process applied in each country. However, if it is indeed important to ensure that the process is user friendly, as indicated by BEREC, it must also ensure that customers give an explicit consent to such a switch to avoid fraud or unwilling migration. In addition, ARPs have also to comply with other common rules on consumers' contract subscription.

Guideline 27 – reasonable request

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.

BEREC quotation of article 3 Guidelines is not complete as within those Guidelines, BEREC states that would be regarded as reasonable any "request that does not require deployment of an undue level of resources to implement" but also "and where it is reasonable to foresee that the implementation costs will be recovered within a reasonable period".

It is also obvious that the structural solutions are there only for the purpose of providing regulated roaming services; any request for another purpose could therefore be refused. In

that sense, the last sentence of the Guideline 27 is ambiguous and not relevant in the context of roaming, it should be deleted in the final version.

In addition to the same approach of reasonability of wholesale roaming access pursuant to Article 3, it shall be noted that the assessing the compatibility of ARP with the services offered by the access provider is the first criteria for accepting the reasonable request for decoupling of roaming service. ARP shall support the interfaces and protocols offered by the domestic provider and not vice versa.

Guideline 28 – refusal of requests

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?

Request will be assessed on a case by case basis. In addition to BEREC wording, we also consider that 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;
- does not comply with electronic communications rules such as the one recalled within Guideline 4;
- threatens network integrity or security rules;
- raises risks of unfair use of the regulated access (fraud for instance) or does not commit to financial safeguards.

Guideline 29 – Prioritisation

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

We welcome BEREC’s acknowledgement of the need for the DP to be able to prioritise requests.

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, since Article 5 does not refer to Article 3 of the Regulation. BEREC is therefore not entitled to transpose the rules defined for article 3 of the Roaming Regulation to the structural solutions.

In addition, if BEREC were to maintain time period in Guideline 30, it has to take into account that 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. Applying the same time limits would not be proportionate. Guideline 30 should in such hypothesis 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.

Guideline 31 – Bundling of services

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

BEREC Guideline is compliant with the Roaming III Regulation provisions as stated notably in Article 4 (1), according to which DPs shall enable their customers to access regulated voice, SMS and data roaming services provided together by an ARP. This is also confirmed by the Implementing Regulation of the Commission, both in its Articles 1 and 3.

Guideline 32 – MVNOs and resellers being DP

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

We share 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 should be allowed to switch roaming providers.

We understand from BEREC Guideline that in case such actor is technically not in a position to do so, its host MNO should bare the responsibilities. MNOs will have to negotiate with the retail service provider to allow him to do so under commercial terms. We consider that BEREC should however recall that the responsibility towards end customers first lies in the provider of the roaming retail services.

Guidelines 33, 34 and 35 – information

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?

It is important that the DP is communicated relevant information to ensure a secure and smooth functioning of the roaming services. In that sense, we consider necessary that the ARPs 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. Asking for financial safeguards will also be justified, especially due to the unilateral relationships the structural solution creates.

Guideline 36 – Customer profile

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.

The GSMA position on hybrid profile is neutral; some members support implementation of hybrid profile while others do not. However, and even if this solution further increases the costs to implement the structural solution for the DPs, the Industry Platform has worked on a standardised hybrid profile solution allowing DP to implement it.

In case an ARP is offered the standardised solution worked out by the Industry Platform the ARP should not be entitled to request any special interface besides or on top. This would otherwise severely increase complexity and costs - causing a disproportionate burden to operators who have made significant efforts to provide the standardised solution. ARPs could still make use of an enabler (MVNE) in case they do not want to adapt themselves directly to the standardised interface.

Guideline 37 – Functionalities to be provided free of charge

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

According to Article 5 of the Roaming III Regulation and recital 7 of the Implementation Regulation, access to the network elements and services necessary for the structural solutions should be free of charge and any additional services that go beyond what is necessary is not covered by this rule. This obligation is unusual compared to other wholesale agreements and obligations according to which access donor can at least recover their costs when granting an access, like for a wholesale MVNO access for instance. The implementation of the structural solutions will in addition represent a significant amount of investments for the industry. BEREC should therefore limit the list of free of charge services to the items mentioned in Guideline 37 without going beyond.

We support the statement that DPs are not obliged to offer the ARP more services than they have for their own customers, for instance pre paid services. An MNO may have a pre paid platform in place for providing domestic pre paid services, however for commercial or other reasons the MNO may not necessarily offer pre paid roaming services. It should be clarified that the criteria relates to the offering of services to own customers and not what kind of platform an operator has in place. This principle would allow the ARP to compete on equal terms with the DP.

Guideline 38 – Maximum wholesale charges

This sentence is confusing; the reference to DP “*operating a terrestrial public communication network*” should be deleted. Any actor providing roaming services at wholesale level should comply with the wholesale caps. With the current wording, the guideline implies that a MVNO (domestic provider) who has been asked to provide unbundling might apply to the ARP wholesale charges higher than the caps, which we deem is contrary to the aim of the Regulation.

Guideline 39 – termination of incoming calls and outgoing SMS

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

Those services are indeed not covered by the Roaming III Regulation. They can be charged by MNOs to at least cover the full costs associated with the provision of those services, including payment to the visited network and transit providers, as well as internal costs of the MNO.

The last sentence appears rather unclear as it would concern “resellers having resale access”, which does not appear relevant here.

Guideline 40 – voice mail service

We agree with BEREC statement.

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

Guideline 42 – special rate service

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

Extra EEA traffic is not covered by the EU Roaming Regulation. There is therefore no obligation for DPs to provide it to ARPs. It is up to the DPs to decide under commercial terms whether or not to grant non EEA traffic to ARPs.

Regarding the special rate services, they are as such not covered by the Roaming III Regulation, see recitals 43 and 67. 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.

Guideline 43 – functionalities to be provided on request

DPs have to provide the minimum set allowing ARPs to sell roaming services to end customers. Any service that goes beyond the minimum set is to be discussed under commercial terms. In that case the time limits of decoupling access shall not apply.

In that sense, the Guideline 43 is not acceptable as it proposes to impose (“shall”) a list of products that DPs should deliver. DPs should not be expected to implement facilities for these additional functionalities in advance, or without a commercial agreement, with an ARP, as the current wording of Guideline 43 seems to imply. In addition, the list proposed is in contradiction with the works achieved within the Industry Platform: DPs will implement a new interface that will for instance allow ARPs to build their own bill shock system. Guideline 43 should thus be deleted or modified to refer only to commercial negotiations for any additional services not belonging to the minimum set of services.

Guideline 44 – fair and reasonable prices

Guideline 45 - non discrimination

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?

See comment made under guideline 39 for fair and reasonable prices.

Guideline 46 – loss of service

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

We agree with this Guideline.

Guideline 47 – SLAs

SLAs are not imposed within the Roaming III Regulation and not commonly applied on the wholesale roaming markets.

In addition, Guideline 45 and the fact that quality and provision of services will also depend on the actions of the ARP question the relevance and need of Guideline 47. Guideline 47 should thus be deleted.

Guideline 48 – MMS prices at wholesale level

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

Further questions

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

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

In addition to the above, two other comments should be made:

- An additional issue which BEREC explicitly should clarify is if an ARP is or can be required to conclude an access agreement or another type of contract with a given donor DP in order to enable decoupling as it is already indicated for an LBO providing local data roaming services in Guideline 19.

An agreement beyond the technical standards referred to in Guideline 2 should be required e.g. to enable exchange of TAP files. However, the text is confusing the need to have such agreement, its time period for negotiation, and the requirement for the customers to be able to switch within one day to any ARP (Guideline 24). A clarification will be needed on how to handle the relationship between a donor MNO and an ARP not having an access agreement with the domestic provider and chosen by an end

user. Again it would seem important to recall that wholesale agreement is a pre requisite as indicated in Guideline 19 for LBO.

- When looking at the provisions of the Roaming III Regulation, they may put at risk the possibility to offer affordable and competitive packages that is a key point both for business customers and competition in the pan-European market. Article 4.3 of the Roaming III Regulation indeed states that customers should be able to switch 'under any tariff plan', while customers, and especially businesses, may have signed up for a comprehensive contract including roaming as well as other services – and thus being fully aware that they have bought a bundled product. This could lead to a reduction in packages' policy matching customers' needs. A reference to the other Roaming III Regulation's provisions on Euro-tariff, and impact a switch to Euro-tariff has on bundles (cf Articles 8.5, 10.6 or 13.5 Roaming III Regulation), could be relevant in such circumstances.