



Response to

BoR (15) 140

Draft BEREC Work Programme 2016

30 October 2015

## Contents

---

I. About MVNO Europe .....	3
II. Introduction and Key Points.....	4
III. Draft WP2016: Specific MVNO Europe Comments.....	8
IV. MVNO Europe Contact Details .....	11

## I. About MVNO Europe

1. MVNO Europe [www.mvnoeurope.eu](http://www.mvnoeurope.eu) is the successor of the European Association of Full MVNOs (EAFM).
2. MVNO Europe represents various types of MVNOs, with different business models, addressing retail consumers, business users, providing fixed-mobile convergent offers, machine-to-machine communications, embedded data SIMs, etc. Our members are also active on wholesale markets as MVNE (Enabler) / MVNA (Aggregator). MVNO Europe does not represent branded resellers.
3. The goal of MVNO Europe is to create a more openly accessible market for all MVNOs, in order to contribute to the growth of the fast-moving mobile communications sector, to ensure that consumers and business users have a wider range of diversified services to choose from, and to develop competition on the retail mobile market to their benefit. Our members believe that MVNOs stimulate competition and innovation, and actually also contribute to enabling investment in the telecoms sector, not only in the short term, but also on a structural basis in the long term.
4. The members of MVNO Europe are listed at [www.mvnoeurope.eu/members](http://www.mvnoeurope.eu/members)

## II. Introduction and Key Points

5. MVNO Europe welcomes BEREC's initiative to consult interested parties on its draft Work Programme for the year 2016 (hereafter 'draft WP2016'), and is pleased to provide this brief contribution.
6. We warmly welcome BEREC's reaffirmed commitment to three strategic priorities for the period 2015-2017: (1) promoting competition and investment, (2) promoting the internal market and (3) empowering and protecting end-users.
7. The **areas of key concern** for MVNO Europe for 2016 and beyond are:
  - a) Ensuring that ***wholesale international roaming caps and wholesale voice/sms termination rates are substantially reduced and harmonised in the short term***, in order to enable a working transitory regime on international roaming from 15 April 2016, and the abolition of retail roaming surcharges by 15 June 2017. This must occur ***in a manner which enables ALL operators (including MVNOs) to compete for bundled mobile domestic and international roaming services, for data-led services, for M2M/IoT services, and supports innovation going forward***.
  - b) Ensuring that the ***review*** of the EU regulatory framework for electronic communications ***preserves the key tenet of promotion of competition, supported by regulation where objectively justified***.
  - c) ***Pragmatic approaches M2M/IoT***: Machine-to-Machine communications (M2M) and development of Internet of Things (IoT) should be stimulated by enabling diverse choice of numbering ranges and use of eSIMs without undue restrictions, as well as preventing distortion of competition. This includes a combination of: (i) permission of extraterritorial use of national numbers, IMSIs, and other identifiers across all EU/EEA Member States, and, (ii) an EU number range supported by measures to ensure its usability in the short term (effectively enforced deadline for end-to-end connectivity, harmonised MTR/SMS MT).
  - d) ***Fit-for-purpose wholesale access for MVNOs, incl. in terms of network technologies and in terms of wholesale charges***: in order to ensure sustainable competition and innovation (in technical and in commercial terms), MVNOs need to: (i) benefit from the same RAN technologies and the same RAN coverage as the Host MNO(s) on a non-discriminatory basis, and (ii) not be subject to margin-squeeze. In the

context of 4G, several of our members have faced a situation in which their host MNOs(s) launched 4G retail services, but withheld 4G wholesale from MVNOs hosted on their network, for periods lasting several months to several years. If no action is taken, the same is likely to occur for 5G, and this will harm competition and innovation.

8. MVNO Europe considers it absolutely essential for BEREC, within the boundaries of its remit, to apply its full weight on those four key subject areas. ***We call upon BEREC to:***
  - a) Use its authority as an EU institution advising the co-legislators to help ensure that the 'promise' of the abolition of retail roaming surcharges by 15 June 2017 (and the transitory regime prior to that) is kept.
  - b) BUT, BEREC also needs to ensure that this is NOT done in a way which: (i) would compel market participants (including MVNOs) to create a panoply of complex "fair use restrictions" in retail contracts and/or differential treatment of a subset of roaming destinations within the EU/EEA, (ii) would result in a reduction of competition, (iii) would cause damage to end-user interests, and (iv) could cause damage to the credibility of the EU.
  - c) Assist the European Commission in objectively calculating wholesale mobile network costs, and a credible mark-up (to be objectively separately calculated) for wholesale international roaming costs on mobile networks. This needs to be done as soon as possible, in particular with a view to avoiding damage to competition being caused both during the transitory regime (from 15 April 2016) and in the proposed follow-up regime (from 15 June 2017).
  - d) Help ensure, as an EU institution advising the co-legislators, that the review of the EU regulatory framework for electronic communications retains an unadulterated priority on promoting competition. This includes addressing non-competitive oligopolies in the mobile market as and where they exist, and the wholesale access conditions that can be attached to spectrum licences (Article 5 [RSPP](#) should not be overridden by amending the EU regulatory framework). BEREC's proposed study on mergers & acquisitions is also of direct interest to MVNOs. M2M/IoT, eSIM, numbering, universal service, and other topics covered by the European Commission's consultation on the EU framework review are also of direct interest to MVNOs. MVNO Europe will further make its views known on these matters in its response to the European Commission's questionnaire.
  - e) Be pragmatic and forward-looking on M2M/IoT, in particular by enabling a multitude of numbering/addressing solutions simultaneously, including extraterritorial use.

- f) Take inspiration from the Spanish NRA's and Government's actions, which include mandating MVNO access (by means of market analysis and through 900 MHz spectrum auction rules), and specific actions to: (i) ensure that 4G MVNO access is provided<sup>1 2</sup>, and (ii) prevent margin-squeeze for MVNO access.

9. We note in this regard that:

a) **MVNOs collectively serve over 10% of EU mobile users.**

b) ***MVNO access has been the key antitrust remedy*** in recent 4 to 3 mobile mergers in Austria, Ireland and Germany (new MNOs have not materialised in these countries even as antitrust commitments and, especially in Austria, spectrum licensing conditions were aimed at stimulating new MNO market entry).

10. MVNOs contribute strongly to competition and to financing mobile networks (through payment of wholesale charges which assure revenues to mobile network operators and which are recognised as being among the most profitable business areas for mobile network operators), whilst avoiding costly duplication of network assets.

11. Full MVNOs, in particular, bring not only commercial innovation, but also technical innovation to mobile markets, and are intrinsically well-placed to foster the development of the EU Single Market. Indeed, several MVNO Europe members are Full MVNO multi-country operators, for voice/sms/data, and also for embedded data SIMs and M2M/IoT.

12. We stress that, ***without substantially reduced and harmonised wholesale charges (including MTRs/SMS MT) in the short term, Europe will face:***

a) Severe competitive distortion.

***b) Eviction of MVNOs from the bundle market of domestic mobile services and international roaming services, and preventing development of data-led markets.***

---

1

[http://www.cnmc.es/Portals/0/Ficheros/Telecomunicaciones/Resoluciones/2014/Noviembre/141030\\_Acuerdo\\_CNS-DTSA-1730-14-Consulta%20AENOM%20Servicios%204G.pdf](http://www.cnmc.es/Portals/0/Ficheros/Telecomunicaciones/Resoluciones/2014/Noviembre/141030_Acuerdo_CNS-DTSA-1730-14-Consulta%20AENOM%20Servicios%204G.pdf)

2

[http://www.cnmc.es/Portals/0/Ficheros/notasdeprensa/2015/TELECOS\\_AUDIOVISUAL/20150505\\_NP\\_Masmovil\\_Orange.pdf](http://www.cnmc.es/Portals/0/Ficheros/notasdeprensa/2015/TELECOS_AUDIOVISUAL/20150505_NP_Masmovil_Orange.pdf)

- c) ***Higher overall retail pricing for consumers*** (waterbed effect in home country), driven by high wholesale roaming costs.

13. On the basis of what is stated above, MVNO Europe **asks BEREC to systematically keep in mind the existence and role of MVNOs, and reflect that role, when finalising the list of items in its draft WP2016, and when performing its duties relating to mobile markets**, and more generally when drafting documents, and when providing advice to EU institutions.
14. We also ask BEREC and all NRAs to be attentive to the availability of MVNO access, incl. Full MVNO access, and terms of access, at the technical level (availability of RAN technologies) and at the commercial level (wholesale charges and risk of margin-squeeze). This is of increasing importance in the context of mobile market consolidation and fixed-mobile integration.

### III. Draft WP2016: Specific MVNO Europe Comments

15. Section III.A (BEREC work in 2016 – Strategic Priorities – pages 7-12): BEREC states that *"BEREC will continue to focus on promoting competition and creating a favourable climate for investment and innovation"*, with explicit reference made to consolidation, oligopolies, and spectrum. We agree wholeheartedly, and we request that this should not be weakened in the final text of the WP2016.
16. Section III.A. 1: We appreciate that the first sub-section under this heading addresses wholesale products, but we think that increasing attention is warranted to wholesale mobile inputs (the draft WP2016 seems rather focused on wholesale fixed inputs). We request BEREC's particular additional attention to: (i) the wholesale mobile inputs needed to supply the retail cluster market of domestic voice/sms/data, (ii) the wholesale mobile inputs needed to supply the retail cluster of domestic and international roaming services, (iii) the wholesale market situation for mobile/wireless data-led downstream offers (which themselves can be both retail and wholesale downstream offers – incl. embedded SIMs, M2M/IoT – for which the value chain is often more complex than a simple wholesale-retail relationship, as BEREC's own *Public Consultation on a draft BEREC Report on enabling Internet of Things* indicates).
17. Section III.A 1.2: BEREC addresses NFV/SDN. This is relevant for mobile markets. We are convinced that MVNOs are leaders in optimising mobile core network elements, and are leaders in bringing these network elements into the cloud. We therefore request an invitation for participation of a MVNO Europe representative in BEREC's NFV/SDN workshop which is scheduled for Q4 2015.
18. Section III.A 1.3: BEREC addresses M2M/IoT. Please refer to our point 7 c) above, which sets out the essence of our position in this regard. Please be pragmatic: enable a multitude of numbers/identifiers to be used simultaneously. We support an EU numbering range, but BEREC/NRAs need to do what it takes to make such a range really work, i.e. an effectively enforced deadline for end-to-end connectivity, and harmonised MTR/SMS MT. We recall in this regard that the European Telephone Numbering Space (ETNS +3883 code) has failed in the past. Its failure can to a large extent be attributed to the refusal of operators to make ETNS numbers accessible for their customers, which was insufficiently remedied by regulation.
19. Section III.A 1.4/1.5: BEREC addresses all-IP access networks and IP interconnection. This is relevant for mobile markets. We are convinced that MVNOs are leaders all-IP mobile core networks, and are held back by less agile (mobile and fixed) incumbents in achieving full IP



interconnection. We therefore request MVNO Europe's involvement in these BEREC work streams.

20. Section III.A. 3: BEREC addresses non-competitive oligopolies and mergers & acquisitions. Given our focus on the mobile market, the historic dearth of Full MVNO access in several EU Member States (and risks to diversified MVNO access receding in some EU Member States post 4 to 3 mobile mergers), the [continued success of ex-ante regulatory intervention to promote MVNO access in Spain](#) and its [recognition as a necessary part of a merger commitment which would have eliminated a leading Spanish MVNO](#), it is clear that these subjects are of direct relevance to MVNO Europe's members. We therefore ask to be consulted on any substantive horizontal policy development proposals in this regard by BEREC. For reference, MVNO Europe's position on 4 to 3 mobile mergers has systematically been to advocate a multi-MVNO approach, i.e. enabling a variety of players/new entrants on a structural basis, not only in the short term, but also in the longer term, in order to maintain and stimulate dynamic wholesale and retail markets. This includes ensuring that players able to leverage MVNO/MVNE/MVNA experience from other EU Member States are able to develop multi-country/EU-wide activities, not just as a short term merger remedy, but on a structural basis.
21. Section III.A. 4: BEREC addresses spectrum (in cooperation with RSPG). Article 5 [RSPP](#) provides the possibility to Member States to attach wholesale (national roaming and MVNO access) conditions to spectrum licences. It is clear that EU Member States with a dearth of MVNO access have successfully introduced genuine MVNOs for the first time in their country by means of conditions attached to spectrum licences. We urge BEREC/RSPG to be particularly attentive to ensuring that Article 5 RSPP is not overridden by amendments to the EU regulatory framework, and, in fact, that the pro-competitive elements of Article 5 RSPP are enshrined directly into the EU regulatory framework rather than be left by the wayside.
22. Section III.B. 6: BEREC addresses its role in the preparation of the review of the EU regulatory framework for electronic communications. As stated in 7 b) and 8 d) above, we ask BEREC to put its full weight in the balance as an EU institution advising the co-legislators, and to ensure that the outcome of the review will be to preserve the key tenet of promotion of competition, supported by regulation where objectively justified.
23. Section III.B. 8 (points 1-5): BEREC addresses international mobile roaming within the EU/EEA. BEREC's repeated reference to the "*Roaming IV Regulation*" elicits a wry smile on our part. This is evidently potentially the truth, but it is a term not widely used to our knowledge. It can only become the actual truth IF the follow-up actions required by the

Regulation are diligently taken, and produce real change. MVNO Europe wishes to make it very clear that massive efforts are needed in the very short term to avoid serious accidents from happening with this Regulation. In the absence of a timely and credible decision to materially reduce wholesale roaming caps and to harmonise MTRs and SMS termination rates, in which BEREC needs to play a constructive role as an EU institution, there is a very real risk of dramatically reducing competition (including eviction of MVNOs from the bundle market of domestic mobile services and international roaming services, and preventing development of data-led markets). Needless to say, there is also a serious risk of political 'promises' to end-users not being met. Please refer to our points 7 a), 12 and 13 above. MVNO Europe stands ready to contribute in full detail, and asks to be fully consulted, on any and all ideas, suggestions, proposals and draft decisions on the implementation of the Regulation, and its implementation acts.

24. Section III.B. 10: BEREC addresses wholesale termination rates, and in particular the review of the 2009 EC Recommendation on wholesale *call* termination rates. MVNO Europe is on record in advocating full harmonisation of MTRs as well as SMS MT, and we confirm our position in this response. We observe in addition that if the 2009 EC Recommendation were to be amended or converted into an EC Decision (Art 19 Framework Directive) containing EU-wide binding wholesale call termination rates in 2016, it would be very peculiar not to have wholesale roaming charges (voice/sms/data) fully harmonised at the same time.
25. Section III.C. 12: BEREC addresses universal service. We have no comments as such on BEREC's work stream. However, given the contents of the European Commission's consultation on the review of the EU framework for electronic communications, we wish to state for the record that we think that existing USO policy, and specifically USO funding in the very few countries which have decided to institute industry USO funding, is not a model which can be considered successful. Extending industry USO funding, for instance to broadband, is likely to introduce undue market distortions.
26. Section III.D. 15: BEREC Stakeholder Forum. We ask BEREC to continue to involve MVNO Europe in this type and other future stakeholder engagement.

#### IV. MVNO Europe Contact Details

Should you require any clarifications or further information on the elements and positions set out by MVNO Europe in this response, please contact:

Political Intelligence (Functions as Secretariat of MVNO Europe)

Ms Morgane Taylor

Tel: +32 2 550 41 10 – [morgane@mvnoeurope.eu](mailto:morgane@mvnoeurope.eu) [www.mvnoeurope.eu](http://www.mvnoeurope.eu)

Rue du Commerce 124/5, 1000 Brussels, Belgium