



SFR's response to the BEREC's public consultations on the implementation of Roaming 3

August 2012

Contact:

Marie Lamoureux

European Affairs Manager

Marie.lamoureux@sfr.com

SFR thanks BEREC for giving it the opportunity to express its opinion on its two public consultations regarding the implementation of the last Roaming Regulation.

As regards wholesale obligation, **some of the guidelines proposed by BEREC would go beyond the scope of the obligation and of the objectives set in the Regulation and should therefore be deleted or amended.** This includes the proposed obligations to provide service level agreements; to impose resale access for non-regulated services; to impose non-discrimination obligation and termination rate for outgoing SMS.

According to article 1 of Regulation n° 1211/2009, BEREC has to follow the same objectives as those which have been set to NRAs by article 8 of the Framework Directive 2002/21/EC. In particular, this provision states that « *Member States shall ensure that in carrying out the regulatory tasks specified in this Directive and the Specific Directives, the national regulatory authorities take all reasonable measures which are aimed at achieving the objectives set out in paragraphs 2, 3 and 4. Such measures shall be proportionate to those objectives* ». **In general, we believe that BEREC should pay more attention to the proportionality principle set by the Directives.**

When it comes to decoupling, we welcome BEREC's approach aiming at reducing complexity and costs for operators. As mobile markets have reached a high and still increasing level of competition at both the wholesale and retail level and taking into account the fact that data services will be key in the future, **we consider that LBO would be a sufficient (if necessary) solution to improve further competition for roamers.**

BEREC considers that taking into account the provisions of the Regulation, Single IMSI combined with the "basic version" of the LBO would be the most reasonable solution. **We do not think that there is sufficient evidence that Single IMSI+ would add a significant improvement in terms of competition compared to the incremental costs and complexity we can expect.**

BEREC seems to consider that the implementation of both LBO and Single IMSI would represent very little costs and complexity. **On the contrary, we expect important costs and resources for MNOs who should be able to recover the costs incurred.**



I. Guidelines on the application of article 3 of the Roaming Regulation

Q1. Do you agree with BEREC's interpretation of the Regulation concerning timing of provision of service?

The wording of Article 3 creates some ambiguities and could lead to different interpretations regarding what should apply until July 2012 and until January 2013. We invite BEREC to acknowledge that some difficulties might happen in the meantime, especially in updating existing access agreements.

Q2. Do stakeholders agree with BEREC's approach to mandatory and optional resale access services and to its approach to pricing?

Basically, BEREC proposes to divide services in three categories:

- Services mandatory and included in the regulated caps,
- Services mandatory and subject to a fair and reasonable price,
- Services to be negotiated commercially.

Those categories do not raise any concerns as such but we do not always agree with the repartition of the services between the three categories. This should be further clarified by BEREC.

We agree with BEREC that services covered by the regulated caps are *"only those services which are wholesale in nature and are closely related to the wholesale roaming service purchase by the MNO"*.

The Guidelines should clearly state that retail functions such as cut off facility or pre-paid credit are not characterized as essential services. We also believe that according to the proportionality principle, a MNO should not be obliged to provide wholesale products corresponding to retail services that it does not actually provide.

When it comes to costs and tariffs, BEREC should make clear that in any case, MNO should always be able to recover their costs. The costs recovery should also embrace financial liability risk.

We also believe that any service that is not mandatory under the Regulation should be freely discussed under commercial terms.

Guidelines 2, 12 and 18 are dealing with this issue; we recommend keeping only Guideline 2 to avoid any inconsistency and to complete it with our previous remarks; in particular category (c) of guideline 2 should not be mandatory but offered as category (d) on a commercial basis.

Q3. How would your business be affected if the right for direct wholesale roaming access applies to hub aggregators for the purpose of supply of regulated roaming services to EEA customers? How could a distinction between access for such purposes and access for purposes unconnected with the Roaming Regulation be applied in practice?



According to the Regulation, article 3 is intended to benefit only to operators providing regulated roaming services to EU roaming consumers. The first part of Guideline 4 rightly confirms this.

Nevertheless, the second part of Guideline 4 extending the scope of the obligation to Hubs is not proportionate. Opening a relationship with aggregators is much more complex and costly than concluding a bilateral agreement (cf. technical documentation from the GSMA on roaming hubs connections). First, technical relationships are different; second, hubs may charge both operators for which they are enabling a connection. It is also worth noting that according to the framework, only providers of electronic communications services or networks are entitled to access obligations.

If the obligation was to be kept, Guideline 4 should at least expressly specify that the MNO providing the access would not have to make any payments to the hub and would not have to fulfil any technical and operational requirements specific to the said hub (which might be either not feasible for the MNO or bring significant costs or complicate so much the roaming relationships that the service might be jeopardised for all operators).

Technical feasibility and network integrity are criteria accepted for not accepting a request from a MNO so there is absolutely no reason for not having at least the same criteria towards the hubs.

According to the Regulation, MVNOs accessing roaming wholesale services through hubs should also be entitled to the regulated wholesale caps. How regulators could ensure that hubs are not selling above those caps?

Q4. 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 MNOs to refuse to provide on the basis of careful objective justification?

The Regulation requires MNO to meet all "*reasonable request*" for wholesale roaming access. Article 3 also specifies that access may only be refused "*on the basis of objective criteria*" such as "*technical feasibility*" or "*network integrity*" (cf. recital 26). We do not think BEREC needs to provide further guidance on the "*objectively justified reasons*" which will be analysed on a case by case basis.

We therefore recommend to merge Guidelines 5 and 8 and keep the wording to a very high level of principles as the list of potential legitimate reasons for refusal could be constituted by NRAs ex post.

Q5. Do stakeholders consider that further Guidelines should be developed to deal with the issue of requests for wholesale resale roaming access from market players whose retail services are otherwise hosted on other networks? If so, please provide examples of commercially credible retail services which could be operated in this manner.

Demand for resale services from operators hosted on another network for domestic services would be very complex to set up -if technically feasible at all. It would not be proportionate to impose to MNOs to meet those demands, especially when access seekers can always request access to their domestic host. Moreover, such scenario would spur new fraudulent cases implying premium services content providers.



Guideline 6 should be deleted.

Q6. Do you agree with BEREC's views on resale access to unregulated services?

The Regulation is clearly stating that wholesale roaming access should only be granted for the purpose of "providing **regulated roaming services** to roaming customers". In any case, as article 144 of the Treaty is one of the legal basis of the Roaming Regulation, the ECJ already stated that "*the Community legislature may have recourse to it in particular where there are differences between national rules which are such as to obstruct the fundamental freedoms and thus have a **direct effect on the functioning of the internal market***". Also, Article 2 of the Regulation No 1211/2009 states that BEREC is entitled to issue guidelines "*on the implementation of the **EU regulatory framework***". For all these reasons, services outside the EU are therefore out of the scope of the Regulation and cannot be imposed by BEREC guidelines. We believe access to unregulated wholesale services can only be considered as optional services and cannot be imposed to MNOs.

MNOs should be able to set and negotiate their own prices for unregulated services. We do not believe that an obligation of "fair and reasonable" tariffs can be imposed. In any case, any analysis of the tariffs set by a MNO should take into account the conditions made to the other MVNOs hosted by the same MNO for the provision of a similar service and not to the costs incurred by the MNO.

Guideline 16 should state that unregulated services are not in the scope of the regulation and cannot be imposed to MNO.

Q7. Do you agree with BEREC's general approach to fair and reasonable prices? Do you consider that other general principles should be articulated?

Q8. Do you agree with BEREC's proposed basis of charging for resale of incoming roaming voice calls?

Q9. Do you agree with BEREC's proposed basis for resale charges for termination of outgoing SMS?

The principles proposed by BEREC to specify the notion of "Fair and reasonable" in Guideline 19 seem appropriate and general enough to apply to any situation. We can only underline that from our point of view, "fair and reasonable" does not mean "at costs".

For these reasons, we recommend the deletion of Guideline 20 which very specifically details how "just and reasonable" applies when it comes to termination of incoming calls and outgoing SMS. We believe that this level of detail has to be left to the ex post procedure and not be addressed in this paper.

Q10. Do you have any comments on BEREC's approach to service level agreements and guarantees or on the regular monitoring of service levels?

Current roaming agreements do not contain any SLA. Moreover, we do not offer guaranty to our MVNO for the provision of roaming resale access either. Indeed, MNOs are usually only committing



on service level as far as their own network is concerned. Imposing SLA would therefore be disproportionate.

Guideline 23 should be deleted.

Q11. Please set out your views on what the “accepted standards and methods are. Is there any action which BEREC could usefully take to promote further useful standardisation?

Cf. GSMA

Q12. Do you consider that the Guidelines should include specific provisions on fraud prevention in addition to the generic statements in the draft?

Cf. GSMA

Q13. Do you consider that BEREC should provide more detailed guidance on restrictions of conduct of business? In particular, would it be useful to include an indicative list of generally unacceptable restrictions in the Guidelines.

No.

Q14. Do you consider that any current practical “permanent roaming” applications should be considered as an “unfair use” of roaming wholesale access agreements? If so, please explain why and also how you would propose to distinguish between “fair” and “unfair” uses of permanent roaming. Would a distinction based on the phone number of the roaming MSISDN be relevant and applicable?

Cf. GSMA

SFR is very concerned by this issue and would welcome any BEREC statement acknowledging the potential issue. For instance, limiting permanent roaming to 10% of global usage during a limited period of time (e.g. on a rolling three month average) would seem fair.

Q15. Do you consider that the Guidelines need further detail concerning anti-competitive provisions which must not be included in the Reference Offer or supply contract?

Cf. GSMA

Q16. Do you consider that the Guidelines should cover additional issues or that the draft guidance on issues already covered should be further developed?

No.

Q17. Do you have any other comments on the draft Guidelines?



Guideline 21 – non-discrimination: The Regulation does not impose any non-discrimination obligation on MNO for the provision of wholesale roaming access. According to the regulatory framework, this type of obligation can only be imposed following a proper market analysis exercise and the identification of a SMP operator. It is worth noting that the non-discrimination obligation and the access obligation are distinct obligations set by two different provisions and do not come all together. Therefore, Guideline 21 is not justified and should be removed.

Guideline 22: a general obligation of replication is not imposed by the Regulation. Moreover, this obligation could have detrimental impacts on the incentive to innovate on this market. Paragraph 3 of the proposed guideline should therefore be deleted.

Guideline 38 - New and modified services: once again, the obligation proposed is going beyond the scope of the Regulation (it should be noted that such an obligation is not even in place in all EU market when it comes to the access to the local loop of the fixed incumbents). Therefore, this guideline is not proportionate and should be deleted.

Guideline 33: as far as safeguards to assure payments are concerned, BEREC should clearly state that this is a usual commercial practice for operators (bank guarantees for instance) and must be accepted as long as the conditions they imposed remain justified and proportionate. We do not think it is necessary to further detail this guideline at this stage.



II. Report on the decoupling solutions

As recognized by BEREC in the competition annex of the report, whether decoupling will be a success or not in terms of competitive outcomes remains largely debatable. First of all, the final Regulation imposes a combination of structural solutions; this could undermine the business case for potential ARPs by making the decoupling solution less attractive for new players. Also, retail tariffs adopted in the final Regulation are much lower than the one proposed initially by the Commission, leaving less economical space for new entrants. For all these reasons, we agree with BEREC that the obligations imposed on HMNO should be as simple as possible.

In general, SFR shares most of the technical analysis presented by BEREC in its draft report. Nonetheless, we believe that overall, BEREC seems to underestimate the complexity and costs of the implementation of what is described as the simplest solution, the combination of LBO and Single IMSI.

Should BEREC re-assess the other decoupling solutions in the perspective of future technology evolution, it has to take into account on top of MNOs implementations costs MNOs resources mobilizations and all additional costs such as commercial. Future evolution incremental benefits have to be thoroughly appraised against the overall costs prior including them in a new implementation act.

Moreover, BEREC does not take into account the complexity and costs of implementation for MNOs that do not currently support MVNOs. This particular situation raises significant concerns for MNOs situated in Outermost regions (SFR is established¹ in two of them (Mayotte and Reunion)² which constitutes very particular markets notably as regards Roaming regulation. It should in this respect be noted that these markets are not as developed as in Europe from a technical and a commercial point of view: small-sized, with only three MNOs in both regions, none of them supporting MVNO yet. Due to their geographical situation, only a small proportion of roamers are from Europe, the majority is coming from other regions. Taking into account all of these particularities and the costs involved, it would not be proportionate to impose those decoupling solutions to MNO's from outermost regions.

We understand that BEREC could prepare and publish new guidelines following the adoption of the Commission decision. We would welcome such guidelines as we believe that a lot of implementation details would need to be specified by BEREC (especially regarding the relationships between HMNO and ARP, their respective responsibilities toward consumers...). We would simply remind BEREC that the implementation of the structural solutions will require reasonable delays and therefore we would urge BEREC to adopt its guidelines as soon as possible and at the latest beginning of 2013.

¹ SRR in la Reunion and SMR in Mayotte

² are situated in the African continent in the Indian ocean zone up to 10 000km from Europe),



1. LBO (Q1 to 3)

As the Regulation only imposes HMNO not to prevent their end users from accessing data roaming services provided on a visited network, we welcome that BEREC recommends the simplest version of the LBO.

Even the simplest LBO would still mean costs for HMNO, in particular for the provisioning of the common APN for all our retail consumers. HMNO will also have to open new roaming agreements with any VMNO willing to provide LBO. This will necessitate new financial and human resources to be able to negotiate, open and manage those new contracts.

When it comes to technical complexities, some data services will no longer be available for the LBO consumer (outgoing and incoming MMS, directories update, other specific services...). The LBO provider should have to clearly inform its consumer about those limitations. He should also bear the responsibility of informing its consumer about the necessity to reconfigure its phone when he gets home.

2. Single IMSI/ Single IMSI + (Q5 to 9)

In our view, the implementation of Single IMSI + would mean significant added costs and complexity for HMNO. Since there is no clear evidence of any competition benefits, we recommend that Single IMSI+ be explicitly excluded from HMNO obligations.

BEREC seems to believe that Single IMSI means only very little costs and complexity from HMNO. We do not share this position at all. Indeed, even though Single IMSI is mainly based on a traditional reseller model, some developments would still be necessary with important impacts on HMNO, in particular as far as pre-paid consumers are involved. The solution needs a new type of wholesale arrangements between the host operator and an ARP and new technical interfaces to give direct control to signaling for CS and PS services of its customers. The requirement for information flow in dispute resolution will be challenging to resolve within the timeframe of the Regulation.

- For postpaid consumers, complexity is mainly on the information system side to be able to sort billing tickets out.
- For prepaid consumers, the difficulties are both at the network and the information system level and are both quite challenging:
 - o Standardization of the exchanges between an external OCS (of the ARP) and the different network components of the HMNO;
 - o Development of the mechanisms allowing a disconnecting per IMSI (and not per IMSI ranges);
 - o Compatibility with some advanced services on CAMEL and in particular with the future VoLTE;
 - o Standardization of the proxy CAMEL function indicated by BEREC.

HMNO will have to face an upfront costs corresponding to the implementation of the general solution and will have to invest quite significantly every time a new ARP is asking to be tied up.



Moreover, HMNO has to be able to recover costs for ARP billing support (either post-paid or pre-paid) and all additional costs linked to regulatory obligations (e.g cut-off mechanism) and legal interception.

3. Other comments:

During the public hearing organized in Brussels, BEREC seemed to consider that article 5 was preventing HMNO from recovering their costs due to the implementation of the decoupling solution. We believe that this interpretation of the Regulation deserves further discussion.

Article 5 of the regulation is stating that:

“Access to those facilities and support services that are necessary for the separate sale of regulated roaming services, including user authentication services, shall be free of charge and shall not entail any direct charges to customers.”

According to BEREC, this would mean that no costs should be passed either on the ARP or on the end user. We question this interpretation.

First of all, this article should be read together with recital 34. This recital states that No *“additional charge”* should be levied by a HMNO when one of its consumer is choosing to use the LBO. Nothing more is said on the decoupling obligation.

Then, the rest of the art. 5-1 is referring to end users and not to ARP as such, we could therefore consider that *“free of charge”* applies to consumers and not to ARP.

The cost issues would even be more relevant for MNOs operating in Outermost regions. Firstly their implementation costs would be more significant as most of them do not currently host any MVNO. Secondly, as the volume of communications which would be impacted would be very small, the ability to recover the costs incurred remains uncertain.