Response to BEREC Consultation

<u>BoR (24) 96</u>

BEREC draft Report on M2M and permanent roaming

23 August 2024

I. Introduction

1. MVNO Europe[1] strongly welcomes the BEREC draft Report on M2M and permanent roaming – BoR (24) 96 (hereafter 'draft BEREC Report'). We are particularly pleased to note that elements provided by MVNO Europe in response to BEREC's Call for Input (filed on 26 January 2024) are substantially reflected throughout the draft BEREC Report.

II. Brief comments on BoR (24) 96

2. BEREC's draft Report correctly highlights severe critical problems faced by MVNOs focused on Internet of Things (IoT), notably when negotiating wholesale roaming access with Mobile Network Operators (MNOs), in particular with entities acting on behalf of multiple MNOs which are part of a large group. These severe critical problems include restrictive wholesale access conditions, technology restrictions, and problematic wholesale charges and charging mechanisms (including excessive fees, per-IMSI fees, high minimum financial commitments, etc.), as is detailed in the draft BEREC Report based on the input provided by MVNO Europe and by its members.

> MVNO Europe calls on BEREC to retain the correctly identified critical problem descriptions, in full detail, in the final BEREC Report on M2M and permanent roaming.

3. BEREC's draft Report *(e.g. page 15, para 5, page 25 para 3, page 26, para 1, page 28 para 3, page 30, para 2, page 31 last para)* reflects input received by BEREC from large group MNOs. These large group MNOs oppose regulatory intervention and at the same time openly demand to be entitled to (continue to) restrict supply and to apply discriminatory (i.e. higher) wholesale fees for M2M / permanent roaming and signalling to MVNOs. From MVNO Europe's perspective, it is clear that large group MNOs aim to shield their domestic market positions and their own IoT businesses from competition from innovative MVNOs, by self-supplying wholesale roaming (and trading with selected other MNOs) at conditions (fees and operational conditions) that are discriminatory.

> 4. MVNO Europe calls on BEREC to retain these elements in the final BEREC Report on M2M and permanent roaming, but to add BEREC commentary discussing the implications of the position taken by large MNO groups, including on the alleged issues relating to signalling. This is important to inform the co-legislators of the motivation behind positions which advocate the status-quo, advocate against regulatory intervention, or advocate validating signalling fees.

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[1] http://mvnoeurope.eu/ and http://mvnoeurope.eu/members/

5. MVNO Europe's position is that regulatory intervention on 'M2M and permanent roaming', and - more practically expressed - on the wholesale roaming conditions to enable IoT, is necessary to prevent damage to competition, innovation, and end-user interests.

6. MVNO Europe wishes to put it on the record that:

   a) The lack of definition of IoT (in practice the restrictive interpretation of M2M) is actively being invoked by MNOs to justify unduly restrictive practices.

   b) Conditions in MNOs' wholesale roaming reference offers and contracts, which limit which customers can be served, exist today, and should not be permitted going forward.

   c) Differentiating wholesale data roaming charges based on the type of usage that is made, the type of customers to be served, or the location of the customer, is a common practice by MNOs today, and should not be permitted going forward.

   d) Arguments made by large group MNOs relating to alleged impact on network integrity and increased signalling costs must be assessed critically, based on the facts, and in terms of their implications for competition, innovation, and benefits for Europe's businesses.

7. MVNO Europe advocates for change to the applicable EU legislation (e.g. through the scheduled 2025 reviews of the EU Roaming Regulation and if necessary also the EECC), to create a true EU Single Market for IoT, notably by means of:

   a) Unequivocal removal of restrictions on permanent roaming for IoT.

   b) Unequivocal wholesale access to all (existing and future) cellular technologies and a prohibition on bandwidth restrictions imposed through wholesale contracts.

   c) Maximum harmonization of authorization, numbering, and related compliance and reporting requirements to NRAs. Note: For details on the issues relating to authorization, including with regard to the 'country of origin' principle suggested in the European Commission's public consultation on the White Paper *"How to master Europe's digital infrastructure needs?"*, please refer to MVNO Europe's response to BoR(24)101.

   d) Further substantial reduction of regulated wholesale roaming data caps.

   e) Rejection of suggestions to apply differentiated (i.e. higher) wholesale roaming caps for "M2M and permanent roaming"; rejection of per-IMSI fees or signalling fees.

8. More broadly MVNO Europe wishes to reiterate key overall remarks made in its response to the BEREC Call for Input, as follows:

a) There is a serious issue with both the 2018 EECC and the 2022 EU Roaming Regulation, in that M2M is restrictively defined, and IoT is not properly defined, resulting in MNOs/MNO Groups considering themselves entitled to impose restrictions to permanent roaming which impede the development of competition and of the EU Single Market for legitimate and desirable IoT use cases, demanded by European industry. The result is damage to European industry's innovative potential, and damage to MVNOs' opportunities to participate in what is clearly a global market for IoT connectivity.

b) Work is needed, including a formal BEREC Opinion, in the run-up to the 2025 review of the 2022 EU Roaming Regulation, to achieve decisive progress on at least the following topics:

    i) Resolving the definitional issues relating to M2M (defined restrictively in the 2022 EU Roaming Regulation, albeit only in Recital 21), and IoT (remaining largely undefined in legal terms in the EU). MVNO Europe calls for a legislative review, which should result in a broad and progressive definition of IoT, based on market demand for IoT solutions, and unequivocal removal of restrictions on permanent roaming for IoT.

    ii) The removal of restrictions contained in wholesale roaming/wholesale resale roaming contracts (and where applicable domestic MVNO access contracts), such as:

- Restrictions on the services to be provided.
- Bandwidth made available less than that of the Host MNO's own retail services or contractual partners' retail services, etc.
- To which customers services can be provided under the contract (e.g. excluding the home country of the Host MNO, excluding types of customers, traffic profiles, etc.). Related to this, action is also needed to remove the imposition through contracts of extreme reporting requirements on usage of wholesale roaming, clauses which enable rapid termination of service/of contracts, etc.

    iii) Prohibiting wholesale roaming access (and wholesale roaming resale access) data prices de-facto exceeding the wholesale data caps set by the EU Roaming Regulation, including through the application of up-front and recurring fees in wholesale contracts, the application of recurring fees per SIM card, etc.

iv) Guaranteeing unequivocal wholesale access to all (existing and future) cellular technologies and a prohibition on bandwidth restrictions imposed through wholesale contracts.

v) Prohibiting related and other stratagems employed by MNOs/MNO Groups which are clearly intended to prevent or limit competition by MVNOs focused on M2M / IoT.

c) Several of the restrictions, obligations, wholesale pricing approaches and other stratagems widely employed by MNOs/MNO Groups can take on a character akin to constructive refusal to supply wholesale roaming access/resale. There can be no doubt that the applied restrictions seriously undermine the EU Single Market, business processes, and the ability of European companies (both MVNOs and their business customers) to be global players, in global digitized businesses, etc. This thus runs directly against the interests of European businesses and is ultimately to the detriment of European consumers.

9. Based on the considerations outlined in this response, MVNO Europe calls on BEREC to explicitly identify areas in which changes to the EU Roaming Regulation (and if applicable also to the EECC), are justified to promote competition, innovation, the Single Market, and citizens' and businesses' interests, and thus the interests of European society and economy as a whole.

III. About MVNO Europe

10. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing consumers, business users (including start-ups/scale-ups)/medium/large businesses, the public sector, ICT service/systems integrators, and Internet of Things markets, etc. http://www.mvnoeurope.eu/members

11. MVNOs currently represent +/- 10% of SIM cards in the European Union.

12. The term "virtual" refers to the fact that MVNOs do not control radio frequencies and related mobile physical infrastructure (antennas, base stations etc.). However, MVNOs do control the necessary hardware/software/resources to provide wireless/mobile services and may own other telecom infrastructures and networks depending on the extent of their business model.

13. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications, embedded data SIMs for tablets, laptops and other devices, connected mobility for vehicles, IoT in a broad sense, etc. Some of our members are also active on wholesale markets as MVNE (E=Enabler) / MVNA (A=Aggregator) supporting other companies

and brands that provide mobile/wireless services. MVNO Europe does not represent branded resellers.

14. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits.

15. MVNOs also contribute to financing mobile network infrastructure through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets. Enabling and promoting MVNOs is by far more environmentally responsible than promoting the build-out and operation of additional parallel physical mobile infrastructures, and is thus consistent with the twin green and digital transitions.

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 document, please contact:

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