

ETNO-GSMA response to the public consultation on the draft BEREC Guidelines on the application of Article 3 of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (Wholesale Roaming Guidelines)

Introduction

ETNO and the GSMA, who represent the telecoms sector in Europe, welcome the opportunity to comment on BEREC's Draft Wholesale Roaming Guidelines. ETNO and the GSMA hope the following detailed comments can serve as a constructive contribution to BEREC's deliberations on its draft Guidelines.

Wholesale roaming provisions

We note that the final Guidelines will not be published until October this year. Given the importance of the Guidelines for implementation of the new Roaming Regulation and the gap between such adoption and the effective date of the Regulation itself, we consider that the immediate update of contracts as implied by the last paragraph of **Guideline 1** is disproportionate. We therefore urge BEREC to update the Guidelines to reflect that existing access agreements "*need to be **gradually** updated as necessary to make them consistent with the Roaming Regulation*". This gradual transition is considered in the Regulation in recital 14.

In respect of **Guideline 5**, we consider that a one-month period for refusal to be provided in writing to the access seeker is too short and that a more appropriate "reasonable timeframe" would be sixty days. This procedure is expected to take longer than the provision of the draft agreement referred to in Art 3(5). In addition we consider that the Guidelines should be amended to reflect that such a period should only commence "*after the initial receipt of the **complete** request by the MNO*". Without a complete request the receiving operator cannot conduct a full evaluation and determine if there are any objective reasons for refusal such as technical feasibility and network integrity.

BEREC states in the **second paragraph of Guideline 6** that it "*considers that it is reasonable to prioritise requests for 4G services, including VoLTE, if such wholesale roaming agreements are not in place already*". ETNO and the GSMA are of the view that the addition of "*while allowing for sufficient implementation time on the side of the visited network*" is required to reflect the fact that prioritisation can be best determined by the visited operator and the current wording introduces scope for the provision to be used as unwarranted leverage by the access seeker. The established market practice is that the operator planning to switch-off a network sends its partners periodic reminders, more frequently as the deadline approaches.

We suggest that "*[a]ccess seekers should in particular not be expected to provide any details of the service they expect to provide where these might reasonably be regarded as commercially sensitive*" should be deleted from **Guideline 8**. We believe that requests for necessary information should be permitted, as long as this information is shared in a confidential manner with the Wholesale team. This is in line with the existing EU telecommunications law e.g. Art. 60 of the EEC states that "*Member*

States shall require that undertakings which acquire information from another undertaking before, during or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such undertakings shall not pass on the received information to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage."

Wholesale roaming access services

On page 8 and 9 there is a footnote "Article 9 also applies for VoLTE". Compared to the situation in 2017, when the current guidelines were published, the rollout of VoLTE has started with various commercial practices that are in line with the roaming Regulation. In this context, it would be wise to change this footnote to "Art. 9 may also apply for VoLTE", because this footnote does not take into account the development of the market and the related trading conditions that should be left to the market under the Regulation, also avoiding disruption of the current practices.

With regard to the third paragraph of the **Guidelines 12**, when negotiating, operators agree on a definition of "permanent roaming" to be applied and it is satisfactory while there is no universal definition of permanent roaming. Therefore, we would suggest to delete the sentence "for example in cases of prevailing roaming consumption and presence according to the Commission Implementing Regulation (EU) 2016/2286 (CIR)".

With regard to wholesale charges for emergency communications, we propose that **Guideline 16** should be amended to the following:

*"At wholesale level, the conveyance of any type of emergency communications, **that are mandated and are technically feasible to be used by roaming end-users**, to the most appropriate PSAP must be free of charge for the roaming provider (with direct or resale access). The same holds for the transmission of caller location information to the most appropriate PSAP while using roaming services."*

The Guidelines should not go beyond the obligation set in the Regulation and the emergency communication provisions under article 109 and 111 of the EECC. The current wording of **Guideline 16** implies that all types of emergency communication should be free of charge. However, this is not the case if such emergency communications are not mandated in the visiting country according to the national law and the national emergency services system. This issue is especially important in the context of alternative means of access to emergency services that are not mandated in each case nor free of charge according to the national legislation in line with articles 109 and 111 of the EECC. Indeed, this distinction is recognised in the context of articles 15 and 16 of the of the Regulation itself.

Regarding the **Guidelines 17** about public warning; it should be acknowledged that if a solution is already in place in a MS to fulfil the obligation, providers should not be forced to develop/install new solutions. If there is a need for development, this should be done in a harmonised manner.

We suggest that "For the avoidance of doubt, Eurorates should be applied for surcharges on the incoming calls" should be added to the end of **paragraph 2 of Guideline 18**. The implementation of several surcharges (for countries with the Eurorate and separately for those temporarily below the

Euro rate) is unnecessary complex and will likely be unnoticed by customers due to differences below one cent.

In the context of **Guideline 21** we suggest the deletion of the following text.

“BEREC considers that wholesale roaming access seekers have a best effort obligation to seek access to those visited networks, which allow them to meet the requirements of Article 4 and 5 as well as of Recital 14 Roaming Regulation. Without prejudice to the principle of technology neutrality of wholesale roaming agreements referred to in Recital 14, roaming providers should seek to ensure that the wholesale roaming agreements provide the customers with equivalent mobile communications services like at home, where the underlying technology is available. To that end, roaming providers therefore should not only consider their commercial needs, such as for instance selecting the roaming partner offering, the highest discount, but they must also take into account the technological level/maturity of the visited networks regarding the obligation to offer equivalent retail roaming conditions to the services offered domestically. They also do not necessarily have to conclude agreements with operators whose networks have a higher quality than that available in the roaming provider’s own domestic network.”

In our view this should be replaced by:

“BEREC expects wholesale roaming access seekers to put reasonable effort to seek access to those visited networks, which allow them to meet the requirements of Article 4 and 5 as well as of Recital 14 of the Roaming Regulation, this however does not imply that they have the obligation to conclude new agreements.”

The current wording creates an *de facto* requirement for operators to conclude new agreements. The guidelines should instead recognise that this is a **reasonable** effort obligation to seek access to networks that will allow operators to meet the requirements of QoS for retail services - not only the cheapest but also taking into account the technology level and maturity of the visited network. In addition there is no obligation to conclude contracts with higher quality and it is important to acknowledge that there will be a transition process so delays are possible. If only one operator is offering next generation services access seekers may delay their request.

We also consider that this reasoning applies regarding the **fourth paragraph of Guideline 21** and that the text beginning *“Furthermore BEREC considers that when next generation coverage in the visited country...”* should be complemented as suggested below:

*“Furthermore, BEREC considers, **as well as when the coverage of last generation is low in the domestic market**, that when next generation coverage in the visited country is considerably low (independently of the visited network and not cumulative for all networks) or when there is only one operator offering next generation services in the visited country with significant coverage, access seekers might delay their access requests.”*

Reference offer

Regarding **Guideline 24**, we suggest that the second and third paragraph should be deleted. Equalisation of roaming quality information with QoS levels under OIR is not based on the Roaming Regulation. We consider that the introduction of this requirement on the wholesale level is therefore disproportionate.

Also related to **Guideline 24**, we request to have the last paragraph beginning with *“In this regards, BEREC encourages operators to continue working on such network coordination, making it possible to create handovers without disconnecting ...”* to be removed as this goes beyond the regulated provision that requires reducing undue delays in network handovers.

Furthermore, we suggest to replace the **fourth and the fifth paragraph of Guideline 24** by a direct reference to the recitals 15 and 27 of the Regulation, for the sake of clarity. Alternatively, we suggest to add the wording below to the **fourth paragraph of Guideline 24**, *“unless visited network operators that are requested to provide access can prove that it is technically unfeasible to do so.”*

In relation to **Guideline 26** and information on access to emergency services we have several comments. BEREC states that the Reference Offer should *“contain information on at least what type of emergency communications are mandated and technically feasible for ensuring access for roaming customers under national measures in the visited Member State”*. It remains unclear to us what should be considered within the definition of emergency communications. For example, does this only cover services providing on-site assistance e.g. medical services, fire services, police etc. or also remote assistance such as the anti-poison centre, centres for suicide prevention, etc. We consider that there is currently too much room for interpretation. We therefore propose that NRAs should issue a clarification for the situation/requirements in each country in order to allow for alignment between national operators. We consider that this should also be the case in respect of alternative access means and NRAs should develop uniform guidance for all national operators to guarantee a harmonised approach per country.

The **fifth paragraph of Guideline 26** makes reference to the delegated acts to be adopted according to Article 109 (8) EEC. when released. We consider that NRAs should clarify the impact of the delegated act in each country. Even if the delegated act is adopted, we do not know which initiatives will be taken to implement this act.

Finally, BEREC states in the **last paragraph of Guideline 26** that it considers that *“for meeting the requirement about the transmission of handset derived information, providers of handsets’ operating systems should also co-operate in the standardization process.”* We continue to have concerns with this guidance as operators are not involved in this aspect, which is fully driven by the operating systems of handsets and the PSAP. The caller location information from the network is provided by the visited network. The handset derived information is provided based on the handset, the roaming partner has no impact on this. As operators we were only requested to deliver the SMS with location information. Consequently, we consider not to have any other responsibility except to transmit information as long as we get it in free mode and suitable format from the handset.

In relation to **Guideline 36** we suggest the addition of the following text to the end of the first paragraph.

“In the case of a termination on the grounds of permanent roaming or anomalous or abusive use of wholesale roaming access, according to the contractual arrangements between the parties, cancellation period without any reasons is possible without any clearance, as long as these arrangements regarding the cancellation period allows the access seeker to have the possibility to conclude a new contract according to Art. 3. BEREC considers 6 months cancellation period as sufficient to fulfil this requirement.”

There is existing case law which provides for the possibility of such solution (series of MNO-MVNO disputes in Germany).

About ETNO

ETNO (European Telecommunications Network Operators' Association) represents Europe's telecommunications network operators and is the principal policy group for European e-communications network operators. ETNO's primary purpose is to promote a positive policy environment allowing the EU telecommunications sector to deliver best quality services to consumers and businesses.

About GSMA

The GSMA is a global organisation unifying the mobile ecosystem to discover, develop and deliver innovation foundational to positive business environments and societal change. Representing mobile operators and organisations across the mobile ecosystem and adjacent industries, the GSMA delivers for its members across three broad pillars: Connectivity for Good, Industry Services and Solutions, and Outreach.

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