



**GSMA-ETNO input to BEREC's opinion on the Commission Implementing
Regulation on the Fair Use Policy and Sustainability of the Roaming Regulation**

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Introduction

GSMA and ETNO welcome the opportunity to provide comments to BEREC's opinion on the functioning of the Commission Implementing Regulation on the Fair Use Policy (FUP) and Sustainability of the Roaming Regulation.

The possibility to apply FUP is a fundamental feature of "roam-like-at-home" regime, which enables the operators to prevent losses caused by users using roaming services for purposes other than periodic travel.

This element of the roaming service conditions will become even more crucial in a M2M scenario, where FUP allows operators to prevent massive use of their M2M solution abroad, which would open up the doors for harmful arbitrage.

In the view of the GSMA and ETNO, the Fair use policy provisions not only need to be maintained but would benefit from improvements and simplification due to the current high complexity of the existing control mechanism.

In our view, the Regulation should be defined in a way where any controls are transparent and easy to understand for customers, easy to implement and track for network operators, and based on cost-efficient solutions. We therefore continue to believe that when reviewing the Implementing Regulation, the Fair use policy provisions should be changed concerning open data bundles, limits on voice/SMS, simplification of 4-month window rule, and proof of normal residence or stable links.

Fair use rules that foresee the (ex post) monitoring of roaming vs domestic presence and traffic are extremely costly and complex to implement. Therefore, in some cases, operators have decided not to use this tool at all.

The (ex-ante) setting of a fair use limit on open data bundles also present challenges e.g., it:, (i) does not protect operators from providing the service below cost, and (ii) will be watered down in the event of a further reduction of wholesale caps.

To improve the existing provisions of the Fair use policy set out in the Commission Implementing Regulation 2016/2286, the following points should be considered:

Data allowance on open data bundles (to be once and not twice the volume purchased at wholesale price):

When RLAH was introduced, it was ruled that due to potential discount agreements on the wholesale side, the RLAH data usage must be twice the volume that can be purchased by an operator at wholesale level from the whole retail price charged from the customers for all services included in the bundle of the monthly subscription fee. Hence, the current methodology multiplies the wholesale-based amount by a factor of two (2 x domestic retail price/wholesale price for the entire bundle).

This methodology is becoming increasingly out of sync with reality and inhibits operators' incentives to add data into mid- and low-end rate plans. Due to the glide path included in the Regulation, the wholesale data prices are, at the end of the current Regulation, significantly lower than in the beginning.

Therefore, there is no reason to keep the multiplier two in the Fair use rule. The amount of fair use data is sufficient also without multiplier of 2 when compared to the normal needs of end users which shall be covered by the Fair use policy. Additionally, the multiplier 2 may result in operators paying more for the wholesale roaming services than what they can charge from the end users. For these reasons, we suggest the multiplier 2 is removed.

Introduction of limits for voice/SMS:

Absence of a voice/SMS limit may lead to significant interconnection fraud to various number ranges and a limit should be introduced to effectively prevent abusive/anomalous use of RLAH. This would also be preferable for the understanding of the mechanism by the customers who prefer to manage their consumption vis a vis limits instead of paying extra charges.

Simplification of 4-months window rule:

The rule (more of 50 % of the days and more of 50 % of usage in roaming in at least 4 consecutive months), which enables the identification of permanent roamers is too complex to implement and to apply in practice.

Besides being complicated to implement, the 4-month observation period is also very long from the perspective of occasional travels that are in the scope of the Roaming Regulation. The usual travelling abroad patterns do not exceed one-month period.

Furthermore, the following two criteria cannot be applied, as long as prepay customers are not registered, i.e., their identity is not known: (i) long inactivity and use mostly in roaming; (ii) subscription and sequential use of multiple SIM cards by the same customer.

Therefore, the existing mechanism should be replaced by a significantly simpler one, for example a fixed period per annum. In doing so the focus should be on a fair share between domestic and roaming usage which eliminates elements of potential end-user circumvention.

Proof of normal residence or stable links:

The mechanism for proving this criterion is ineffective. Any customer can provide a copy of the ID, even in cases when they work/study abroad, and their ID still includes the address of their residence on the territory of that particular Member State.

About the 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. Our vision is to unlock the full power of connectivity so that people, industry, and society thrive. 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. This activity includes advancing policy, tackling today's biggest societal challenges, underpinning the technology and interoperability that make mobile work, and providing the world's largest platform to convene the mobile ecosystem at the MWC and M360 series of events.

We invite you to find out more at [gsma.com](https://www.gsma.com). Follow the GSMA on Twitter: [@GSMA](https://twitter.com/GSMA) and [@GSMAEurope](https://twitter.com/GSMAEurope)

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.

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