

# **BEREC GUIDELINES ON ROAMING REGULATION (EC) NO 531/2012 (THIRD ROAMING REGULATION)**

## **(Articles 4 and 5 on Separate Sale of Roaming Services)**

*Summary of responses received during the public  
consultation and BEREC view on issues raised by  
stakeholders*

**5 July 2013**

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## I. INTRODUCTION

The BEREC public consultation on the BEREC guidelines about the application of articles 4 and 5 on separate sale of roaming included in the roaming regulation (EC) No 531/2012 was launched on 14<sup>th</sup> May and lasted until 3<sup>rd</sup> June.

The responses to the document which was the subject of the public consultation have been used by BEREC to get feedback from different types of stakeholders regarding BEREC's clarifications of the third roaming regulation on issues relating to the separate sale of roaming services, as well as amending and adapting BEREC guidelines to take into account issues raised by stakeholders.

BEREC received 30 responses from stakeholders comprising different type of actors. Most of the responses came from MNOs (both large groups with a footprint in several EU countries and small MNOs present in just one country), and the GSMA sent a respond on behalf of all MNOs in the EU raising issues common to all of them. Among the stakeholders responding to the public consultation were also some MVNOs from different parts of the EU (including the association of full MVNOs in Europe). In general it can be said that the responses are a good representation of stakeholders affected or involved in the application of articles 4 and 5 on decoupling.

The responses received addressed most of the issues considered in the guidelines. As expected, views from different type of stakeholders diverge on issues related to the relationship between MVNOs and MNOs and the obligations applied to each type of stakeholders. The application of the regulation is complex in these cases and BEREC has focused on finding a balanced compromise between encouraging competition and not imposing disproportionate investments on any type of actor.

In some cases, stakeholders were stating that some guidelines are going too far without the legal support of the regulation. BEREC has reviewed its guidelines in the light of the feedback received and in some cases they have been amended so as to restrict the application of obligations while in others the obligations or made more specific in the guidelines have been maintained.

A relevant part of the feedback is focused on the complexity and high costs associated with the implementation of the regulation. BEREC understands that the implementation of the decoupling obligation has relevant associated costs and has tried to keep it at a minimum when possible, but in any case the need to facilitate and encourage competition from ARPs has also been a key issue to take into consideration. The final objective is to be able to introduce real competition from ARPs at the retail level, the only way to allow further steps in the future to lift the price caps and let market forces act to reach EDA targets on roaming.

Some clarifications and amendments at the suggestion of stakeholders were also introduced to make the guidelines more technology-neutral and future proof.

In the following sections a summary of responses received is supplied together with rationales for adoption/non-adoption by BEREC.

The guidelines in this document refer to the numbering that was used in the draft guidelines which were subject to public consultation. As BEREC included a new guideline (guideline 7 - Exceptions for allowing the separate sale of roaming for specific customers), and deleted

two (former guideline 10 and former guideline 43) BEREC points out that the numbering of the guidelines in the Guidelines document has changed accordingly.

## **II. SUMMARY OF RESPONSES AND BEREC CONCLUSIONS**

### **1. General Guidelines**

#### **Access documents, Guideline 1 (previously 2)**

Stakeholders oppose the compulsory publication of a reference offer, which is not considered in the guideline, as there is no legal provision for it in the Regulation. Stakeholders believe that there is also not an obligation to publish a draft contract. An issue raised by several stakeholders was that all GSMA relevant information referenced in the draft contract should be made accessible to non-GSMA members.

There is also support expressed for BEREC's position, which is that any organization or platform where access documents are discussed should be accessible freely by all stakeholders.

BEREC believes that it is necessary for ARPs to be provided with a draft contract, which will allow ARPs to negotiate access requests as well as facilitating the associated technical implementation. In light of this, BEREC considers it necessary to include this requirement in guideline 1. Regarding accessibility of GSMA related documents for non-members, BEREC considers that all documents to which the ARP-contract makes reference (whether or not produced by the GSMA) have to be provided free of charge to access seekers. This is expressed in guideline 2. As a result, any related document, which cannot be freely provided to the access seeker, cannot be part of the contract.

#### **Standardization and documentation, Guideline 2 (previously 3)**

Stakeholders stressed the need for ARPs to comply with the standards elaborated by the industry platform. Stakeholders also consider that the output provided by the industry platform should be binding on all parties, including NRAs in the case of disputes, and one of them recommends annexing the document to the BEREC Guidelines. The documents – particularly the interfaces identified there – needs to be maintained in a suitable standards forum and be kept up to date for example by ETSI or 3GPP. Access to any organization or platform should not be restricted or entail any costs. One stakeholder suggests that the EC could make technical specifications binding or set them out in a list of standards.

BEREC takes the view that guideline 3 covers all documents that are potentially needed to negotiate access requests. The guideline makes clear that GSMA related information is to be made accessible to non-GSMA members as well. BEREC amended this guideline to clarify that the main reference for interfaces is the documentation produced by the industry platform, that must be used as the main reference by all stakeholders for the interfaces to be provided by DPs. However BEREC believes that an EC decision to ensure application of those interfaces is not necessary, given that the documents to be produced are still evolving and will adapt over the time to the technical evolution. Although these BEREC Guidelines are not legally binding, stakeholders have stressed the need for a reference to the technical documents elaborated by the industry platform to be included so as to make them binding

among operators. Furthermore, BEREC is of the opinion that the above mentioned documentation should remain in the hands of the industry and should be regarded as such and at the time of writing these guidelines the documentation is still not definitive. It is therefore not appropriate to annex any of those documents to the BEREC Guidelines.

### **Authorisation regime for ARPs, Guideline 3 (previously 4)**

A majority of stakeholders considered that the authorisation regime for the ARP should not be any different than the one for any other ECS provider, as proposed in the draft Guideline. Many responses also supported the view that ARPs should follow any notification procedures defined by the Member State (MS) where the service is contracted. A number of stakeholders stated that ARPs should have to comply with same rules as MNOs and some of these responses were referring to the MS where the DP is located. On the other hand, the responses also supported the following authorisation regimes: the MS where the ARP is established, the MS where the service is provided, the home MS of the customer, and the visited MS in case of local data roaming access.

However, there was also a view expressed that ARPs should be subject to a lighter authorisation regime than MVNOs, particularly those ARPs who provide only local data roaming access. In addition, another stakeholder argued that a system of multiple authorizations, reflecting the current status of the European Framework, could hamper market entry and that BEREC should address this issue with the European Commission.

Some stakeholders argued that it is important that aggregators/enablers inform DPs about who they are representing. Moreover, it was argued that BEREC should be clear whether or not the ARP should have the complete responsibility regarding authorisation and that the aggregators/enablers only act on behalf of the ARP. There was also a proposal that the Guidelines should specify that although the numbering rights of use are assigned to the national DP, the ARP should become, when it provides the roaming services abroad, completely responsible for the numbering used by their customers.

BEREC's view is that the Roaming Regulation does not provide any special rules regarding the authorisation regime. Thus ARPs are treated in the same way as any other ECS provider. Regarding the opinion that it should be stated more clearly in the Guidelines that the ARP will have to follow the same rules as other providers of telco services in the respective MS, BEREC considers this is already clear since the same authorisation regime is valid for ARPs as for any other telco in that MS.

Regarding the statement that ARPs should be subject to a lighter authorisation regime than MVNOs, particularly those ARPs who provide only local data roaming access, BEREC is of the opinion that only the national authorisation regime is valid for any electronic communication provider of the respective MS could guarantee the maximum protection for the customer. A lighter authorisation regime for ARPs could lead to the detriment of customer protection.

As to the possibility of multiple licenses being a barrier to entry, BEREC finds that an "EU license" cannot be included in the Guidelines as such an authorisation regime is not introduced within the European Regulatory Framework. If future evolution of the EU authorization regime allows for that type of "EU license", BEREC will reconsider this issue and adapt accordingly. It was also argued that the ARP should only be subject to any legal requirement in the country where it is legally established. BEREC considers that this would

not be in line with the current European regulatory framework, as the provision of ECS may be subject to a general authorisation in the MSs.

BEREC agrees with the proposal that aggregators should inform DPs about who they are representing. Accordingly, BEREC has amended the text of the Guideline regarding the identity of access seekers (guideline 4).

### **Identity of access seekers, Guideline 4 (previously 5)**

Stakeholders generally agree to the principle set out in this guideline. In respect of requests by enablers/aggregators, stakeholders believe that the guideline should specify the parties to the contract agreement, i.e. the DP and aggregator or the DP and ARP. Most stakeholders believe that the agreement is to be settled between the DP and the ARP. Stakeholders consider it necessary for the enabler/aggregator to prove that they act on behalf of the ARP. Furthermore, some stakeholders have stated that BEREC should include the principles set out in its Guidelines on Art 3 such that the costs incurred by the enabler/aggregator are borne by the ARP.

As most stakeholders share BEREC's view with regard to the identity of the access seeker, BEREC does not see the need to amend this guideline. As to the parties negotiating the decoupling agreements, BEREC is of the view that this is to be settled between the parties involved. In order to be consistent, BEREC included the principles that are set out in its Article 3 Guidelines on who has to bear the costs of connecting to an enabler/aggregator as well as a provision to inform DPs about which ARP is the enabler/aggregator representing.

### **ARP services used by customers, Guideline 5 (previously 6)**

Stakeholders either did not comment or agreed with BEREC's approach. One stakeholder seeks clarification as to how to handle a situation where two ARPs are involved in decoupling one customer.

BEREC does not see the need to amend this guideline as comments received from stakeholders are generally in line with it. As to the situation where two ARPs are involved in decoupling one customer, BEREC takes the view that stakeholders should handle such cases in a reasonable manner, considering that this specific issue can be addressed in the industry platform.

### **Fraud Management, Guideline 6 (previously 7)**

A significant portion of the responses raise concerns about the liability of the ARP for own customer behaviour or misuse of the service, requesting a clarification on the roles and liability of each actor in fraud management scenarios. In general, many of these responses request the extrapolation of GSMA rules for fraud into the traditional roaming context, as well as an explicit reference to the application of the output of the industry platform with regard to fraud management. Some proposals are raised for detailed provisions about fraud management to be included in the BEREC Guidelines. Finally, there is a proposal to change "necessary" steps to avoid fraud to "reasonable" steps.

BEREC understands that fraud management may be complex and involves many different issues that are being addressed in the industry platform. The initial intention of the guidelines was not to change normal practices on fraud management, but to stress the need for collaboration between all stakeholders aimed at preventing fraud. A reference to the industry platform has been inserted in the guideline to make clear that detailed agreements,

interfaces, etc. are to be reached in this platform (provided these agreements are consistent with the regulation and the guidelines) and are applicable in this area. BEREC has also considered changing “necessary” to “reasonable” steps, since it would not be reasonable to insist on any potential technically possible measure being requested and a principle of proportionality must be applied.

Finally, BEREC has included a provision stating per default ARP liability for any misuse by customers billed by the ARP (provided the DP has met its usual obligations), following standard practice rules for other services.

## **M2M services, Guideline 8**

The main comment received during the consultation (also from the TRG) is the need to exempt specific cases when decoupling cannot be done due to technical reasons (for example, APNs cannot be changed in the terminal equipment or a VPN which needs the use of a server in the home network).

The second important common comment concerns either legal or technical reasons that make it impossible to apply decoupling based on single IMSI to M2M services. Stakeholders argued that M2M is not a bundle of voice and SMS. M2M is mostly only data or SMS, therefore there is no obligation to apply single IMSI to decouple M2M. Stakeholders claim that M2M services are complicated services with special infrastructure (propriety), sold as a global services (hence MCC 901 usage) and authorisation for decoupling should be human and not machine-based, and special interfaces may be required, which however can be agreed upon on commercial basis.

The last group of comments concerns the wording ‘special’, which might refer to premium rate services and other special services. The first main comment is taken into account by BEREC, as it is not BEREC’s goal to enforce obligations, which are impossible to implement. However, technical reasons that block the possibility of local data roaming access should not be created artificially by potential DPs when ordering M2M equipment to distribute to customers.

On the second comment BEREC refers to guideline 31 (Wholesale bundling of services - please note new numbering). An ARP has the right to offer any combination of services to its customers, so special bundles for M2M services are most certainly not out of scope of the regulation. Under Single IMSI (SI) traffic keeps being routed through the DP’s network of the DP and the propriety services. Accordingly single IMSI based decoupling should be possible without extra interfaces. For local data roaming access however, BEREC already conceded the argument that there may be technical limitations. However, EU DPs offering M2M services to EU customers while using the MCC 901 should comply with the regulation, so there is no technical reason for an exception in this regard. Authorization of SI is always with human help, the same with M2M, where the contracting party has the right to ask for decoupling. With local data roaming access human interaction with the equipment is necessary to change APN and to contract with the local data roaming access provider.

With regard to the last group of comments, BEREC agrees with replacing the wording ‘special’, as it has no meaning towards value added services and such. In summary, BEREC has agreed on allowing for exceptions where this is technically justified and the DP cannot solve the technical issues involved.

## **2. Guidelines for local data roaming services**

### **2.1 General Guidelines for local data roaming access**

#### **Customers' right to return to the default roaming mode, Guideline 9**

Most of the feedback received for this guideline is focused on the statement that the roaming service automatically rolls back to the default (not locally provided) mode/environment when customers finish using local data roaming services. The issues raised are about the technical impossibility for the local data access provider to perform any automatic rollback, as well as the perceived lack of clarity of this text. There is also one suggestion to explicitly state that the local data access provider should not be able to alter APN for MMS when a different APN for this service is used by the DP that has been considered in guideline 21.

BEREC's intention in this guideline was not to request any automatic procedure to be done by the local data access provider, but to state the right of the customer to return to default roaming at any time in a simple and instantaneous way just by changing APNs. The guideline has been simplified by deleting any reference to "automatic rollback", which could give the impression of a remote action to be done by the local data access provider in the terminal.

#### **Provision of local data roaming services by third operators, Guideline 10**

Most stakeholders agree that there is no legal obligation, which could support the provision of local data roaming services by third operators. They also believe that such services could be subject to commercial agreements. Some stakeholders regard the technical implementation to be complex and believe that the service could be confusing for customers.

Hence most MVNOs take the view that access to visited networks for the purpose of providing local retail data roaming access is to be allowed pursuant of Art 3 of the Roaming Regulation. The wording of Art 3 includes visited networks. According to their view, assuming that a commercial agreement is arrived at, wholesale roaming access for providing local data roaming services have to be provided to full MVNOs at the regulated wholesale caps. In case of refusal of access, MVNOs are to be entitled to initiate a dispute resolution procedure. BEREC should consider that refusal of access for MVNOs distorts competition in the roaming market and benefits the MNO. Access for the MVNOs could be explicitly set out so as to ease negotiations with the MNO.

The European Commission has contacted BEREC pointing out that this issue is under study by their legal services. At the moment of writing the final guidelines, the evaluation of this legal matter has not been finalized.

BEREC considers that any final decision on this issue must take into account the final legal view from the Commission, and for that reason, BEREC has refrained to make a definitive clarification statement on this issue after having available a final view from the EC. Consequently, this guideline was been deleted in the final document.



## **Local data roaming access outside the EEA/ Use of Universal APN by non EEA roamers, Guidelines 10 and 11**

Many of the stakeholders raised concerns with the proposed text on the use of local data roaming access services outside EEA countries and the use of Universal APN by non EEA roamers. In their view, as the Regulation is not applicable outside EU/EEA countries the BEREC Guidelines should be consistent with the new Roaming Regulation and should not go beyond what is set out in the provisions.

However, such concerns arose from an assumption that guidelines 11 and 12 try to impose new obligation on MNOs. This was not BEREC's intention, which is to make clear that there is nothing in the regulation preventing from using the universal APN outside the EEA, although BEREC understands that the domestic operator can in any case restrict its use outside the EEA. Regarding guideline 12, BEREC also understands that for providing local data roaming access to non-EEA customers an agreement with the foreign operator is necessary, but that the foreign operator does not have an obligation to cooperate as it is not a domestic provider in the EU. In order to make clear that no additional obligations are derived from the Guidelines, BEREC has adapted the wording of Guideline 12. Guideline 11 is sufficient clear by not stating any obligation to use of the universal APN outside the EEA.

## **Rights to publicise and sell services by the ARP providing local data roaming access, Guideline 12**

Various stakeholders commented on the rights to publicise and sell services by the ARP providing local data roaming services and the need for greater clarity about the ARPs rights to carry out marketing activities. On this specific issue, one respondent indicated that landing pages can only be used when the customer is using the Universal APN. Another proposal issued in this regard is that an ARP providing local data services is not entitled to send direct marketing messages via, including but not limited to, SMS, e-mail and landing pages to the customers of the current roaming provider unless the ARP providing local data services has received a prior consent from such customers.

BEREC takes the view that ARPs providing local data roaming access shall perform marketing activities in accordance with the Directive on privacy and electronic communications. Introducing any additional restriction is not necessary, because in any case the customer must give prior consent to receive direct marketing information from ARPs (being single IMSI based or to local data roaming access based) according to the Privacy Directive that also applies to ARPs. At the same time the customer will have access to up to date information about the tariff plans from the local data roaming access provider. ARPs providing local data roaming access should have the same rights and obligations as other electronic communications service providers, and additional APN restriction would create the burden for local data roaming access providers to advertise their services. It should also be considered that the use of landing pages is restricted in the BEREC Guidelines to situations where customers are using the Universal APN, and visited networks are not allowed to show a landing page when customers use domestic APNs, where traditional roaming services will be provided as usual and no landing page will be launched.

## **2.2 Obligations for donor roaming providers**

### **Universal APN, Guideline 13**

Some of the respondents have pointed out the need to not be explicit about the HLR, as there can be different implementations even without an HLR or involving an HSS as is the case for LTE. Another issue that has been raised is the need to establish an exception for the case where the customer explicitly asks for not allowing the use of the universal APN, as in the case of a corporate customer not willing to allow for the use of local data access in the terminals of the end-users for security or other reasons. Finally, some stakeholders consider that not allowing the use of the universal APN by the donor roaming provider to supply traditional roaming data services may imply undue restrictions and that the use of this APN can be useful in specific scenarios.

BEREC shares the view not to explicitly mention the HLR, making the guideline more technology-neutral and more future proof and have accordingly adapted the text and the title of the guideline to avoid such a reference. Acknowledging that customers have a right to restrict the use of local data access in terminals covered by their contract, the guideline was adapted to consider this exception proposed by some stakeholders, stating that this must be a deliberate request by the customer, being the by-default configuration to allow local data access use.

Regarding the request not to restricting the use of the universal APN by the donor provider, BEREC considers that taking account of the mechanism to be used by customers to switch from local data access to traditional roaming and vice versa, the use of the universal APN to supply traditional roaming by the DP may induce misunderstandings for customers in certain situations where they are not aware of the network that is being used. Domestic providers are in any case allowed to alert their customers when they are trying to use the universal APN in a network not supplying local data roaming access, and that they are not using the right APN, although DPs are not entitled to provide roaming services using this APN.

### **Barring and blocking ARPs providing local data roaming access, Guideline 14**

The main comments received during consultation concern the need for a common guideline about blocking/barring of individual customers for using an ARP (single IMSI or local data roaming access) either on request of the contractor or on basis of non-payment or fraud.

The second largest group of comments concern the use of local data roaming access by prepaid customers through a visited network that does not support Camel (it impedes voice and SMS continuation for these prepaid customers). It is also stated that in these cases it is impossible to conclude a roaming agreement (guideline 18: Conclusion of roaming agreements with ARPs), since roaming agreements primarily cover voice and SMS, and data is put on top. Barring of these networks should be allowed according to the view of these stakeholders. One stakeholder also commented that the local data roaming access provider must otherwise make the limitations transparent (already addressed in guideline 19: Supply of other services when customers are using local data roaming access).

The last group of comments argued that the ARP also should not impede, change or overrule manual selection. ARPs doing so or even those who are not able to re-establish a seamless restoration of DP APN settings should be barred.

Some comments state that DPs should be allowed to inform their customers about the performance of ARPs (based on complaints) or even force DPs to publish a list with exceptions.

BEREC considers it reasonable that DPs are allowed to block or bar individual contractors from use of decoupling at their own request. The request of stakeholders to block or bar individual users from the use of the DP's services (and therefore also to block the services of an ARP) in case of fraud or non-payment is somehow similar to the situation when ARPs do not fulfil the technical conditions, or non-payment or fraud (see guideline 14: Barring and blocking ARPs providing local data roaming access). BEREC therefore considers it also reasonable to allow this on an individual customer level only under objective and duly motivated reasons as the general rule is the prohibition of blocking or barring individual customers on retail level. In this respect, BEREC created a new common guideline 7 (Exceptions for allowing prevention of the separate sale of roaming for specific customers).

The second large group of comments is asking about the possibility to bar/block ARPs offering local data roaming access without a minimal Camel level 1 support for their pre-paid customers. They are not able to keep continuing voice and SMS services in these cases, also Roaming agreements do not support this option. BEREC studied this problem earlier on and decided that regardless of this situation the regulation continues to apply. As in this case it is not possible to supply voice and SMS service to prepaid customers, according to guideline 19 (Supply of other services when customers are using local data roaming access) local data roaming access providers must inform customers of this limitation.

BEREC has not considered applying rules to allow DPs to inform customers about ARP performance as it is not included in the regulation. Normal commercial practices and (self)-regulation in any case apply on marketing activities.

### **Traffic Steering, Guideline 15**

Some MVNOs have raised potential problems in the case of those domestic providers not having control of the steering mechanism applied in the network, as is typically the case for a reseller supported by a host network. Other stakeholders asked BEREC to state that provisions in the guideline are only applicable when they are technically possible, pointing to some specific cases, where traffic mechanisms cannot be adapted to comply with the regulation.

Other stakeholders propose a wording suggestion to change "avoid steering" to "overcome steering", a request to clarify the meaning of "customer" in the guideline to be done (end user or contractual customer), and there are some additional suggestions to extend the guideline.

BEREC amended the guideline to include any customer supported by the network and not only own customers, in order to cover also customers of domestic providers making use of third party networks, as no customer must be prevented by steering from making use of local data roaming access. Other suggestions for extending the guidelines have not been taken on board, on the understanding that technical details on traffic steering should be discussed and should evolve according to the technical evolution in the industry platform. Regarding the issue of restricting the application of the guideline to when it is technically possible, BEREC considers that technical availability most of the time involves costs issues (something is technically possible or not depending on the investment assumed necessary to comply) and a general exception in the guideline could lead to give a wrong message in

fulfilling the regulation only when no investment is needed to adapt steering systems, the regulation being clear on the obligations about steering. Anyhow, in the case of disputes NRAs are able to analyse specific cases where an adaptation is not possible or completely disproportionate were it to be implemented and take a decision.

### **Manual selection of networks in the terminal, Guideline 16**

Most stakeholders expressed concerns about operators being responsible for terminal features that are not under their control. It is clear that the USIM and some features, which are built into the handsets under the commission of providers who are buying these devices from vendors in order to bundle them with their services, are under their control. However, BEREC understands that some terminal equipment features are not under the control of the provider, especially the parts which concern the non-provider specific parts of an operating system on the equipment and BEREC is not imposing obligations on issues that are not under the control of the DP.

Some stakeholders expressed concerns that changes by the customer or by the home network in terminal equipment to allow the customer to use a local data roaming access might lead to disruption of the supply of a national MVNO service which the customers are using at home. According to their views, MVNO's should have the right to reconfigure the terminals of their users when they finish using local data roaming access. BEREC does not see the need to revise this guideline. This guideline concerns the configuration in USIM, or software on the terminal which the domestic providers are able to order from vendors to be built in the terminal or USIM. BEREC agrees that not all software in terminal equipment is under the direct influence of the domestic provider and those features that are not under the DP control are not the subject of this guideline. In this regard, BEREC agrees on remarks made by some stakeholders on the relevance of openness of terminal equipment crucial for the local data roaming access to work. In this regard terminal manufactures should be aware about not preventing separate sale of local data roaming access. The Industry platform will publish a document on requirements for terminal and device behaviour to support manual network selection and editing of APN and BEREC has made a reference to it, considering that it is important to inform terminal suppliers on specific requirements on terminal openness to allow consumer to use local data roaming services.

Regarding the concerns of some stakeholders that domestic MVNOs may lose their customers for national roaming after manual selection of a local data roaming service, BEREC refers to guideline 17 (Automatic reconfiguration of the terminal). This guideline also applies to domestic providers, which include MVNOs and clearly states that they have the right to reconfigure the terminal.

### **Automatic reconfiguration of the terminal, Guideline 17**

Comments from stakeholders are mainly focused on the issue of the situations in which the donor roaming provider is entitled to reconfigure the user's terminal. Proposals range from allowing this reconfiguration once the customer leaves the country where local data roaming access is used, when the customer is out of the reach of the local data roaming access provider, to when it is requested by the local data roaming access provider or the customer, when terminating the use of local data roaming access or when the customer leaves EEA territory. There are a couple of additional proposals to impose obligation on the local data roaming access provider to reconfigure the terminal when the contract expires and

about not deleting APNs profiles in the terminals with the ability to store several APN profiles.

The guideline is intended to allow terminal configuration by the donor provider when the customer does not use local data roaming access anymore and she/he has forgotten about changing APNs. This should not be done when the customer is still in the visited country, as local data roaming access can be used in an intermittent way, even in several EEA countries. However, the case for terminal reconfiguration can be extended to situations where customers travel to a non-EEA country, where in principle local data roaming access cannot be used, and when for any reason it is requested by the customer or the ARP provider (for example in case of non-ability to change APNs). ARPs cannot be obliged to reconfigure terminal, as OTA interactions are to be done just by the domestic providers. Although the proposal not to delete APN profiles in specific terminals can be considered as a good practice, this is a detailed issue depending on terminal features that is too specific for setting particular obligations. This issue will be reviewed based on experience in future editions of the guidelines.

### **Conclusion of wholesale roaming agreements with ARPs, Guideline 18**

BEREC was asked to extend the guideline to consider also MVNOs reaching roaming agreements in accordance with guideline 32 (MVNOs and resellers being domestic providers – new). Some stakeholders suggest that to avoid any confusion, BEREC should use the terminology used in the technical documents of the industry platform, such as DP.

Some stakeholders argued that it should be made clear that this wholesale agreement is a pre-requisite before an end user can switch to a given local data roaming access provider. There was also the view that not all wholesale conditions are applicable to the ARP. Regarding the use of the reference offer of the network used by ARP providing local data roaming access, stakeholders argue that a new entrant DP could have significant problems in case it has to provide numerous bank guarantees/cash deposits/upfront payments and this issue should be addressed in the guideline.

BEREC does not agree that the obligation to conclude a roaming agreement should be extended to cover others in addition to domestic providers operating a terrestrial public mobile communication network. Article 3 of the Roaming Regulation only requires MNOs to meet all reasonable requests for wholesale roaming access. For the sake of clarity, BEREC has changed the wording to better reflect that MNOs have an obligation to conclude a wholesale roaming agreement with the visited network on request.

BEREC acknowledges that in most cases there needs to be a wholesale agreement between the donor provider and the ARP providing local data roaming access in the visited network. However, BEREC does not consider that the wholesale agreement should be a prerequisite for the provision of local data roaming access in the visited network, as some data only services might not require a wholesale agreement between the donor provider and the ARP.

Regarding the argued burden of numerous bank guarantees/cash deposits/upfront payments, BEREC takes the view that the BEREC Guidelines on Article 3 on wholesale roaming access provide sufficient safeguards to address this issue. According to guideline 33 of the Article 3 Guidelines any safeguards must be proportionate and should not have the effect of imposing insuperable barriers to entry to small players.

## **Supply of other services when customers are using local data roaming access, Guideline 19**

The majority of stakeholders either agreed or did not have any comments. Some stakeholders argued that the requirement of the local data roaming access provider to inform the subscriber if their voice and SMS service is restricted as a result of selecting a local data roaming access should be considered in the same way as the requirement to inform the subscriber of limitations to data services, such as MMS and VPN. Referring also to guideline 9 they considered that the ARP needs to inform customers in a clear manner prior to concluding a contract. There was also a view that the user may connect (for example, manually) to specific APNs for well-defined services, such as WAP or corporate VPNs, and that the donor provider should be able to provide these services supported on different APNs.

Two stakeholders argued that the local data roaming access provider has to meet the technical requirements to be able to provide voice and SMS at wholesale level. The end-user should be able to continue to have all the services (voice and sms), as the Roaming Regulation (Article 5 para 3 (a) and (b)) requires consumer friendliness and ability to serve all categories of consumer demand. It was argued that the domestic provider should be able to bar local data roaming access providers who cannot support voice and SMS in wholesale.

BEREC agrees that it is essential that the ARP providing local data roaming access informs customers about the possible limitations of the service. BEREC considers that this issue is sufficiently covered by guidelines 9 (Customers' right to return to the default roaming mode) and 24 (Switching between roaming providers).

BEREC disagrees with the argument that the domestic provider could bar ARPs providing local data roaming services who cannot support voice and SMS in wholesale. In some instances, when using e.g. laptops or tablets, the customer might be willing to subscribe to a data only service. Also, BEREC points out that consumer-friendliness of local data roaming access is considered good due to the flexibility to opt for and disconnect from local data roaming service providers instantaneously.

BEREC concludes that there are no reasons to change or amend the guideline.

### **2.3 Responsibilities of ARPs providing local data roaming services**

#### **Restoration of APNs by local data access providers, Guideline 20**

Most of the responses are focused on the lack of legal support to impose any obligation to supply apps to manage APNs switch, requesting that BEREC leaves to the market the implementation of apps to assist customers in the process of switching to/from local data roaming access. There are also some responses about local data roaming access providers having to inform the DP about customers using local data roaming access, provisions for reimbursement for any harm done to the DP when original APNs are not restored, the obligation to restore APNs for the local data roaming access provider, as well as the obligation to provide information to customers about how to restore manually APNs.

One of the stakeholders makes a proposal to also consider in the guidelines APN management in the network, instead of the terminal, as well as a proposal to set KPIs (Key Performance Indicators) and measure complaints on wrongful settings of the APN.

The intention of BEREC with this guideline was to assure an easy and convenient way for customers to switch to/from local data roaming access, and with that aim, apps are especially useful to improve customers' experience. BEREC, however, recognises that it is in the interest of the local data roaming access provider to assist customers in the process of adapting the terminal, and the market itself will supply these apps. The guideline has been consequently adapted not to impose the obligation to provide these types of apps. However, in the case that these apps will be provided, we still consider that they must include restoration facilities, to ensure that it is as easy to use local data roaming access, as it is to switch back to default roaming services. This, however, does not replace the need to inform customers on how to change APNs manually (apps will not work in all type of terminals). Regarding other requests to consider additional obligations, we consider that as now additional measures can increase the burden for actors involved and in order to facilitate smooth initial deployment, things should be as simple as possible. We also consider that there is not a need to address explicitly any issue on reimbursements due to wrongful management of APNs, as it is in the interest of the local data roaming access provider to keep the customer satisfied, meaning that APN switch will be done smoothly and easily.

With regard to the proposal to also consider explicitly in the guidelines APN management in the network, instead of the terminal, BEREC is of the view that no restrictions should be introduced on the technology to be used to implement local data roaming access, provided that all provisions in the regulation and the guidelines are fulfilled, and considers that there are no restrictions in that sense in the guidelines. However, BEREC refrains from making an explicit statement on allowing explicitly APN management in the network, as there are specific issues like inadvertent use of the default roaming mode when the customer loses the coverage of the local data roaming access provider. Such cases would need a more detailed analysis to make sure that the customer is aware of the situation, and any statement explicitly allowing a specific technical solution should be backed by an assurance that the final outcome for customers fulfils all provisions, and that the user is aware at any time who is the provider and the price and characteristics of the service supplied.

### **Separate bill shock measure for local data access, Guideline 21**

Some observations made were around the fact that bill shock measures for local data access need further clarification. Some comments received stressed that there is a potential risk that a customer will receive different information about the prices from different roaming providers (while being outside EEA countries, ARP inside EEA and local data roaming access provider). Lastly some mentioned that they agree with BEREC's view and stressed that anti bill shock information is under the responsibility of the local data roaming access provider.

With respect to the comments, BEREC amended guideline 22 in order to stress that the local data roaming access provider is obliged to make the bill shock notification. At the same time it must be noticed that customers, under the Roaming Regulation, have a choice to select the set of received notifications. The rules for bill shock measures are already indicated in the Roaming Regulation and cannot be regulated otherwise in the BEREC Guidelines.

### **Local data access notification to donor roaming providers, Guideline 22**

Opinions are divided regarding the issue of the notification to donor roaming providers from the local data roaming access providers. About half of the respondents consider that this notification is needed for different reasons: some of them point to the need to perform

selective barring and adapt steering, others base their arguments on providing a better service to customers or facilitating billing and preventing fraud.

The other respondents consider that this notification is not needed and would add a significant extra burden for both parties, ARP and DP, involving a lot of notifications in real time which would be difficult to process. Some of the respondents on this side also argue that there are alternative ways for the DP to know about the manual selection of the network. In fact, in the work done up to now by the industry platform the specification of this interface is frozen, as most participants in the group have considered it burdensome, increasing complexity for an already challenging implementation date of 1 July, 2014.

BEREC does not wish to increase unnecessarily the burden for stakeholders that are to implement local data roaming access and the needed functionalities in home networks. The rationale for including this provision was to allow for selective barring (not to bar local data roaming access customers, but barring other customers from using the network for traditional roaming) and to adapt steering, but not for other purposes. Fraud issues are covered in other sections and in the work done by the industry platform, and other commercial reasons are outside the scope of this guideline and do not justify the cost and complexity implied. When writing the draft guidelines, it seemed that this notification was the only way to achieve this purpose.

As there are relevant costs issues implied and some stakeholders have pointed out that simpler technical solutions could be devised (if finally any interaction is needed), BEREC has changed the wording of the guideline so as not to prescribe a specific solution for selective barring and steering. The new text leaves room for the stakeholder group to discuss this issue in more detail. However, there is not a clear consensus on alternative mechanisms to allow for selective barring of a visited network for non-local data roaming access users and adapting steering for local data roaming access users, and a significant number of responses pointed out the need for this mechanism. For this reason BEREC still considers it as a possible implementation, leaving room for stakeholders to discuss alternative solutions, and in case that this mechanism is finally needed for some of the stakeholders, pointing to a definition of the interface for this notification in the industry platform.

### **3. Guidelines for-Single-IMSI**

#### **3.1 General Guidelines for Single-IMSI**

##### **Switching between roaming providers, Guideline 23**

Many stakeholders considered that the time period for switching to an ARP is challenging. They proposed that a longer time period should be allowed at least for the first implementation period. However, there was also a view that 24 hours should in general be enough. Some stakeholders argued that the switching period should be counted as from the request from the ARP and the request should be processed through normal working hours. For example, a request received at 8pm on Tuesday would be processed through one working day, comprising normal working hours, of Wednesday and come into effect on Thursday.

Also, stakeholders argued that the guideline does not take into account Recital 21 of the implementing Act, which requires that the switching period should not exceed the time period established for the domestic services.



BEREC agrees that the definition of a working day needs some clarification and an example has been included in the guideline.

The time period, however, cannot be extended in the BEREC Guidelines, as the time period for the switch is clearly defined to be one working day in the Implementing Regulation. Article 3 paragraph 5 of the Implementing Regulation of the European Commission requires that the switch shall be done within a working day. According to Recital 21, the switch should be done without undue delay and in any case within the shortest period of time. The switch should be done within a similar time period as the one for switching domestic services, which in the Recital is considered to be one working day.

### **Fallback to regulated roaming supplied by the domestic provider, Guideline 24**

Stakeholders mostly agree with BEREC on the fallback model set out in guideline 24. The euro-tariff is considered as a reasonable fallback option in case the previous tariff ceases to exist. One stakeholder considers that falling back to the previous tariff is more customer-friendly, that it simplifies the process and that it reduces costs for implementing the decoupling solution. Some argue that other applicable tariffs may also be agreed between the DP and the retail customer beforehand. Others claim that the euro-tariff should apply if the customer did not provide a specific declaration of intent, but should be able to change to another tariff.

Some stakeholders claim that ARPs should inform the DP about the termination of its customer contract without undue delay. Some stakeholders suggest that the DP should be informed within 24 hours on the following working day after the termination. An obligation of the ARP to assist its customers with regard to providing them with information on the DP's fallback tariffs or to select them is not regarded as appropriate. A number of stakeholders recommend deleting the term "if agreed by the customer".

One stakeholder points to a situation where the customer falls back from one ARP to another. In such a case the Guidelines should explain if the DP would have to interact with the customer during the subscription change. There is also an unclear situation when a customer has post-paid contracts signed with more than one ARP, which from a legal point of view would be possible.

BEREC clearly states in guideline 6 (ARP services used by customers) that only one ARP can be used at a time. This is a technical requirement assuming that a retail customer uses one single IMSI in order also to avoid high technical complexity. Some stakeholders prefer customers to fall back to their previous tariff for reasons of consumer friendliness and simplicity for implementation and request that no explicit consent is to be obtained from the customer in order to avoid a burden for them and also to make the procedures more convenient. BEREC expects the DP to inform the customer about the fallback tariff to be applied when subscribing with the ARP or when initially subscribing to the DP. BEREC does not see any need to include fraud in this guideline as fraud is dealt with in guideline 6 (Fraud management). Lastly, BEREC sees the need to swiftly inform the DP about the termination of a customer contract for reasons of consumer friendliness.

### **ARP subscription procedure, Guideline 25**

Stakeholders believe that the subscription procedure should be in line with national switching procedures. They stress that they have to be consumer friendly and customers have to give

their consent in order to avoid fraud or unwanted migration. Information is to be provided to customers, as this is crucial to make decoupling work successfully.

BEREC believes that stakeholders' comments are reflected in this guideline and added a reference to consumer consent. This is ensured by the fact that customers must sign a contract with the ARP.

BEREC considers also that ARPs and DPs must agree in advance, at a national level, on the subscription procedure so as to be ready for the commercial launch on the 1<sup>st</sup> of July 2014.

### **3.2 Obligations for domestic providers applying from 1st July 2014**

#### **Reasonable requests, Guideline 26**

Basically stakeholders agree with BEREC. Access requests should be considered reasonable when the ARP request is compatible with the services offered by the access provider and supports the interfaces and protocols offered. Additionally BEREC should also consider the implementation costs as also set out in its Art 3 Guidelines. This is the case when the DP offers wholesale roaming based on hubs or via dual IMSI and would have to charge the wholesale caps. The DP would also incur costs for tailored services or in cases of fraud. Other stakeholders ask BEREC to define a set of criteria for reasonable requests. One stakeholder refers to setting a maximum time limit to process requests in case the DP receives too many requests. Some stakeholders requested deleting the last sentence of this guideline.

BEREC is aware of the implementation costs put forward by some stakeholders. Hence those occur on both sides (DP and ARP) and thus cannot be used to label an access request as being unreasonable. As to setting a maximum time limit, BEREC considers that it should remain in the hands of the DP. BEREC expects that access requests will be negotiated within a proper time limit and that DPs will not unduly delay market entry from ARPs. Furthermore, the last sentence of the draft guideline is deleted as recommended by stakeholders.

#### **Refusal of requests for decoupling, Guideline 27**

Generally stakeholders agree on certain criteria that will be considered when assessing access refusals – such as when the ARP does not comply with the standards set out in the document of the industry platform, when the ARP does not comply with network security provisions or with financial safeguards etc. Some stakeholders believe that it would make sense to clarify these issues. Access requests should be evaluated on a case by case basis. One stakeholder considers that information on the commercial nature of the access seeker may be necessary for negotiating features that are not part of the mandatory wholesale service. Another stakeholder seeks clarification as to which guideline (previous 28, now 27: refusal of requests of decoupling or previous 29, now 28: Prioritization of requests) to use in case the access request entails the deployment of an undue level of resources. However MVNO are not subject to the wholesale access obligation pursuant to Art 3 and therefore only have to comply with the standards for decoupling interfaces if they own network parts.

BEREC intentionally did not include specific criteria that explain refusal of requests, but rather chose to apply the same principle as set out in its BEREC Guidelines on Art 3. BEREC is aware that there are several reasons for refusing requests, but is on the other

hand concerned that setting out a list of examples in this guideline may not include certain grounds that have been brought forward by an access seeker. Therefore BEREC chooses to keep the wording in this guideline general. It is up to the NRA to decide which criteria to apply in case of disputes. BEREC believes that stakeholders will negotiate in good faith.

### **Prioritisation of requests, Guideline 28**

Most stakeholders agree with BEREC that prioritization may be necessary and support the non-discrimination principle. Providers determine criteria for prioritization. Requests could be processed for example according to the date of the customer request. Stakeholders believe that prioritizing technically more compatible ARPs could reduce the time needed for implementation and therefore is considered as legitimate. Different prioritization rules may be applied if ARPs do not meet the same requirements. Hence one stakeholder does not consider non-discrimination rules to be necessary and regards them as an undue obligation for providers.

BEREC takes the view that this guideline is kept general and gives enough flexibility for access providers and access seekers to handle requests, while at the same time ensuring a non-discriminatory process. BEREC sees the need to stress the non-discrimination principle as it ensures fair conditions for market entry for all market players. BEREC therefore did not amend this guideline.

### **Time for implementation of the decoupling method and Timing Issues for requests after 1st of July 2014 - Guidelines 29 and 30 (previously 1 and 30)**

The vast majority of the respondents to the public consultation are of the view that the timeframe of four months set by BEREC to implement requests from ARP is too challenging and request a longer time for implementation, especially in the case of the first request to be received. A relevant part of them also question the applicability of deadlines set to art 3 provisions on the availability of decoupling interfaces that are considered as a different issue. Reasons given for requesting a longer time for implementation range from technical complexity, non-availability as now of the final interface descriptions from the industry platform, as well as technical complexity of testing and implementation for the first request to be received, that will be significantly more challenging and time consuming than subsequent requests. The proposals to extend time allowed for implementation of requests range from 6 months to one year. This view is shared by MNOs and many of the MVNOs. A minority of stakeholders (MVNOs) consider the deadlines as adequate and one response propose to reduce the time to 1 or 2 months in July 2015, once experience has been gained on the implementation of the decoupling interfaces.

BEREC understands and shares many of the concerns about the challenging time set in the regulation for the implementation of the decoupling measure, which involves the development of a set of new interfaces not already existing. However, it must be considered that the regulation clearly states that customers must be able to request separate sale of roaming from the 1st of July, 2014, and that it is very important for all the sector to introduce competition based on separate sale at the retail level as soon as possible in order to be able to assess its effects on the review to take place in July 2016.

Considering these conflicting issues, BEREC is of the view that time for notifying access requests before 1st of July can be extended to six months considering that the first requests

will be especially challenging to proceed and knowledge of the requests further in advance can help to coordinate issues between access seekers and access providers in order to assure that the first implementations will be ready for operation in the summer of 2014. Requesting more time for notification from access seekers would imply that ARP decisions to enter the business of separate sale of roaming should be made with sufficient anticipation implying a limitation on the number of ARPs competing in the summer of 2014. While in the first version of guideline 1 four months was considered from the moment the request is received to the moment when the functionality for the decoupling must be operational, in the amended guidelines BEREC has also allowed for two additional months to conclude commercial negotiations that will allow for time to agree on details of the interfaces and agreement on testing procedures and other issues.

Regarding requests received after 1st of July, BEREC considers that in this case developments required to have been done in the access provider infrastructure will be already prepared, as the regulation states that on this date customers must be able to decouple, and in general fulfilling access requests will be less challenging and have maintained the timeframe initially considered. However, BEREC has amended this guideline stating that this is the general situation, understanding that there can be specific cases where there can be additional complexity involved or any other factor justifying a departure from the general rule. NRAs will judge these specific cases considering the issues involved that may justify a different approach. NRAs will cooperate among them and with BEREC to analyse and decide in these specific cases in order to apply similar rules when facing similar situations.

BEREC has not seen grounds for shortening the time for supplying decoupling interfaces in July 2015. This issue will be reviewed next years in light of the experience of the separate sale of roaming services.

In addition, the former Guideline 1 has been moved to the Single IMSI section in order to improve the transparency of the document.

### **Wholesale Bundling of services, Guideline 31**

There is wide agreement among stakeholders with BEREC's approach to bundling of services. It is important that ARPs inform customers in the event that they supply only a limited set of services. Some stakeholders request deleting the last sentence as Art 3 of the Roaming Regulation solely addresses MNOs and thus does not require (full) MVNOs to supply wholesale roaming access to ARP.

BEREC believes that ARPs should have a chance to offer the same retail services as the DP. Otherwise the ARP would not be able to compete with the DP at the retail level. It is for this reason that the wholesale roaming services are to be provided as a bundle to the ARP. BEREC assumes that the ARP will inform its retail customer in case it only offers a limited set of services in its own interests, and therefore does not consider it necessary to include such an obligation in the BEREC Guidelines.

BEREC would like to make clear that these Guidelines refer to Arts 4 and 5 of the Roaming Regulation. It is correct that Art 3 does not oblige MVNO to supply wholesale roaming access as Art 3 clearly targets MNOs. But Arts 4 and 5 are the relevant legal provisions as those refer to the provision of decoupling functionalities. Thus the domestic provider, which theoretically does not exclude the MVNO, has to provide wholesale roaming services as a bundle to ARPs, because retail customers are entitled to request all three roaming services

from DPs as well as from ARPs (Art 4 (1) sentence 1 of the Roaming Regulation). As a result the guideline remains as originally drafted.

### **MVNOs and Resellers being domestic providers, Guideline 32**

MNOs' comments regarding this guideline (MVNOs and Resellers being domestic providers) pointed to the relationship between MVNOs and the host operator. The majority indicated that in the case of MVNOs or resellers who technically are not in a position to fulfil the required obligations, commercial terms for providing such services will have to be negotiated with the host operator. One respondent noted that fair and reasonable charges should apply in such a scenario. On the other hand, MVNOs stressed that they are not covered by the decoupling obligation, since they do not operate a terrestrial public mobile communication network.

In this context, BEREC would like to underline that the obligation to decouple domestic and roaming services is for all undertakings providing domestic mobile communications services according to Article 5 of the Regulation. There is no support in the Roaming Regulation for customers of MVNOs not being allowed to benefit from the decoupling provisions. The same applies at a service provider level: all undertakings providing domestic mobile communications services are covered by the obligation to decouple their customers for roaming, and necessary facilities and services must be provided free of charge. This rule applies both to MNOs and MVNOs.

In the case of MVNOs having these facilities supported by host providers (the typical case a reseller), it is the MNO who must provide the corresponding technical facilities to the ARP. However, as argued by some stakeholders, the obligation is for the MVNO, who is the one having control of the customers. In this regard, BEREC has added a text stating that the host is entitled to charge fair and reasonable charges for the cost incurred in providing these functionalities for MVNO customers.

### **Information required from access seeker, type of Information required before conclusion of an access agreement and information required on an ongoing basis, Guideline 33-35**

In general, operators agree with BEREC's approach and state that the information should be sufficient to allow the DP to provide all relevant services. One operator commented that it was important that ARPs commit to complying with relevant standards and technical requirements for implementing the structural solutions and relevant rules in order to ensure network security and integrity while mitigating the risks of fraud. Financial safeguards would also be justified.

Another operator suggested adding that the DP should indicate how long the implementation would take and if they meet the maximum implementation time or if they had many concurrent requests. BEREC did not amend guidelines 33 – 35 (previous numbering – now guidelines 34 - 36), but suggests amending guideline 1 (previous numbering – now guideline 30) and 31 (new), which handle timing issues and guideline 29 on prioritization of requests to reflect the comment with regard to the implementation time. The comment on ARPs to commit themselves to comply with relevant standards is already addressed in guideline 3.

## **Customer Profile, Guideline 36**

Opinion is divided on this issue regarding the customer profile. Some stakeholders argue that disproportionate costs are needed to implement a hybrid profile and claim not to allow for a different billing profile for the customer in the ARP than the profile they already have in the DP. These high costs are used as an argument for considering the implementation of the hybrid profile as being a disproportionate provision not supported in the regulation that does not explicitly and clearly address the issue of the hybrid profile.

Other stakeholders request the application of fair and reasonable prices for the hybrid profile or to implement a simplified single IMSI flavour, where real time information for postpaid customers is supplied just for data services.

Another section of stakeholders agree on implementing the hybrid profile following the specifications agreed in the industry platform for implementing a hybrid profile, asking for not extending what is agreed in this platform.

BEREC's view on this issue is still that it is very important for ARPs to be able to offer prepaid services even when the customer has a postpaid billing profile in the domestic services. As stated by one of the respondents, roaming is a service that is not to be used in general continuously, and the ability to offer prepaid service will be key to developing competition and reinforcing competition at the retail level, something which is good not only for customers, but also for the whole sector to allow for a more natural working of the market.

BEREC also understands that the implementation of the hybrid profile has relevant costs attached to it, and allows room for some adaptation and some minor simplifications to the ones that have been agreed up to now in the stakeholders group. For now, BEREC will maintain the guideline as it is, stressing the relevance of ARPs being able to offer both profiles, and will follow the work of the industry platform, whose output will be the reference to implement decoupling interfaces.

## **Interfaces to be provided free of charge by domestic providers, Guideline 37**

In general, stakeholders agree on the contents of this guideline and have not identified the need to extend this obligation. Some stakeholders ask for a change in the title from "functionalities" to "interfaces" to make clear that any functionality is to be offered as part of interfaces that are being defined in the industry platform. One stakeholder has requested clarification of the meaning of bullet 2.

Regarding the last sentence, there are also some considerations from one stakeholder about the difficulty to demonstrate the quality of the service offered to end users, as there is not a "standard of service" for roaming. In the last paragraph too, there is an issue of the case of operators owning specific platforms but not using them for their customers in roaming, where offering interfaces for the ARP can be challenging implying a higher burden for providing the service for the ARP when it is not supplied to its customers.

There is also one proposal stating that no restrictions of VoIP traffic will apply, and a request to include an interface to provide customers' location data to the ARP. Another proposal requests a restriction of the interfaces offered in line with the simplified single IMSI proposal addressed in the discussion for the guideline related to the customer profile (conclusions on this issue in section 9)

BEREC changed the title of the guideline agreeing that it better reflects the contents of the guideline. A clarification has been added in bullet 2. Regarding the lack of a “standard of service” to measure that the service offered to the ARP is as good as the one offered to its own customers, the guideline has been “relaxed” as the burden of the proof can be very challenging in specific cases, notwithstanding that if any discrimination can be reasonably demonstrated, the contents apply.

Regarding the restrictions on VoIP, there are no specific “network neutrality” rules for decoupling and all the provisions on this issue for the rest of the services apply also in this case. BEREC prefers to address network neutrality use in a more general context to allow for evolution of the regulation for all Electronic Communication Services. BEREC has not considered any other extension of the obligations, as any additional obligation should be clearly justified as a need to provide regulated roaming services by the ARP and there is no demonstration for a strict need to support any additional feature in these interfaces being provided for free.

### **Maximum wholesale charges for ARPs for regulated calls, SMS and data, Guideline 38**

Some MNOs take the view that the guideline should also apply to MVNOs and resellers, and not only to DPs operating a terrestrial public mobile communication network. They suggested deleting “operating a terrestrial public mobile communication network”. One stakeholder had the opposite view saying that BEREC should instead clarify that MVNOs and resellers do not have to comply with the wholesale caps.

Taking into account comments received, BEREC is of the opinion that when the wholesale traffic services are provided by the host network (DP operating a terrestrial public mobile communication network) for the MVNO customers, the host network (DP operating a terrestrial public mobile communication network) of the MVNO or reseller being the domestic provider, has to provide these traffic wholesale regulated services. The host network therefore is allowed to charge, as a maximum, the wholesale cap prices following Arts 7, 9 and 12 of the Roaming Regulation. When the MVNOs is not using roaming wholesale services from their host, it is the MVNO who must provide also these wholesale services for voice, SMS and data services and they are not allowed to charge anything else above the cap according to Arts 7, 9 and 12 in the regulation.

In order to clarify this, BEREC added a sentence to the guideline stating that in the event that the domestic provider is a MVNO or reseller and its host network provides the roaming services for the retail customers, the host network shall supply the wholesale regulated roaming services for the ARP following Articles 7, 9 and 12 in the Roaming Regulation (EC) No. 531/2012.

### **Termination of incoming calls and outgoing SMS, Guideline 39**

About half of the stakeholders agree with BEREC’s approach set out in this guideline. The rest are of the opinion that this guideline is not covered by the Regulation. But most of them would accept to give access under commercial terms, and prices should be set at a level where they can recover full costs including payments to the visited network, transit providers as well as internal costs.

Another stakeholder claims that the guideline should not only apply to DPs but also to MVNOs and resellers.

BEREC is still of the opinion that these services should be offered at fair and reasonable prices as these services are a crucial part of regulated roaming services, hence not regulated. Guideline 33 (MVNOs and resellers being domestic providers - new) makes clear that MVNOs and resellers are also included and thus have to offer these services.

Therefore this guideline remains as it was originally drafted to reflect the comments made by stakeholders, but only incorporates some minor changes for clarification.

### **Voice Mail Services, Guideline 40**

The majority of stakeholders did not comment or agreed with the guideline. One stakeholder argues that it was important to notice that all functionalities within and behind the voicemail system should not be offered free of charge but required agreement between DP and ARP based on commercial terms.

BEREC considers an amendment of this guideline not to be necessary.

### **Extra-EEA services to customers roaming in the EEA, Guideline 41**

Most stakeholders (among them, all of the MNOs) do not agree with this guideline and suggest deleting it. In their opinion extra-EEA services are outside the scope of the Regulation and therefore must not be offered by the DP to the ARP. MNOs argue that it should be up to the decision of the DP to provide these services or not. Prices should be set at a level that covers full costs in the event that these services are being provided by the DP.

This is also in part the notion of the High Level Technical Requirements document elaborated by the industry platform, where it is the DP who decides if to provide also extra-EEA services or only intra-EEA services, but not considering both alternatives depending on the decision of the ARP, stating that otherwise it would be too complex to have different configurations for different ARPs.

On the other hand, some stakeholders support BEREC in stating that access to these kinds of services must be allowed.

BEREC is still of the opinion that access to extra-EEA services, when roaming within the EEA, has to be granted by the DP. It would otherwise be very inconvenient and confusing for customers to receive two bills for roaming within the EEA, namely one from the ARP and the other from the DP.

With regard to the comment of some stakeholders saying that if a DP decides to offer intra- and extra-EEA services as bundle, BEREC added a paragraph to the guideline addressing this issue and to meet the concerns that extra-EEA services are not price regulated and DPs could charge excessive prices from ARPs. Charges for ARPs should be fair and reasonable, so that the ARP is able to compete at the retail level.

So, in summary, BEREC has been sensitive to the need to reduce complexity avoiding different flavours depending on ARPs request on including or excluding extra-EEA services, allowing the DP to include both intra and extra-EEA services in a bundle, but in this case, as the ARP has no choice, prices for extra-EEA services should be fair and reasonable. BEREC expects that, considering the complexity of differentiating between intra and extra-EEA services, in most cases ARPs will have the ability to offer also extra-EEA services, something convenient for customers.



## **Value added services, Guideline 42**

In the public hearing and in the stakeholder responses it was made clear by stakeholders that this guideline required some clarification. Apparently some stakeholders think that the guideline implies that rates for premium services are under the cap, while BEREC's intention is to cover only transmission charges and BEREC has clarified this in the amended guideline. Other stakeholders question special rate/ value added services as being regulated roaming services at all. They advocate that these kinds of services should only be made available to ARPs under commercial conditions and point to recital 67. Furthermore, they assume a large threat of fraud. And lastly, these services have not been considered in the TRG.

BEREC considers it important that the price level of value added services do not distort the competitive benefits (recital 43 of the Regulation). Recital 43 makes clear that the conveyance part, i.e. the traffic part which connects a customer to these kinds of services is part of the regulated roaming services. It follows that these value added services should be unbundled as well just like any other regulated wholesale roaming service. However, according to guideline 37 (Interfaces to be provided free of charge by domestic providers - new) domestic providers are not obliged to supply wholesale access to services which they do not supply to their own customers while roaming.

The non-connection part, i.e. the actual supplied value added service as not being transport or conveyance services, must be supplied under fair and reasonable conditions (recital 29 of the Regulation).

## **Functionalities to be provided by domestic providers on request, Guideline, previously Guideline 43 (in the final version deleted)**

Most of the stakeholders providing feedback on this guideline consider that this guideline should be deleted or amended or to change "shall" to "may" in the first sentence. Just a couple of responses point to these services to be offered on fair and reasonable prices or under specific conditions. The reasons argued to support this position is that having the obligation to offer more than is strictly needed to build the service provided by the ARP is outside the scope of the regulation and any agreement among stakeholders should be commercial in terms of prices, deadlines and freedom for both parts.

BEREC knew when submitting this guideline for public consultation that legal support would be challenging, but was willing to receive responses and get feedback on this issue, because it is relevant for competition from ARPs and to reducing barriers to entry.

From the evolution of the work done in the industry platforms as well as responses received, BEREC understands that a minimum set of functionalities provided behind the interfaces addressed in guideline 37 (Interfaces to be provided free of charge by domestic providers - new) to comply with the regulation is challenging enough for July 2014, and will refrain from imposing any additional obligation to allow for a smooth implementation of a minimum to allow ARPs to start competing. For this reason, and also considering that in the responses we have not identified any additional legal support to enforce provision of additional functionalities, this guideline was deleted. In light of the working of the decoupling obligation and competition from ARPs, this issue can be revisited as a part of the review to be taken in July 2016 according to the roaming regulation.

### **Fair and reasonable prices, Guideline 43**

Most stakeholders agree with BEREC's approach set out in this guideline.

One stakeholder remarks that market rate levels are not appropriate since operators, markets and countries experience different costs. Others argue that fair and reasonable should mean that MNOs are able to cover the full costs, which are related to offering the service. Another stakeholder claims that the need to minimize the overall costs of ARPs should not be considered when deciding whether a price is fair and reasonable.

Some stakeholders (potential ARPs) fear that large operators could increase market rates via internal transfer pricing techniques. They suggest that prices should be compared to market rates in other countries as well as to costs. Another stakeholder points out that prices should be set at a level that allows ARPs to replicate the offer of the DP and thus to maintain an adequate margin.

BEREC decided to keep the original wording of this guideline. In the case of a dispute it is up to the NRA to define a market rate or to determine the costs of provision.

### **Non-Discrimination, Guideline 44**

One stakeholder believes that some of these services may not be subject to the regulation in such a way that they should be supplied within the caps and thus the costs of those services may be recovered at fair and reasonable prices.

Another stakeholder argues that the principle of non-discrimination and internal/external equivalence is not included in the Regulation. Such measures would rather require a market analysis.

One stakeholder suggests some wording changes for clarification.

BEREC considers a non-discriminatory approach towards regulated wholesale access for decoupling roaming services as necessary. Without such rules domestic providers could frustrate decoupling and deter market entry. Hence this guideline is not targeted at prices but rather at the non-discriminatory provision of necessary facilities and support to make decoupling possible free of charge (Art 5 (1)). Those service which are necessary to make decoupling actually work for customers but which are not mandated by the Regulation (for example termination of outgoing SMS, extra EEA roaming services) are already addressed in the relevant guidelines. Certainly non-regulated services may not be delivered within the caps. However, BEREC sets out in the relevant guidelines which exceptions are considered reasonable.

### **Loss of service when switching domestic provider, Guideline 45**

In general, stakeholders agree with this guideline. One stakeholder recommends making information about decoupling and switching procedures available on the NRAs' websites. Some stakeholders (potential ARPs) claim that the ARP should be informed in advance by the previous/new DP. Others (MNOs) argue that there should be an obligation for the ARP to inform the customer about the loss of service when switching domestic providers.

BEREC points out that the obligation for ARPs to inform the customer is already included in the guideline. A paragraph is added to this guideline in order to reflect the comments of

some stakeholders that claim the former DP should inform the ARP when the customer switches to a new DP.

### **Service Level Agreements, Guideline 46**

Stakeholders generally disagree with BEREC on this guideline as SLAs and penalties are not included in the Regulation. Furthermore, they claim that SLAs are not being used in current roaming agreements between home MNOs and visited networks. Stakeholders also believe that the rules set out in the guideline are contradictory, such as supplying the same quality as for itself and at the same time applying the best industry practice.

BEREC is aware that SLAs are not set out in the Regulation. However, BEREC believes that a limited set of SLAs based on what can be measured and which does not depend on roaming agreements with no SLAs, can help to prevent domestic providers supplying only a limited set and quality of services to access seekers with the intention of frustrating market entry. Furthermore, BEREC regards it as futile to set out SLAs without imposing penalties..

BEREC is aware that SLA's are not included in the current roaming agreements between the domestic network and visited networks. However, as the physical access to facilities, support services and interfaces, which are necessary for the provision of decoupling of regulated roaming services, are under the control of the domestic provider, BEREC does not see a problem in incorporating SLAs for those services.

BEREC amended this guideline so as to make clear that the decoupling services are to be provided with the same service level as set out by common industry standards.

### **Charges for MMS at the wholesale level, Guideline 47**

Stakeholders point out that the wholesale billing method is determined by the DP and this is also set out in the technical requirements document elaborated by the industry platform. Their position is that BEREC Guidelines should conform to this principle set out in the aforementioned document.

Stakeholders argue that allowing different wholesale billing models for MMS is challenging and complex. Some stakeholders mention that a wholesale billing solution which delivers enough information to allow per kb or per unit charging at the retail level should be sufficient. In any case, all stakeholders argue that ARPs should work with the technical solution currently used for billing wholesale MMS, i.e. to follow the retail method of the DP. They claim that they do not have to offer a technical solution which they did not implement and that it was a waste of money investing in an obsolete service. Two stakeholders argued that a new solution should be supplied on a commercial base.

In BEREC's view the Regulation is clear such that MMS is defined as a regulated data service (Article 2 (m)), Furthermore, wholesale data services must be billed on a kilobyte basis (Article 12 of the Regulation). If a DP does not offer a MMS service to its customers, it does not have to decouple a MMS service on wholesale basis.

BEREC takes the view that ARPs must be able to choose how they bill their retail customers. The required MMS interface for wholesale billing and monitoring data usage for bill-shock monitoring should therefore provide information on the amount of MMS as well as on the volume in Kb. BEREC understands that this can be provided in one interface. Commercial agreements on different models may also be settled between DPs and ARPs.

BEREC stresses that though the outcome of the industry platform is important, the Regulation is quite clear on this matter and the industry is thus to be in line with the Regulation.

#### **4. Additional issues raised by stakeholders**

A portion of the stakeholders raised other additional issues not directly related to any of the guidelines. A couple of them raised the issue of the application of the draft VAT Directive on the place of taxation of local data roaming access, which could introduce additional complexity and additional burdens for local data roaming access providers. BEREC is aware of this issue and has contacted the EC with the aim to addressing this issue and avoiding when possible any extra burden not justified by clear reasons.

Other stakeholders request the obligation for local data roaming access providers to notify to domestic providers that they will start to provide these services. As of now, there is no justification to impose this obligation, however, this model can be considered in the industry platform if consensus is reached among stakeholders as an alternative solution for the notification addressed in guideline 30.

Other stakeholders requests that BEREC states that the obligations on transparency apply to local data roaming access providers. Although BEREC has considered the application of the bill-shock measure for local data roaming access, we have not included an obligation to send an SMS when entering the visited country, as the local data roaming access provider does not know when customers enter the country, and imposing an obligation to send an SMS each time the customer connects would be burdensome and inconvenient for customers. Local data roaming access providers must in any case inform customers about prices when contracting the service. Transparency measures are restricted to domestic providers or ARP providing the service using the single IMSI model.

Other stakeholders request that BEREC defines specific guidelines about interception and data retention for the separate sale of services. Although BEREC understands that there may be relevant issues involved on interception and data retention, this is an area where national regulation and imposition of obligations can differ among member states and it therefore prefers to leave it to NRAs taking into consideration national regulation.

Certain issues are also raised on other specific national regulation issues where the relevant NRA should have room to apply the regulation according to their national law.

Other responses include a request for further guidelines that specify the roles of DPs, visited networks and MVNOs in different scenarios. BEREC's view is that the guidelines are designed to cover all possible scenarios, and a complete analysis of all possible scenarios would be outside the scope of these guidelines, considering especially the need of the sector to have the guidelines available as soon as possible to start implementing the functionality needed for decoupling. However, this request can be considered for the future BEREC work plan to help stakeholders to apply the regulation.

Some stakeholders request in a general way for more guidelines about consumer protection issues. BEREC believes that these issues are covered sufficiently by the existing guidelines (not only in articles 4 and 5, but also in guidelines published on March 2013 for the remainder of articles). In any case, based on the experience to be collected on the separate sale of roaming, BEREC will revisit this issue in the future if needed.

Some MVNOs as well as the EAFMVO have asked BEREC to be clearer on the difference between supplying Art 3 wholesale access and supplying functionalities and network resources needed for the separate sale of roaming. BEREC has taken into consideration this request when amending relevant guidelines related to this issue.

A request is also raised by one of the stakeholders to take into consideration the special situation of French outermost regions, allowing for more time to implement the first request for decoupling for operators providing service in these regions, assuming that it is unlikely that they will receive any request and that an exemption may apply. BEREC considers that this issue can be analyzed case by case by the relevant NRA treating it as a “non general case” and allowing for more time for the first implementation after 1st of July, provided that the reasons for this delay in the implementation are sufficiently justified according to the criteria of the NRA.