

INTERNATIONAL ROAMING REGULATION

BEREC GUIDELINES ON

ROAMING REGULATION (EC) NO 531/2012

(THIRD ROAMING REGULATION)

(Articles 4 and 5 on

Separate Sale of Roaming Services)

5 June 2013

1. Introduction

Article 4 of the new Roaming Regulation requires that domestic providers shall enable their customers to access regulated voice, SMS and data roaming services provided as a bundle by any alternative roaming provider (generally home country based decoupling). It requires furthermore that neither domestic nor alternative roaming providers shall prevent their customers from accessing data roaming services provided directly on a visited network (decoupling in the visited country).

On December 14th 2012 the Commission published an Implementing Act¹ containing detailed rules on the general obligations laid down in Article 4(4) of the Roaming Regulation and on the technical solutions for the implementation of the separate sale of regulated retail roaming services. This is designed to ensure a consistent and simultaneous implementation of the separate sale of regulated retail roaming services across the Union.

Two types of decoupling models are considered in the regulation. For the first type of decoupling, where regulated voice, SMS and data roaming services are provided as a bundle, the Single-IMSI solution has been chosen. The separate sale of roaming services is provided on a wholesale basis to the alternative roaming provider, which resells the services to the roaming customer at the retail level. This basic option of resale of retail roaming services does not allow the alternative roaming provider to control which visited networks are to be used in preference to others.

For the second type of decoupling, i.e. data roaming services provided directly on a visited network, the basic requirements are the implementation and activation of the processing of data roaming traffic in the visited network and the requirement not to prevent the manual or automatic selection of a visited network.

In accordance with recital 38 of the roaming regulation and recital 24 of the implementing act, BEREC, in collaboration with the relevant stakeholders, should develop guidance on the technical elements necessary to enable the separate sale of roaming services. This document contains the guidance of BEREC and describes the main obligations for domestic providers and obligations and corresponding rights of access seekers concerning the separate sale of regulated retail roaming services. Although this guidance is not legally binding, NRAs are nevertheless required to take the utmost account of it in resolving any disputes or taking any enforcement action concerning Articles 4 and 5 of the Roaming Regulation. In particular, when NRAs make a decision, which departs from this guidance, they will be expected to state objective reasons for the departure.

The Guidelines apply to “regulated” roaming services, as defined in the Regulation, except where the Regulation explicitly applies to other services.

BEREC expects that these Guidelines will be a living document and will therefore be updated in the future in the light of having gained new experience on the application of the regulation or in the case of future changes of the regulation.

¹ Commission Implementing Regulation (EU) No 1203/2012 OF 14 December 2012 on the separate sale of regulated retail roaming services within the Union (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:347:0001:0007:EN:PDF>)

NRAs will analyse issues related to the application of the Guidelines in collaboration with BEREC and other NRAs in order to apply rules as similar as possible in all Member States.

2. General Guidelines

Guideline 1.

Access documents

In general, mobile network operators shall provide ARPs requesting access with a draft contract for such access. Even though the Regulation does not impose a Reference Offer in Articles 4 and 5 of the Regulation, BEREC considers it good practice that these guidelines and output from the industry platform could be used to elaborate access documents with the main elements in case of access requests. These documents should specify the essential network elements and services necessary for the separate sale of regulated retail roaming services, as well as interfaces offered by domestic providers to ARPs and it is also considered good practice to publish these documents on the website so that they are easily accessible for any potential access seeker. These documents shall not contain reference to any document which is not freely accessible to access seekers.

Guideline 2.

Standardization and documentation

Interfaces for decoupling should be based on common used standards from widely recognized standardization organisations like 3GPP, ETSI & OMA and on the output of the industry platform established by the Commission Implementing Regulation (Art 5) on the separate sale of regulated retail roaming services within the Union. Particularly the standards set out in the documents elaborated by the industry platform are to be considered as the main reference for interfaces. In any case, the contents of those documents are to be in line with the legal provisions. Any GSMA or any other organization reference documents and database procedures applied by MNOs for roaming purposes may be applied, provided that they are free of charge and freely available for any potential access seeker and not against any provision of the regulation and Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012.

The documents produced by the industry platform and any reference documents are best managed and kept for maintenance by those above mentioned and widely recognized standardization organizations. BEREC takes the view that industry is responsible for making sure that the above arrangements work smoothly.

Guideline 3.

Authorisation regime for ARPs

The authorisation regime for the ARP is not different than the one for any other ECS provider, and no “EU licence” is required. ARPs should follow any notification procedures defined by the Member State where the service is contracted.

Guideline 4.

Identity of access seekers

Any undertaking which is entitled, under the law of the Member State in question, to provide retail roaming services to roaming customers enjoys the right to access facilities and related support services relevant for the separate sale of roaming services under the terms of Article 5 of the Roaming Regulation, in order to serve roaming customers. This includes MNOs, full and light MVNOs, as well as resellers.

Requests presented by enablers/aggregators are valid if they act on behalf of an ARP and they are therefore entitled to negotiate access sufficient for and limited to the purpose of serving EEA providers of retail roaming services. Where enablers/aggregators provide the service on behalf of ARPs, DPs should be informed about who they are representing. All involved parties are to make sure they identify liability for cases of fraud, misuse or breach. In case that the connection via an enabler/aggregator entails additional costs for the other party (as monthly fees or any additional fee to be paid to the hub), the party requesting to connect via the enabler/aggregator will carry these additional costs for the other party.

Guideline 5.

ARP services used by customers

In the case of Single-IMSI, any customer can use the services of just one ARP at the same time. This does not apply to the usage of local data roaming services, as customers can subscribe to several contracts with different providers in each visited country at any time, even if they are using the service of an ARP supported by the Single-IMSI model.

Guideline 6.

Fraud management

Both parties (ARP and domestic provider) should agree on fraud prevention procedures concerning fraudulent or unauthorized use by roaming customers to comply with legal obligations and take the usual steps to avoid fraud and the misuse of roaming services. Procedures and technical tools to prevent fraud may be agreed between the ARP and domestic provider to the extent necessary to comply with legal obligations or in accordance with normal commercial practice. Output from the industry platform should give guidance on how to establish and apply common used fraud management procedures. In case of fraud, provided the DP has followed the agreed procedures referenced in the first part of the guideline, the ARP remains responsible for its own customer's behaviour and is liable for any fraud or misuse by its customers.

Guideline 7.**Exceptions allowing prevention of the separate sale of roaming for specific customers**

The general rule is that DSP cannot block or bar individual retail customers. But, in exceptional circumstances the DP may be allowed to prevent them from accessing ARPs on a temporary or a permanent basis. This may be done either upon request of the contractor (the entity holding the subscription) or when circumstances justify it which may include non-payment of services, fraud based on common fraud management procedures between the ARP and the domestic provider or other objectively duly justified reasons. This approach is without prejudice to national procedures regarding switching providers in accordance with Article 30 of the Universal Service Directive.

Guideline 8.**M2M services**

There are no restrictions in the regulation, which exclude M2M services from the regulation, therefore decoupling does apply to these services based on a public communication network as defined in Article 2(d) of the Framework Directive². BEREC recognizes that there are certain situations (for example M2M configurations) where decoupling of M2M services is not technically possible and consequently under objective and justified reasons decoupling does not apply for certain M2M services. For example, an exemption from the decoupling obligation of local data roaming services would be allowed, but only when there are technical implementation problems, which are not under the influence of the DP. In accordance with Article 15 of the Roaming Regulation, price information and the cut-off limit does not apply to M2M services.

3. Guidelines for local data roaming services**3.1. General Guidelines for local data roaming services****Guideline 9.****Customers' right to return to the default roaming mode**

When a customer finishes using local data roaming services (for example: returning to the home country, switching countries, etc.) or has given explicit consent to terminate the usage of local data roaming services, the customer is entitled to quit local data roaming services and immediately return to traditional roaming. Local data roaming providers should not prevent roaming customers from returning to the default mode with the DP or ARP providing the roaming services. ARPs providing local data roaming services should guarantee access to transparent up to date information on applicable prices and tariffs, and provide points of

² Directive 2002/21/EC of The European Parliament and of The Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)

contact in case of problems. Further, standard terms and conditions in respect of access to, use and termination of local data roaming services should be provided. Customers must also be informed by the ARP providing local data roaming services about any services that may not be available such as MMS, VPNs or other special services supported by the donor roaming provider.

Guideline 10.

Local data roaming services outside the EEA

The regulation does not set out any rules that customers should also have access to unregulated roaming services provided directly by a visited network in a country outside the EEA. Nevertheless, domestic providers are free to allow their customers the use of local data roaming service providers outside the EEA, but no obligations to do so.

Guideline 11.

Use of Universal APN by non EEA roamers

There is no provision in the Regulation to prevent non EEA customers from using the Universal Access Point Name (APN) in EEA countries and such service may be provided on a commercial basis.

Guideline 12.

Rights to publicise and sell services by the ARP providing local data roaming services

ARPs providing local data roaming services are entitled to carry out marketing activities and to sell roaming services in the same way as any other mobile provider³ and in full accordance with Article 13 of the Directive on privacy and electronic communications⁴.

3.2. Obligations for donor roaming providers

Guideline 13.

Universal APN

By 1st July 2014 all EEA operators must allow by default the use of the Universal APN within the EEA. Exceptions can be considered when the customer deliberately requests not to allow the use of the Universal APN (for example corporate customers may not want to use local data roaming services in their terminals for security reasons). This universal APN

³ For example landing pages when using the universal APN and other subscription models

⁴ Directive 2002/58/EC of The European Parliament and of The Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)

cannot be used by the donor roaming provider to supply traditional roaming data services while the customer is abroad. The Universal APN is “euinternet”.

Guideline 14.

Barring and blocking ARPs providing local data roaming services

Home networks are generally not allowed to either bar or block ARPs providing local data roaming services. This includes: not barring customers using local data roaming services, not disrupting active local data roaming services and not impeding the contracting of local data roaming services in real time for any potential local data roaming customer. Customers shall be free to contract and use services from any ARP that provides local data services without any restrictions.

Exceptions may be considered entitling home networks to bar ARPs providing local data roaming services due to non-fulfilment of reasonable technical conditions, non-payment of services or other objectively duly justified reasons.

Guideline 15.

Traffic steering

Traffic steering mechanisms (applied either at the home network, at the terminal, or at the SIM) should not prevent any customer supported in the network used for providing regulated roaming from connecting to their chosen ARP providing local data roaming services. Additionally, end users who have chosen to use local data roaming should not be disconnected from their chosen network due to traffic steering or other mechanisms. Upon request of the customer, the domestic provider must supply information on how to overcome steering in order to use local data roaming services.

Guideline 16.

Manual selection of networks in the terminal

Domestic providers and ARPs are not allowed to apply any restriction or limitation in terminal equipments⁵ and SIM or networks to prevent manual selection of networks and local data roaming service use while customers are roaming in the EEA.

⁵ BEREC considers 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.

Guideline 17.

Automatic reconfiguration of the terminal

Donor roaming providers have the right to reconfigure the user's terminal once the terminal is connected to the access network used by donor roaming provider in the home country, when the customer is outside the EEA or upon request of the customer.

Guideline 18.

Conclusion of roaming agreements with ARPs

In order to allow their customers to use local data roaming services in the visited country, domestic providers operating a terrestrial public mobile communication network shall be obliged to conclude a roaming agreement with the visited network that wants to provide this service on request. The roaming agreement will follow the conditions included in the reference offer of the network used by the ARP providing local data roaming services⁶. The exceptions allowing refusal of a request by the home network defined in the BEREC guidelines on Article 3 of the Roaming Regulation apply also in this case.

Guideline 19.

Supply of other services when customers are using local data roaming access

The donor roaming provider is obliged to continue providing all the roaming services it normally offers to its customers, except for data roaming services when a customer has subscribed to local data roaming services. However when the ARP providing local data roaming services, who is also acting as the visited network, is not able to supply at the wholesale level voice and/or SMS services, the donor roaming provider is not required to provide the unsupported services at the retail level. The ARP providing local data roaming services must inform the potential users of these limitations prior to contracting.

When the ARP providing local data roaming services is able to offer voice and SMS services at the wholesale level, the donor roaming provider must not unduly change the quality parameters and charges compared to if the customer was not using local data roaming services.

3.3. Responsibilities of ARPs providing local data roaming services

Guideline 20.

Restoration of APNs by local data access providers

In the event that the ARP supplies to customers using local data roaming services any application to manage an APN switch, APN restoration facilities shall be included as part of

⁶ According to BEREC Guidelines on Article 3 tariffs are negotiable but limited by the cap.

these functionalities. Customers are to be informed in any case about how to restore these APNs manually in a clear and easily accessible way at any moment. Automatic APNs restoration shall not be prevented when customers finish using local data roaming services and want to return to traditional roaming services. The automatic restoration procedure shall not conflict with any manual configuration done by the customer when using local data roaming services.

Guideline 21.

Separate bill shock measure for local data access

Bill shock measures are to be provided for customers using local data roaming services in order to control their expenditure on data services. These customers are to be billed for the data services they use, and billing information on local data roaming services provided directly on a visited network shall, if parties have not commercially agreed on an alternative set-up, not be sent to the donor roaming provider.

Guideline 22.

Local data access notification to donor roaming providers

In order to allow the donor roaming providers to perform selective barring for customers not using local data roaming services without blocking local data roaming services, improving the user experience, to suspend steering or to update the SIM, the local data roaming service provider shall collaborate with the donor roaming provider when needed to comply with the Regulation providing that any information to be sent is to be used for the above mentioned purposes. A possible way to collaborate is to send a notification when a customer contracts or finishes using local data roaming services upon request of the DP.

It is important to note that selective barring should not block, disrupt or prevent any potential customer from contracting and using local data roaming services. Contracting to local data roaming services should not require a preregistration due to the use of selective barring.

4. Guidelines for Single-IMSI

4.1. General Guidelines for Single-IMSI

Guideline 23.

Switching between roaming providers

The switch to an ARP shall be done within a maximum of one working day, which BEREC considers to be 24 hours on the following working day after receiving the request from the ARP.

For example if a request is received at 9 am on Monday, the switch to an ARP shall be done no later than 9 am on Tuesday, or in case Tuesday is a non a working day, no later than 9 am on Wednesday.

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

When a customer terminates the contract with the ARP, the ARP informs the domestic provider about the termination without undue delay and the customer falls automatically back to the domestic provider's previous contract tariffs or the eurotariff. In any case, the retail customer is to be notified about the fallback tariff when subscribing with the ARP or when initially subscribing with the DP. In case the previous tariff no longer exists, the customer falls automatically back to the eurotariff.

Guideline 25.**ARP Subscription procedure**

Domestic providers and ARPs should agree on a user friendly subscription procedure according to Art 5 para 3a) Roaming Regulation with a compatible timetable for a commercial launch by 1 July 2014. The user has to explicitly consent to the switching. BEREC considers that this procedure must resemble as much as possible the procedures applied for common switching provider procedures in each country, especially with regard to issues of customer interaction with the domestic provider and ARPs.

4.2. Obligations for domestic providers applying from 1st July 2014**Guideline 26.****Reasonable requests**

Article 5 Roaming Regulation requires domestic providers to grant all reasonable requests for access which may be necessary for the separate sale of regulated retail roaming services. Whether or not a request is reasonable will always be judged on the merits of the case. But as a general rule, BEREC expects that any request which does not require deployment of an undue level of resources to implement it would be regarded as reasonable. Requests for decoupling which are not requested for the purpose of providing regulated retail roaming services are not covered by Article 4 and 5 Roaming Regulation, the Implementing Acts, or by these Guidelines.

Guideline 27.**Refusal of requests of decoupling**

Request for access to provide decoupling services may not be refused except for objectively duly justified reasons, backed up by evidence where appropriate. The domestic provider may not, during consideration of the request, seek information on the commercial nature of the services which the ARP plans to offer. Refusal on the basis of an unfounded suspicion of a particular behaviour or outcome is not justifiable. Full reasoning for any refusal must be provided in writing to the alternative roaming provider.

Neither explicit nor constructive refusal on the basis that access to decoupling would be available from another provider is justifiable.

Guideline 28.

Prioritisation of requests

It is understood that prioritisation of requests may be necessary. Nevertheless, requests must be dealt with according to a non-discriminatory process, which shall be available on request. The commercial interests of the domestic provider should not be a relevant consideration in deciding on prioritisation.

Guideline 29.

Timing Issues for requests after 1st of July 2014

An access agreement should be implemented as soon as possible but in any case it should in general not take longer than the time limits set out in the Roaming Regulation for Art 3. This means that domestic providers should provide the ARP with a draft contract for access at the latest one month after the initial receipt of the request. The access should be granted within a reasonable period of time generally not exceeding three months from the conclusion of the contract.

Guideline 30.

Time for implementation of the decoupling method

The implementation of the separated sale of roaming services by domestic providers should be available for a sufficient time prior to commercial launch by 1 July 2014 to allow all relevant testing procedures to be carried out to enable full implementation in case of an ARP request. Availability of a pre-production or a commercial platform could be enough to allow ARPs and domestic providers to test interfaces and functionality before commercial operation.

If ARPs want to offer retail services for customers on 1st of July 2014, they should request access from the domestic provider six months in advance, two months to conclude commercial negotiations and the following four months to implement all the functionalities as well as to carry out all relevant testing procedures.

Guideline 31.

Wholesale Bundling of services

According to the Regulation the domestic provider is required to offer a wholesale bundled offer including voice, SMS and data roaming services. The ARP must be able to offer customers to subscribe to any combination of those three regulated services as a bundle where the retail price can be differentiated for the services included in the bundle .

Guideline 32.

MVNOs and Resellers being domestic providers

Domestic providers that are required to provide decoupling facilities as well as resale roaming access to ARPs can be MNOs, MVNOs, resellers, or any other entity offering retail mobile services in the customer's home country. If the domestic provider requested to resell roaming access is technically unable to offer the required functionalities, for example due to the level it holds in the value chain (resellers and light MVNOs), the obligation for providing the necessary functionalities extends to the service providers capable of providing these functionalities, located upstream from the domestic provider, including the host MNO. The upstream provider is therefore allowed to charge the domestic provider fair and reasonable prices for providing these functionalities on behalf of the DP to the ARP.

Guideline 33.

Information required from access seeker

Domestic providers must inform the ARP promptly and in a timely manner of the information needed to make an adequate specified access request (including necessary facilities). Information required by domestic providers shall be limited to the minimum necessary to allow them to provide an efficient access service, together with any evidence which may be necessary under the relevant national law to establish that the ARP is entitled to seek access under Article 5 Roaming Regulation. Information may be required at the outset of discussions about access. Further information may be required throughout the life of the access agreement.

Guideline 34.

Type of Information required before conclusion of an access agreement

BEREC expects that non-technical information will be limited to that which commercial parties would normally seek from one another at the outset of any agreement. ARPs should in particular not be expected to provide any details of the service they expect to provide where these might reasonably be regarded as commercially sensitive.

Required technical information for the separate sale of roaming services must be limited to technical information on, for example, interfaces and protocols used by the access seeker which is needed to assess compatibility with the services offered by the access provider. Any technical information that is not needed to assess compatibility with the requested services by the access seeker is not required in advance of negotiations.

An efficient method of establishing communication between the parties so that access requests can be processed and implemented without delay should be established at the outset.

Guideline 35.**Information required on an on-going basis**

Domestic providers may lay down a reasonable procedure for the regular supply and update of forecasts by the access seeker of its future demand (including, where appropriate, the geographical nature of that demand), where this is necessary to allow the domestic provider to dimension its service efficiently or to provide the necessary resources.

The degree of foresight or precision required should not be excessive. It should be understood and accepted that demand is inherently uncertain and will depend in particular on the commercial success of ARP's retail service.

Guideline 36.**Customer profile**

Article 5 on the implementation of the separate sale of regulated retail roaming services explicitly addresses in points (b) and (c) that the technical solution to be applied to implement decoupling should allow all customers' billing profiles to be served on competitive terms and effectively foster competition. There is no provision in the regulation or in the implementing acts restricting the billing profile of the customer when using an ARP, therefore the ability of the ARP to offer prepaid and/or postpaid services is key in fulfilling these criteria.

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

According to the regulation, domestic providers shall supply free of charge a minimum set of interfaces for decoupling to allow an ARP to provide separate retail roaming services. Without prejudice to the generality of this requirement, this shall include in particular:

- Online charging systems interconnection to allow ARPs to manage prepaid customers using their own on-line charging system. This interface will be provided by using standard real time protocols;
- Support needed from the domestic provider for customer provision related to the required collaboration among actors for customer subscription/un-subscription and basic support for billing information both on prepaid and postpaid necessary to perform retail billing by the ARP;
- Basic support for allowing the ARP to implement the bill shock measure.

Domestic providers are not obliged to offer to the ARP more wholesale services than they use for their own customers (for example, if the domestic provider does not have prepaid roaming customers, the domestic provider is not obliged to provide support for prepaid services by the ARP). Additionally, the decoupling service provided should be demonstrably such that an ARP would be practically and economically able to offer its end users a specification and standard of service at least as good as those offered to end users of the domestic provider.

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

Domestic providers shall supply all wholesale regulated roaming services for the ARP following Articles 7, 9 and 12 in the Roaming Regulation (EC) No. 531/2012. 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 these wholesale regulated roaming services for the ARP following above mentioned Articles.

Termination of incoming calls and outgoing SMS

The wholesale roaming charge does not normally include the costs for termination of outgoing roaming SMS or incoming roaming voice calls. Therefore these termination services cannot be considered as forming part of a wholesale roaming resale service. These services must nevertheless be offered to ARPs having access to the separate sale of roaming services. Fair and reasonable prices may be charged.

A fair and reasonable charge for termination of incoming calls may be levied to recover the costs to the domestic provider arising from termination of calls received by customers of the ARP.

A fair and reasonable charge for termination of outgoing roaming SMS shall take account of income received by the domestic provider for termination of incoming roaming SMS received by customers of the ARP, taking account of any commercial agreement for sharing such income.

Objective justification of the basis of the charge must be made available to the access seeker on request concerning the necessity of such a charge to avoid providing services at a loss and the reasonableness of the level.

Where the average termination charge paid per outgoing SMS is significantly less than the average termination charge levied on incoming SMS, a charge to ARPs is unlikely to be justifiable.

There should be no charge for termination of incoming SMS to ARPs.

Guideline 39.**Voice mail services**

The domestic providers (or the entity in the value chain that facilitates voice mail services on behalf of the domestic providers) is obliged to maintain the provision of voice mail services to customers opting for an alternative roaming provider. The costs charged to customers should not exceed the regulated caps provided in Art 8 of the roaming regulation.

Guideline 40.

Extra-EEA services to customers roaming in the EEA

The regulation does not require domestic providers to allow alternative roaming providers to provide access for the purposes of retail provision of unregulated services (in particular roaming voice calls and SMS messages where either sender or recipient is outside the EEA). However, BEREC considers that the great majority of customers would find it confusing and inconvenient to have one retail supplier of intra-EU roaming services and another supplier of extra-EEA services when roaming in the EEA. For that reason, BEREC takes the view that access for decoupled service must include extra-EEA roaming services for Mobile originated calls/SMS from EEA to outside the EEA and Mobile terminated calls/SMS from outside the EEA to the EEA, when requested by the alternative roaming provider. These extra-EEA roaming services are to be charged by the domestic provider at fair and reasonable prices.

If DPs decide to offer intra- and extra-EEA services only as a bundle in order to minimize complexity, the price for extra-EEA services must be fair and reasonable.

Guideline 41.

Value added services

At the wholesale level the conveyance of value added services has to be provided inside the EEA by the domestic provider (or the entity in the value chain that facilitates value added services on behalf of the domestic provider) on request of the ARP based on wholesale cap prices (Recital 43 of the Regulation). Domestic providers are allowed to charge an additional 'non-conveyance' charge to ARPs at fair and reasonable prices (Recital 29 of the Regulation).

BEREC is of the opinion that this obligation is non-discriminatory, i.e. the domestic provider does not have to comply with this obligation when its roaming customers do not have access to value added services while roaming.

Guideline 42.

Fair and reasonable prices

Where these Guidelines specify "fair and reasonable" prices, compliance with this requirement will often necessitate consideration of the individual circumstances of the case. In dealing with any complaint about non-compliance or any other dispute, NRAs will in particular take into account the following considerations:

- whether there is a "market rate" for such services (or broadly comparable services). Any charge significantly in excess of the market rate is unlikely to be reasonable.
- the cost of provision and the magnitude of the resulting return to the domestic provider. Such returns should not be excessive
- the need to minimise the overall cost of the ARP, in order to facilitate the objectives of the Regulation to promote retail competition.

The basis of fair and reasonable charges must be made available to the access seeker on request. This does not imply that the access provider needs to provide commercially sensitive information to the access seeker.

Guideline 43.

Non discrimination

Where access to facilities and support services that are necessary for the separate sale of regulated roaming services is required to be offered in accordance with the provision of the necessary functionalities for the separate sale of regulated roaming services, all terms and conditions of supply (except price) must be similar to those relevant for the provision of such access to facilities and support services to the domestic provider itself. Exceptions must be objectively duly justified. Without prejudice to the generality of this requirement, it applies in particular to:

- a) The availability of necessary access to facilities and support services
- b) Maintenance periods
- c) Repair times in case of malfunctions
- d) Process of ordering and delivery
- e) Process of announcing new or redefined access to facilities and support services
- f) Process of supply of information

Guideline 44.

Loss of service when switching domestic provider

Considering that it would be very complex to maintain ARPs' services in all case when customers change their domestic provider (even if the customer maintains the number) it should be made clear in the ARP contract that customers may lose their alternative roaming service, if they choose to switch their domestic service provider.

The former domestic provider shall inform the ARP in the event that the customer terminates the contract for domestic services.

Guideline 45.

Service Level Agreements (SLAs)

The offer of access for decoupling shall incorporate a Service Level Agreement which sets out clearly the standards of service which the alternative roaming provider can expect. Where absolute benchmarks are not available, in particular where the quality of service in question depends on the performance of other network operators (visited networks), it is acceptable to define standards by reference to those experienced by the MNO's own retail customers. The agreement shall incorporate Service Level Guarantees, with appropriate compensation in the event of failure to meet those guarantees, on all aspects of performance which are critical to the provision of the alternative roaming provider's own

retail service. In particular, BEREC considers that minimum service levels should generally be specified for ordering, delivery, normal operation, maintenance and repairs. The specified minimum service levels should be at least as good as those normally achieved by the MNO in respect of services provided to itself and should, in addition, be consistent with common used industry standards, if applicable.

Compensation for failure to meet agreed minimum service levels should be appropriate to incentivise achievement of those levels and should not be less favourable than normal commercial practice.

Guideline 46.

Charges for MMS on the wholesale level

The euro-data tariff has to be charged on a per kilobyte basis except for MMS, which can be charged on a per unit basis at the retail level. At the wholesale level MMS is billed as a regular data service, which is to be on a per kilobyte basis. The domestic provider must offer an interface free of charge that supplies the ARP with adequate wholesale billing information to allow retail billing of MMS either on a per kilobyte basis or per MMS sent.

Definitions

Alternative roaming provider: means a roaming provider different from the domestic providers.

APN – identifies a data (service) access server in a network where a user is connected to.

Domestic provider: means an undertaking that provides a roaming customer with domestic mobile communications services.

Donor roaming provider: means the roaming provider that is currently providing roaming services to a customer.

Home network: means a public communications network located within a Member State and used by the roaming provider for the provision of regulated retail roaming services to roaming customers.

Local data roaming service: means a regulated data roaming service provided, temporarily or permanently, to roaming customers directly on a visited network, by an alternative roaming provider without the need for roaming customers to change their SIM card or mobile device.

Roaming customer: A 'roaming customer' is "a customer of a roaming provider of regulated roaming services, by means of a terrestrial public mobile communications network situated in the Union, whose contract or arrangement with his roaming provider permits Union-wide roaming".

Subscriber Identity Module: (SIM) is in the present document also used to describe USIM and CSIM applications.

Visited network: means a terrestrial public mobile communications network situated in a Member State other than that of the roaming customer's domestic provider that permits a roaming customer to make or receive calls, to send or receive SMS messages or to use packet switched data communications, by means of arrangements with the home network operator.

Abbreviations:

3GPP	3rd Generation Partnership Project (3GPP)
APN	Access Point Name
ARP	Alternative Roaming Provider
BEREC	Body of European Regulators for Electronic Communication
DP	Domestic Provider
ECS	Electronic Communication Services
EEA	European Economic Area
ETSI	European Telecommunications Standards Institute
EU	European Union
GSMA	GSM Association
HLR	Home Location Register
IMSI	International Mobile Subscriber Identity
M2M	Machine 2 Machine
MNO	Mobile Network Operator
MVNO	Mobile Virtual Network Operator
NRA	National Regulatory Authority
OMA	Open Mobile Alliance
SIM	Subscriber Identity Module
SLA	Service Level Agreement
SMS	Short Messaging Service