

BEREC Report on the outcome of the public consultation on the BEREC Guidelines on the Wholesale Roaming Guidelines



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Executive summary

The BEREC Guidelines on the application of Article 3 of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (Wholesale Roaming Guidelines) replace the BEREC Guidelines of 2017 (BoR (17) 114) which concern the wholesale roaming access obligations for mobile network operators (MNOs) and the rights for access seekers on the application of Article 3 of Regulation (EU) 531/2012 as amended by Regulation (EU) 2015/2120 and Regulation (EU) 2017/920. The revision of the BEREC Guidelines of 2017 was necessary to include the changes introduced by the new Roaming Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (hereinafter – Roaming Regulation).

The Wholesale Roaming Guidelines contain guidance on the application of the articles relating to wholesale roaming services in the Roaming Regulation which BEREC is required to publish by 5 October 2022 as set out in Article 3(8) Roaming Regulation. The guidance does not represent an official legal interpretation. Nevertheless, NRAs are required to take the guidance into utmost account when resolving any disputes or taking any enforcement actions concerning Article 3. In particular, where NRAs make a decision which departs from this guidance, they will be expected to state objective reasons for the departure. These Guidelines are complementary to the BEREC Retail Roaming Guidelines.

During the public consultation, stakeholders were requested to provide comments on the Wholesale Roaming Guidelines and specifically include references to relevant paragraphs or guidelines in the document.

Stakeholders were invited to submit their inputs on the draft Wholesale Roaming Guidelines by 24 June 2022. Contributions received after the above-mentioned deadline were not taken into account.

All stakeholders were invited to submit their contributions to the dedicated e-mail address PC_Wholesale_GLS@berec.europa.eu.

All contributions will be published on the BEREC website, taking into account requests for confidentiality and restricted use of personal data. Any such requests were required to clearly indicate which information should be considered confidential.

1. Introduction

This report summarises the responses sent by stakeholders to the public consultation on the Wholesale Roaming Guidelines (hereinafter – Guidelines). The BEREC public consultation was open from 25th of May to 24th of June 2022 with the objective to get insights from all types of stakeholders (consumers, companies in the telecommunications sector, digital companies, other companies, institutions, associations, etc.) in the context of Guidelines.



In response to the consultation, BEREC received 13 contributions from the following stakeholders:¹

1. Bouygues Telecom (hereinafter – Bouygues),
2. ETNO-GSMA,
3. Liberty Global,
4. MTX Connect,
5. MVNO Europe,
6. NOS Comunicacoes, S.A, (hereinafter – NOS)
7. Polkomtel,
8. Section of Electronic Communications Operators (hereinafter – SOEK),
9. Spusu,
10. Telefonica,
11. Transatel,
12. 1&1 Telecom GmbH (hereinafter – 1&1),
13. Confidential contribution (hereinafter Contributor).

BEREC is grateful for receiving the submissions and has carefully considered them, and sets out its summary of stakeholders' assessments and responses in this report. The non-confidential responses are also published on BEREC's website and can be consulted for the complete version of respondents' submissions.

2. General comments

Overall, the stakeholders welcome the opportunity to provide feedback on the Guidelines (**Telefonica, Liberty Global, Spusu, 1&1, Transatel, NOS, MVNO Europe**) and understand the reason for BEREC to review the Guidelines. **Liberty Global** considers that the Guidelines provide essential legal certainty, while ensuring that the provisions of the Regulation are applied in an appropriate and proportionate manner.

However, **Telefonica** finds that the Guidelines should be updated according to the Regulation while providing proportionate guidance under a future-proof vision, and thus requested to avoid measures that could lead to market distortions or restrictions to new business developments. **Liberty Global** highlighted that there are a number of areas where further clarification would be helpful, such as further clarity on the provisions on quality of service (QoS), measures to prevent abusive behaviour, and the administration of public warning systems for both access seeker and visited operators. **Liberty Global** agreed that QoS plays a key role in the Regulation, however some of the standards set in the Guidelines are formulated in a manner which exceeds the provisions of the Roaming Regulation and are disproportionate. **Liberty Global** therefore believes that the Guidelines should be adjusted to ensure that roaming customers can enjoy a high level of quality of service without placing a

¹ In alphabetical order

disproportionate burden on the visited operators, while abiding by the principle of legal certainty.

MTX Connect considers that the newly introduced Roaming Regulation together with Directive (EU) 2018/1972 of the European Parliament and the Council of 11 December 2018, establishing the European Electronic Communications Code (hereinafter – EECC), did not resolve the problematic issues, and finds that the proposed Guidelines seem to ignore the existing constraints as well. **MTX Connect** raises BEREC's attention to matters that either remain unsolved by new legislation or demand explicit clarification. **1&1** consents that the Guidelines raise unresolved questions. **NOS** demands clearer and better-defined approaches in order to avoid misinterpretations. **NOS** highlights that the negotiation between operators about the question whether to include new technologies and to allocate technical resources must be taken into account when interpreting access obligations imposed on MNOs.

SOEK conforms to all comments expressed by **ETNO-GSMA** and sustains all their proposals. **Transatel's** contribution is supplemental to the **MVNO Europe** contribution, however **Transatel** provided a few additional comments, based on their own experience.

BEREC's response:

BEREC would like to thank all participants for the comments provided. As regards MTX Connect's comment about the new regulation not resolving problematic issues, and that the proposed Guidelines seem to ignore the existing constraints, BEREC would like to note that MTX Connect did not provide further details in their introductory remarks on which issues remained unresolved.

As regards the comments provided in the introductory remarks for the issues covered by particular guidelines, these will be discussed in the following sections, in which BEREC responds to the comments received per BEREC guideline.

3. Comments on Wholesale Roaming Provisions (GL1-9)

Guideline 1 - Entry into force:

MTX Connect considers that the last paragraph of Guideline 1 (*"Existing access agreements, to the extent that they deal with regulated roaming services, need to be updated as necessary to make them consistent with the Roaming Regulation"*) might be interpreted in different ways and access providers may terminate the existing access agreements instead of amending them. **MTX Connect** sees a great risk that access providers would consider the implementation of Roaming Regulation as an opportunity to amend the existing agreements through termination and renegotiation of new access terms.

MTX Connect also refers to big operators having presence in several countries through their subsidiaries or partnerships. These operators may concentrate their roaming business activities in one hand, be it a department within the same undertaking or a separate special

purpose entity (SPE). Such outsourcing is time and cost efficient and likely increases the productivity of the whole group. When dealing with such SPE, an access seeker may increase its network coverage into several countries by entering only one agreement. For commercial wholesale roaming access, such outsourcing seems to be a win-win solution for all participating parties. But for regulated wholesale roaming access there are several issues that require straightforward explanation about the rights and obligations of all parties subject to such arrangement, as well as the possible dispute resolution mechanism.

MTX Connect explains that from the regulated roaming perspective, dealing with an unregulated SPE creates certain ambiguities for the access seekers: a) an unregulated SPE is not bound by the obligations set out in the Roaming Regulation (transparency, non-discrimination with respect to access seekers, etc.); b) the scope of rights and obligations of all parties involved in a roaming agreement with unregulated entity is unclear (an access agreement directly binds only the SPE and the access seeker, but not the actual roaming access provider, or, as may be the case, several providers in different countries); c) the dispute resolution provisions mentioned in Article 18 of the Roaming Regulation seem to be inapplicable to claims involving SPEs.

Telefonica considers that a transition period is required so that roaming providers and network operators can update their networks and their agreements accordingly. It is disproportionate and not feasible to require an immediate update of the roaming agreements after the publication of the guidance. Therefore **Telefonica** suggests the following amendment: *“Existing access agreements, to the extent that they deal with regulated roaming services, need to be gradually updated as necessary to make them consistent with the Roaming Regulation”*.

ETNO-GSMA considers that the immediate update of contracts as implied by the last paragraph of Guideline 1 is disproportionate, and therefore urges BEREC to update the Guidelines to reflect that existing access agreements *“need to be gradually updated as necessary to make them consistent with the Roaming Regulation”*. **ETNO-GSMA** indicated that this gradual transition is considered in the Regulation in Recital 14.



BEREC's response:

As regards MTX Connect's comment about the amendment of existing agreements, BEREC considers that the following could be added in Guideline 1: *BEREC considers that the terms and conditions included in the existing agreements that are not affected by the provisions of the new Roaming Regulation are not expected to be re-negotiated if there is no such need by the Roaming Regulation.* BEREC will update the Guidelines accordingly.

For MTX Connect's comment about SPEs, BEREC would like to note that Roaming Regulation, among others, sets out the conditions for wholesale access to public mobile communications networks for the purpose of providing regulated roaming services. BEREC considers that no change is needed in Guideline 1 and would like to refer to the definitions of Article 2 Roaming Regulation and in particular the ones about direct wholesale roaming access, wholesale roaming resale access and visited network.

As regards Telefonica's and ETNO-GSMA's comment about the need to include a period for transition/gradual update, BEREC would like to note that any roaming agreement has to be consistent with the Roaming Regulation. In addition, according to Recital 14 Roaming Regulation, in the course of making the transition towards next generation mobile communications networks and technologies, roaming providers should gradually ensure wholesale roaming access that enables the provision of retail roaming services in other Member States under equivalent contractual conditions as in their home Member State, in accordance with the objectives of RLAH. BEREC's guidelines foresee this possibility in Guideline 21 and therefore BEREC considers that the proposed change is not needed.

Guideline 3 - Reasonable requests:

Telefonica suggests to keep the same wording as in the Roaming Regulation in order to avoid misinterpretations: “(...) *Article 3 (1) Roaming Regulation requires MNOs to grant all reasonable requests for access and Article 3 (3) states that wholesale roaming agreements shall cover to all available network technologies and networks generations which may be necessary in order for the access seeker to provide a retail roaming service (and relevant ancillary services) allowing the replication of retail mobile services offered domestically by the retail roaming provider for its roaming subscribers, where this is technically feasible.*”

Spusu notes that with invoking Article 3 (1) Roaming Regulation that only “reasonable requests” must be complied with, requests by large MNOs are often rejected or considerably subordinated. According to **Spusu**, Guideline 3 still does not provide a clear definition of what is meant by “reasonable requests”. **Spusu** proposes to clarify its meaning.

Furthermore, **Spusu** considers that Guideline 3 and Guideline 5 contradict each other. Guideline 5 states that requests may not be rejected for economic reasons; yet in Guideline 3, a possible non-reasonable request is described as one that will not cover costs in the

foreseeable future, which is indeed based on economic reasons for which a request may subsequently be rejected.

BEREC's response:

BEREC does not consider Telefonica's suggestion to use the wording from the Regulation to be necessary, as the Guideline already makes clear that the requirements of Article 3 (1) Roaming Regulation have to be met without having to use the exact wording of the legal provision. The wording of this Guideline is drafted to incorporate the available technology and necessary items the access seeker requires to provide retail roaming services.

As regards Spusu's comment about the meaning of the term "reasonable request", BEREC would like to note that Recital 15 Roaming Regulation as well as the second paragraph of Guideline 3 include the relevant explanation.

Furthermore, BEREC considers that Guideline 3 and Guideline 5 do not contradict each other. In particular, the fourth bullet point in the fifth paragraph of Guideline 5 refers to the recovery of investments. In any case, BEREC considers that any request that requires significant high investment that cannot be recovered in a reasonable period is unreasonable.

Guideline 4 – Identity of access seekers:

Contributor comments on the sentence in the second paragraph of Guideline 4: *"BEREC considers that operators of hub aggregation services which do not directly serve Union roaming customers are nevertheless entitled to negotiate access sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services"*. **Contributor** believes that there is no legal basis to grant hub aggregation service providers regulated access to the roaming services provided by member states' operators, because hub aggregation service providers are not directly addressed by the Regulation that refers to the obligation to give access only to operators providing roaming services to member states' roaming customers. **Contributor** explains that hub aggregation service providers can access roaming services provided by MNOs on a commercial basis, but there is no legal basis to grant them the applicability of wholesale caps to the service purchased. **Contributor** disagrees with the applicability of wholesale caps to the service provided by an MNO to an aggregator hub. **Contributor 3** therefore requests to delete above mentioned sentence and amend the second paragraph of Guideline 4 as follows: *~~"BEREC considers that operators of hub aggregation services which do not directly serve Union roaming customers are nevertheless entitled to negotiate access sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services. According to art 9, 10, 11 of 2022/612 regulation that applies only to the charge that the visited network operator may levy on the roaming provider, the wholesale caps are not applicable to provider of hub aggregation services,~~*

such charges shall be left to commercial negotiation, according to the Commission intention to promote alternative wholesale schemes, in this case reasonably based on volumes discount. The wholesale roaming access provider is entitled to specify reasonable standards, procedures and protocols for such access. As a general rule, each party will bear its own costs of connectivity and access”.

MVNO Europe thanks BEREC for reconfirming that the identity of access seekers includes MNOs, full and light MVNOs and resellers and welcomes that BEREC reconfirms that operators of hub aggregation services are entitled to negotiate access *“sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services”*. **MVNO Europe** asks BEREC to add, by analogy, that providers such as MVNEs/MVNAs, and providers and aggregators of wholesale M2M/IoT solutions, qualify as beneficiaries of access in application of Article 3 Roaming Regulation, insofar as their services ultimately enable providers of regulated retail roaming services. MVNO Europe provides wording for Guideline 4 paragraph 2, as follows: ***“BEREC also considers that operators of wholesale services, such as Mobile Virtual Network Enablers and Aggregators (MVNE/MVNA), and providers and aggregators of wholesale Machine-to-Machine and Internet of Things (M2M/IoT) solutions, which ultimately enable serving Union providers of regulated retail roaming services, are entitled to negotiate access sufficient for and limited to the purpose of serving Union providers of regulated retail roaming services.”***

MVNO Europe also thanks BEREC for reconfirming, in the last paragraph of Guideline 4, the reference to ITU-T Recommendations E.164 and E.212. **MVNO Europe** understands that BEREC thereby confirms that roaming customers can legitimately be identified by numbering resources from Union Member States which are in accordance with numbering plans for international networks, such as the 14-digit 901 range, etc., and **MVNO Europe** explicitly asks BEREC to reject any potential requests from other stakeholders aimed at restricting the use of international network codes by Union operators.



BEREC's response:

In general, BEREC does not agree with Contributor's comment. In particular Article 2 (2m) Roaming Regulation defines 'wholesale roaming resale access', while Recital 16 Roaming Regulation mentions that the wholesale roaming access obligation should also cover the mobile network operator's obligation to enable MVNOs and resellers to purchase regulated wholesale roaming services from wholesale aggregators which provide a single point of access and a standardised platform to roaming agreements all over the Union. However, for more clarity, BEREC intends to add a footnote in Guideline 4 *clarifying that the term resellers refers also to hub aggregators*.

As regards MVNO Europe's draft suggestion for paragraph 2, BEREC considers that all the cases mentioned by MVNO Europe are covered by Guideline 4 and therefore no change is deemed necessary. As mentioned above, BEREC intends to add a footnote in Guideline 4 *clarifying that the term resellers refers also to hub aggregators*.

Furthermore, BEREC would like to thank MVNO Europe for their last comment and notes that there have not been any requests to adapt Guideline 4 to restrict the use of international network codes.

Guideline 5 - Refusal of requests:

Telefonica and **ETNO-GSMA** consider that a one-month period for refusal to be provided in writing to the access seeker is too short and that a more appropriate "reasonable timeframe" would be sixty days, therefore **Telefonica** suggests the following amendment: "**BEREC considers that a reasonable timeframe could be ~~one month~~ sixty days after the initial receipt of the complete request by the MNO (as in the case of providing a draft wholesale roaming agreement in accordance with Article 3 (5) Roaming Regulation).**" **ETNO-GSMA** adds that this procedure is expected to take longer than the provision of the draft agreement referred to in Article 3 (5) Roaming Regulation. In addition, **ETNO-GSMA** considers that the Guidelines should be amended to reflect that such a period should only commence "*after the initial receipt of the complete request by the MNO*". Without a complete request, the receiving operator cannot conduct a full evaluation and determine whether there are any objective reasons for refusal, such as technical feasibility and network integrity. **NOS** agrees that one month is too short a timeframe (especially if considering popular holiday times). Moreover, **NOS** argues that anticipated "network or signalling saturation" should be considered a reason for access refusal as it believes it can harm the service provided to its own customers.

Telefonica also requests the deletion of the following paragraph (based on justification mentioned in Guideline 8): "~~In BEREC's view, the MNO may not, during consideration of the request, seek information on the commercial nature of the services which the access seeker plans to offer, other than to verify that the wholesale roaming service in question will not be~~



~~used for purposes other than the provision of regulated retail roaming services to roaming providers' customers while the latter are periodically travelling."~~

1&1 expressed concerns that while Guideline 5 circumscribes the conditions under which refusals of access requests would not be objectively justified, it does not address the issue of appropriate legal redress available to access seekers. Hence, Guideline 5 should refer to the dispute resolution procedure specifically prescribed in Guideline 50 (in turn, referring to Article 18 (1) Roaming Regulation in conjunction with Article 26 EEC).

Transatel agrees with the clarifications that are made by BEREC. Notwithstanding all the clarifications that are made in this Guideline 5, **Transatel** suggests that the Regulation/BEREC also clarifies that permanent roaming access requests for the provision of IoT services based on international numbering resources should be met. **Transatel** informs that some European MNOs still refuse to grant European IoT providers access to their networks for permanent roaming and at reasonable economic conditions.

MVNO Europe asks BEREC to add examples of M2M and IoT in Guideline 5 and proposes the following amendments: *"BEREC considers examples for commercial considerations to be the cases where visited network operators and access seekers compete in the provision of the same services, and where the access seeker wishes to bring innovations to market, including relating to M2M/IoT or other data-only and specialized services, committed volumes, number and type of roaming subscribers etc."*. In addition, **MVNO Europe** asks BEREC to reject any potential requests from other stakeholders aimed at removing or weakening the text of draft Guideline 5 where it concerns refusals of requests on commercial grounds.

As regards the *indicative list that would constitute legitimate reasons for refusal of a request*, mentioned in the fifth paragraph of Guideline 5, **MVNO Europe** considers that this remains highly problematic, and asks BEREC to reconsider each element in the list and to add text qualifying any elements that would remain after reconsideration. Refusal on the basis of the size of the access seeker or of its customer base could illegitimately be invoked to shut out small innovative providers, and should most definitely be deleted from the list. The necessity to make significant investments should be assessed in light of whether relevant/related investments are made in any case to support the MNO's own activities, and/or to support other access takers/seekers. It is also necessary to ensure that investments made to enable wholesale access are not paid over and over by multiple access takers.



BEREC's response:

BEREC disagrees with the comments made by ETNO/GSMA, Telefonica and NOS about the one-month period. The proposed changes cannot be taken into account as Article 3(5) Roaming Regulation defines that mobile network operators shall provide the undertaking requesting access with a draft wholesale roaming agreement, in accordance with Article 3, for such access at the latest one month after the initial receipt of the request by the mobile network operator.

In addition, on the comment about network or signalling saturation, BEREC disagrees with NOS's proposal and would like to note that if access providers, in order to solve the problem of network and signalling saturation, need to make significant investments to support access and these investment costs cannot be recovered in a reasonable period, then this could be a reason for access refusal.

BEREC disagrees with Telefonica's proposal to delete one part of Guideline 5 and will provide the relevant explanation in Guideline 8 in which Telefonica provides that relevant justification.

Moreover, BEREC considers that Guideline 50 refers to all types of disputes between undertakings providing electronic communications networks or roaming services. Therefore, 1&1's request for amendment is not deemed necessary. However, BEREC will add a footnote in Guideline 5 *about the dispute resolution procedure specifically prescribed in Guideline 50*.

As regards Transatel's comment about some European MNOs still refusing to grant access to their networks for permanent roaming to European IoT players, BEREC considers that no change in Guideline 5 is needed as both Guideline 5 and Guideline 12 as well as Roaming Regulation provisions cover this topic. BEREC also notes the possibility to request dispute resolution in such cases.

BEREC accepts partially MVNO Europe's drafting proposals in Guideline 5, paragraph 1, sentence 2, and intends to adjust Guideline 5 as follows: *BEREC considers examples for commercial considerations to be the cases where visited network operators and access seekers compete in the provision of the same services, and where the access seeker wishes to bring innovations to market, committed volumes, number and type of roaming subscribers etc.*".

On the last comment by MVNO Europe, BEREC notes that the list mentioned by MVNO Europe refers to circumstances that would not constitute legitimate reasons for refusal of a request, and not vice versa (i.e. circumstances that would constitute legitimate reasons) as asserted by MVNO Europe.



Guideline 6 - Prioritisation of request:

Telefonica considers that the prioritisation of VoLTE in case of the switch-off of 2G and 3G is reasonable, however, it is important to note that the prioritisation can be best determined by the network operator, and it should not be considered as an unwarranted leverage for the access seeker. Thus, **Telefonica** suggests to amend the wording as follows to reflect this fact: *“BEREC considers that due to phasing out of 2G and 3G technologies across the Union and with the aim of ensuring availability of essential services for consumers (see Guideline 25), it is reasonable to prioritise requests for 4G services, including VoLTE, if such wholesale roaming agreements are not in place already, **while allowing for sufficient implementation time on the side of the visited network**”*. **ETNO-GSMA** also considers that the addition of the sentence *“while allowing for sufficient implementation time on the side of the visited network”* is required to reflect the fact that prioritisation can be best determined by the visited operator and the current wording introduces scope for the provision to be used as unwarranted leverage by the access seeker.

Spusu believes that Guideline 6 should state that a prioritisation may not be permitted. **Spusu** refers to the unwillingness of large MNOs to enter roaming contracts with smaller MNOs and MVNOs.

NOS argues that the prioritisation of services should be made by the MNO taking into account the efficiency and the safety of services. For instance, VoLTE roaming is a very complex service, with a long and challenging testing and launching process. Furthermore, it poses challenges in terms of visibility, safety and control.

MVNO Europe welcomes prioritisation of 4G and VoLTE access requests, however sees a severe risk that the wording could be invoked by operators to de-prioritise or (continue to) refuse 5G access, which cannot be the intention, given that one of the key goals of the Regulation is precisely to enable matching QoS for retail users when roaming.

MVNO Europe notes that the importance of ensuring continued 2G wholesale roaming has recently been highlighted in the context of emergency calling, given the many problems in enabling VoLTE across networks and on all handsets. This issue has manifested itself in the scenario of Europeans roaming in the USA. **MVNO Europe** expects similar problems to arise in Europe, especially when 2G networks are to be shut down before VoLTE interworking is fully implemented and functions on all devices. eCall could also be affected. **MVNO Europe** encourages BEREC to reach out to **MVNO Europe** for further details on these issues.



BEREC's response:

BEREC would like to clarify that the intention of Guideline 6 is to shed light on the following: Access requests should, as the main rule, be handled as they are received. In the event that the number of access requests is higher than the visited network's ability to handle them, BEREC considers that priority should be given to requests related to establishing VoLTE-roaming services. It would be detrimental to roaming end-users if, after the phase-out of 3G and 2G, they would not be able to use call services and SMS or to call emergency services when travelling within the EEA. BEREC will adapt/extend the Guideline 6 text to make this principle clearer. As such, BEREC does not see a need to add the text requested by Telefonica and ETNO-GSMA. For the same reasons the comments of Spusu and Telefonica are rejected.

As regards, MVNO Europe's comments, BEREC would like to note that according to Guideline 5 (as well as Recital 15 Roaming Regulation), refusal to provide wholesale roaming access is only possible when visited network operators which receive such a request can prove that it is technically unfeasible to grant it or the integrity of the network is at risk. In addition, if 4G and VoLTE access are already available, this Guideline does not restrict access to 5G. As mentioned above, Guideline 6 is intended for cases where the number of access requests is higher than the visited network's ability to handle them.

BEREC is available to discuss further with stakeholders the issues mentioned in the last paragraph by MVNO Europe about the shutdown of 2G/3G-technologies and might also include relevant work in its future work programmes.

Guideline 7 - Information required from an access seeker:

Telefonica proposes to keep same wording of the BEREC Guidelines of 2017 (as current draft substitutes "*shall*" by "*must*" or "*have to*").

BEREC's response:

BEREC considers that the substitutes "*shall*" by "*must*" or "*have to*" do not change the meaning of the Guidelines and therefore rejects Telefonica's proposal.

Guideline 8 - Information required before signature of an access agreement:

Telefonica considers that information required before the signature or review of an access agreement should be fit for purpose and sufficient for a proper typification and provision of the roaming service. The roaming services to be provided can be of very different nature (such as



end-user services for periodic travelling, machine-to-machine, machine-to-machine on permanent roaming with different use cases, etc.) and certain details should be required for the adequate provision of the service and for an efficient network operation. Therefore, **Telefonica** and **ETNO-GSMA** request the deletion of the following paragraph: “~~Access seekers should in particular not be expected to provide any details of the service they expect to provide where these might reasonably be regarded as commercially sensitive.~~”.

BEREC’s response:

BEREC considers that the proposed deletion is not necessary. Guideline 8 foresees the provision of technical information on e.g. interfaces and protocols used by the access seeker which are needed to assess compatibility with the services offered by the access provider. Furthermore, according to Guideline 8, it might be additionally required to give an initial estimate of traffic volumes to assess necessary connection capacities. Moreover, Guideline 9 foresees that the wholesale roaming access provider may lay down a reasonable procedure for the regular supply and updating 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 access provider to dimension its service efficiently or to provide the necessary resources. BEREC considers that the provisions of Guideline 8 and Guideline 9 are sufficient and no amendment is needed.

4. Comments on Wholesale Roaming Access Services (GL10-21)

Guideline 10 - Direct access:

Telefonica informs that VoLTE is being rolled out in the domestic markets and also in roaming after the due process of standardisation. This development is based on commercial negotiations, even more so given that VoLTE can only be charged as data at this moment. **Telefonica** and **ETNO-GSMA** consider that the Guidelines should not distort the current commercial practices and should not restrict the charging scheme of this service, thus **Telefonica** and **ETNO-GSMA** suggest the following amendment to the footnote in GL 10 and 11: “Article 9 **may** also **apply** ~~applies~~ for VoLTE”.



BEREC's response:

BEREC disagrees with this amendment. VoLTE is considered a regulated roaming call which is defined in Article 2 (2) subpara f Roaming Regulation. Article 9 Roaming Regulation includes the wholesale charges for the making of regulated roaming calls.

Guideline 11 - Resale of access:

Telefonica suggests amendments in Guideline 11 in accordance with feedback provided for Guideline 10.

1&1 points out that the wholesale price caps are generally higher than the bilaterally negotiated wholesale roaming charges between MNOs in a direct access relationship (within the meaning of Guideline 10). By contrast, the regulated wholesale price caps are the direct reference point for the MNOs' prices charged to resellers / light MVNOs. Hence, there is a residual cost discrepancy to the detriment of resellers / light MVNOs, leading to indirect price discrimination. **1&1** believes that BEREC should emphasise the need for MNOs to charge resale access prices that are at par with their own bilaterally negotiated wholesale roaming charges to give effect to the spirit of non-discrimination as envisaged in Guideline 11.

1&1 indicates another problem with the Regulation related to its premise of balanced inbound and outbound roaming. However, resellers / light MVNOs and MNO entrants dependent on national roaming access are each unable to provide incoming EU roaming services on a nationwide basis. Hence, they are missing out on the wholesale revenue stream for incoming EU roaming calls, placing them at a competitive disadvantage against established MNOs. In effect, the Regulation therefore discriminates against the business models mentioned.

BEREC's response:

BEREC would like to note that the Roaming Regulation introduces price caps while lower charges need to be further negotiated.

Guideline 12 - Machine-to-machine communication services:

Telefonica states that permanent roaming is subject to commercial negotiations and can be agreed by the roaming partners in the roaming agreement. Operators are encouraged to negotiate agreements on machine-to-machine in permanent roaming but it could not be understood as a contractual obligation. **Telefonica** requests the deletion of this paragraph: "~~If M2M communication services are used on a permanent basis in a visited network, for example in cases of prevailing roaming consumption and presence according to the Commission Implementing Regulation (EU) 2016/2286 (CIR), wholesale roaming access should be subject to commercial negotiations. According to Guideline 35, access providers may request information allowing them to determine whether a significant share of the access seeker's~~

~~customers engage in permanent roaming. In relation to M2M, the relevant indicator could be the share of SIMs¹¹ or IMSIs. Traffic information should not refer to specific information relating to individual traffic of the roaming provider's customers, but rather to aggregated roaming traffic information."~~ **Telefonica** also requests following amendment: "However, in practice the IoT/M2M market is constantly growing and the Roaming Regulation states that MNOs are expected to increasingly accept reasonable requests for wholesale roaming agreements which explicitly allow permanent roaming for M2M communications (Recital 21). **This is not to be understood in the sense of a contractual obligation."**

Polkomtel points out that, despite the justification noted by BEREC for introducing a different way of billing M2M cards when roaming, the Guidelines do not refer to a situation in which the roaming partner (the SIM card home operator) does not accept different conditions for billing such cards when roaming. **Polkomtel** suggests that the Guidelines should explicitly specify the possibility for host operators to refuse to use M2M roaming cards in case the home provider does not accept the terms and conditions offered for such cards. **Polkomtel** considers that provisions of the draft Guidelines should ensure that access for M2M cards can be offered only on the basis of the chosen/contractually agreed technology – e.g. NB-IoT. **Polkomtel** believes that there is no justification for requiring operators to grant unconditional access to M2M cards in any available technology.

ETNO-GSMA informs that when negotiating, operators agree on a definition of "permanent roaming" to be applied, as there is no universal definition of permanent roaming. Therefore, **ETNO-GSMA** suggests to delete the sentence ~~"for example in cases of prevailing roaming consumption and presence according to the Commission Implementing Regulation (EU) 2016/2286 (CIR)"~~.

Transatel regrets that the Regulation/BEREC does not explicitly include an obligation for MNOs to accept requests for permanent roaming access for IoT connectivity and only an incentive, as this access is indeed critical for the development of the European cross-border IoT market, and some operators in some countries refuse to negotiate in good faith such permanent roaming agreements for IoT, at reasonable economic conditions. **Transatel** is concerned that the European Regulation and BEREC are not ambitious enough on this point.

According to **NOS**, no official guidance has been given on what should be understood as permanent roaming, therefore a definition of permanent use has been, when applicable, freely agreed between operators. In cases where there is no agreement between partners for a permanent use, the absence of this definition may be problematic. For these scenarios, **NOS** understands that the only possible reference is associated with the evaluation criteria of prevailing roaming consumption and presence according to the Commission Implementing Regulation (EU) 2016/2286 (CIR). However, **NOS** believes that this guideline needs further clarification on the meaning of "periodically".

NOS also stresses that M2M permanent roaming access should be conditional to an appropriate charging model. Because, as stated by BEREC, *"the majority portion of current M2M communication does not generate much data"*, however, the M2M SIM cards, while attached to the visited network, consume resources and generate a lot of signalling traffic, which is a cost that the visited network has to cover. Furthermore, it is said that some M2M



applications generate nothing but signalling. **NOS** adds that certain M2M applications, due to their specific and simultaneous usage patterns, are known to put networks at risk.

MVNO Europe proposes modification of the last sentence of paragraph 4 as follows: "*BEREC expects that visited network operators will have a clear motivation to ~~offer access to~~ meet all relevant requests for dedicated M2M communication technologies to their roaming partners, enabling the Internet of Things, such as LTE-M, NB-IoT, and the 5G IoT standards, etc.*"

In addition, **MVNO Europe** asks BEREC to reject any potential requests from other stakeholders aimed at removing or weakening the text of draft Guideline 12 where it concerns the enablement of IoT. BEREC should also firmly reject any potential requests from other stakeholders where these are aimed at the removal of the reference in paragraph 5 to the potential need for future regulation.

BEREC's response:

BEREC notes that it is clear from Guideline 12 that there is no obligation to allow permanent roaming for M2M. Therefore, BEREC sees no need to amend the text according to Telefonica's proposal.

In addition, BEREC considers that the points raised by Polkomtel are covered by Guideline 12 and therefore there is no need to adapt the text as proposed.

As regards ETNO-GSMA's proposed deletion, BEREC notes that this is just an example based on the CIR and therefore it could remain in the text.

On Transatel's comment, BEREC would like to reply that when BEREC drafted this Guideline, it took note of the content of Recitals 14 and 21 Roaming Regulation. BEREC Guidelines cannot include obligations that are not in the Regulation itself.

As regards NOS's first comment, BEREC notes that the CIR will be soon reviewed and therefore the points raised could be discussed in this context. In addition, BEREC considers that the issues mentioned in NOS's second comment are taken into account in the text of Guideline 12.

Finally, BEREC partially accepts MVNO Europe's drafting suggestions and intends to adapt the last sentence of paragraph 4 as follows: "*BEREC expects that visited network operators will have a clear motivation to meet all reasonable requests for dedicated M2M communication technologies enabling IoT, such as LTE-M, NB-IoT, and the 5G IoT standards, etc.*"

Guideline 13 – Unregulated roaming service:

1&1 mentions that Guideline 13 states that unregulated roaming services should be subject to fair and reasonable prices, and Guideline 15 further substantiates the notion of fairness and reasonableness, however disputes over that notion arise frequently between access providers and access seekers. Despite of the intended clarification in Guidelines 13 and 15, the



interpretation of fair and reasonable given by access providers and, respectively, access seekers remain diametrically opposed. Hence, **1&1** strongly believes that both Guidelines 13 and 15 should address the appropriate legal redress available to the parties involved and refer to the dispute resolution procedure specifically prescribed in Guideline 50.

Contributor points out that definitions in Article 2 of Regulation ((*k*) *wholesale roaming access*; (*l*) *direct wholesale roaming access*; (*m*) *wholesale roaming resale access*) mention and apply for regulated roaming services only, therefore the obligation to provide wholesale roaming access exists only for regulated services and therefore not for unregulated roaming services. **Contributor** requests the guideline to be wholly eliminated.

BEREC's response:

BEREC considers that Guideline 50 refers to all types of disputes between undertakings providing electronic communications networks or roaming services. Therefore, 1&1's request is not deemed necessary. However, BEREC will add a footnote in Guidelines 13 and 15 *about the dispute resolution procedure specifically prescribed in Guideline 50*.

As regards Contributor comment, BEREC notes that Guidelines 10 and 11 are only minimum requirements in order to secure meaningful end-to-end connectivity for all end-users in line with the aim of the EECC. BEREC, therefore, considers that in line with BEREC Guidelines of 2017, Guideline 13 must be retained.

Guideline 14 – Retail functions which can practically or economically be provided only by the access provider:

Contributor believes that the current title of Guideline 14 could be misleading because access providers cannot provide any retail function, but only wholesale functions that could be straight related to the provision of retail feature by the roaming provider. **Contributor** suggests modifying the title as follows: “*Guideline 14 – “Retail related” wholesale functions which can practically or economically be provided only by the access provider*”.

Telefonica proposes to keep same wording of BEREC Guidelines of 2017 (as the current draft substitutes “*shall*” by “*must*” or “*have to*”).

1&1 welcomes the clarification that as part of resale access, MNOs must *inter alia* provide data bill shock services within the meaning of Article 14 of the Regulation. Nonetheless, whether the provision of data bill shock services is part of resale access services has been a contentious issue in negotiations between MNOs and resellers / light MVNOs. Thus, **1&1** urges BEREC to add a reference to the available dispute resolution procedure as outlined in Guideline 50.



BEREC's response:

BEREC accepts Contributor's comment and intends to adapt the title of Guideline 14.

BEREC considers that the substitutes “*shall*” by “*must*” or “*have to*” do not change the meaning of the Guidelines and therefore rejects Telefonica's proposal.

BEREC considers that Guideline 50 refers to all type of disputes between undertakings providing electronic communications networks or roaming services. Therefore, 1&1's request is not deemed necessary. However, BEREC will add a footnote in Guideline 14 *about the dispute resolution procedure specifically prescribed in Guideline 50*.

Guideline 15 – Fair and reasonable prices:

Contributor comments on the last two paragraphs of the guideline and believes that the Regulation does not imply the provision of access services for non-regulated roaming. Taking this into account, **Contributor** considers that no obligation for fair and reasonable price should be in place for access providers, such services should be left to commercial conditions. Access providers are not obliged to objectively justify any price proposed and negotiate; nor the basis of negotiated charges must be made available to the access seeker, even upon request. **Contributor** requests elimination of the last two paragraphs of Guideline 15 according also to comments provided on Guideline 13.

1&1 notes that its comments for Guideline 15 were expressed together with feedback on Guideline 13.

BEREC's response:

BEREC considers that Article 3(4) subpara 2 and Recital 18 Roaming Regulation include provisions about fair and reasonable prices. Therefore, Contributor's suggestions cannot be accepted.

Guideline 16 - Wholesale charges to emergency communications:

Telefonica agrees that the emergency communications that are mandated in the visiting country according to the national law and the national emergency services system should be free of charge, however, this is not the case if such emergency communications are not mandated in the visiting country, and therefore, there are no grounds for this obligation to be extended to the wholesale side. In **Telefonica's** view, Guideline 16 clearly goes beyond this obligation in setting out that any type of emergency communications should be free of charge at wholesale level. **ETNO-GSMA** adds that this is especially important in the context of alternative means of access to emergency services that are not mandated in each case nor are free of charge according to the national legislation in line with Articles 109 and 111 of the EECC. Indeed, this distinction is recognised in the context of Articles 15 and 16 of the Roaming Regulation itself. Therefore **Telefonica** and **ETNO-GSMA** request the following amendment:

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

NOS believes that it is important to clarify that, presently, as for **NOS**, they only guarantee free-of-charge conveyance to the most appropriate PSAP for the single European emergency number (112). Also, there is no access to any source of what should be considered as other alternative means of emergency access, at least until the respective database is published by BEREC. According to **NOS**, it is not clear from the regulation itself to what extent free-of-charge access to “*any type of emergency communications*” must be ensured. **NOS** understands that other types of emergency communications, rather than 112, refers to alternative means that will be included in the future BEREC’s database. **NOS** requires additional clarification on this matter.

As for the transmission of caller location information to the most appropriate PSAP, it is important for **NOS** to take into utmost consideration the legal framework in each Member State, as well as the EU framework. **NOS** understands that as long as the Regulation is not amended and/or remains in force, compliance with this obligation will be limited to the single European number.

Bouygues sees the following problem regarding calls to the emergency service in VoIP: calls made by voice over data from OTT services, or by other non-voice communications services (SMS) are not able to be billed, or even not invoiced independently, for net neutrality reasons, as well as for technical reasons. In case of communication via VoIP or SMS, the caller location detection cannot be carried out through the operator’s network and must be routed via the terminal’s manufacturer.



BEREC's response:

BEREC agrees with Telefonica's and ETNO-GSMA's amendment and, taking also into account NOS's comments, will adjust the sentence to: *At wholesale level, the conveyance of any type of emergency communications, that are mandated and are technically feasible to be used by roaming end-users (included also in the relevant BEREC's database), to the most appropriate PSAP must be free of charge for the roaming provider (with direct or resale access).*

As regards NOS's comment BEREC notes that when Guideline 16 says "the conveyance of any type of emergency communications" means any way of communications such as, voice, SMS or data used for emergency communications. These traffics must be generated in those emergency services which are mandated in each Member State (under Article 109 of the EECC) and the types of which are listed in the Guideline 26.

As regards Bouygues' comment, emergency communications to the most appropriate public safety answering points (PSAP) that are originated from emergency applications should be free of charge in roaming when such applications are technically feasible and mandated by the Member States according to Article 109 of EECC and have been notified to BEREC's database according to Article 16 Roaming Regulation.

Notwithstanding the above, BEREC agrees that visited network operator and roaming provider are not aware of those emergency communications that can be made through OTT services and therefore operators will not have information available about underlying data used for wholesale billing, unless the OTT service providers have an agreement with operators to exchange this information. This topic exceeds Roaming Regulation and therefore BEREC considers that underlying data consumption of emergency communications from OTT services should be billed in roaming as they are billed in domestic according to RLAH principle. BEREC intends to add the following in Guideline 16: *"When there are mechanisms in place that allow both the visited network operator and the roaming provider to recognize that OTT-services are being used for emergency communications by a roaming end user, BEREC considers that underlying data consumption of emergency communications from OTT services should be billed in roaming according to the Roaming Regulation provisions."*

Guideline 17 - Reception of public warnings:

Liberty Global is supportive of an increased emphasis on transparency regarding public warnings present in the Roaming Regulation, however, some clarity about the provisions contained in the draft Guidelines would be useful. Guideline 17 outlines that no further action should be required of a customer to receive public warnings, other than the installation of a mobile application that enables the receipt of such warnings where such an application exists. **Liberty Global** considers that it would be useful if the Guidelines specified that the roaming operator is responsible for sharing this information with the customer, as outlined in Article 15.



ETNO-GSMA declares that if a solution is already in place in a Member State to fulfil the obligation, providers should not be forced to develop/install new solutions. If there is a need for development, this should be done in a harmonised manner.

BEREC's response:

BEREC notes that the point raised by Liberty Global is covered by the draft BEREC Retail Roaming Guidelines. In addition, on ETNO-GSMA's comment, BEREC clarifies that BEREC Guidelines do not introduce any further requirements but provide guidance on the transparency obligations.

Guideline 18 - Fair and reasonable charges for resale of termination:

ETNO-GSMA suggests that the following sentence should be added to the end of paragraph 2 of Guideline 18: *"For the avoidance of doubt, Eurorates should be applied for surcharges on the incoming calls"*. The implementation of several surcharges (for countries with the Eurorate and separately for those temporarily below the Eurorate) is unnecessary complex and will likely be unnoticed by customers due to differences below one cent.

MVNO Europe asks BEREC to delete the last sentence of paragraph 1, which reads: *"BEREC considers prices for these services to be fair and reasonable"*. This seems neither necessary nor appropriate, especially in light of the following paragraph and footnote 13, which refer appropriately to the maximum regulated wholesale call termination rates as the correct levels.

BEREC's response:

BEREC notes that the ETNO-GSMA's suggestion is not necessary as the second paragraph of Guideline 18 starts with "Any charge in excess of the maximum mobile termination rate in accordance with the Commission Delegated Regulation adopted pursuant to Article 75 of Directive (EU) 2018/1972 (i.e. Eurorates) is unlikely to be reasonable". However, BEREC will add a footnote clarifying this further in Guideline 18.

BEREC does not accept MVNO Europe's suggestion because it considers that BEREC's text is in line with Recital 18 and Article 3(4) subpara 2 Roaming Regulation.

Guideline 20 – Value-added services:

1&1 welcomes the incoming Union-wide database of numbering ranges for value-added services in each Member State in accordance with Article 16 of the Regulation. **1&1** estimates that this will minimise resale related disputes between MNOs and resellers / light MVNOs.

NOS considers that the following statement included in this Guideline is not clear: *"application of the rules set out in the Regulation for VAS numbering resources does not preclude the possibility of the wholesale roaming agreements to define, on a voluntary basis, the application*

of rates at the wholesale level that allow the application of RLAH tariffs for these services". **NOS** asks what is intended by this statement, namely if it is referring to the application of RLAH tariffs for VAS numbering resources of the country visited or of the country of origin from the roaming consumer.

Since the imposition of RLAH retail tariffs for VAS in roaming does not result from the Regulation, **NOS** suggests eliminating this reference.

Any discussion on VAS will depend entirely on a definition/database of BEREC's VAS numbers, which is not yet available. **NOS** emphasises that when made available, such a database must be reliable and updated.

BEREC's response:

The Guideline is intended to remind operators that in addition to the Roaming Regulation, at the wholesale level, operators are free to agree on tariffs that facilitate offering the RLAH principle to domestic VAS calls or to VAS calls in the visited country or third country in the EEA. On the one hand, for calls to domestic VAS, what is relevant will be the transport component to be covered by the wholesale caps of the Roaming Regulation. However, for VAS numbers from the visited country or third destinations, operators can agree on wholesale prices (including the transport and value-added component) that allow the user to be billed in the same way as if the call had been made from the user's country of origin, so that the RLAH principle can be applied to this type of call. This would facilitate transparency from operators to consumers and make it easier for consumers to know the price of calls to VAS numbers in other countries.

Guideline 21 - QoS obligations for wholesale roaming access seekers:

Telefonica considers that Guideline 21 clearly goes beyond the Regulation. It is in the spirit of the Regulation, and in accordance with Recital 14 and Articles 4 and 5, that roaming providers should make a reasonable effort to meet the requirements for QoS. Having said this, it is important that the guideline is consistent with Recital 14 and recognises the freedom of the roaming provider to conclude the wholesale agreements according to its interest. **Telefonica** requests the deletion of this paragraph: *~~"To that end, roaming providers therefore should not only consider their commercial needs, such as for instance selecting the roaming partner offering the highest discount, but they must also take into account the technological level/maturity of the visited networks regarding the obligation to offer equivalent retail roaming conditions to the services offered domestically."~~*

ETNO-GSMA believes that the current wording creates a *de facto* requirement for operators to conclude new agreements. The guidelines should instead recognise that this is a reasonable effort obligation to seek access to networks that will allow operators to meet the QoS requirements for retail services - not only the cheapest, but also taking into account the technology level and maturity of the visited network. In addition there is no obligation to conclude contracts with higher quality and it is important to acknowledge that there will be a

transition process, so delays are possible. If only one operator offers next generation services, access seekers may delay their request. Therefore **ETNO-GSMA** suggests the deletion of the following text: *“BEREC considers that wholesale roaming access seekers have a best effort obligation to seek access to those visited networks, which allow them to meet the requirements of Article 4 and 5 as well as of Recital 14 Roaming Regulation. Without prejudice to the principle of technology neutrality of wholesale roaming agreements referred to in Recital 14, roaming providers should seek to ensure that the wholesale roaming agreements provide the customers with equivalent mobile communications services like at home, where the underlying technology is available. To that end, roaming providers therefore should not only consider their commercial needs, such as for instance selecting the roaming partner offering the highest discount, but they must also take into account the technological level/maturity of the visited networks regarding the obligation to offer equivalent retail roaming conditions to the services offered domestically. They also do not necessarily have to conclude agreements with operators whose networks have a higher quality than that available in the roaming provider’s own domestic network.”* In **ETNO-GSMA’s** view, this should be replaced by: *“BEREC expects wholesale roaming access seekers to put reasonable effort to seek access to those visited networks, which allow them to meet the requirements of Article 4 and 5 as well as of Recital 14 of the Roaming Regulation, this however does not imply that they have the obligation to conclude new agreements.”*

ETNO-GSMA also considers that above mentioned reasoning applies regarding the fourth paragraph of Guideline 21 and that the text beginning with *“Furthermore BEREC considers that when next generation coverage in the visited country...”* should be complemented as suggested: *“Furthermore, BEREC considers, as well as when the coverage of last generation is low in the domestic market, that when next generation coverage in the visited country is considerably low (independently of the visited network and not cumulative for all networks) or when there is only one operator offering next generation services in the visited country with significant coverage, access seekers might delay their access requests.”*

NOS comments on the first sentence of the second paragraph (*“BEREC considers that wholesale roaming access seekers have a best effort obligation to seek access to those visited networks, which allow them to meet the requirements of Article 4 and 5 as well as of Recital 14 Roaming Regulation”*) and believes that this should be a reasonable (not necessarily a best) effort obligation to seek access to networks that may allow to meet the requirements of QoS for retail services. This effort should take into account the economic rationale, but also the technology level and maturity of the visited network. According to **NOS**, additionally, there is no obligation to conclude contracts with higher quality, as foreseen by commercial freedom. It is also important to acknowledge that there will be a transition process, so delays are to be expected. Under these circumstances, if only one operator is offering next generation services, access seekers may delay their request.

NOS is also uncertain about paragraph 3 of the guideline: *“BEREC considers that Recital 14 Roaming Regulation provides room for gradual transition to new generation/technologies. BEREC considers that this gradual transition should not take into account only the coverage for the next generation networks of the access provider but also the access seeker’s customers average travelling patterns as the latter is related to their best interests as well as ensuring availability of essential services for consumers”*. In **NOS’s** view, the reference to



“*average travelling patterns*” is confusing and lacks clarity about its purpose. It is not explicit whether it should be understood that the operators which provide a greater flow of roamers-in should have priority in the negotiation process.

MVNO Europe considers that BEREC must make an important addition to the Guidelines, to ensure that wholesale access/resale access providers do not impose downstream/upstream speed limitations on wholesale access seekers compared to their own self-supply. Speed limitations would amount to discriminating between self-supply and supply to third parties, or potentially even discriminating between third parties. **MVNO Europe** believes that specifying a prohibition on such speed restrictions would be consistent with the Roaming Regulation.

Bouygues understands that the Roaming Regulation provides that operators wishing to obtain wholesale roaming access should have the freedom to negotiate their wholesale roaming agreements in accordance with their own commercial needs and the best interests of their end-users. Roaming providers will gradually have to guarantee wholesale roaming access that allows the provision of retail roaming services in other Member States under contractual conditions equivalent to those of their home Member State, in accordance with the objectives of RLAH. **Bouygues** mentions that Guideline 21 considers that wholesale roaming access seekers have an obligation to do their best to obtain access to visited networks, allowing them to comply with the requirements of Articles 4, 5 and Recital 14 of the Roaming Regulation. **Bouygues** wishes to point out that that in the context of the transition to next generation mobile communications networks and technologies, contractual developments will also have to take place in line with the improvement available in the country visited. The latest available technology will not necessarily be the most efficient technology for the customer of the visited network, depending on the state of deployment in other countries. Roaming providers should therefore not only take into account their commercial needs, but also the technological level/maturity of visited networks to offer equivalent conditions. **Bouygues** believes that the BEREC guidelines do not provide any indication of the impact of technological developments, in particular when 5G offers are switched from 5G NSA to a core of 5G SA. **Bouygues** also wonders what procedures should be used to ensure that the offers and performance available at the heart of 5G SA were available to customers in the country visited.



BEREC's response:

BEREC does not agree with the request by Telefonica to delete from Guideline 21 the paragraph that starts with "*To that end...*". In order to comply with the intention of the Roaming Regulation, BEREC is of the opinion that roaming providers should put emphasis on technological maturity as well as commercial factors when entering into wholesale access agreements. Furthermore, BEREC considers the text to be in line with Recital 27 and Article 4 Roaming Regulation that include provisions on the level of QoS for roaming customers. In their input, ETNO-GSMA raise similar concerns and fear that the Guideline text puts demand on roaming providers to conclude new agreements. BEREC would again point to Recital 27 and Article 4 Roaming Regulation and does not agree that the deletion of the current wording of Guideline 21 is necessary. BEREC also notes that the Guideline already takes into account that technological factors might influence the roaming providers possibility to negotiate/re-negotiate wholesale agreements from the entry into force of the Roaming Regulation.

Regarding the proposal from ETNO-GSMA to complement the text so that the current domestic and/or the visited networks' availability of new generation/technology shall guide the necessity to request access, BEREC is of the view that Recital 27 Roaming Regulation does not explicitly allow for this interpretation.

Relating to the first comment from NOS, BEREC considers that roaming providers are bound by the provisions of the Roaming Regulation and the objectives of RLAH – with the clarification provided in the first paragraph of BEREC's response to the input from Telefonica and ETNO-GSMA. On the second comment of NOS, BEREC would like to note that Guideline 21 refers to QoS obligations for wholesale roaming access seekers and not access providers.

As regards MVNO Europe's comment, BEREC would like to note that wholesale roaming obligations and the BEREC Guidelines refer to both direct and resale wholesale roaming access, as defined in Article 2 (2l) and 2 (2m) Roaming Regulation. Therefore, BEREC does not see the need to include this suggestion.

On the comments raised by Bouygues, BEREC notes that the Roaming Regulation places quite some responsibility on the roaming providers to strive to let their roaming customers have access to next generation mobile networks and technologies, as they would in their home network. At the same time, the Roaming Regulation provides some flexibility about how the transition from 2G, 3G and 4G into 5G should play out. BEREC expects NRAs to take this into account when following up on the implementation of the Roaming Regulation. On the transition to 5G SA, there seems to be different migration paths available for the operators and in the 5G-specifications there are different options/scenarios for providing retail roaming services. Furthermore, there is the issue that calling emergency numbers with new technologies like VoLTE and VoNR is not always possible due to standardization issues. BEREC deems it important that these problems are addressed with priority since more and more 2G and 3G networks are being phased out. Thus, BEREC cannot be more detailed than this.

5. Comments on Reference Offer (Guidelines 22-48)

Guideline 22 - Obligations to publish a Reference Offer:

According to Article 3(5) Roaming Regulation, MNOs must publish their Reference Offers and shall make them available to access seekers. BEREC suggests that MNOs shall inform the NRA about their published Reference Offers. **MTX Connect** strongly believes that this measure is insufficient, as random checks for Reference Offers of various MNOs in different member states shows that the obligation of transparency is not observed by everyone.

MTX Connect suggests the following guidelines to be adopted:

1. NRAs shall verify the compliance of the published reference offer with the requirements of the Roaming Regulation and national laws;
2. In case of provision of regulated wholesale roaming access through third-party subcontractors or SPEs (whether or not those are un/regulated undertakings), MNOs shall provide NRAs with sufficient information on such subcontracting and confirmation of performance of, and liability for non-observance of regulated obligations by such subcontractors;
3. NRAs shall verify whether the reference offer is publicly available and can be easily accessible;
4. NRAs shall publish on their websites the information about all reference offers that must be published by local operators, indicating the allowed limitations of such publishing (whether there are confidential provisions that are not published);
5. NRAs shall periodically control the availability of all reference offers subject to mandatory publishing.

Telefonica proposes to keep the same wording as the one in the previous Guidelines (as the current draft substitutes “*shall*” by “*must*” or “*have to*”).

Bouygues recalls that among the new obligations on customer information, the Regulation foresees the establishment of a database containing numbering ranges for value added services. Another database should also list the means of access to emergency services, which are mandatory in each Member State and which roaming customers are able to use, which shall be made available to operators and national regulatory authorities. **Bouygues** notes that these lists would have to be drawn up by the national authorities, which would then be put online by BEREC, and NRAs would have to update them frequently.



BEREC's response:

As regards MTX Connect's comment, BEREC considers that the supervision and enforcement provisions of Article 17 Roaming Regulation are adequate and operators facing issues can always address them to the respective NRA.

As already mentioned above, BEREC considers that the substitutes “*shall*” by “*must*” or “*have to*” do not change the meaning of the Guidelines and therefore rejects Telefonica's comment.

Regarding VAS and emergency services databases, BEREC will proceed according to the Roaming Regulation provisions and set up a procedure to fill in the databases and make sure that they are regularly updated.

Guideline 23 - Agreement on performance:

Liberty Global considers that the following sentence in paragraph 1 of Guideline 23 is a high standard to set as the default minimum service level and places a high burden on the roaming provider: “*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 best industry practice*”. Achieving this standard could cause visited network operators to deprioritise innovation in provision of these services to its own domestic customers to enable delivery of a roaming access seekers' requests. Instead, setting this standard at a level of service consistent with best industry practice allows visited network operators to continue to innovate to provide standards that surpass this standard, while ensuring that roaming customers enjoy a sufficient level of service. **Liberty Global** believes that this would be both proportionate and appropriate.

Contributor believes that the introduction of an SLA in the Wholesale Roaming Reference Offer (WRRO) is an unfair burden not foreseen in Article 3 Roaming Regulation. It is not clear which minimum service levels should generally be specified for ordering, delivery, normal operation, maintenance and repair of which services. Roaming services are typically provided to visitors under the same conditions they are provided to the customers of the visited network, so it is not straightforward to define service levels for such services. **Contributor** suggests that at least such prescriptions should be referred to in the “wholesale roaming agreements” resulting from a negotiation and not in the WRRO. **Contributor** therefore proposes the following amendment for Guideline 23: ~~“BEREC considers the Reference Offer shall incorporate a Service Level Agreement (SLA) which clearly sets out the standards of the service which the access seeker can expect in the case of direct and resale wholesale roaming access. Where no absolute benchmarks are available, in particular where the quality of service in question depends on the performance of other network operators, it is acceptable to define standards by reference to those experienced by the visited network operator's own retail customers. The Agreement should 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 access seeker'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 **roaming** service levels **provided** 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 best industry practice.~~

~~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 in the case of normal commercial practice.~~

~~Access providers should supply without delay and thereafter on a regular basis, a quality report to the access seeker, capable of demonstrating whether or not the specified quality parameters have been met and the extent of any non-conformity. The report has to show the quality levels achieved in respect of services provided to each of the following:~~

- ~~– the access seeker in question,~~
- ~~– all access seekers in aggregate,~~
- ~~– the MNO itself.~~

~~Procedures should be established for the automatic payment of any compensation due at the same time as the production of the Report.~~

~~In order to minimise unnecessary costs, the degree of detail reported may be limited where there is no prior reason for concern over quality and where problems would be readily apparent. In contrast, where there is a history of quality problems within the responsibility of the access seeker, a great level of reporting detail is likely to be justified.”~~

NOS argues that as for now, there are no SLAs in Roaming, therefore SLAs cannot be included in the reference offer. **NOS**' suggestion is to eliminate this guideline.

BEREC's response:

BEREC rejects Liberty Global's comment as it considers that is not in line with the QoS requirements of the Roaming Regulation.

BEREC does not also accept Contributor's suggestion as it considers that the text that Contributor proposes to be deleted is important for the fulfilment of the QoS retail obligations. BEREC also notes that this particular guidance was also included in the BEREC Guidelines of 2017 when the Roaming Regulation was not very specific about Quality of Service. The same holds for NOS's comment.

Guideline 24 - Information on QoS parameters and specifications provided in the Reference Offer.

Telefonica agrees with BEREC that the information to be included in the Reference Offer should be the generally available radio technologies, the frequency bands and the

configurations that could affect the throughput (as long as the customer's device supports these configurations). However, **Telefonica** considers that the reference to the estimated and advertised speeds should not be included. **ETNO-GSMA** adds that equalisation of roaming quality information with QoS levels in the Open Internet Regulation is not based on the Roaming Regulation and considers that the introduction of this requirement on the wholesale level is therefore disproportionate. Therefore **Telefonica** and **ETNO-GSMA** request the deletion of the following paragraphs: *~~"The Reference Offer must also include the estimated maximum and advertised (i.e. speed that can be realistically delivered to end-users) download and upload speeds per available technology for retail roaming customers. This information on the speeds is the same as that to be provided to customers by operators according to the Open Internet Regulation¹⁶ and the BEREC Guidelines on the Implementation of the Open Internet Regulation.~~*

~~The descriptions can be contained in an annex and might be based partly or wholly on available industry recommendations, if applicable".~~

Furthermore, **Telefonica** and **ETNO-GSMA** suggest to replace paragraphs 4 and 5 of Guideline 24 by a direct reference to Recitals 15 and 27 Roaming Regulation, for the sake of clarity. Alternatively, **ETNO-GSMA** suggests to add the wording below to paragraph 4 of Guideline 24: *"unless visited network operators that are requested to provide access can prove that it is technically unfeasible to do so."*

With regard to handover between mobile communication networks (paragraph 6 of Guideline 24), **Telefonica** notes Recital 27 and Article 4 Roaming Regulation refer to handover between networks, not to service handover. The lack of standards in 4G and 5G means that the technical implementation of service handover is not feasible in the short term due to the high technical complexity and the risk of developing non-standardised solutions for 4G and 5G. Although operators are working with standardisation bodies to develop these standards, service handover cannot be required in the guideline. **ETNO-GSMA** adds that this paragraph goes beyond the regulated provision that requires reducing undue delays in network handovers. Therefore, **Telefonica** and **ETNO-GSMA** request to delete the following paragraph: *~~"In this regard, BEREC encourages operators to continue working on such network coordination, making it possible to create handovers without disconnecting and thus enhancing the experience of end-users, taking also into account the different pricing especially in cases of intra-EEA communications".~~*

Liberty Global agrees to provide information on QoS in the reference offer, however the provision in paragraph 4 (*"the visited network operator should ensure that roaming customers are not subject to conditions that are less advantageous than those it offers to its domestic customers"*) is difficult to enact, because the visited operator is not solely in control of QoS – it can ensure QoS for the network components, including both RAN and core network, under its own control. But the overall QoS experienced by the roaming customer is also dependent on the access seeker's core network capabilities. Thus, **Liberty Global** considers that additional clarification on the guideline is needed.

In accordance with its comments on Guideline 23, **Contributor** does not agree with the obligation to insert and maintain an updated description of the MNO's QoS parameters in the



WRRO. The insertion in the WRRO of estimated maximum and advertised download and upload speeds per available technology for retail roaming customers appears to be an unfair burden. The WRRO is a document updated yearly, earlier upgrade would only increase costs providing little improvement to QoS perceived by final customers of the roaming provider. As in Guideline 23, **Contributor** suggests that at least such prescriptions should be referred to the “wholesale roaming agreements” and not to the WRRO. Therefore, **Contributor** proposes the following modification of Guideline 24: ~~“The Reference Offer must contain and maintain an updated description of the MNO’s QoS parameters and specifications that it supports for the relevant routing scenarios. BEREC assumes this will include at least information on generally available radio technologies, frequency bands and other configurations or parameters that could support consistent throughput should the incoming roaming customer’s device supports such configurations.~~

~~The Reference Offer must also include the estimated maximum and advertised (i.e. speed that can be realistically delivered to end-users) download and upload speeds per available technology for retail roaming customers. This information on the speeds is the same as that to be provided to customers by operators according to the Open Internet Regulation and the BEREC Guidelines on the Implementation of the Open Internet Regulation.~~

~~The descriptions can be contained in an annex and might be based partly or wholly on available industry recommendations, if applicable.~~

According to Recital 15 Roaming Regulation, the visited network operator, taking also into account the relevant wholesale roaming agreement and without prejudice to the relevant retail obligations, should ensure that roaming customers are not subject to conditions that are less advantageous than those it offers to its domestic customers.

According to Recital 27 Roaming Regulation, operators should take reasonable measures to minimise any undue delay in handovers between mobile communications networks. Furthermore, national administrations and operators can conclude spectrum coordination agreements and ensure coverage, at least along 5G corridors and terrestrial transport paths.

In this regard, BEREC encourages operators to continue working on such network coordination, making it possible to create handovers without disconnecting and thus enhancing the experience of end-users, taking also into account the different pricing especially in cases of intra-EEA communications”

MVNO Europe notes that its views on Guideline 24 were expressed in feedback on Guideline 21.



BEREC's response:

As regards the comment of Telefonica, ETNO-GSMA and Contributor about not including the reference to the estimated maximum and advertised speeds, BEREC considers that this should not be a burden for operators as a similar obligation has already been in place at the national level for their end-users. This type of information, which BEREC clarifies that refers to estimations, is considered to contribute to the implementation of the Roaming Regulation's retail QoS obligations.

BEREC disagrees with ETNO-GSMA's suggestion to add the following wording to the fourth paragraph of Guideline 24, *"unless visited network operators that are requested to provide access can prove that it is technically unfeasible to do so"*, because it considers that this addition will result in Guideline 24 not being in line with recital 15 Roaming Regulation. BEREC also considers that it is not needed to replace the fourth and the fifth paragraph of Guideline 24 by a direct reference to the recitals 15 and 27 of the Regulation.

With regard to the comment about handover, BEREC considers that the Guideline's text is not binding for operators and therefore sees no need to eliminate it as it is proposed by Telefonica and ETNO-GSMA.

BEREC rejects Liberty Global's suggestion as the purpose of this Guideline is to cover the requirements that the visited network operator has to comply with when providing services to the access seeker. This Guideline does not address the end user experience issues.

Guideline 25 - Phasing-out of previous mobile generations:

MVNO Europe welcomes this guideline, however believes that a proactive notification requirement covering the entire chain of parties involved in all use cases may also need to be recommended by BEREC, to avoid any negative surprises. **MVNO Europe** also reminds about the importance of ensuring continued 2G wholesale roaming and refers to explanations included in feedback provided for Guideline 6.

BEREC's response:

BEREC accepts MVNO Europe's comment and intends to add in Guideline 25 a reference that in case of wholesale roaming resale access, access providers must pass the information they receive from visited network operators to the MVNOs and resellers they serve.

Guideline 26 - Information regarding access to emergency services through emergency communications:

MTX Connect notes that the implementation of caller location identification (CLI) is subject to national laws and the Commission delegated acts. The first deadline for such acts is set for 21 December 2022 and BEREC is supposed to provide its opinion on the subject matter. **MTX Connect** would like to draw BEREC's attention to the fact that each Member State will have its own rules on compatibility, interoperability, integration, protocols and other matters of the CLI. The general concept is that national operators will provide a respective CLI to a local PSAP in a format and in a way as prescribed by national law. Emergency communications are executed through a local breakout, therefore **MTX Connect** raises the question who shall provide the CLI (if at all) in case of emergency calls originated from a SIM registered in a visited network while roaming. For this reason, it is unclear whether the obligation to comply with CLI requirements falls on the visited network operator or remains with the home network operator.

ETNO-GSMA and **NOS** point out that the following sentence remains unclear: "*Reference Offer should contain information on at least what type of emergency communications are mandated and technically feasible for ensuring access for roaming customers under national measures in the visited Member State*". It is important to understand what should be considered within the definition of emergency communications (does this only cover services providing on-site assistance e.g. medical services, fire services, police etc. or also remote assistance such as the anti-poison centre, centres for suicide prevention, etc.). **ETNO-GSMA** considers that there is currently too much room for interpretation, therefore **ETNO-GSMA** proposes that NRAs should issue a clarification for the situation/requirements in each country in order to allow for alignment between national operators. This should also be the case in respect of alternative means of access and NRAs should develop uniform guidance for all national operators to guarantee a harmonised approach in every country. **NOS** complements that it is unclear what should be considered within the definition of emergency communications, namely whether these should be understood as alternative means of emergency access to be included in the corresponding database to be prepared by BEREC.

Paragraph 5 of Guideline 26 makes reference to the delegated acts to be adopted according to Article 109 (8) EEC when released. **ETNO-GSMA** considers that NRAs should clarify the impact of the delegated act in each country, as even when the delegated act is adopted, operators do not know which initiatives will be taken to implement this act.

The last paragraph of Guideline 26 states that "*for meeting the requirement about the transmission of handset derived information, providers of handsets' operating systems should also co-operate in the standardisation process*". **Telefonica**, **ETNO-GSMA** and **NOS** express concerns with this guidance as operators are not involved in this aspect, which is fully driven by the providers of the handsets' operating systems and the PSAP. Currently, the caller location information from the network is provided by the visited network. In the case of handset derived information, this information should be provided based on the handset and the responsibility of the visited network should be limited to the transmission of this information. This location information should be provided by the handset to the network in a free mode and in a suitable format.

Contributor believes that the following sentence in paragraph 2 seems to involve a role for the roaming provider: "*It should also contain information on the role of the roaming provider*".



about how to convey emergency communications and transmit the caller location information to the most appropriate PSAP". However, in **Contributor's** experience, it is the visited network that should handle emergency calls to the most appropriate PSAP typically nearest to the roaming customer call origination. **Contributor** mentions that it is not clear which could be the role of the roaming provider and underlines the need to investigate how emergency services access could evolve in the future with the introduction of VoLTE (involving home routing of all voice calls as well as for data) and for all those technologies that involve home routing of voice calls, SMS and data (for specific application). **Contributor** suggests to delete the sentence in the second paragraph of Guideline 26: ~~"It should also contain information on the role of the roaming provider about how to convey emergency communications and transmit the caller location information to the most appropriate PSAP"~~.

In addition, **Bouygues** considers that the transmission to the emergency services of the geographical location from which the communication originated depends not only on the availability of the information, but also on the information transmitted by the terminal manufacturers, which must make that location information available to operators. Without the cooperation of these actors, telecoms operators will not be able to properly meet their legal obligations by transmitting data that they do not control, especially when data is encrypted.



BEREC's response:

As regards the comments of ETNO-GSMA and NOS on the definitions, BEREC notes that the definitions of emergency communication and emergency service are found in Articles 2(38) and 2(39) EECC, respectively. It is for the Member States to determine the type of emergency communications that are technically feasible for ensuring roaming customers' access to emergency services. Until Member States have defined them, BEREC cannot provide more guidance.

Regarding the comments of MTX Connect and Contributor on the roaming provider role in emergency communications, BEREC notes that according to Recital 19 Roaming Regulation: *"wholesale roaming agreements should include information on the technical parameters for ensuring access to emergency services, including by roaming customers with disabilities, as well as for ensuring the transmission of caller location information, including handset-derived information, to the most appropriate PSAP in the visited Member State. Such information should allow the roaming provider to identify and provide the emergency communication and the transmission of caller location free of charge"*.

As several comments received point out, it is true that emergency calls will be handled by the visited network (local breakout) and it makes sense that the operator of the visited network transmits the caller location information instead of the roaming provider. It should however be noted that alternative means of access to emergency communications may also be implemented in different ways and, depending on their specific implementation, the roaming provider could be in the position to identify and provide emergency communications or transmit the caller location. For those reasons, BEREC considers that Guideline 26 covers all possible scenarios that may occur in the absence of knowing the communications services mandated in each Member State.

On the comments raised by Telefonica, ETNO-GSMA, NOS and Bouygues about location information, BEREC agrees that without the co-operation of terminal manufacturers, terminal-based location information may not be available to operators. For this reason, BEREC pointed out in the Guideline 26 that *"for meeting the requirement about the transmission of handset derived information, providers of handsets' operating systems should also co-operate in the standardization process"*.

This cooperation entails the terminal manufacturer making available to operators the location information of the user's terminal in a standardised form suitable for transmission. BEREC considers that this provision of information for the purpose of emergency communications should be provided free of charge by the terminal manufacturer and intends to add this is at the end of Guideline 26.

Finally, with regard to the ETNO-GSMA comment about NRAs clarifying the impact of the delegated act in each country, BEREC considers that this is not within the scope of the wholesale roaming Guidelines.



Guideline 34 - Information about permanent roaming and anomalous or abusive use:

Liberty Global sees that preventing permanent roaming and anomalous and abusive behaviour is important for both the visited network operator and the access seeker and welcomes the provisions under Guidelines 34 and 35. However, **Liberty Global** notes that restricting the assessment of anomalous and abusive behaviour solely to aggregate data may prevent the detection of small numbers of roamers engaging in abusive practices, e.g. permanently uploading large amounts of data. **Liberty Global** suggests allowing for some degree of exchange of individual information to allow the access seeker to better enforce the fair use policy, preventing fraud and other abusive behaviour, which is detrimental to other customers, both domestic and roaming.

Transatel believes that the Roaming Regulation and/or BEREC should issue clear prohibitions preventing MNOs from applying:

- Disproportionate penalties in case of permanent roaming or anomalous or abusive use (i.e. penalty higher than 20% of the applicable price). MVNOs do not always have the tools to control the uses made through their platform, and this should not be a reason to apply a penalty that could put such MVNOs out of business (as some EU MNOs threaten to do).
- Bandwidth limitations. For example, some EU MNOs are limiting the data transmission rate in download and upload for the MVNOs while roaming. As such limitations do not allow the MVNOs to offer a QoS continuity to their clients while roaming and are discriminatory, such bandwidth limitation should be prohibited.

Contributor underlines that without referring to specific information relating to individual traffic of the access seeker's roaming customers, it is not possible to demonstrate that permanent roaming occurs. Therefore, any evidence produced does not mean that permanent roaming occurs but provide only a likelihood evidence. **Contributor** therefore proposes the following amendments to Guideline 34: *"The Reference Offer may include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access by the access seeker's customers."*

These conditions may include:

- *the specific measures that the visited network operator may take to prevent permanent roaming or anomalous or abusive use of wholesale roaming access;*
- *the objective criteria on the basis of which such measures may be taken. Such criteria may refer to aggregate roaming traffic information. They should not refer to specific information relating to individual traffic of the access seeker's roaming customers.*

The visited network operator should establish, based on objective criteria, that permanent roaming by a significant share of the access seeker's customers or anomalous or abusive use of wholesale roaming access is ~~taking place~~ likely occurring. The visited network operator has to inform the access seeker accordingly."



MVNO Europe welcomes the additional sentence compared to BoR (17) 144. Placing the burden of proof explicitly on the visited network will help to avoid situations in which access seekers are asked to meet extreme up-front and recurring information requirements on the traveling patterns and behaviour of their users.

BEREC's response:

BEREC rejects Liberty Global's proposals. Guideline 34 has been prepared according to Recital 20 Roaming Regulation and therefore BEREC sees no room for any amendment.

BEREC also rejects Transatel's comment as it considers that there is no relevant legal basis.

Furthermore, BEREC notes that Contributor's drafting suggestion cannot be accepted as it would not be consistent with Recital 20 Roaming Regulation.

Guideline 35 - Measures to prevent permanent roaming or anomalous or abusive use:

As mentioned in its feedback to Guideline 1, **MTX Connect** expressed its concern that BEREC's suggestion to revise the wholesale roaming agreement may lead access providers to interpret this as an opportunity to terminate the contract and force access seekers to undergo an access negotiation procedure. **MTX Connect** would appreciate if BEREC clarified the limits of such a right for a revision.

MTX Connect also asks BEREC to clarify whether the last paragraph of Guideline 35 (*"The Reference Offer may, as a last resort, provide for the possibility to terminate the wholesale roaming agreement where less stringent measures have failed to address the situation"*) is the same one that requires an authorisation by the NRA as stated in paragraph 5 of Article 3(6) Roaming Regulation, or whether this is a separate invention of BEREC.

Liberty Global and **Transatel** note that their views on Guideline 35 were included in their feedbacks on Guideline 34.

MVNO Europe considers that innovative M2M/IoT services and applications are being unduly held back by extreme information requirements imposed on access seekers. Reference Offers are intended to regulate the behaviour of (often unwilling) access providers; they should not be an instrument to regulate and constrain the activities of access seekers, or to prevent wholesale roaming access for legitimate and innovative M2M/IoT use cases. **MVNO Europe** recommends deleting the first and last paragraphs of Guideline 35.



BEREC's response:

BEREC has replied to MTX Connect's first comment in Guideline 1 further above.

Moreover, BEREC clarifies that the last paragraph of Guideline 35 is the same one that requires an authorisation by the NRA as stated in paragraph 5 of Article 3(6) Roaming Regulation.

As regards MVNO Europe's recommendation to delete the first and last paragraphs of Guideline 35, BEREC considers that the draft text is consistent with Recital 20 Roaming Regulation and therefore, it rejects this proposal.

Guideline 36 - Procedure prior to the unilateral termination of wholesale roaming agreements in case of permanent roaming or abusive or anomalous usage:

Telefonica and **ETNO-GSMA** request to add the following text to the end of the first paragraph: *"In the case of a termination on the grounds of permanent roaming or anomalous or abusive use of wholesale roaming access, according to the contractual arrangements between the parties, cancellation period without any reasons is possible without any clearance, as long as these arrangements regarding the cancellation period allows the access seeker to have the possibility to conclude a new agreement according to Art. 3. BEREC considers 6 months cancellation period as sufficient to fulfil this requirement."*

Telefonica and **ETNO-GSMA** pointed out that there is existing case law which provides for the possibility of such solution (series of MNO-MVNO disputes in Germany).

BEREC's response:

BEREC notes Telefonica's and ETNO-GSMA's comment but considers that this addition is not required.

Guideline 39 - Wholesale roaming agreement duration including any break clauses:

MTX Connect believes that the contractual right to terminate the regulated access gives the access provider an opportunity to delay the provision of roaming services and in some cases to require a re-negotiation of previously agreed terms, while the access seeker has no protection against such tactics. **MTX Connect** requests BEREC to clarify that the contractual right to terminate the regulated wholesale roaming access represent an objective justification within the scope of the Roaming Regulation.



BEREC's response:

BEREC has replied to MTX Connect's comment in Guideline 1 further above.

Guideline 41 - Supply conditions which deter entry:

BEREC asserts exclusivity clauses unacceptable unless in case of specific justification, therefore **MTX Connect** asks BEREC to elaborate more on what potentially may be qualified as an exceptional justification.

BEREC's response:

BEREC considers that if a visited network operator, in its role as wholesale access provider, can argue in a thorough and convincing manner that technically well-founded threats to its service or network integrity would follow from the access seeker using other wholesale providers in the same country, this could be an example of such exceptional justification.

Guideline 42 - Management and implementation of new roaming agreements:

MTX Connect stresses that the replacement of existing roaming agreements is an administrative and time demanding burden for the access seeker, therefore, in order to minimise this burden, **MTX Connect** suggests to simplify the re-negotiation process and to oblige MNOs not to terminate the existing roaming agreement until the replacement is in place. MTX Connect emphasises that the continuity of roaming services shall be of utmost importance.

BEREC's response:

BEREC has replied to MTX Connect's comment in Guideline 1 further above.

Guideline 44 – Timing issues:

According to **Spusu**, the submission of a draft agreement is often delayed by unnecessary requirements, such as the obligation to submit numerous documents until a draft agreement is sent. The submission of such documents should not be necessary, and this should be stated accordingly in Guideline 44. The criteria that must be met before a draft contract can be submitted should be more clearly defined.

BEREC's response:

BEREC considers that Spusu's requirement is of more detail than what BEREC Guidelines need to address.



Guideline 47 - Negotiation time:

MTX Connect indicates that neither Roaming Regulation nor BEREC's Guidelines detail the time limits for negotiation of the roaming agreement, therefore **MTX Connect** asks BEREC to reflect on how this gap can be filled.

According to **Spusu**, the lack of a time limit for the conclusion of the contract itself is a central weakness of time limits in Article 3(5) Roaming Regulation, because it could lead to deliberate delays in case of disagreements during negotiations. **Spusu** suggests setting a reasonable time limit in Guideline 47 for the conclusion of a contract after making available a draft of the roaming agreement, which is already based on reference offer.

BEREC's response:

Regarding the comments raised by the two stakeholders, BEREC notes that any negotiation should be in good faith and that there is no legal basis to include in the draft BEREC Guidelines what they suggest.

6. Comments on Disputes and NRA intervention (GL 49-52)

Guideline 50 - Dispute resolution:

MTX Connect believes that there are too many issues which may force an access seeker to initiate a dispute over regulated obligations where unregulated entities are involved. For example, during regulated access negotiations when an SPE does not observe the provisions stated in Article 3 Roaming Regulation, or the dispute resolution mechanism stated in Article 18(1) Roaming Regulation does not cover disputes with unregulated undertakings, etc. **MTX Connect** urges BEREC to consider these matters with utmost diligence because these issues have not been raised to date in either the legislation or in BEREC documents, but the SPEs and associated difficulties are already there and NRAs refuse to deal with them.

1&1 generally welcomes that Guideline 50 refers to Article 18 (1) Roaming Regulation in conjunction with Article 26 EEC, which *inter alia* covers the procedure available to resellers / (light) MVNOs for disputes arising with MNOs concerning resale access in their home Member State. **1&1** invites BEREC to expressly mention that the dispute resolution procedure is intended to provide legal redress to resellers / light MVNOs for disputes with MNOs related to resale access in connection with the Regulation.

In addition, **1&1** would like to bring to BEREC's attention that Germany has attempted to transpose Article 26 EEC in § 212 (1) of the German Telecommunications Act ("TKG"). According to 1&1, the provision arguably contains an editorial error, since it suggests that only disputes arising from rights and obligations stipulated in, or based on, the TKG may trigger the dispute resolution procedure. However, the wording of § 212 (1) TKG does not cover disputes related to the Regulation, which is directly applicable in all Member States.

According to **1&1**, BEREC should clarify that any disputes involving rights and obligations from the Roaming Regulation should trigger the national dispute resolution procedure equivalent to Article 27 EECC. This would particularly pre-empt any legal doubts on the application of the German dispute resolution procedure, despite the wording of § 212 (1) TKG.

BEREC's response:

BEREC notes the comments of MTX Connect but it considers that the Guidelines meet the relevant requirements.

Regarding the comment from 1&1, BEREC acknowledges that the new Regulation is being accounted for in the national provisions in order to ensure the enforcement of the Regulation.

Annex - List of received contributions

NAME OF THE CONTRIBUTOR	COUNTRY	NO. OF PAGES
BOUYGUES TELECOM	France	3
ETNO GSMA		5
LIBERTY GLOBAL	United Kingdom/Netherlands/USA	3
MTX CONNECT	Luxembourg	8
MVNO EUROPE	Belgium	8
NOS COMUNICACOES, S.A,	Portugal	5
POLKOMTEL	Poland	1
SECTION OF ELECTRONIC COMMUNICATIONS OPERATORS (SOEK)	Slovenia	1
SPUSU	Austria	2
TELEFONICA	Spain	7
TRANSATEL	Belgium	2
1&1 TELECOM GMBH	Germany	3
CONTRIBUTOR	CONFIDENTIAL	11