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EAFM

EUROPEAN ASSOCIATION
OF FULL MVNOs

Response to

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Draft Work Programme 2015

and

BoR (14) 119

Draft BEREC Strategy 2015-2017

24 October 2014

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I. Introduction of the European Association of Full MVNOs (EAFM)

1. The European Association of Full MVNOs (hereafter "EAFM") was created in 2012 to represent the interests of companies which are active on European mobile markets, and are independent (in terms of ownership and control) from established mobile network operators. The EAFM consists of companies which have negotiated Full MVNO agreements with host mobile network operators, in such a manner that they achieved commercial independence from their host mobile network operators and are involved in the deployment of their own network elements (or are in the process of achieving Full MNVO status).
2. The goal of the EAFM is to create a more openly accessible market for Full MVNOs, in order to contribute to the growth of the fast-moving mobile communications sector, to ensure that consumers and business users have a wider range of diversified services to choose from and to develop competition on the retail mobile market to their benefit. Our members believe that Full MVNOs can stimulate innovation in the telecom sector.
3. The members of the EAFM are listed at <http://eafm.eu/members/>

II. Introduction and Key Points

4. The EAFM welcomes BEREC's initiative to consult interested parties on its draft Work Programme for the year 2015 (hereafter 'draft WP2015') and on its Strategy for the years 2015-2017 (hereafter '2015-2017 Strategy'), and is pleased to provide this brief contribution.
5. The EAFM warmly welcomes BEREC's reaffirmed commitment to three strategic priorities: (1) promoting competition and investment, (2) promoting the internal market and (3) empowering and protecting end-users.
6. The key concern for the EAFM at this time relates to the **on-going developments on international roaming as part of the European Single Market for electronic communications** (EC Connected Continent legislative proposal [COM\(2013\) 627](#), European Parliament legislative resolution [P7_TA-PROV\(2014\)0281](#), and Italian Presidency proposal in September 2014). **The EAFM considers it absolutely essential for BEREC, within the boundaries of its remit, to put its full weight in this debate.**
7. **We call upon BEREC to:**
 - a) **Act as a trusted source of factual information and evidence;**
 - b) **Objectively calculate wholesale network costs;**
 - c) **Demonstrate consequences and risks arising from insufficiently considered proposals on international roaming;**
 - d) **Use its authority as an EU institution advising the co-legislators to help avoid severe economic shocks to market participants, damage to regulatory predictability, and damage to end-users; and,**
 - e) **Systematically keep in mind the existence and role of Full MVNOs.**
8. We note in this regard that:
 - a) Mobile Virtual Network Operators (MVNOs) collectively **serve over 10% of EU mobile users.**
 - b) Full MVNO access has been the **key antitrust remedy** in recent 4 to 3 mobile mergers in Austria, Ireland and Germany.

9. **MVNOs contribute strongly** to competition and to financing mobile networks (through payment of wholesale charges which assure revenues to mobile network operators), **whilst avoiding costly duplication of network assets.**
10. Full MVNOs, in particular, bring not only commercial innovation, but also **technical innovation** to mobile markets, and are intrinsically **well-placed to foster the development of the EU Single Market.** Indeed, several EAFM members are multi-country operators.
11. The **proposals on the table on international roaming**, notably the fact that it is not guaranteed that wholesale caps would be reviewed/reduced prior to the abolition of retail roaming surcharges, pose an **existential threat to Full MVNOs.** This is the case because: (i) genuine retail 'roam like at home' cannot be achieved if wholesale payments are due at the level of the regulated wholesale caps of the Roaming III Regulation, (ii) **Full MVNOs have no bargaining power to negotiate wholesale roaming charges in a bilateral/multilateral context.**
12. Indeed, **without material reduction of wholesale roaming charges, Europe will face:**
 - a) Competitive distortion;
 - b) **Eviction of Full MVNOs from the international roaming market;**
 - c) **Risk of eviction of Full MVNOs from their domestic market(s)** on account of inability to compete with MNOs offering 'roam like at home';
 - d) Only bilateral/multilateral MNO alliances will be able to offer 'roam like at home', on account of their ability to trade below the regulated wholesale caps, and,
 - e) **Higher overall retail pricing for consumers** (waterbed effect in home country) including for 'roam like at home', driven by high wholesale roaming costs.
13. For the avoidance of doubt, the EAFM agrees with the policy objective to enable 'roam like at home', insofar as: (i) it does not reduce competition, (ii) it is not exclusionary, and (iii) it is not damaging to users of mobile services in the EU. **EAFM members want to offer RLAH retail bundles, if they can.**

14. On the basis of what is stated above, the **EAFM asks BEREC to systematically keep in mind the existence and role of Full MVNOs, and reflect that role, when finalising the list of items in its draft WP2015. Similarly, we ask BEREC to consider Full MVNOs in its 2015-2017 Strategy, and when subsequently conducting work on the finalised items**, and more generally when drafting documents, and when providing advice to EU institutions.

III. Draft WP2015: Specific EAFM comments

15. In Section 3.1, in the context of Strategic Priority 1, BEREC proposes to focus on developments which affect: *"The overall competitive scenario, including the trend towards market concentration, and the challenge to competition this may represent, and the need to analyse alternatives, such as network sharing, which could help minimise potential adverse effects on competition"*. The EAFM requests BEREC to **add the role of Full MVNOs** in this context. This is necessary, on an intrinsic basis, but also because Full MVNO access has been the key antitrust remedy in recent 4 to 3 mobile mergers.
16. In Section 3.1.1, BEREC proposes to develop a report on virtual access products. We understand that this concerns wholesale access to fixed networks. However, there would also be considerable **merit for BEREC to develop the regulatory and industry community's understanding of what genuine Full MVNO access consists of**. We make this statement because we observe that Full MVNO access exists only in a subset of EU Member States, and has not been achievable in some Member States. In the annex to this response, we provide the EAFM's understanding of what constitutes genuine Full MVNO access.
17. In Section 3.1.5, BEREC proposes to develop a report on oligopoly analysis and regulation, and reference is made to: *"Depending on the resources available, a fact-finding exercise on the most recent Merger and Acquisition processes and on regulatory remedies in the EU could be included in this work item. This will be a useful tool for BEREC to further develop a forward-looking analysis on this subject. In addition, a report on market developments post-merger may also be envisaged."* The **EAFM urges BEREC to focus this work on mobile markets**, to include the recent Austrian, Irish and German cases, but also to examine the circumstances in which a tight oligopoly of MNOs has resulted in the absence of MVNOs altogether, has resulted in the absence of Full MVNOs, has resulted in undue restrictions harming Full MVNOs and end-users (e.g. withholding independent wholesale roaming access,

withholding wholesale 4G access). As per our response to BEREC's draft Work Programme for the year 2014, we again **ask BEREC to explicitly consider the conditions of supply of wholesale mobile access** (stand-alone for voice, for SMS, and for data, as well as for a wholesale cluster market comprising voice/SMS/data). We look forward to seeing the BEREC report and an opportunity to comment on a draft.

18. In Section 3.2 and 3.2.6, in the context of Strategic Priority 2 (and also in the draft 2015-2017 Strategy), BEREC proposes to continue work on Machine-to-Machine communications (M2M) and Internet of Things (IoT). We support BEREC's involvement in these matters, although we also wish to caution against perhaps unnecessarily pro-regulation bias which seems implicit in BEREC's description of the issues in both documents.
19. In Section 3.2.2, BEREC proposes to conduct (essentially internal) work on the costs of wholesale call termination, and proposes to continue publishing monitoring reports on termination rates. We believe that this is necessary, all the more if the proposals on international roaming progress. Indeed, as we have indicated at the BEREC Stakeholder Event on 16 October 2014, **harmonisation of MTRs is necessary prior to introducing/mandating retail 'roam like at home'**.
20. The EAFM supports BEREC's proposed work under Section 3.2.3 in the context of the proposed Connected Continent Regulation and the upcoming review of the EU regulatory framework for electronic communications. Please refer to Section II above of this response, in which we specifically address the situation with regard to the European Single Market for electronic communications, focusing on international roaming. **The existence and role of Full MVNOs should be explicitly taken into account by BEREC when dealing with the ongoing legislative process and when considering the upcoming review of the regulatory framework.**
21. Section 3.2.4 on international roaming is obviously crucial for the EAFM. We refer to Section II of this response for our key concerns about the process and the risk of evicting Full MVNOs from both the international roaming market and from their domestic market(s). With regard to **'Fair Use Principles/Policies'**, please allow us to emphasise the following:
 - a) If wholesale roaming caps are +/- aligned with domestic MVNO wholesale charges, Fair Use principles may not be necessary at all;
 - b) The EAFM is not convinced that detailed Fair Use rules (going beyond principles) can workably be determined at EU level;

- c) Regulating detailed Fair Use policies (i.e. the retail terms and conditions of operators) does not align with the philosophy of transparent retail pricing; this would likely create distrust and disputes between end-users and operators;
 - d) Implementation of detailed Fair Use policies mandated by regulation will generate high IT development costs;
 - e) Providers, such as Full MVNOs, with the most progressive offers may be forced to curtail their existing domestic retail offers to adapt to the economic impact of retail 'roam like at home', both in terms of retail pricing and as regards the terms and conditions they apply towards their customers.
22. More broadly, we agree entirely with the contents of Section 3.2.4, although the EAFM is on record (also at the BEREC Stakeholder Event of 16 October 2014) in stating that the **decoupling obligations in the Roaming III Regulation should be abolished if retail roaming surcharges are to be abolished**. The EAFM also reiterates its firm belief (see our response to specific BEREC consultations and our response to the BEREC's draft WP2014) that if decoupling were after all to become a reality, then Full MVNOs must be able to participate in the provision of Local Data Roaming Services ('LBO'), i.e. offer their services to visitors to their country, in the same way as MNOs.
23. Section 3.3.1 addresses (among others) Net Neutrality and suggests a second round of the Traffic Management Investigation. We request BEREC to provide for a **public consultation on the draft questionnaires and on the draft report**. A point of attention in this context is that virtual operators may not in all cases have the same level control as the mobile network operators, and/or may face constraints which are of a different nature compared to those of network owners.
24. BEREC Stakeholder Forum: We appreciated the format and content of the Stakeholder Event held on 16 October 2014 and we ask BEREC to continue to involve the EAFM in future stakeholder engagement.

IV. Annex: Concept of Full MVNO Access – Technical and Commercial

Please allow the EAFM to inform you of our understanding, as Full MVNOs, of what the concept of Full MVNO precisely entails, in technical terms as well as in commercial terms, and of what we consider appropriate safeguards for market concentration.

Full MVNO access – in technical terms

In technical terms, we believe that the following conditions must be fulfilled in order to achieve Full MVNO access, and thereby achieve the necessary technical independence from the Host Operator:

- Rights-of-use over numbering resources granted by the national regulatory authority directly to the Full MVNO, including: IMSI mobile network code, MSISDN number range, non-geographic numbers, national and international signalling point codes, operator ID code/number portability code, etc.
- Own SIM cards, including control over all SIM card functionalities.
- Control over all network elements, with the exception of the Radio Access Network (RAN), and – at the Full MVNO’s discretion – with the exception of backhaul from the RAN. This implies that the Full MVNO has its own HLR (Home Location Register), MSC (Mobile Switching Centre), SMSC/MMSC (SMS and MMS Switching Centre(s)), SGSN/GGSN (Mobile Data network elements), and can organise its own international roaming.
- Control over all OSS/BSS (Operations Support and Business Support systems), billing system, customer care system, ability to provision post-paid and pre-paid customers, etc.
- All calls, SMS/MMS, and data sessions are delivered to the Full MVNO’s equipment (i.e. none stay ‘on-net’ of the Host MNO, none are routed end-to-end by the Host MNO).
- Full MVNO benefits from the same RAN technologies (e.g. 4G) and the same RAN coverage as the Host MNO.

Note: In some cases, the Full MVNO may wish to ‘outsource back’ the ownership and/or management of certain technical resources or technical processes to the Host MNO, or to outsource them to another provider. This is acceptable as long as it is clear that it is done by the Full MVNO on a fully voluntary basis, without coercion or operational/financial pressure on the part of the Host MNO, and likely under a contract that is separate from the wholesale access contract.

Full MVNO access – in commercial terms

In commercial terms, we believe that the following conditions must be fulfilled in order to achieve Full MVNO access, and thereby achieve the necessary commercial independence from the Host Operator:

- Full MVNO unequivocally owns its customer base, and is able to migrate that customer base to another Host MNO, to its own network, to sell that customer base, etc.

- No restrictions on type of services provided, and on the type of customers (retail and wholesale) to whom services are provided.
- No restrictions on the setting of retail prices to customers and wholesale charges to third parties.
- No restrictions on the receipt of wholesale call / SMS termination payments.
- No restrictions on the Full MVNO to organise its own international roaming.
- No restrictions on the ability to contract with any third parties (in particular no exclusivity; the Full MVNO must be able to use multiple domestic Host MNOs and international roaming partners if it so wishes).

Appropriate safeguards for market concentration

Based on our members' experience in several EU member states, we believe that safeguards for market concentration are needed. In particular, it should be ensured that Full MVNOs are guaranteed to be able to make use of wholesale access, and that they are enabled both to replicate and innovate, as is explained below.

Replication of Host MNO services

As stated above (Full MVNO Access – in commercial terms), we believe that there should be no restrictions on Full MVNOs: (i) in terms of the type of services provided, and on the type of customers (retail and wholesale) to whom services are provided by the Full MVNO, and (ii) in terms of setting of retail prices to customers and wholesale charges to third parties.

In practice, we have witnessed cases in which (Full)MVNOs were driven by the Host MNO to specific market niches, or were unable to compete with the Host MNO especially for the low end of the market, or were unable to follow price reductions over time of the Host MNO, on account of a margin-squeeze situation.

On the basis of this experience, the EAFM advocates internal-external non-discrimination and transparency principles not only on quality, but also on the wholesale access charges, and specific safeguards against margin-squeeze, in order to ensure that Full MVNOs are able to replicate ALL retail/channel offers marketed by the Host MNO at all times, without being faced with a margin-squeeze situation.

In addition, Full MVNOs should not be prevented from acting as MVNO Enablers (MVNE) providing wholesale services to other MVNOs.

Innovation

As stated above, we believe that there should be assurance that Full MVNOs can use their own numbers, their own systems, and benefit from the same RAN technologies (e.g. 4G) and RAN coverage as the host MNO.

In practice, we have witnessed cases in which (Full) MVNOs were not able to access a large pool of numbers (e.g. necessary for machine to machine communications), launch 4G simultaneously with their Host MNO, or launch commercially aggressive data-led bundles, or were held back from organising their own international roaming.

Such a state of affairs prevents Full MVNOs from developing, experimenting with, and putting innovative services and solutions on the market. Smaller companies are often more willing to experiment, and are more capable of coming up with technical and commercial innovations, which has an overall welfare-enhancing effect.

On the basis of this experience, the EAFM advocates specific safeguards for innovation, specifically the prohibition of technical and commercial restrictions as set out above, and a guarantee that Full MVNOs will be able to benefit from the same RAN technologies (e.g. 4G) and RAN coverage as the host MNO, at the same time as the Host MNO.

V. EAFM Contact Details

Should you require any clarifications or further information on the elements and positions set out by the EAFM in this response, please contact:

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