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Body of European Regulators  
for Electronic  
Communications (BEREC)

E-mail sent to the address [pm@berec.europa.eu](mailto:pm@berec.europa.eu)

**Subject: Response to the draft report for public consultation on "Guidelines for Quality of Service in the scope of Net Neutrality"**

PosteMobile wants to provide its response to the public consultation on draft report related to "Guidelines for Quality of Service in the scope of Net Neutrality".

You can find below PosteMobile contribution on the public consultation (Annex 1).

PosteMobile remains at your disposal for any possible further clarification and encourages the European Commission to send any communication to the attention of Mr Giovanni Maria Lione, Mr. Antonello Conte and Miss. Sonia Romano ([giovannimaria.lione@postemobile.it](mailto:giovannimaria.lione@postemobile.it); [sonia.romano@postemobile.it](mailto:sonia.romano@postemobile.it), [antonello.conte@postemobile.it](mailto:antonello.conte@postemobile.it)- tel. 0039 06 9667 4722; fax 0039 06 9667 4997).

Best regards.

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Gruppo Postaitaliana

## Annex 1

PosteMobile, with registered office in Via Aurelia 866 - 00165 Rome (RM) - Italy (hereinafter "PosteMobile"), in person of Mr. Giovanni Maria Lione Head of Legal, Regulatory and Security Department, is the Poste Italiane Group's Mobile Virtual Network Operator (hereinafter "MVNO"), active in Italy since 2007.

As of today, PosteMobile manages around 2,220 million SIM CARDS.

PosteMobile developments projects include that to become a Full-MVNO in the next two years.

**The main purpose of PosteMobile's contribution to this consultation document is to provide the specific MVNO's point of view on:**

- **the conditions and process for regulatory intervention,**
- **the relevance and exhaustiveness of the scenarios described in the consultation document.**

As reported in the response to Consultation n. 31, PosteMobile wants to underline the importance to consider MVNOs specific characteristics toward MNOs.

Presently MVNOs cannot autonomously manage the Quality of Service because they have to rely on the host MNO access network and facilities.

In this scenario it is necessary that -in order to avoid any distortion of competition in the market - NRAs request the MNOs to allow MVNOs to access some essential traffic management network features at the same technical and economic conditions and with the same level of quality and transparency applied by MNOs to their retail divisions, in order to

give the MVNOs the chance to autonomously define and offer to their end users retail offers based on the prioritization of bandwidth allocation.

#### **1. On the conditions and process for regulatory intervention**

As reported in the response to Consultation n.31, generally PosteMobile considers correct and necessary to allow any operator (MNOs and MVNOs) the appropriate technical and commercial levers to manage Quality of Service in order to guarantee the level of service expected by their final users, in respect of no-discrimination, competitiveness policies and customer protection.

**Anyway possible regulatory obligations or guidelines have to be diversified between MNOs and MVNOs, considering that MVNOs are not able to manage autonomously the service and to provide any information to their customers in case the host MNO is not transparent toward them.**

For this reason it is important that any form of regulation for MNOs toward their retail customers has to be assured also at a wholesale level, ensuring that MNOs guarantee to their hosted MVNOs:

- **respect of transparency;**
- **the same QoS provided to their retail customers;**
- **the access to manage their own managed services**

In particular MNOs should promptly inform the hosted MVNO on any possible limitations on its network in order to allow the MVNO to inform their customer of any potential or effective service limitation (as established by Directive n. 2009/136/CE).

Moreover, with reference to QoS issues MVNOs end users should always have access to the same service/applications of MNOs and the MVNOs have to be free to adopt their own commercial differentiation for specific broad categories.

**2. On the relevance and exhaustiveness of the scenarios described in the consultation document**

The scenario described in the consultation document doesn't consider the specific issues of MVNOs, which could be subjected to MNOs Quality of Service degradation on both Internet Access Service and specialized services.

Any traffic limitation conducted by host MNO's could cause a lack of transparency on quality of services for MVNOs, apart from a transparency issue toward their own customers.

This would considerably impact the competitiveness of MVNOs.

It's very important that the same transparency and information provided at a retail level have to be provided at a wholesale level and that MNOs cannot adopt any practice on MVNOs customer base not previously agreed.

Moreover, it is important that the legislation also guarantees that MVNOs have the right to offer its customers the same conditions and quality of services that MNOs offer to their customers also when accessing specific applications of OTT (Over The TOP players). MVNOs have a lower bargaining power toward OTT according with their lower market share. So, it's fundamental that MVNOs have the opportunity to access to their host MNO's agreements with OTT at the same conditions except for the exclusive arrangements between OTT and MNOs.



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**Subject: Response to the draft report for public consultation on "Differentiation practices and related competition issues in the scope of Net Neutrality"**

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You can find below PosteMobile contribution on the public consultation (Annex 1).

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As of today, PosteMobile manages 2,220 million SIM CARDS.

PosteMobile developments projects include to become a Full-MVNO in the next two years.

**The main purpose of PosteMobile's contribution to this consultation document is to underline the specific characteristics and issues of MVNOs in the contest of net neutrality.**

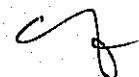
As required this document provides some input on:

- the description of the value chain and the tendencies described in the document;
- the assessment of the three examples provided (VoIP, P2P and CAP differentiation);
- the final conclusions reached in the report.

### **1. The description of the value chain and the tendencies described in the document**

The consultation document assimilates MVNOs to MNOs as ISP or ECP:

***"Internet Service Providers (ISPs) or Electronic Communication Providers (ECP), namely network operators (including fixed and mobile network operators – FNOs, MNOs) and virtual operators (including resellers and Mobile Virtual Network Operators - MVNO), which provide Internet access services to end-users, as well as other intermediary operators***



*or business connectivity providers. ISPs/ECPs are paid for their traffic services by CAPs or end-users" where ECPs (end-user connectivity providers) are ISPs for end-users, on "retail broadband and internet access markets"; Within the ECP category, access network operators (FNOs and MNOs) have traditionally borne the entire high cost of local access infrastructure deployment to provide broadband connectivity services and have passed this on to end-users through access and usage charges.*

However PosteMobile wants to remember that **MVNOs and MNOs have substantial different positions in the value chain** because:

- MVNOs do not have their own mobile access and transmission network, so they are in a position of strict dependence on MNOs since they are not able to provide services in an independent way;
- MVNOs can't develop autonomously any traffic management's policy but risk (as final users) to be subjected to MNO's restrictions on traffic prioritization and Quality of Service;
- MVNOs pay for Access to MNOs networks;
- A MVNO can't easily switch to a MNO other than his present Hosting MNO.

Such characteristics have to be specifically considered in analyzing the context of net neutrality and traffic management policies.

MVNOs provide voice and data mobile services without having radio frequencies and radio network infrastructure, **paying an host MNO for Access to these features, on a commercial basis.**

Services offered by MVNOs are usually strictly connected to specific mobile access services and activities provided and implemented by MNOs.

In this scenario PosteMobile envisages two main possibly discriminatory situations:

**A) The MVNO is not allowed to define its own "differentiated" offers towards final customer**

There is a risk that, absent a regulatory obligation, a MVNO won't be able to implement commercial differentiation policies as the MNO, because some kinds of traffic management tools are directly related to the Access Network Elements. In fact, although a MVNO could use capabilities of its own network elements (e.g. HLR), the MNO will always control the settlement of key parameters such as speed and allowance.

Therefore MVNOs couldn't make, as an example, autonomous traffic shaping based on localization by its own. More generally MVNOs couldn't be able to autonomously define retail offers based on the prioritization of bandwidth allocation.

**In this scenario a MVNO could only rely on the consensus of its MNO for offering the same traffic management practices as offered by the MNO.**

The lack of MVNO's autonomy in managing the services generates several problems on retail supply and safeguards of customers.

In order not to hamper competition, it's therefore very important that **MNOs don't practise any discrimination at a wholesale level**, guaranteeing the respect of MVNO's interests on economic and technical aspects.

**This means that NRAs should request the MNOs to allow MVNOs to access some essential traffic management network features at the same technical and economic conditions applied by MNOs to their retail division, in order to give the MVNOs the chance to autonomously define and offer to their end users retail offers based on the prioritization of bandwidth allocation.**

**B) Traffic management practices applied by the host MNO could negatively affect the quality of service of MVNO's customers**



**It must be put in evidence that there is a risk that traffic management practices implemented on host MNOs' networks could imply a discrimination in quality at the expense of the connection quality delivered to MVNO's customers. In other words it's very important to assure that:**

- no traffic management implemented by the MNO on regard of its own final customers should impact on the MVNO's customers;
- no traffic management should be allowed on MVNO's customers unless it has been agreed with the MVNO.


**2. The assessment of the three examples provided (VoIP, P2P and CAP differentiation)**

Generally PosteMobile considers correct and necessary that operators (MNOs and MVNOs) have the appropriate technical and commercial levers to manage Quality of Service in order to guarantee the level of service expected by their final users, in respect of no-discrimination, competitiveness and customer protection policies. As reported in the consultation document "practices should be based on broad categories of traffic and involve objective criteria".

In this sense also:

- Arcep 2010 Guidelines, that declare acceptable traffic management methods in some circumstances, in respect of relevance, proportionality and efficiency criteria;
- FCC 2010 Report & Order that recognize to operators the adequate flexibility margin to manage their network in order to manage congestion and security issues.

On the other end the Regulator should prevent MNOs from adopting discrimination and anticompetitive practices at the disadvantage of MVNO's customers.



Considering that MVNOs offer their services using MNO's access and transmission networks, PosteMobile finds it necessary to guarantee to MVNOs access to technical features (non discrimination) to manage autonomously traffic management on their customer base in order to allow them to the same potential differentiation in relation to Quality of Service (equivalence of inputs). This means to allow MVNOs to adopt even different policies on their customers in respect of their hos MNOs in terms of:

- Traffic management
- Quality of service modulation

Finally PosteMobile wants to underline that, as for MNOs and MVNOs, CAPs have to respect regulatory and legal rules.

For example PM believes that Voip application have some regulatory issues in terms of:

- Consumer protection
- Contractual transparency
- Litigations resolution
- Consumptions control
- Prepaid credit repayment

Moreover, considering that CAPs use MNOs networks to provide their services, in the same way of MVNOs, they have to pay for network use.

The risk is that of the creation of a *walled garden* in which CAPs have more favourable conditions in respect of MVNOs and no form of regulation to respect in terms of consumer protection and transparency, with considerably lower costs.

### 3. The final conclusions reached in the report

The conclusion states that between ISPs and CAPs on the Internet, **moving from a practice of "no commercial relations" to direct negotiations raises several questions:**

- the balance of power between ISPs and CAPs varies
- effects on general welfare are complex
- risks of discrimination among CAPs with a general preference for "*content and application agnostic*" practices.

PosteMobile wants to underline that **CAPs & MNOs agreements could have disruptive impacts on MVNO's competitiveness.**

MVNOs have a lower bargaining power toward CAPs according with their lower market share. Exclusive agreements between MNOs & CAPs could reduce MVNOs competitiveness in the market. It's very important that MVNOs have the opportunity to access to their host MNO's agreements with CAPs at the same conditions.

In evaluating CAPS and MNOs agreements, the Regulator should consider the necessity, "*...to promote the interests of the citizens of the European Union by inter alia ... promoting the ability of end-users to access and distribute information or run applications and services of their choice (Article 8(4) including 8(4)(g) of the Framework Directive)*", and in this sense prevent discriminatory and anticompetitive practices toward MVNOs.

Moreover it's very important that every user pay for telecommunication networks utilization: CAPS have to pay for networks as made by MVNOs.

Finally every telecommunication operator has to respect regulatory and legal rules in term of transparency, consumer protection, prepaid traffic management, etc.



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Regarding the consultation document PosteMobile has the following two general observations.

### 1) Players and Definitions

**Question 1 (Chapter 2): Are any other important players and/or relationships missing?**  
**Question 4 (Chapter 2): Do you agree with the classifications of ISPs as outlined above?**

PosteMobile believes that Section 2 should make an explicit reference to the fact that the family of "Internet Service Providers (ISPs)" **does also include the "Mobile Virtual Network Operators – MVNOs"** (see definition in BoR (12) 31, section "2.2.1 Retail players in the value chain").

Consequently in analyzing the relationships between the different subjects, **the remaining part of BoR (12) 33** (starting with Section 2.3 ISP -network providers- but continuing with the other sections, specifically Section 3 -Types of IP-Interconnection-) **should also**

examine the implications deriving by the presence of MVNOs in the value chain, and in particular in the "retail broadband and Internet connectivity markets" (blue area).

First of all PosteMobile believes that the ISP definition given in section 2.3 ("Generically, the term ISP relates to operators who sell broadband access -network access- and connectivity to the Internet at the retail level called Internet access service and at the wholesale level through transit and other forms of interconnection") should be amended because it defines an ISP as a subject necessarily operating both at retail and wholesale level; on the contrary the definition should take into account the fact that **broadband access** (network access) and **connectivity to the Internet** are already sold at the retail level **also by the MVNOs**, which however presently are not necessarily involved also in the selling of services "at the wholesale level through transit and other forms of interconnection".

In other words PosteMobile believes that the document should have regard to the fact that:

- MVNOs already have a significant role in selling retail Broadband access and Internet access service,
- this role will grow in a 4G context,
- this role should imply -at least- that MVNOs have to be properly involved by their hosting MNOs in the definition of any wholesale transit /interconnection agreement that could impact on the MVNOs quality of service and retail business.

In fact, even if a MVNO is acting simply as an "Eyeball ISPs" which predominantly sells connectivity to CAUs (residential/business), in order allow its customers to access content from distant non-affiliated CAPs connected to other ISPs it needs to rely on the upstream capacity bought by its hosting MNO, via transit and/or peering.

**2) Development of free peering agreements**

Secondly, and more generally, PosteMobile totally agrees -taking into account the above remark- with Berec invitation to NRAs to monitor the development of free peering agreements. It should be considered , in fact, that little operators could be discriminated, as a result of the increasing of these commercial agreements. That's why PM suggests that NRAS are prompted to extend their activities in order to take into account possible implications for MVNOs.

