Response to BoR (19) 183

Draft BEREC Work Programme 2020

and

Call for Input on

BEREC Medium-Term Strategy 2021-2023

6 November 2019

Contents

I. About MVNO Europe

1. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing retail consumers, business users, the public sector, machine-to-machine and Internet of Things, etc. http://www.mvnoeurope.eu/members

2. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications including connected mobility, embedded data SIMs for tablets, laptops and other devices, etc. Our members are also active on wholesale markets as MVNE (Enabler) / MVNA (Aggregator). Some of our members hold rights-of-use over radio spectrum while also being an MVNO. MVNO Europe does not represent branded resellers.

3. MVNOs currently represent +/- 10% of SIM cards in the European Union.

4. MVNOs contribute strongly to competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits. MVNOs also contribute to financing mobile networks through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets.

II. Introduction and Overarching Messages

5. MVNO Europe welcomes the opportunity to provide its comments on BEREC's draft Work Programme for 2020 (hereafter 'draft WP 2020') and to briefly address BEREC's Call for Input on BEREC's Medium-Term Strategy for 2021-2023 (hereafter 'MTS 2021-2023').

6. Our overarching messages are as follows:

    a) We urge BEREC to place competition for mobile/wireless communications, including mobile broadband, Internet of Things (IoT), and 5G, at the core of its priorities.

    b) We call upon BEREC, to actively monitor and report on the wholesale dimension of IoT and 5G, and specifically to expand the data collection and reporting that BEREC already conducts for traditional mobile international roaming and wholesale call/sms termination rates, to include additional elements, as follows:

        i) Wholesale international roaming for IoT and 5G (generic wholesale mobile international roaming and attention to specific arrangements for NB-LTE/LTE-M/5G): data collection and reporting on availability, whether international roaming agreements are concluded, and applicable wholesale inter-operator charges.

ii) IoT and 5G Full MVNO access and other forms of wholesale access enabling MVNOs to provide 5G services (Enhanced Mobile Broadband and Massive Machine Type Communications / Ultra-Reliable & Low Latency Communications): data collection and reporting on availability and whether agreements are concluded for the provision of wholesale access.

iii) 5G 'network slices': data collection and reporting on availability and whether bilateral agreements have been concluded between network operators, agreements have been concluded between network operators and MVNOs, and with industrial users, for the provision of 'network slices'. This should specifically include reporting on whether multi-country agreements setting out the characteristics of 'network slices' or some forms of international roaming or exchange of 'network slices' at specified quality and price levels are agreed.

iv) 4G/5G campus/industrial site networks: data collection and reporting on the extent to which 'private' mobile networks (using their own spectrum) or 'quasi-private' (using spectrum assigned to MNOs or spectrum sharing) 4G/5G networks are being built and operated to serve particular usage scenarios (e.g. large industrial sites, airports, large company campuses, etc.).

7. MVNO Europe emphasises that mobile/wireless wholesale access and wholesale international roaming are clearly crucial for competition, and in end-users' interests. This topic therefore connects perfectly with BEREC's Strategy for 2018-2020 and our expectations for BEREC's MTS 2021-2023.

8. In the chapters below, we address selected aspects of BEREC's draft WP2020, and we provide brief input on the BEREC MTS 2021-2023.

III. Response to Selected Elements of BEREC draft WP2020

9. **BEREC's introduction and background sections.** These sections of the draft WP2020 acknowledge the increasing importance of topics such as the role digital platforms, security issues especially in relation to 5G networks, and the implications that 5G may have on the ecosystem and consequently on regulation. MVNO Europe agrees that these are important topics. However, addressing these should not be to the detriment of BEREC and NRAs fully exercising their mandate as set out in legislation, notably the continued promotion of competition and safeguarding the interests of EU citizens and other end-users of electronic communications networks and services.

Strategic Priority 1: Responding to connectivity challenges and to new conditions for access to high-capacity networks

10. MVNO Europe welcomes the introductory paragraph, although we have some concerns with BEREC referring to a situation 'where markets have become mature'. MVNO Europe urges BEREC to clarify meaning of this statement, and to ensure that this is not proxy language for abandoning wholesale access regulation where this may not be justified. In MVNO Europe's opinion, a market could only be considered 'mature' if Full MVNO access is widely available on fit-for-purpose terms, and is widely taken up, including by MVNOs pursuing head-on competition with MNOs, not just MNOs relegated to niche markets.

11. **_1.1: Carry-over work on Guidelines on very high capacity networks_**. Although this presumably mainly addresses fixed networks, we believe that it could increasingly become relevant for mobile/wireless networks as well. The conditions under which mobile/wireless networks are rolled-out and upgraded are changing, e.g. in terms of intentions towards market consolidation, RAN sharing and other sharing arrangements, small cells, network slicing, 5G, etc. We ask BEREC to be particularly attentive to fixed-mobile network integration, because it is likely that this may lead to new kinds of networks, which may (at least in part) meet the definition of "very high capacity network", and may therefore be subject to the guidelines BEREC will issue.

12. **_1.6: Opinion on the review of the EC Recommendation on Relevant Markets._** This European Commission Recommendation structures EU electronic communications markets, because it basically determines which markets NRAs are readily entitled to regulate. The removal of Market 15 from this Recommendation in 2007 has had profound effects in terms of NRAs refraining from examining wholesale mobile markets. Our concern about fixed-mobile integration going forward is also relevant here. We note that BEREC does not intend to conduct a public consultation on this workstream. We ask BEREC to change its position on this: such an important BEREC Opinion should be subject to public consultation – this is especially important given that the European Commission may not consult stakeholders about revised text of the Recommendation. MVNO Europe's response to the European Commission's targeted consultation conducted earlier in 2019 is available on request. In this response, we advocate retaining the wholesale call termination markets, and make the case for wholesale mobile access to be re-included in the list of markets susceptible to ex-ante regulation and make specific proposals for M2M/IoT.

Strategic Priority 3: Enabling 5G and promoting innovation in network technologies

13. MVNO Europe welcomes the introductory paragraph. However, please note that in our response to the call for input on the MTS 2021-2023 (shown below), we ask BEREC to adapt the title of this strategic priority, to more clearly encompass wholesale access to mobile/wireless networks, roaming, network slicing, services for so-called 'industry verticals', and private/quasi-private networks.

14. ***3.1: Carry-over work on the impact of 5G on regulation.*** MVNO Europe calls upon BEREC to actively collect data and report on the wholesale dimension of 5G.

    In line with our September 2019 response to BEREC's WP-FPT call for input on Potential Regulatory Aspects of 5G, MVNO Europe considers that BEREC should conduct further data collection and reporting on:

    a) availability (or lack thereof) and take-up IoT/5G wholesale international roaming;

    b) availability (or lack thereof) and take-up of 5G Full MVNO access and other forms of wholesale access enabling MVNOs to provide 5G Enhanced Mobile Broadband, Massive Machine Type Communications and Ultra-Reliable & Low Latency Communications;

    c) availability (or lack thereof) and take-up of 'network slices' (sub-sets of the 5G networks' capacity with particular QoS profiles) within and across multiple EU Member States. This includes international roaming as we broadly know it, but would also include multi-country 'network slices' and multi-country (Full) MVNO approaches to deliver services to 'verticals';

    d) the barriers to and benefits of enabling new business models;

    e) experiences with issues around systems deployed using network slices, demand from verticals and how mobile operators – including MVNOs – are able to respond to demand from 'verticals'.

    MVNO Europe brings to the incoming BEREC 2020 and 2021 chairmanship's attention that, in many EU Member States, MVNOs were prevented from launching 4G simultaneously with their host operator(s), with delays on network capability parity often exceeding 18 months (and notably in Germany far longer). Our members have painfully experienced that technology transitions (in mobile, e.g. from 3G to 4G, but also in other markets) have often

led to restrictive commercial practices foreclosing markets for MVNOs, regulatory inaction or lag, which have ultimately hurt end-user interests. In recent years, consolidation in mobile markets has also led to significant changes to market structures, and in some EU Member States, to serious competition problems and lack of fit-for-purpose MVNO access. The competition problems resulting from MNO consolidation have to a limited extent been acknowledged in BoR (18) 119. Looking forward, widespread RAN sharing and other co-operative arrangements by MNOs, and profound fixed-mobile network integration notably in the context of 5G, are likely to bring about new concerns about undue market concentration, and resulting concerns surrounding the need to find new ways to ensure effective competition.

Market foreclosure (including undue delays for MVNOs to gain network access) should not happen again with IoT and 5G. Fit-for-purpose wholesale access for MVNOs, incl. in terms of network technologies and in terms of wholesale conditions/charges, is necessary in order to ensure sustainable competition and innovation (in technical and in commercial terms), and pan-European/global reach and competitiveness.

MVNOs need to: (i) benefit from the same RAN technologies and the same RAN coverage as the Host network operator(s) on a non-discriminatory basis, and (ii) not be subject to margin-squeeze. A regulatory system needs to be in place to enable to preserve and enhance sustainable competition. This requires that NRAs (and BEREC) are prepared for potentially negative outcomes, and 'feel the pulse' of the market, i.e. are aware of market dynamics, or the absence thereof. It would be antithetical to the 5G vision of involving and serving 'verticals' (e.g. automotive, health, industry 4.0, etc.) if 5G networks were not open to fit-for-purpose Full MVNO access from day one, and if competition were lessened rather than enhanced. We urge BEREC to ensure that the past will not repeat itself.

15. ***3.4: Report on security issues related to 5G implementation***. MVNO Europe welcomes that BEREC aims to inform other EU and national institutions dealing with security aspects on the functioning of electronic communications markets. MVNO Europe expects BEREC and NRAs to remain mindful of their statutory duties to protect competition and choice, at all levels of the ecosystem. MVNO Europe regrets that no public consultations are planned, but trusts that it will be invited to the BEREC external workshop proposed for some time in 2020.

16. MVNO Europe welcomes the introductory paragraph. However, please allow us to express our surprise on the inclusion of the new topics on 'third party payment charges on mobile phone bills and NRAs' enforcement powers when it comes to penalties' (Sections 5.5 and 5.6). We urge BEREC to handle these topics prudently, and to interact with stakeholders such as MVNO Europe on this as early as possible in the development of BEREC deliverables, in order to avoid introducing new overly bureaucratic rules and penalties, which might end-up harming competition rather than promoting it.

**BEREC obligatory work and stakeholder engagement**

17. MVNO Europe welcomes the introductory paragraph, and thanks BEREC for being open to MVNO Europe's input, including at the Stakeholder Workshop (point 6.14).

18. _**6.1: Ad hoc input to the European Union institutions or NRAs and 6.8: Ad hoc works – Inputs to any potential legislative proposals of the EC on roaming**_. MVNO Europe wishes to expressly thank BEREC for its June 2019 Opinion on the functioning of the roaming market (BoR (19) 101) and its September 2019 supplementary analysis on wholesale roaming costs (BoR (19) 168). MVNO Europe trusts that BEREC will continue to collect data (expanded as we have proposed above), and to make its voice heard as and when the roaming regime comes up for discussion again among the EU institutions.

19. _**6.4: BEREC input to the setting of single EU-wide maximum fixed/mobile voice termination rates.**_ MVNO Europe welcomes that BEREC will play a role in this. Please allow us to express our frustration about the process led by the European Commission, its consultants, and with a steering committee composed of NRAs. We feel that industry stakeholders are largely sidelined, and must rely on the willingness of NRAs to involve them. MVNO Europe respectfully disagrees with BEREC's proposal NOT to conduct a public consultation on its input to the Commission's delegated act setting single EU-wide maximum MTR and FTR. We consider that a public consultation on this is essential, to ensure an open public policy debate on this high-impact subject.

20. _**6.6: International Roaming Benchmark Data Report.**_ MVNO Europe welcomes this BEREC workstream, which has already yielded interesting information, notably on the wholesale charges set by MNOs when they negotiate roaming bilaterals. More attention is needed to the level of wholesale charges incurred by MVNOs, how (and why) these are far higher than charges for domestic wholesale access to mobile networks. More attention is also needed to the very large discrepancy between retail tariffs and the wholesale caps.

21. ***6.14: Stakeholder Forum.*** MVNO Europe is thankful for having been invited to make a statement from the room at the September 2019 Forum. We encourage BEREC to enable MVNO Europe to also participate in panels at these recurring BEREC events. However, we do consider it appropriate to comment that the panels did not contain as diverse a representation of stakeholders as we consider necessary, notably in terms of those providing wholesale access, and those who take up wholesale access.

IV. Call for Input on BEREC Medium-Term Strategy 2021-2023

22. MVNO Europe expects BEREC's 2021-2023 Medium-Term Strategy (MTS 2021-2023) to maintain and enhance its pro-competitive stance. Indeed, MVNO Europe expects BEREC to be instrumental in enabling challenger operators such as MVNOs to continue to play their role in delivering innovative solutions for all types of customers (on B2C as well as on B2B markets), building on MVNOs' lead in areas such as attractive data-led offers, fixed-mobile convergence, and embedded mobile data connectivity.

23. We are convinced that competition (supported by regulation where appropriate), resulting in choice between diversified market offerings (at different quality and price levels, in different bundles, bundles led by different products/services), is the only guarantor of: (i) a good customer experience, and (ii) the development of services/packages that attract digitally disengaged citizens. This is applicable to traditional telecommunications services, ICT/Digital services for business users and public administrations, and new integrated products/services in which connectivity is an underlying component, which may in the future be invisible to the end-user (sometimes sold without a recurring (telecoms) subscription).

24. In addition, it is key in the context of IoT and 5G, and new integrated products/services in which connectivity is an underlying component, that the businesses whose products/services necessarily include connectivity have genuine choice among providers of the underlying telecommunications services, including European MVNOs. In light of the products/services concerned (e.g. connected computing devices, connected mobility, e-health, financial services, etc.), that choice will in many cases be affected by pan-European or even global considerations, rather than concern a national market, because the devices and related products/services travel across borders. BEREC's MTS 2021-2023 needs to reflect this, by ensuring a 'home market' at European scale for European businesses, including European MVNOs.

25. MVNO Europe members interact with the handset/device industry in different ways. Problems relating to achieving full functionality for some devices (notably iOS devices) for end-users using MVNOs' services have arisen, harming the MVNO customer experience (lack of 4G

connectivity even where the underlying network supports 4G, problematic activation and configuration processes, issues with messaging, roaming, etc.). MVNO Europe needs the help of BEREC/NRAs and the EU institutions to resolves these problems, and to ensure that they do not arise again for 5G.

26. On the basis of the above, MVNO Europe considers that the following points are key, in this order: (i) ensuring competition (supported by regulation (including (Full) MVNO access) where appropriate), enabling end-users to select any provider of their choice (notably including MVNOs) and effectively switch to them, (iii) enabling businesses that integrate communications in their products/services to have genuine choice between providers, and switch between them, on a pan-European scale, including where these providers are MVNOs.

27. As stated above (our over-arching messages in Section II), MVNO Europe considers that BEREC needs to enhance its data collection and reporting exercises, notably on EU international roaming for IoT/5G and wholesale access to 5G networks, in order to appropriately assess where IoT/5G is heading, and to identify potential (likely) problems in the wholesale dimension early-on. Based on the experience with 3G and 4G transitions, restrictive practices by MNOs harming competition by MVNOs are to be expected. It would be most unfortunate if the transition to 5G would again lead to exclusionary practices and competition problems.

28. MVNO Europe therefore urges BEREC to place competition for mobile/wireless communications, including mobile broadband, massive machine type communications & low latency use cases, and 5G more generally, at the core of its priorities. Very specifically, we ask BEREC to redefine the title of Strategic Priority 3 (2018-2020) in the MTS 2021-2023, to read **'Enabling IoT/5G, promoting innovation in network technologies, and achieving a competitive and diversified 5G ecosystem'.**

V. MVNO Europe Contact Details

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

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