



Response to BEREC Consultation

BOR (21) 36

Draft BEREC Report on the handling of third-party
payment charges on mobile phone bills

16 April 2021

I. MVNO Europe Response

1. MVNO Europe welcomes BEREC's initiative to consult interested parties on its Draft Report on the handling of third-party payment charges on mobile phone bills – BoR (21) 36.
 2. It comes as no surprise to MVNO Europe that BEREC's main finding is that there is massive divergence between national policy/legislation/regulation/codes of practice in the EU and EEA Member States (and beyond). This logically results from the fact that frameworks have developed 'organically' at national level over time, reflecting problems that needed fixing, in the specific national context. It also comes as no surprise to MVNO Europe that BEREC's attempt to schematise the payment flows (only for a voice premium rate call) is met with limited agreement by national authorities (paragraph 21 and especially footnote 14). Reality is much more diverse, and much more complex.
 3. As stated in our responses to BEREC's draft Work Programmes for 2020 and 2021, MVNO Europe urges BEREC to handle this topic prudently, and to avoid introducing new overly bureaucratic rules, which might end-up harming competition rather than promoting it. Indeed, attempts to harmonize or modify national frameworks could upend carefully crafted interlocking rules, such as consumer protection measures, billing and accounting principles, retail and wholesale price caps, etc. that drive the regulatory set-up at national level.
 4. MVNO Europe is therefore satisfied to note that BEREC's Draft Report is descriptive rather than prescriptive in nature, identifies no areas for harmonization, and that the sole envisaged follow-up action at this time is that "*The same exercise will be considered as part of the BEREC Work Program in 2023*" (paragraph 104 of the draft BEREC Report).
 5. One area that is absent from BEREC's Draft Report is the Value Added Tax treatment of the premium-rate services value chain. This is often very complex, driven by tax authorities' approach rather than by electronic communications regulation. Any attempts to harmonize or modify third-party payment regulation could result in modifications of payment flows, and consequent legal uncertainty and unpredictable changes to Value Added Tax treatment, with potentially major negative effects for mobile operators including MVNOs. This further emphasizes the need for BEREC to exercise extreme caution in considering any harmonization.
6. Based on the points above, MVNO Europe strongly advises BEREC to abstain from making any harmonization proposals relating to third party payment charges on mobile phone bills.
7. As regards the consultation questions, MVNO Europe welcomes the information provided by NRAs and gathered by BEREC, but MVNO Europe has no specific observations to make.

II. About MVNO Europe

8. MVNO Europe represents various types of Mobile Virtual Network Operators (MVNOs), with different business models, addressing consumers, business users (including start-ups/scale-ups)/medium/large businesses, the public sector, ICT service/systems integrators, and Internet of Things (hereafter 'IoT') markets, etc. <http://www.mvnoeurope.eu/members>
9. MVNOs currently represent +/- 10% of SIM cards in the European Union.
10. The term "virtual" refers to the fact that MVNOs do not control radio frequencies and related mobile physical infrastructure (antennas, base stations etc.). However, MVNOs do control the necessary hardware/software/resources to provide wireless/mobile services and may own other telecom infrastructures depending on the extent of their business model.
11. Our members provide mobile-only offers, fixed-mobile convergent offers and offers incorporating audio-visual media content, financial services, machine-to-machine communications, embedded data SIMs for tablets, laptops and other devices, connected mobility for vehicles, IoT in a broad sense, etc. Some of our members are also active on wholesale markets as MVNE (E=Enabler) / MVNA (A=Aggregator) supporting other companies and brands that provide wireless/mobile services. MVNO Europe does not represent branded resellers.
12. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits. MVNOs also contribute to financing mobile network infrastructure through payment of wholesale charges which assure revenues to Mobile Network Operators, whilst avoiding costly duplication of network assets.

III. 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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