NOS response to the public consultation on the draft 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")

NOS Comunicações, S.A ("NOS") welcomes this opportunity to express its views regarding BEREC's Draft Wholesale Roaming Guidelines.

These guidelines contains the guidance, which BEREC is required to publish, under the application of Article 3 of Regulation (EU) 2022/612 ("Roaming Regulation").

Such document is of the utmost relevance, as it addresses a set of concerns linked with wholesale roaming access obligations for MNOs and the rights for access seekers, as well as, with the proposed amendments, aspects related to new obligations associated with value added services ("VAS") and access to emergency services.

NOS comments' reflects our vision regarding the enclosed guidelines, aiming in particular a clearer and better defined approaches, in order to avoid misinterpretations.

Finally, NOS highlights that roaming agreements between operators follows a negotiation process, in which the inclusion of new technologies depends on the acceptance of both parties involved and requires the allocation of technical resources, as well as reciprocal availability for testing. These aspects largely condition the negotiation process and thus must be taken into account when interpreting any wholesale roaming access obligations imposed on MNOs.

Specific comments on the proposed guidelines

Guideline 5. Refusal of requests

In our opinion one month is too short a timeframe, especially if incorporating holiday time (e.g. December or July to September).

Furthermore, we believe that anticipated "network or signalling saturation" can harm the service provided to our own customers and therefore, dully justified, it should be considered a reason for access refusal. For instance, certain M2M applications, due to its specific and simultaneous usage patterns, are known to put networks at risk.

Guideline 6. Prioritization of requests

This guideline states that "it *is reasonable to prioritize requests for 4G services, including*

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VoLTE". In NOS' opinion the prioritisation of services should be made by the MNO taking into account the efficiency and the safety of the services. For instance, VoLTE roaming is a very complex service, with a long and challenging testing and launching process, which isn´t yet fully sorted out. Furthermore, it poses challenges in terms of visibility, safety and control. For example, Legal Interception is still preventing some MNOs from launching VoLTE Roaming.

Guideline 12: Machine-to-machine communication services

As provided by the Regulation, permanent roaming is subject to commercial negotiations and can be agreed by two roaming partners involved in a wholesale roaming agreement.

However, 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.

Nevertheless, 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.

This guideline states that "M2M communications are therefore subject to the limitations of permanent roaming foreseen by the regulation and reasonable requests for regulated wholesale roaming access to offer M2M communications should be met if connected devices are periodically roaming." Further clarification is needed on the meaning or periodically.

Also, we would like to stress 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 for. Furthermore, it is said that some M2M applications generate nothing but signalling.

Lastly, as stated before, certain M2M applications, due to its specific and simultaneous usage patterns, are known to put networks at risk.

Guideline 16: Wholesale charges for emergency communications

This guideline states that *"At wholesale level, the conveyance of any type of emergency communications 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."

In this regard, it is important to clarify that, presently, as for NOS, we only guarantee free 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.

Indeed, it is not clear from the regulation itself to what extent free access to "*any type of emergency communications*" must be ensured. The only possible understanding is that other types of emergency communications, rather than 112, refers to alternative means that will be included in the future BEREC's database. Notwithstanding, additional clarification on this aspect is required.

As for the transmission of caller location information to the most appropriate PSAP, it is important to take at utmost consideration the legal framework in each Member State, as well as the EU framework. As for Portugal, currently only 112[1] is covered by the Regulation on the provision to authorities responsible for providing emergency services of information on the location of callers. Consequently, NOS understand that as long as this regulation is not amended and/or remains in force, compliance with this obligation will be limited to the single European number.

Guideline 20: Value-added services

BEREC indicates that the 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 Roam Like at Home ("RLAH") tariffs for these services.

For NOS it is not clear 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.

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

Lastly, any discussion on VAS will depend entirely on a definition/database of BEREC's VAS numbers, which is not yet available. Furthermore, when made available, such database must be reliable and updated.

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[1] Also 115, the national number, as long as it remains operational

Guideline 21: QoS obligations for wholesale roaming access seekers

According to BEREC "*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.*"

NOS' view is 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 in to account the economic rational, but also the technology level and maturity of the visited network. Additionally, as previews by the commercial freedom, there is no obligation to conclude contracts with higher quality. Also, it is important to acknowledge that there will be a transition process, so delays are expected. Under these circumstances, if only one operator is offering next generation services, access seekers may delay their request.

Finally, BEREC considers that, as indicated in the Recital 14 of the Roaming Regulation, a gradual transition to new generation/technologies 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 traveling patterns as the latter is related to their best interests, as well as ensuring availability of essential services for consumers.

The reference to the "*average traveling patterns*" is confusing and lacks clarity about its purpose. Indeed, it is not explicit if it should be understood as the operators which provides a greater flow of roamers-in should have priority in the negotiation process. If so, it is something that, by the way, already results from the commercial freedom to negotiate access agreements.

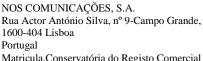**Guideline 23. Agreement on performance**

As of now, there are no Service Level Agreements in Roaming. Therefore, SLAs cannot be included in the reference offer, and, for this reason, NOS' suggestion is to eliminate this guideline.

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

BEREC states that the 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*".

First, 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.

Also, in the last paragraph of this guideline, BEREC mentions that it considers 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."* NOS express it concerns with this guidance as operators are not involved in this aspect, which is fully driven by the operating systems of handsets and the PSAP. The caller location information from the network is provided by the visited network. The handset derived information is provided based on the handset and the roaming partner has no impact on this.

As operators are only requested to deliver the SMS with location information, their responsibility should be limited to transmit information if there are no additional costs involved and it is received in a suitable format from the handset.

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