

Telefónica's contribution 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).

On 13 April 2022, *Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union* was published. According to Article 3 of this Regulation BEREC should, after consulting stakeholders and in cooperation with the Commission, update the guidelines for wholesale roaming access laid down in accordance with Article 3(8) of Regulation (EU) No 531/2012. BEREC is required to publish the revised guidelines by 5 October 2022.

Telefónica welcomes the opportunity to contribute to the BEREC guidelines. In our view, the guidelines should be updated according to the Regulation while providing a proportionate guidance under a future-proof vision. Thus, we would request to avoid measures that could lead to market distortions or restrictions to new business developments.

Additionally, we see no need in the review of the overall tone of the wording. The draft substitutes "shall" by "must" or "have to" in several guidelines (for instance guideline 7, 14, 22). According to our experience in the roaming market there is no need for such change, and therefore we would request to keep the current wording as it is perfectly valid.

Comments to the guidelines.

Guideline 1 Entry into force.

In the process of implementing the new provisions, a transition period is required so that roaming providers and network operators can update their networks and their agreements accordingly. Especially if we consider the gap between the adoption of the Regulation on 6 April and the publication of the Guidelines by 5 October 2022. This gradual transition is already considered in the Regulation in recital 14. We would consider disproportionate and not feasible the requirement of an immediate update of the roaming agreements after the publication of the guidance.

We would suggest the following amendment (in bold):

*"Existing access agreements, to the extent that they deal with regulated roaming services, need to be **gradually** updated as necessary to make them consistent with the Roaming Regulation."*

Guideline 3 Reasonable requests.

We would suggest to keep the same wording as in the Regulation in order to avoid misinterpretations:

*"(...) Article 3 (1) Roaming Regulation requires MNOs to grant all reasonable requests for access **and Article 3 (3) states that wholesale roaming agreements shall cover** all available **network technologies and networks generations** which may be necessary in order for the access seeker to provide a retail roaming service (and relevant ancillary services) allowing the replication of retail mobile services offered domestically by the retail roaming provider for its roaming subscribers, where this is technically feasible."*

Guideline 5 Refusal of requests.

With regard to the provision of the reasoning for the refusal of a request, we consider that a one-month period for refusal to be provided in writing to the access seeker is too short and that a more appropriate "reasonable timeframe" would be sixty days. This procedure is expected to take longer than the provision of the draft agreement referred to in Art 3(5) which is a more standard document. It is also important to note that the deadline should start to run after the reception of the complete request, including the necessary information to conduct a full evaluation and determine if there are any objective reasons for refusal such as technical feasibility and network integrity.

We would suggest the following amendment (in bold):

*"BEREC considers that a reasonable timeframe could be ~~one month~~ **sixty days** after the initial receipt of the **complete** request by the MNO (as in the case of providing a draft wholesale roaming agreement in accordance with Article 3 (5) Roaming Regulation)."*

With regard to the information required before the signature of the roaming agreement, please see comments to Guideline 8.

Guideline 6 Prioritisation of requests.

We consider that the prioritisation of VoLTE in case of the switch off of 2G and 3G is reasonable. However, it is important to note that the prioritisation can be best determined by the network operator, and it should not be considered as an unwarranted leverage for the access seeker. Thus, we would suggest to amend the wording to reflect this fact.

It is also important to highlight that Telefónica communicates its partners when is planning to switch off and so it is included in the agreements. The established market practice is also to communicate and to send the periodic reminders.

We would suggest the following amendment (in bold):

*“BEREC considers that due to phasing out of 2G and 3G technologies across the Union and with the aim of ensuring availability of essential services for consumers (see Guideline 25), it is reasonable to prioritise requests for 4G services, including VoLTE, if such wholesale roaming agreements are not in place already, **while allowing for sufficient implementation time on the side of the visited network.**”*

Guideline 8 Information required before signature of an access agreement

With regard to the information required before the signature or review of an access agreement, Telefónica considers that it should be fit for purpose and sufficient for a proper typification and provision of the roaming service. The roaming services to be provided can be of very different nature, end user for periodic travelling, machine-to-machine, machine-to-machine on permanent roaming with different uses cases, etc, and certain details should be required for the adequate provision of the service and for an efficient network operation.

We believe that roaming partners should be entitled to request the necessary information as long as this information is treated as confidential and restricted to the process of negotiating the wholesale access agreement, according to article 60.2 of the Communication Code¹.

Therefore, we would request the deletion of the following paragraph:

“~~Access seekers should in particular not be expected to provide any details of the service they expect to provide where these might reasonably be regarded as commercially sensitive.~~”

Consequently with the above, “Guideline 5 Refusal of request” should also be amended with the deletion of the following paragraph:

“~~In BEREC’s view, the MNO may not, during consideration of the request, seek information on the commercial nature of the services which the access seeker plans to offer, other than to verify that the wholesale roaming service in question will not be used for purposes other than the provision of regulated retail roaming services to roaming providers’ customers while the latter are periodically travelling.~~”

Guideline 10 Direct access and Guideline 11 Resale of access

VoLTE is being rolled out in the domestic markets and also in roaming after the due process of standardisation. The development is based on commercial negotiations, even more so given that VoLTE can only be charged as data at this moment. In this context Telefónica

¹ Article 60. 2 of the Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018, “Without prejudice to Article 21, Member States shall require that undertakings which acquire information from another undertaking before, during or after the process of negotiating access or interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such undertakings shall not pass on the received information to any other party, in particular other departments, subsidiaries or partners, for whom such information could provide a competitive advantage.”

considers that the Guidelines should not distort the current commercial practices and should not restrict the charging scheme of this service.

We would suggest the following amendment to the footnote in Guidelines 10 and 11 (in bold):

“Article 9 *may also apply* applies for VoLTE”

Guideline 12 Machine-to-machine communication services

Telefónica welcomed the flexibility introduced in the recital 21 of the Roaming Regulation. According to this, permanent roaming is subject to commercial negotiations and can be agreed by the roaming partners in the roaming agreement. As a consequence, operators are encouraged to negotiate agreements on machine-to-machine in permanent roaming but it could not be understood as a contractual obligation.

Besides, in our view, guideline 12 may introduce some confusion because:

- i. Currently roaming partners agree on the definition of permanent roaming for the provision of machine-to-machine communication services bilaterally. There is not a universal definition of permanent roaming. Therefore, Telefónica considers that the reference to “prevailing roaming consumption” according to the Commission Implementing Regulation (EU) 2016/2286 (CIR) should not be included in the machine-to-machine context.
- ii. The guideline 12 refers to the limitations of permanent roaming in machine-to-machine services. Also, the measures to prevent permanent roaming or anomalous or abusive use are already specified in guideline 35. In our view, these provisions perfectly address the question and there is no need to repeat these references that may be confusing in this context.

Therefore, Telefónica would request the deletion of this paragraph:

~~“If M2M communication services are used on a permanent basis in a visited network, for example in cases of prevailing roaming consumption and presence according to the Commission Implementing Regulation (EU) 2016/2286 (CIR), wholesale roaming access should be subject to commercial negotiations. According to Guideline 35, access providers may request information allowing them to determine whether a significant share of the access seeker’s customers engage in permanent roaming. In relation to M2M, the relevant indicator could be the share of SIMs11 or IMSIs. Traffic information should not refer to specific information relating to individual traffic of the roaming provider’s customers, but rather to aggregated roaming traffic information.”~~

Telefónica would request the following amendment (in bold):

“However, in practice the IoT/M2M market is constantly growing and the Roaming Regulation states that MNOs are expected to increasingly accept reasonable requests for wholesale roaming agreements which explicitly allow permanent

roaming for M2M communications (Recital 21). ***This is not to be understood in the sense of a contractual obligation.***"

Guideline 16 Wholesale charges to emergency communications

Articles 15 and 16 of the Regulation set the obligations related to emergency communications in roaming, also in accordance with articles 109 and 111 of the European Electronic Communication Code. According to the above, the emergency communications that are mandated in the visiting country according to the national law and the national emergency services system should be free of charge. However, this is not the case if such emergency communications are not mandated in the visiting country. Therefore, there are no grounds for this obligation to be extended to the wholesale side. In our view, the guideline 16 clearly goes beyond this obligation setting that any type of emergency communications should be free of charge at wholesale level.

We would request the following amendment (in bold):

*"At wholesale level, the conveyance of any type of emergency communications, **that are mandated and are technically feasible to be used by roaming end-users**, 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."*

Guideline 21 QoS obligations for wholesale roaming access seekers

Telefónica considers that the guideline 21 clearly goes beyond the Regulation. It is in the spirit of the Regulation, and according to Recital 14 and Articles 4 and 5, that roaming providers should make a reasonable effort to meet the requirements of QoS. Having said this, it is important that the guideline is consistent with Recital 14 and recognises the freedom of the roaming provider to conclude the wholesale agreements according to its interest. This Recital 14 states that:

"This Regulation does not impose an obligation on roaming providers to conclude wholesale roaming agreements only with those operators that have the most advanced networks, subject to compliance with the retail quality of service requirements laid down in this Regulation. The operators seeking wholesale roaming access should have the freedom to negotiate their wholesale roaming agreements according to their own commercial needs and the best interests of their end-users."

Therefore we would request the deletion of this paragraph:

~~*"To that end, roaming providers therefore should not only consider their commercial needs, such as for instance selecting the roaming partner offering the highest discount, but they must also take into account the technological level/maturity of the visited networks regarding the obligation to offer equivalent retail roaming conditions to the services offered domestically."*~~

Guideline 24. Information on QoS parameters and specifications provided in the Reference Offer.

Telefónica agrees with BEREC that the information to be included in the reference offer should be the generally available radio technologies, the frequency bands and the configurations that could affect the throughput (as long as the customer's device support these configurations). In our view, the reference to the estimated and advertised speeds should not be included. On one hand, the maximum available data speed that is referred to in Recital 27 can be estimated from the information provided. On the other hand, the reference offer is a wholesale offer so the information on QoS level under the Open Internet Regulation is not applicable, nor the concept "advertised speed" of the guideline, both oriented to the retail side.

We would request the deletion of the following paragraphs:

"The Reference Offer must also include the estimated maximum and advertised (i.e. speed that can be realistically delivered to end-users) download and upload speeds per available technology for retail roaming customers. This information on the speeds is the same as that to be provided to customers by operators according to the Open Internet Regulation¹⁶ and the BEREC Guidelines on the Implementation of the Open Internet Regulation.

The descriptions can be contained in an annex and might be based partly or wholly on available industry recommendations, if applicable".

Furthermore, we suggest to replace the fourth and the fifth paragraph of Guideline 24 by a direct reference to the recitals 15 and 27 of the Regulation, for the sake of clarity.

With regard to handover between mobile communication networks, Telefónica would like to note that Regulation in Recital 27 and Article 4 refers to handover between networks, not to service handover. The lack of standards in 4G and 5G means that the technical implementation of service handover is not feasible in the short term due to the high technical complexity and the risk of developing non-standardised solutions for 4G and 5G. Although operators are working with standardization bodies to develop these standards, service handover cannot be required in the guideline.

Therefore, we would request to delete the following paragraph:

"In this regard, BEREC encourages operators to continue working on such network coordination, making it possible to create handovers without disconnecting and thus enhancing the experience of end-users, taking also into account the different pricing especially in cases of intra-EEA communications".

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

BEREC states in the last paragraph of Guideline 26 that 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.”*

We continue to have concerns with this guidance as operators are not involved in this aspect, which is fully driven by the providers of the handsets’ operating systems and the PSAP. Currently, the caller location information from the network is provided by the visited network. In the case of handset derived information, this information should be provided based on the handset and the responsibility of the visited network should be limited to the transmission of this information. This location information should be provided by the handset to the network in a free mode and in a suitable format.

Guideline 36. Procedure prior to the unilateral termination of wholesale roaming agreements in case of permanent roaming or abusive or anomalous usage

We would request to add the following text to the end of the first paragraph:

“In the case of a termination on the grounds of permanent roaming or anomalous or abusive use of wholesale roaming access, according to the contractual arrangements between the parties, cancellation period without any reasons is possible without any clearance, as long as these arrangements regarding the cancellation period allows the access seeker to have the possibility to conclude a new agreement according to Art. 3. BEREC considers 6 months cancellation period as sufficient to fulfil this requirement.”

There is existing case law which provides for the possibility of such solution (series of MNO-MVNO disputes in Germany).