

## **NOS response to the public consultation on the draft BEREC guidelines on Regulation (EU) 2022/612 and Commission Implementing Regulation (EU) 2016/2286 (Retail Roaming Guidelines)**

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

These guidelines contains the guidance, which BEREC is required to updated, according to Article 4 (3) and Article 8 (6) of Regulation (EU) 2022/612 ("Roaming Regulation").

Such document is of the utmost relevance, since it is designed to explain the Roaming Regulation, including the Commission Implementing Regulation ("CIR") laying down detailed rules on the application of a fair use policy ("FUP"), on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment.

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

A very relevant aspect concerns the fact that the final guidelines will not be published until the end of this year. Given the gap between such adoption and the effective date of the Regulation itself (July 2022), some flexibility should be granted on it's implementation, at least June 2023, that is, the deadline for BEREC databases to be added in automatic messages.

Also, as for the obligations that already come into effect on 1 July 2022, namely those related with contract Information, the same should be considered with care and flexibility due to the implementation work and modifications already undertaken by operators.

### **Specific comments on the proposed guidelines**

- **Guideline 13**

BEREC states that "*any other sanctions (e.g. withdrawal of roaming services) are not in line with the Roaming Regulation*".

NOS understands that this provision goes beyond the scope of the Roaming Regulation and does not provide for legitimate situations for suspension of access to roaming, such as cases in which the allowance is exhausted or in which the existence of fraudulent behaviour is proven.

Therefore, NOS suggests that this provision should be eliminated or be complemented with a more positive approach, such as the indication that "*any other measure should be in*





*line with the Roaming Regulation."*

- **Guidelines 15 and 17**

The definition presented in the Roaming Regulation for domestic retail price indicates that the off-net price should be considered as a reference for the application of the roam like at home ("RLAH").

The guideline 15 clarifies that *"In case there are different off-net prices in a subscription, roaming providers must use the same charging mechanism which would apply to the relevant roaming customers in their Member State."*

Thus, according to NOS' interpretation, if a customer has a tariff that includes different prices for national networks A and B, when, while in roaming, this customer calls a national number of network A, it will be charged with the off-net price defined for the network A.

However, if this same customer calls a number located in the country where the customer is roaming, it is not so clear which off-net price should be applied, namely which of the reference prices should be used to charge this call.

- **Guideline 21**

Guideline 21 provides for the possibility of extending the FUP limits in exceptional cases.

Although it may be considered an acceptable claim, such prerogative goes beyond the scope of Roaming Regulation. Also, an extension of the FUP entails additional costs for operators, especially in cases where data consumption occurs through a data allowance (without any additional retail revenue for the roaming provider), but for which the roaming provider has to pay a wholesale tariff.

Hence, it is essential that the operator should have the possibility to require some evidence from the end-user that the request is made under these exceptional circumstances.

Thereupon, the guideline must be complemented with the reference to *"Roaming providers should therefore extend the applicable FUP for an appropriate period if the roaming customer makes such a request **and provides reasonable evidence to the roaming provider."***

- **Guideline 24**

Regarding the provision of transparent, simple and efficient procedures to address customer complaints relating to the application of a FUP, NOS understands that nothing prevents that the means made available for this purpose couldn't be the same as those used at the domestic level for the same purpose.





Additionally, NOS understand as redundant the statement “... provide evidence that the alert is not based on correct or complete information and to provide evidence that the alert is based on incorrect or incomplete information...”.

- **Guidelines 105 and 106**

Article 109 of Directive (EU) 2018/1972 (“EECC”) states that emergency communications free of charge corresponds to single European emergency number ‘112’ and any national emergency number specified by Member States.

Although, guidelines 105 and 106 introduce some confusion about what are the emergency services that are free of charge, by referring that calls to “any type of emergency communications” cannot be charged.

This conclusion cannot be drawn from the provisions of article 109 of the EECC, so to ensure full alignment with the provisions of Directive (EU) 2018/1972, NOS suggests, at least, the following corrections:

- a) To guideline 105:

- ... In order to ensure that, roaming providers shall not levy on roaming customers any charges related **the single European emergency number ‘112’ and any national emergency number specified by Member State** to the most appropriate PSAP initiated by the roaming customer or to the transmission of caller location information.

- b) To guideline 106:

- Emergency communications include calling the single European emergency number ‘112’ and any national emergency number specified by Member State, in particular for roaming customers with disabilities, that are appropriate for use by roaming customers.*

- **Guidelines 125, 126 and 127**

According to guideline 125, for users of laptops with dongles or similar devices, the free of charge information preview by article 14 of Roaming Regulation could be provided on a landing page (displaying price information) that opens when a data roaming session is initiated and before any data transfer (that is subject to a charge or a FUP) takes place.

Regarding the availability of the required information on landing pages, such approach has been subject of recurrent fraud practice, namely with the use of apps that allow data traffic to be “masked” for domestic operators, which view such traffic as being permanently carried out on this landing page. In such cases, while roaming operators do not bill or deduct such traffic from monthly allowances, they face high wholesale costs with fraudulently routed traffic.

Hence, for laptops with dongles or similar devices, the provision of information provided



for in article 14 of the Roaming Regulation should not be limited to landing pages, and other alternative means such as apps, SMS, e-mail or a pop-up window must be explicitly allowed.

In relation to Guideline 126, NOS understand that information provided at the point of first connection could be sufficient when it provides all the mandatory information, instead of sending information when there is a call and subsequent information when there is a data session. Indeed, it should be noted in this respect that both can occur at the same time with IP.

- **Guideline 128**

This guidelines states that *"an opt-out is not possible for the information about emergency communications and public warning mobile applications (when relevant)."*

NOS understands that this interpretation is based on the fact that the information included in the welcome SMS is now indicated in articles 13 (prices), 14 (cut-off limits) and 15 (alternative means to access emergency services) of the Roaming Regulation, but only articles 13 and 14 explicitly refer to the possibility of opting out.

However, it is important to bear in mind that operators tend to include the predicted information in a single "welcome message", because the successive sending of messages leads to impairing user experience and information fatigue.

Therefore, when the customer wants to opt-out of the availability of a welcome SMS, it intends, and will assume, that it will not receive any more messages. However, by continuing to send a welcome SMS with part of the information (about emergency communications and public warning mobile applications), the roaming operator can be seen as acting against the customer's intention.

Additionally, clarifications are requested on how to proceed with customers who have previously opted-out for a welcome SMS, as well as on how to proceed when a customer indicates that it effectively does not want to receive any more messages when roaming.

- **Guidelines 129 and 146**

According to article 13 of the Roaming Regulation, roaming customers should have access, through a SMS message, to a link to access, free of charge, that could provide information about the numbering ranges for value-added services or other relevant additional information contained in the database established.

The inclusion of such information in the SMS message must occur, as indicated in article 24, from 1st June 2023.

NOS understands that the best way to ensure compliance with this obligation is to include a link forwarding to the operators' website for additional information on





access to value-added services while in roaming. In turn, operators' website should include: i) information on the potential risk of increased charges due to the use of this type of services; ii) costs with these communications; iii) a direct link to BEREC database, that should be accessible through a public website with a direct, short and stable link/URL and include all information required under the Regulation in all official Union languages.

As mentioned on NOS' comments on BEREC call for inputs regarding set-up of a database of numbering ranges for value-added services and of a database of means of access to emergency services for roaming users, direct links for the databases would ensure correct, complete and up-to-date information and would be the most (cost) efficient solution to avoid additional workload and development at operators' side and to avoid potential transposing errors.

Additionally, forwarding to the information compiled and made available by BEREC makes it possible to dismiss the development and adaptation of information systems, which tends to imply significant costs, tests and guarantee of operationalization. Such burden shouldn't be imposed in a context on which mobile operators have been facing a reduction in their revenues, while are channeling efforts and investments in the deployment of 5G networks.

Finally, this approach guarantees that the information provided is always up to date and that all roaming customers have access to the same information provided, regardless of their operator.

- **Guidelines 132,133 and 146**

Comments presented in the previous point (guideline 129 and 146) are equally valid for the alternative means of access to emergency services, in which the operators' website would indicate the possibility of consulting what are these means by accessing the database prepared by BEREC with the same requirements indicated for value-added services.

Such an approach allows for harmonization, simplicity in terms of implementation, correct, complete and up-to-date information and would be the most cost-efficient solution.

NOS understands that the reference to the operators' page ensures access to information in the language in which the roaming provider communicates with the roaming customer, and the database must be developed in a way to be generically accessible to persons with disabilities.

- **Guidelines 184 e 185**

Guideline 184 states that "For VAS, the charge for the voice call, SMS, or data transmission is bundled with the price of a specific service being purchased, e.g. weather forecast or a call to a hotline. The bundled price is fully billed by and paid to the roaming customer's roaming provider."





In turn, guideline 185 adds that “Roaming Regulation does not apply to the entire tariff that is charged for the provision of VAS, but only to the tariff component corresponding to the connection to such services.”

It is important to note that in addition to what is mentioned in guideline 184 that “The bundled price is fully billed by and paid to the roaming customer's roaming provider, VAS communications is also billed in an integrated way at wholesale level. Therefore, clarification from BEREC is requested, preferably with examples, of cases that may fit to what is referred in guideline 185 that Roaming Regulation rules should be applied to the tariff component corresponding to the connection to such services.

Finally, It should be furthermore clarified, that in case of calls where the VAS or the beginning of the VAS in call cannot be differentiated from the voice service should be treated as one call to a VAS (e.g. roaming providers cannot detect the part of a call to hotline, where customer is still waiting to be connected in a queue and therefore such calls should be treated and charged as one call to the hotline including the VAS).

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