BEREC Public Consultation BoR (22) 87 Draft BEREC Report on Internet Ecosystem

MVNO Europe response

20 July 2022

<u>Comments on Chapter 6 - Analysis of competition dynamics:</u>

- Addition to paragraph 6.2.2:

MVNO Europe welcomes the last two paragraphs of the subsection 6.2.2. However they do not fully address the issue that the so-called "termination monopoly" affects not only OSs, app-stores and search engines but also internet access providers. Apple for example makes the proper functioning of its handsets (the hardware and operating system iOS) and usage of all features conditional upon the signature of a 'carrier partner agreement' by mobile operators. This type of commercial agreement is one-sided and financially and commercially unsustainable/unrealistic for small and specialized MVNOs because it implies a commitment to market and sell iPhones and providing specific tech support for Apple devices.

Without the carrier partner agreements in place, several iOS features are blocked, not working properly or have to be manually configured (e.g. MMS, Mobile Hotspot, VoLTE deployment, 5G access, VoWiFi etc.).

Apple is just an example as other big companies like Samsung and Google, are hard to approach refusing to make steps without commercial deal in place. The smaller the vendors become, the easier to talk to and work with.

This is obstructing the open Internet and freedom of choice to the detriment of end-users. By buying an iPhone device, users are not only obliged to use the corresponding Apple OS, but they are also constrained/limited in their usage of the features developed for this OS. It is distorting competition on electronic communications markets in favour of the largest network operators that have a 'carrier partner agreement' with Apple. Overall, this results in less choice, less competition and & less innovation.

Challenges with carrier bundles are particularly an issue for those smaller operators who operate under their own MCC/MNC tuple. Operators purely borrowing MNO will experience less problems, although it may still be preferred to have customized setting for the particular subrange used (for example: pre-defined different APN, customized VoLTE settings, etc).

Besides device customization there is still the topic of eSIM support ono smartwatches. Both Apple and Samsung limit the deployment of this service via a commercial model and additional requirements (entitlement servers). The smartwatch is 'just' a UE with eSIM capabilities and should be usable by anyone who can configure the device with a valid eSIM subscription. It should be up to the operator to agree with it's end-customer on a certain commercial offer, it should not be Apple who dictates this to the MVNO.

We would suggest that BEREC adds the following wording at the end of paragraph 6.2.2 so to explicitly underline this problem:

Furthermore, OEMs may also discriminate between one electronic communications provider and another, by guaranteeing the full functionality of the device/OS only to those operators that signed a commercial agreement that binds the operator to provide also additional services. It is for example the case of Apple that makes the proper functioning of its handsets and operating system conditional upon the signature of a 'carrier partner agreement' that requires operators to also sell iPhones and provide technical assistance in for these. Those are services that small and specialized operators do not have the means to provide. Without this type of commercial agreement in place, several features are blocked, not working properly or have to be manually configured (e.g. MMS, Mobile Hotspot, VoLTE deployment, 5G access, VoWiFi, etc.). Other big companies, like Samsung and Google, are also hard to approach and refusing to make steps without a commercial agreement to be in place. This is obstructing the principles

of the open Internet and freedom of choice to the detriment of end-users. It is distorting competition on electronic communications markets in favour of the largest network operators that have a 'carrier partner agreement' with Apple. Overall, this causes less choice, less competition and less innovation.

- Comment on paragraph 6.2.9:

Referring to the issue of permanent roaming, MVNO Europe would like to further broaden the reflection by insisting on the obstacles its members face as well as on the fact that IoT services do not limit themselves to pure M2M communications and may include connectivity services that somehow require partial human usage/interaction (e.g. infotainment services such as weather forecasts or navigation systems in a connected car). It happens that some MNOs accept to enable permanent roaming services for pure M2M communications (e.g. telematics for diagnosing machines) while refusing to do so for non-pure M2M connectivity services – which are nonetheless essential in the IoT value chain/ecosystem. Without being able to provide those non-pure M2M connectivity services, MVNO Europe members are forcibly pushed out of the IoT market because industrial customers expect those non-pure M2M connectivity services to be included in the IoT solution that is offered. This issue has not been addressed by the Roaming Regulation and MVNO Europe invites BEREC to closely monitor this issue so that it can be addressed in future revisions of the Roaming Regulation.

Chapter 7 - Analysis of openness

- Addition to paragraph 7.2.2:

For the same reasons described in paragraph 6.2.2 we would like to add to paragraph 7.2.2 the following wording (in blue the addition):

Hence, users (among them, developers) might be restricted in the way they access the device's resources. For example, basic functionalities of the device may be available only to specific apps (e.g. NFC chip); there may also be limits to access to other resources, such as battery charge, memory space and CPU. This can be seen as a limit to software innovation at the device level. Basic functionalities of the device might also be blocked, malfunctioning or need to be set up manually depending on the electronic communication provider because of commercial restrictions that the device manufacturers put in place. For example, as referred to in paragraph 7.2.2, some features of Apple devices (e.g. MMS, Mobile Hotspot, VoLTE deployment, 5G access, VoWiFi, etc.) are blocked, not properly functioning or have to be set up manually depending on whether the mobile operator signed a so-called 'carrier partner agreement' with Apple). Other restrictions and limitations could also be introduced into the device, for instance port blocking, which may also impact users' choice.

- Comment on paragraph 7.2.9:

MVNO Europe welcomes the fact that IoT specificities are taken into account.

- Comments on Chapter 8 - Future Work:

MVNO Europe welcomes the second paragraph of Ch. 8 which identifies as a new area of work for the in the future the dynamics of competition and collaboration between the traditional ECN/ECS providers and other actors. Concerning this point, in relation to the ongoing debate on network fees to be paid towards telecom infrastructure companies, MVNO Europe would like to urge BEREC and the European institutions to thoroughly consider the wider implications of such a change before taking any actions that would directly or indirectly impact the stability and sustainability of the European industry (and consumer rights) as a whole. Organizing financial flows to the largest telecom operators, without any

assurance on where and how the funds will be spent, would only end up reinforcing telecom incumbents' market position and could lead towards tighter oligopolies. In addition, it is likely that the 'taxed' companies pass on fees to their own subscribers. This would harm both competition and consumers. MVNO Europe is drafting a position paper on the topic.

We welcome the last paragraph of p. 70 where BEREC "considers that further work could be done is related to user devices, as potential restrictions for competition, switching, interoperability, portability, etc."

As anticipated under comments on paragraph 6.2.9 on IoT, MVNO Europe also invites BEREC to closely monitor the issue of the exclusion from the scope of non-pure M2M connectivity services so that it can be addressed in future revisions of the Roaming Regulation.

About us

MVNO Europe represents the interests of Mobile Virtual Network Operators active on European mobile and Internet of Things markets, and that have negotiated wholesale access to the networks of host Mobile Network Operators (MNOs). MVNO Europe gathers various types of business models addressing retail consumers, business users, the public sector, machine-to-machine (M2M) and Internet of Things (IoT). The goal of MVNO Europe is to create a more openly accessible market for all MVNOs so that they can better contribute to the growth of the mobile communications sector, further ensure that consumers as well as business users have a wider range of diversified services to choose from and to, finally, boost competition on retail mobile markets to their benefit. Our members are convinced that MVNOs stimulate innovation in the telecom sector.

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