



Response to BoR (23) 176

Draft BEREC Work Programme 2024

6 November 2023

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I. Introduction and key points

1. MVNO Europe welcomes the opportunity to provide its brief comments on the draft BEREC Work Programme 2024 - BoR (23) 176 (hereafter 'draft BEREC WP2024'). These comments should be read in conjunction with MVNO Europe's detailed specific suggestions, filed on 14 April 2023, relating to the Outline BEREC Work Programme for 2024 – BoR (23) 02.
2. MVNO Europe expresses its support for most of the contents of the draft WP2024.
3. As every year, MVNO Europe thanks BEREC for giving consideration to its requests expressed in response to the Call for Input.
4. In relation to the text of the draft WP2024, the key points requiring more active BEREC work in 2024 from MVNO Europe's perspective are as follows.

a) BEREC's contributions to the preparation of the 2025 Review of the EU Roaming Regulation, and (related to it), the preparation of the 2025 Review of the European Electronic Communications Code.

MVNO Europe welcomes that BEREC mentions the Review of the Roaming Regulation (*page 5, paragraph 4*), and welcomes the activities mentioned in Sections 2.3, and 5.3.3-5.3.6 of the draft WP2024. Please allow us to place emphasis on MVNO Europe's expectations for these BEREC workstreams, which should include the following:

- i) Continued monitoring and reporting on the wholesale international roaming outpayments actually made by MNOs on the one hand, and actually made by MVNOs on the other hand, taking into account the fact that MVNOs are unilateral buyers. It is essential for BEREC to continue to inform policy-makers in concrete terms on any differential treatment between what is paid by MNOs and what is paid by MVNOs for wholesale roaming access and wholesale roaming resale access.
- ii) Reduction of the wholesale roaming caps, in particular for data, as MNO production costs per Gigabit continue to fall on account of more spectrum being put to use by MNOs, advances in technology and modulation (dynamic spectrum sharing, 5G, MIMO, etc.). Continued reduction of wholesale roaming caps is essential for all MVNOs, as data traffic rises and MVNOs' outpayments at wholesale level outpace the retail prices they can charge their customers.
- iii) Specific attention to M2M/IoT. MVNO Europe expects BEREC's working groups on International Roaming and on Planning and Future Trends to provide deliverables,

during 2024, which support European MVNOs' ambitions to provide domestic and EU Single Market services, and indeed global solutions, to enterprise customers. Enterprise IoT customers must be able to select MNOs or MVNOs as their service provider of choice. This requires assurance that MVNOs are not structurally disadvantaged by MNOs' practices on wholesale markets (domestic MVNO access markets and wholesale roaming/roaming resale markets). Determined BEREC positions are therefore requested by MVNO Europe on:

- Ensuring that any wholesale data roaming/roaming resale charges to be paid to visited MNO networks cannot, in globo, exceed the wholesale roaming caps for data set by the Roaming Regulation (as is the case based on the current Roaming Regulation);
- Resisting MNOs' calls to introduce new wholesale charges for signalling and/or monthly per-SIM fees, etc. the only effect of which will be to damage competitors;
- Removing limitations resulting from the definition of M2M, which continue to enable restrictive commercial practices by MNOs in their wholesale (domestic and roaming) contracts with MVNO to the detriment of competition, and which damage the development of IoT in Europe. MVNO Europe hopes that BEREC will be able to issue reports, and Opinions, in favour of amending the Roaming Regulation (Recital 21 RR) and the European Electronic Communications Code EECC (Recital 249 EECC) in that regard.
- Pursuing full harmonization of the NRAs' set of regulatory obligations applied to M2M/IoT, i.e. the notification requirements, statistical reporting requirements, numbering, applicable fees, etc. In addition, where lawful interception and data retention are concerned (which is not always within NRAs' remits), BEREC could also help to advocate for harmonization of relevant legislation and of practices among other competent authorities.

b) Implementation of the Digital Markets Act (DMA), now that gatekeepers have been designated, and a deadline for compliance has been set on 7 March 2024.

MVNO Europe welcomes that BEREC mentions the implementation of the Digital Markets Act (*page 5, paragraph 3*), and welcomes the internal workshop mentioned in Section 2.8 and BEREC's planned contribution to implementation, in Section 5.3.1 of the draft WP2024. Please allow us to place emphasis on MVNO Europe's expectations in this regard.

MVNO Europe is aware that BEREC's formal remit in application of the DMA is limited. However, that does not prevent BEREC expressing itself, especially where markets are not functioning properly, and in particular where there is negative impact on markets for electronic communications. A case in point, mentioned by MVNO Europe on several previous occasions to BEREC, concerns restrictions imposed by Apple at the Operating System level, degrading the user experience where customers choose MVNOs as their electronic communications service provider, compared to when they choose a leading MNO as their electronic communications service provider. We refer in particular to customers of some MVNOs being required to proceed to complex manual configuration of their devices to activate mobile internet and other functions, which is an issue that does not occur for the customers of the MNOs that have entered into a "carrier partner agreement" with Apple. MVNO Europe considers that severe distortions of competition occur on the electronic communications markets in favour of the network operators that have concluded a "carrier partner agreement" with Apple, and that it is imperative for these distortions to be put to an end.

MVNO Europe is available to meet with BEREC and NRA representatives to provide further details of the specific issues, including a demonstration of the crippled 'out of the box' user experience that some MVNO customers face.

II. Additional specific points

5. MVNO Europe has a strong interest in Section 1.11, the forthcoming BEREC Report on the evolution of private and public 5G networks in Europe. We look forward to the public consultation on the draft Report. We may well have substantive elements to contribute, relating both to public 5G networks (in terms of wholesale access requirements), and private 5G networks as well (given that some of our members are directly active in this space, and these and other members are also interested in enabling users/operators of private 5G networks to roam outside the limited footprint of private 5G networks).
6. MVNO Europe will take an active interest in Section 1.12, the External workshop about the usage of satellite technologies in mobile communications. As indicated during the BEREC workshop of 26 October 2023 entitled "*Internet of Things, perspectives and competition*", some of our members are concerned that satellite operators are entering into exclusive deals with MNOs, notably because some satellite system need permission to use the relevant MNOs' terrestrial radio spectrum for direct satellite to handset communications. There is growing concern that MVNOs could be sidelined from adding a satellite component to their services,

since, contrary to MNOs, they have no radio spectrum to bring to the table. Wholesale access obligations may need to be given consideration.

7. MVNO Europe would like to confirm its strong interest in Section 2.4, the forthcoming BEREC Report on the IP interconnection ecosystem. Indeed, MVNO Europe has taken a clear position, kindly reflected in footnote 21 of BEREC's 2022 "*preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs*". We understand that workshops have been held with stakeholders on the topic in the Autumn of 2023, and we regret that MVNO Europe was not invited to participate.
8. MVNO Europe also confirms its strong interest in a BEREC Report on best practices for termination of contracts and switching providers. This item was mentioned in the Outline WP2024, but we do not see it in the draft WP2024. MVNO Europe requests that a Report is issued, and that BEREC makes this Report as explicit as possible, in terms of what constitutes best practice, and what constitutes poor practice, to provide a real impetus to Member States/NRAs/other competent authorities to genuinely facilitate switching for customers.
9. More broadly, MVNO Europe welcomes Section 2.9, the proposed 'Digital Radar'. We look forward to its contents. Section 5.1., BEREC Strategies beyond 2025 (2026-2030) is of great interest to MVNO Europe. Clearly, the role of mobile and wireless communications need to be at the heart of BEREC's strategies, with a focus not only on VHCN deployment, but also on continued promotion of competition, the EU internal market and citizens' interests. MVNO Europe reiterates a statement it has repeatedly made in the past, i.e. that promoting competition is the most tangible way in which end-users' empowerment can be achieved.
10. With regard to Section 5.3.9, the Intra-EU communications Benchmark Report, it remains important for BEREC to continue this work, to inform policy-makers of the actual state of affairs. MVNO Europe considers that there is no justification to renew direct EU Regulation of Intra-EU calls and sms, to reduce the existing retail caps, or to proceed to the replacement of the caps by a system in which domestic retail prices for calls and sms would also apply for Intra-EU communications. In particular the text adopted by the European Parliament, as part of the negotiation mandate on the Gigabit Infrastructure Act, is deeply concerning for MVNOs, and notably those providing unlimited domestic call/sms bundles, but charge for Intra-EU communications. This is the case because these MVNOs incur a wholesale call/sms origination cost for every communication, in many cases very excessive wholesale transit charges, in addition to the regulated wholesale call termination outpayments and unregulated sms termination outpayments.

III. Potential BEREC work for 2025 and beyond

11. MVNO Europe strongly welcomes the proposal to prepare a BEREC Report on IoT/6G, reviewing the 2016 BEREC Report. In fact, it would be highly desirable for this work to be accelerated, so that its deliverable arrives in time for the preparatory work on the 2025 Review of the 2022 Roaming Regulation.
12. With regard to BEREC work on the review of the Delegated act relating to Article 75 of the EECR on the termination rates for mobile and fixed voice calls, MVNO Europe asks for BEREC to provide factual evidence, and to avoid any suggestion that wholesale Eurorates may need to increase, or could conceivably be deregulated. MVNO Europe is on record with BEREC in emphasising that wholesale transit rates, post-deregulation, have risen to very high and problematic levels, and would need to be looked at again, and the same is the case for non-regulated wholesale sms termination rates, which are in some cases also problematic.

IV. Brief reiteration of points made in detail at the Call for Input stage

13. MVNO Europe wishes to express that it had requested, in its response to the Call for Input, for tangible follow-up work in 2024 to the Study on Wholesale Mobile access, in the form of 4 BEREC Reports. Based on our analysis of the draft WP2024, no explicit follow-up seems to be planned in 2024. We would therefore wish to reiterate the detailed requests contained in paragraph 5 of our response to the Call for Input.
14. MVNO Europe notes, with reference to Section 5.2.4 on the spectrum peer review process, that BEREC refers to this only in the context of the strategic priority on promoting connectivity. MVNO Europe insists that much more is at stake in spectrum peer reviews, notably in terms of promoting competition and citizens' interests. In paragraph 7 of our response to the Call for Input, we had requested a workstream proceeding to an evaluation of BEREC's involvement in spectrum peer reviews. We reiterate this request.
15. With reference to Section 5.3.3, the BEREC Report on M2M and permanent roaming (carry over), MVNO Europe members participated actively in BEREC's workshop (organised by the Planning and Future Trends working group) held on 26 October 2023. MVNO Europe also looks forward to a Call for Input (to be organised by the Roaming working group), and to the subsequent report. For reference, we reiterate our detailed expectations for this work below.

Work is needed on the following topics:

- a) Definitional issues relating to M2M and IoT in the 2022 Roaming Regulation and in the 2018 EECC. M2M is defined restrictively in recitals, whilst IoT remains undefined. See also our points in paragraph 4 above.
- b) The imposition through wholesale service contracts, due to insufficiently clear definitions in the 2022 EU Roaming Regulation, of:
- Restrictions on the services to be provided (type of services, bandwidth made available less than that of the Host MNO's own retail services or contractual partners' retail services, etc.), and/or to which customers services can be provided under the contract (e.g. excluding the home country of the Host MNO, excluding types of customers, traffic profiles, etc.). Related to this, is the imposition through contracts of extreme reporting requirements on usage of wholesale roaming, clauses which enable rapid termination of service/of contracts, etc.
 - Wholesale data prices de-facto exceeding the wholesale data caps set by the 2022 EU Roaming Regulation (including through the application of up-front and recurring fees for wholesale contracts, the application of monthly fees per SIM card, etc.). Such restrictions can take on a character akin to constructive refusal to supply wholesale roaming access/resale.

16. With reference to Section 5.3.5, the International Roaming benchmark data and monitoring report, MVNO Europe's detailed expectations on its contents are as follows.

MVNO Europe explicitly asks BEREC to extend its data gathering on wholesale roaming (availability, terms, problems encountered) specifically including 5G, IoT (including its pan-European dimension), cross-border network slicing, etc.

Topics suitable for additional data gathering include:

- a) Wholesale international roaming for IoT and 5G (generic wholesale mobile international roaming and attention to specific arrangements for NB-LTE/LTE-M/5G – including 5G RedCap): data collection and reporting on availability, whether international roaming agreements are concluded, and applicable wholesale inter-operator charges.
- b) IoT and 5G MVNO access and other forms of wholesale access enabling MVNOs to provide 5G services (Enhanced Mobile Broadband and Massive Machine Type Communications / Ultra-

Reliable & Low Latency Communications): data collection and reporting on availability and whether agreements are concluded for the provision of wholesale access.

c) 5G network slices: data collection and reporting on availability and whether bilateral agreements have been concluded between network operators, whether agreements have been concluded between network operators and MVNOs, and whether agreements have been concluded between operators and industrial users, for the provision of network slices. This should specifically include reporting on whether multi-country agreements setting out the characteristics of network slices or some forms of international roaming or exchange of network slices at specified quality and price levels are agreed.

More generally, MVNO Europe is strongly of the view that the wholesale caps established in the 2022 EU Roaming Regulation do not match market realities. Wholesale caps should be further reduced. Already back in 2020, when the institutions started discussing the current caps, BEREC data showed that the caps that have been set in the 2022 EU Roaming Regulation should have been set lower.

MVNO Europe urges BEREC to take into account retail market prices when assisting the European Commission in the draft of the first assessment report on the functioning of the 2022 EU Roaming Regulation.

17. Finally, MVNO Europe notes, with reference to Section 5.4.3 on the Article 32/33 Phase II process, that BEREC refers to an "*exchange of information with the BEREC Office about the effectiveness of the updated Internal Guidelines*", and also refers to a (tentative) internal workshop. In our response to the Call for Input, we had requested a workstream proceeding to a deeper re-examination, and for BEREC to provide active support to NRAs, assisting them prior to their notifications of draft measures. We would therefore wish to reiterate the detailed requests contained in paragraph 6 of our response to the Call for Input.

V. About MVNO Europe

18. 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>
19. MVNOs currently represent +/- 10% of SIM cards in the European Union.
20. 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.

21. 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 mobile/wireless services. MVNO Europe does not represent branded resellers.
22. MVNOs contribute strongly to innovation and competition and provide clear Business to Consumer (B2C) and Business to Business (B2B) end-user benefits.
23. 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. Enabling and promoting MVNOs is by far more environmentally responsible than promoting the build-out and operation of additional parallel physical mobile infrastructures, and is thus consistent with the twin green and digital transitions.

VI. 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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