



Draft implementing act on fair use policy and the sustainability mechanism

30 September 2016

The new approach on FUP

- Basic principle: link the ability to enjoy RLAH to the residence OR frequent and substantial presence in the MS of the roaming provider
- Protection (ex post) against systematic, commercial abuses of RLAH / individual misuse
- Transparency and supervision
- Review by 2019 (in parallel to the wholesale review)

Basic principle

- **RLAH for periodic travel is to be offered by any roaming provider of the country**
 - where you are resident, or
 - where you have a frequent and substantial presence
- **The operator may request from its roaming customers to provide evidence of residence (or stable links) in the Member State of the operator**
- **No limits in time or volumes**

Prevention of abuse of RLAH

- **Operators may apply control mechanisms based on objective indicators for abusive use, such as:**
 - *insignificant domestic consumption compared to roaming consumption*
 - *long inactivity of a given SIM card, associated with use mostly, if not exclusively, while roaming*
 - *subscription of multiple SIM cards by the same customer, associated with sequential use while roaming*

Protection against commercial abuse schemes

In case the operator establishes that a number of SIM cards have been the object of organised resale used for price arbitrage:

- *The operator may take immediate and proportionate measures in order to ensure compliance with all conditions of the underlying contract.*
- *The evidence of the commercial abuse and the measure taken must be notified to the NRA at the latest at the same time as the measure is taken.*

Transparency safeguards

- FUPs should be notified to the NRA.
- The terms and conditions of FUPs should be spelled out in the contracts with customers and brought to their attention in advance.
- The customer should be alerted that anomalous use has been detected and that the service will be subject to a roaming surcharge.
- If the customer alerted to an intended surcharge considers the measure is not justified, the customer may complain to the operator; operators will be obliged to establish simple and effective complaint mechanisms.
- If the dispute persists the customer may complain to the national regulatory authority or other competent out-of-court dispute settlement body which will settle the case.
- Surcharges cease once the customer re-establishes a non-anomalous usage pattern / presents relevant residence /stable link evidence.

Sustainability: Provision of data

- **Operators shall provide all the necessary data in the application to the NRA**
- **Assessment based on a 12-month period of data**
- **At least 45 days of actual RLAH data provided in the first application; the rest based on projections**
- **Applications shall be based on financial accounts.**

Sustainability: Assessment

- The roaming retail net margin (revenues – costs) in the RLAH context should be negative at least by an amount that generates a risk of an appreciable effect on domestic price developments, that is 5% or more of the operator's overall mobile service margin (EBITDA)
- Even when an operator reaches the 5 %, the NRA shall nevertheless reject the application where it can establish that specific circumstances make it unlikely that domestic prices will increase
- NRAs shall identify the amount of the ascertained negative roaming margin that may be recovered through the surcharge

Next steps

BEREC opinion: mid-October

**COCOM discussion: end-September; October
- November**

COM adoption: by 15 December