



NEW ROAMING INITIATIVE

REGULATION ON INTERNATIONAL ROAMING CHARGES

Submission to European Commission – DG Information Society

22 March 2006

1. Introduction

- 1.1 Meteor welcomes the Commission's call for comments and is grateful for the opportunity to provide its views in relation to the preparation of a proposed EU Regulation on international roaming charges.
- 1.2 Meteor is Ireland's third mobile operator. Since its launch in 2001, it has successfully competed against and challenged the positions of the two leading mobile operators, Vodafone Ireland and O2 Ireland. Meteor's subscriber base grew by 85% between October 2004 and October 2005 with an equally impressive growth in revenue. Meteor is now the operator of choice for new subscribers in Ireland and accounts for more than 50% of all new additions to mobile operators in Ireland.
- 1.3 Meteor's commitment to competing on price with other operators has been a major factor in this growth. Meteor agrees with Commissioner Reding's view that the existing international roaming charges within the EU are indeed inconsistent with an "*open and competitive single market for information society*."¹ However, Meteor considers that any Commission proposal to address this issue must be implemented very carefully to avoid distortions of competition and to preserve the integrity of the regulatory framework for electronic communications. Meteor hopes that the comments below will be of assistance to the Commission when considering how best to address the problem of high charges for international roaming within the EU.

2. New Regulatory Framework is the appropriate mechanism

- 2.1 While Meteor welcomes the Commission's interest in reducing charges within the EU, Meteor does not believe that a Regulation is an appropriate policy-making mechanism or is necessary to achieve this aim. Meteor believes that at present the most appropriate mechanism to address high charges for international roaming within the EU is the 'New Regulatory Framework' (NRF).²

¹ Speech/06/69.

² Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (2002) OJ L 108/33 (Framework Directive); Council Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (2002) OJ L 108/21 (Authorisation Directive); Council Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (2002) OJ L 108/7 (Access Directive); Council Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and user's rights relating to electronic communications networks and services (2002) OJ L108/51 (Universal Service Directive); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) [2002] OJ L20137; Decision No 676/2002/EC of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community (Radio Spectrum Decision).

- 2.2 The NRF is based on the principles of deregulation and flexibility to deal with fast changing markets. It confers sufficient powers on National Regulatory Authorities (NRAs) to address the lack of effective competition in their national markets for international roaming by way of the market review process. The NRF aims to encourage competition in the electronic communications markets and to improve the functioning of the internal market by reducing *ex ante* sector specific rules progressively as competition in the market develops.³ This is underlined by recital 27 of the Framework Directive which states that: “*It is essential that ex ante regulatory obligations should only be imposed where there is not effective competition...*”
- 2.3 To determine whether *ex ante* regulation is necessary, the NRAs must be given the opportunity to analyse the relevant market, to determine whether significant market power (SMP) exists and to impose proportionate regulatory remedies where appropriate. To move away from this SMP regime and continuous market review process would be to run contrary to the logic of the NRF and would create considerable regulatory uncertainty in the electronic communications sector.
- 2.4 Although the NRF came into force in 2003, it was transposed much later in some Member States. At the outset, the wholesale international roaming market was not a priority for NRAs. Indeed the Framework Directive describes the national market for wholesale international roaming services as an “additional market” to be included in the Commission Recommendation on relevant product and service markets.⁴ The wholesale national market for international roaming on public mobile networks was ultimately included as market number 17 in the Annex to the Commission Recommendation on relevant product and service markets.
- 2.5 As a result, the NRAs prioritised other markets and have only recently begun to address international roaming. It is clear therefore that the problem is not that *ex ante* regulation based on the NRF does not work but rather that there has been little attempt to address the issue under the framework to date. Meteor considers that this is not sufficient reason to bring forward another layer of regulation.
- 2.6 To the extent that problems with international roaming cannot be addressed by NRAs acting unilaterally, the NRF requires NRAs to cooperate with each other and with the Commission.⁵ Meteor notes that the European Regulators Group (ERG) has begun to coordinate cooperation between the NRAs as envisaged by the Commission guidelines. In May 2005, it adopted a “Common position on the

³ Recital 13 of the Access Directive.

⁴ Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, [2003] OJ L 114/45.

⁵ Article 7(2) Framework Directive; paragraphs 138 and 142 of the Commission Guidelines on market analysis and the assessment of significant market power under the Community Regulatory Framework for electronic communications networks and services, [2002] OJ C165/6 (Commission Guidelines).

coordinated analysis of the markets for wholesale international roaming,” which provides guidance for NRAs when analysing the relevant markets.

- 2.7 In December 2004, following work within the ERG, the NRAs issued a harmonised questionnaire addressed to European mobile operators.⁶ To date only the Finnish NRA has analysed the market for international roaming in accordance with the NRF and notified the Commission of its findings. ARCEP, the French regulator, has also analysed the national market for international roaming and has found that the market for wholesale roaming demonstrates characteristics of “tight oligopoly” defined as a market situation where operators are able to maintain high prices without any prospect of competition. Other NRAs are currently analysing their national markets and will notify the Commission of their planned decisions in due course.
- 2.8 Meteor considers it premature to consider introducing a Regulation to address international roaming at a point when NRAs are only beginning to conduct market reviews.
- 2.8 While a new Regulation may at first seem attractive in terms of speed (although it is quite possible that a Regulation adopted pursuant to Article 95 of the Treaty could be subject to substantial delays during the legislative procedure), the long term ‘damage’ caused by undermining the evolution of competition would far outweigh any perceived benefit of not allowing current initiatives taken by NRAs and the Commission to run their course. Meteor is strongly of the view that a Regulation would be less effective than measures adopted under the NRF or pursuant to EC or national competition law.

Pan-European regulatory coordination necessary

- 2.9 Meteor is of the view that in addition to the analysis of national markets by NRAs a coordinated approach towards the market for wholesale international roaming by all EU NRAs is imperative. Otherwise distortion of competition in the single market or in national markets may occur. For example, if network operators in one Member State are price regulated, it will reduce their bargaining power when negotiating with network operators in other Member States unless these are also regulated in a similar fashion. Therefore, regulation in one Member State may generate negative welfare effects for that Member State where such regulation is not similarly imposed in other Member States. Firstly, the reduced bargaining power of operators based in the regulated Member State will lead to higher international roaming prices for end users. Secondly, regulated network operators will make lower profits in the wholesale market for international roaming compared to their counterparts in other Member States. This may lead to a situation whereby the regulated operators find it more difficult to raise investment capital.

⁶ IP/04/1458.

3. Application of competition law

- 3.1 As part of the review of the Recommendation on relevant markets, the Commission plans to release a revised draft Recommendation on relevant markets for public consultation by July 2006. This review provides an opportunity to consider whether it is still appropriate to include international roaming markets within the NRF.
- 3.2 If the issue of high international roaming charges cannot be remedied pursuant to the framework, and bearing in mind that an EU Regulation should be reserved as a measure of last resort, Meteor considers that the appropriate course of action is to remove the wholesale national market for international roaming on public mobile networks from the Annex to the Commission Recommendation on relevant product and service markets.
- 3.3 A solution to this problem should then be pursued by DG Competition and the national competition authorities applying EC and national competition law. In this regard Meteor notes that the objectives of the competition rules are to ensure wider consumer choice, technological innovation and price competition.
- 3.4 It should not be overlooked that a key principle of the NRF is that *ex ante* sector-specific intervention is to be imposed only where general competition law is not sufficient. Meteor maintains that competition law investigations and competition law actions are an effective way of fostering competition in markets for electronic communications.
- 3.5 In this regard, it is material that a number of key Commission investigations are currently ongoing pursuant to EC competition law.
- 3.6 Following its Roaming Sector Inquiry,⁷ the Commission's investigations into the high rates charged for international roaming services at wholesale level by mobile operators in the UK⁸ and Germany⁹ are continuing. The Commission is investigating certain mobile operator alliances including the FreeMove and Starmap alliances to determine their compatibility with Article 81 of the EC Treaty. The Commission is also currently investigating the GSM Association's Standard Terms for International Roaming Agreements (STIRA) and its Inter-Operator Tariff (IOT), which forms the basis for wholesale roaming agreements between operators.
- 3.7 Meteor expects that as a result of these competition law investigations the Commission will identify any anti-competitive practices, which result in higher

⁷Working Document on the Initial Findings of the Sector Inquiry into Mobile Roaming Charges, Brussels, 13 December 2000.

⁸ IP/04/994.

⁹ IP/05/161.

international roaming charges pertaining to the practices under investigation. Should any anti-competitive practices be found the Commission will be in a position to secure an end to such practices.

4 Problems faced by Meteor at the wholesale level

Access to visited network operators

- 4.1 It is important that any measures adopted to address international roaming charges do not enable large network operators to discriminate in favour of traffic from networks within the same group. Any such provision will have a serious impact on the ability of smaller operators to compete and will lead to a significant reduction in competition.
- 4.2 An example of how this might happen can be seen in Ireland where Vodafone Ireland, O2 Ireland and “3” Ireland have abolished international roaming charges for certain Irish customers roaming in Northern Ireland and the UK. These changes were introduced following complaints by customers in border areas of the Republic of Ireland, who found that their handsets were roaming onto the Northern Ireland networks of these operators even though they were situated south of the border in the Republic of Ireland.
- 4.3 As a result, customers of Vodafone Ireland and “3” Ireland may now use their handsets in the UK without paying international roaming charges while customers of O2 Ireland may use their handsets in Northern Ireland without paying international roaming charges.
- 4.4 Vodafone Ireland, O2 Ireland and “3” Ireland were able to remove these roaming charges because they are part of larger groups which also hold mobile licences in the UK. To date, however, these operators have not indicated that they are willing to remove international roaming charges for Meteor customers.
- 4.5 The networks of Vodafone, O2 and “3” in the UK are significant and Meteor’s inability to access the networks of these operators in the UK on equivalent terms to Vodafone Ireland, O2 Ireland and “3” Ireland is now restricting Meteor’s ability to compete.
- 4.6 Meteor cannot replicate the removal of international roaming charges for the UK and Northern Ireland because it does not have a licence for the UK and therefore must pay the wholesale international roaming charges charged by operators in the UK. The net effect is that customers in Ireland who live in border areas or who travel to the UK may now switch to Vodafone Ireland, O2 Ireland or “3” Ireland in order to avail of free international roaming in Northern Ireland and the UK and there is now a disincentive for new customers to choose Meteor. This is particularly problematic for Meteor, as it has recently emerged as a credible competitor to the two largest operators in Ireland (Vodafone Ireland and O2

Ireland) in the post-pay segment of the market, this market generally includes high ARPU customers such as business customers. Meteor's ability to attract such customers is key to its ability to compete effectively against the two large networks in Ireland.

- 4.7 Thus even though Meteor wants to compete on price, it is prevented from doing so as a result of the high level of wholesale roaming charges it must pay operators in other jurisdictions. This demonstrates why the charges for international roaming must be addressed at the wholesale rather than the retail level. Measures which focus on retail prices, such as retail price caps, would hinder the ability of smaller competitors to match the offerings of the larger operators, which have international footprints (e.g, Vodafone with a footprint of 18 network operations) if such operators can offer better intra-group wholesale terms. Conversely, if operators were obliged not to discriminate in favour of operators within their own groups in this way, competition would quickly drive down the retail price of international roaming.
- 4.8 In this regard, Meteor notes that it has never been established that high roaming costs are as a result of ineffective competition at the retail level. Meteor is of the view that an absence of price controls at retail level would favour smaller operators who would have an incentive to compete on price against the larger operators. This would result in the emergence of stronger competitors to the large operators and enhance competition in the market generally. As an effective competitor Meteor is significantly decreasing retail charging and the ability of Vodafone and O2 to act in a jointly dominant manner on the market for wholesale access and call origination. Inappropriate introduction of regulation could now reverse this trend and remove Meteor's ability to compete, risking a return to joint dominance in that and other markets. This would have the effect of driving up retail prices for consumers.
- 4.9 For these reasons, Meteor considers that any regulatory solution should focus at the wholesale level and no action at the retail level should be taken.

Access to mobile operator alliances

- 4.10 Operators that are members of mobile operator alliances such as FreeMove and Starmap benefit from preferential international roaming arrangements with other members of their alliance. For this reason, Meteor believes that access to such alliances is essential for the survival of small operators. Exclusion from membership could place smaller operators at a significant competitive disadvantage.

5. Proposed Solutions

- 5.1 Meteor considers that any regulatory solutions should be adopted under the NRF. As regards remedies, Meteor believes the following would be effective:

Focus on wholesale not retail level as this is where problem occurs

- 5.2 As outlined above, Meteor considers that any regulatory solution should focus at the wholesale level and no action at the retail level should be taken.

Access on equal terms to network operators in other jurisdictions

- 5.3 For the reasons explained above, Meteor considers that any remedy designed to address the problem of high charges for international roaming must mandate wholesale access to the visited network operator in other jurisdictions on equivalent terms to those offered to competing operators and also to operators within the same group as the visited network.

- 5.4 Meteor notes that an obligation of non-discrimination may be imposed pursuant to the Access Directive as Article 10(2) of the Access Directive states that “*Obligations of non-discrimination shall ensure, in particular, that the operator applies equivalent conditions in equivalent circumstances to other undertakings providing equivalent services, and provides services and information to others under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners.*” Meteor also notes that remedies in relation to transparency, accounting separation may be appropriate.

- 5.5 Meteor suggests that the regulation of IOTs in each national market could be an appropriate and effective means of achieving non-discrimination. IOTs should be calculated on a cost oriented basis and made applicable to all carriers terminating international roaming traffic in that Member State. The rate would apply even to members of the same group, e.g., Vodafone UK and Vodafone Ireland. Unilateral price regulation of operators would be required in the national market. For the reasons explained above, any such actions should be coordinated by NRAs across the Member States.

- 5.6 Meteor believes the calculation of an efficient national IOT would be complex in nature. These rates could not be the same as national mobile call termination rates, as handling calls on behalf of a visiting network operator entails the additional cost of signaling, data clearing, financial clearing, international transit, termination and call origination.

Mobile operator alliances

- 5.7 For the reasons explained above, Meteor considers that access to mobile operator alliances on equal terms to those of existing members must be mandated as part of any regulatory solution to the problem of high charges for international roaming.

6. Conclusions

Effective competition in the National Market

- 6.1 At present Meteor is competing very successfully in the prepaid market and is making significant efforts to establish a footprint in the national postpaid market. Meteor has signed numerous wholesale international roaming agreements, but we have been unable to negotiate substantial discount agreements and this is reflected in our retail roaming tariffs. Meteor has been unable to secure any membership of an alliance and also does not have access to directional tools. Meteor's ability to compete in the national market is being eroded by its lack of wholesale negotiating power. Meteor is effectively foreclosed from competing for the majority of the retail roaming customer base at this time. This inability to compete and invest could over time have the effect of removing small effective operators from the marketplace. Any form of regulation should be appropriate and proportionate and justified on the basis of a detailed regulatory impact assessment. Smaller operators should not be disadvantaged in favour of larger operators in wholesale international roaming market.
- 6.2 Lower and non-discriminatory IOTs will enable Meteor to compete on an equal footing in the postpaid market with Vodafone Ireland, O2 Ireland and "3" Ireland.

Choice and fair prices for Customers

- 6.3 If Meteor obtains access to the lower international roaming charges paid by its competitors in the Irish market, there will be an additional choice of network operator for the majority of mobile users, in particular government departments, post-pay users and large corporate entities. These users will then no longer be confined to Vodafone and O2. At present consumer choice when roaming internationally is restricted due to technical and commercial offerings from the larger global operators. Meteor's ability to compete will allow customers additional choice.