

European Commission Public Consultation on a Review of the functioning of Regulation (EC) No 544/2009 (the “Roaming Regulation”)

A Response by Department of Business, Innovation and Skills (BIS) of behalf of Her Majesty’s Government of the United Kingdom

Executive summary

- The Regulation has been effective in addressing the majority of the issues it aimed to address. However, Her Majesty’s Government (HMG) agrees with the Commission’s Interim Report that the evidence appears to indicate that it has failed to address certain issues relating to competition and in particular the competition dynamics between the wholesale and retail levels of the market;
- The Regulation will probably continue to be needed beyond its expiration in July 2012 unless an alternative methodology can be identified as a viable replacement;
- Thus, the Regulation may need to continue in its current scope of price regulation ie at both the wholesale and retail levels for the SMS and voice markets and the wholesale level for the data market;
- On the matter of retail data prices, HMG acknowledge recent operator initiatives and that some of the evidence appears to indicate that prices have continued a downward trend, but also recognise further evidence that supports the view that this trend is not steep enough and there remains too large a gap between wholesale and retail data prices. One conclusion that can be drawn is that market forces have been unable to address this situation;
- As such, this may indicate one possible solution would be, in the absence of an alternative methodology being identified, to include an extension of the scope of the Regulation to include retail data prices;
- HMG believes that regardless of the methodology adopted to address perceived competition issues, this should not come at the price of the erosion of existing consumer protection mechanisms;

- HMG recognises that the stated target from 'A Digital Agenda for Europe' is that there should be convergence between roaming and domestic prices roaming by 2015 is an ambitious one and that the way forward is not clear. We also recognise that there have been a number of "structural approaches" suggested and considered thus far but, on balance, currently remain unconvinced that any of these can singly be relied upon to achieve this target;
- Therefore, HMG is of the view that the best short-term solution may be to continue with the Regulation's regime of price-capping and further consider this and other methodologies in the medium and longer terms;
- HMG acknowledges that there are instances where individual citizens are adversely affected from time-to-time by inadvertent roaming and that the impact can be significant. However, HMG is of the view that the overall scale of the problem is modest. The obvious long-term solution is for roaming and domestic costs to converge, as per the Digital Agenda target. We are not aware of other methodologies that could be adopted in the interim beyond those which are not already in place in affected areas.
- HMG believes, on balance, that the Regulation has been well designed to meet the legitimate concerns of smaller players.
- HMG continues to monitor the current market situation, is open to further discussion on this issue and eagerly await the publication of the Commission's Final Report on the Regulation in June 2011

Detailed Responses

Question 1: To what extent do you believe that the current regulation achieved its objectives in terms of (a) contributing to the single market for roaming services? (b) Ensuring consumer protection (c) Promoting competition

HMG believes that the current Regulation has significantly improved consumer protection, reduced prices paid by citizens, increased transparency and introduced effective measures to prevent “bill shock” from the use of data services while roaming. However, we believe that the Regulation (or its replacement) could make a greater contribution to the single market for roaming services.

In particular, HMG note that recent analyses by BEREC confirm that many retail roaming prices remain extremely high by comparison with typical domestic prices. HMG believes that it difficult to justify the higher prices of roaming charges when compared to domestic charges on the basis of additional costs alone. As such, the current situation could be interpreted as being inconsistent with the concept of the Single Market.

HMG is also of the view that competition has failed to significantly increase during the life of the Regulation and point to the BEREC analyses show that average national roaming prices for voice and SMS services have hovered consistently just below the Eurotariff caps as evidence to this view. HMG also notes that further evidence from these analyses has also indicated that there is a large opportunity for retail competition in the form of a very large margin between wholesale charges and retail price cap.

HMG offers the view that there are two main drivers behind the current situation. The first being that citizens tend not to focus on roaming prices at the time they make their network choices. Second, we are of the view that the evidence available appears to suggest that price reductions have little or no effect on volumes for voice and SMS roaming services.

Question 2: Do you consider that regulatory intervention for roaming services is needed beyond June 2012? Please consider voice, SMS and data roaming services separately.

In the absence of compelling evidence to indicate otherwise (especially that put forward by BEREC) and the lack of a viable alternative methodology, it is hard to argue against an extension of duration of the current Regulation without possibly losing those benefits to citizens and businesses alike that the current Regulation has delivered.

However, HMG does not believe that regulation, per se, must be the default methodology of choice and that we remain open to further discussion and analysis in order to pursue our shared ambition of the creation of a true Single Market in this sector.

In terms of scope, the matter is less clear, especially when considering a possible extension of scope to include retail data. When considering that citizens have alternative ways of accessing data services whilst outside their home Member State e.g. WiFi this makes the situation for data roaming quite different when compared to voice and SMS. It is therefore logical that to make the assumption that competition between these data access services will act as a constraint on the price of data roaming.

Nevertheless, HMG notes BEREC's analysis that indicates that typical retail data roaming prices fell less than typical wholesale data roaming prices since regulation of wholesale data roaming was introduced. This suggests that not all of the cost savings have been passed through to consumers. We also note the existence of very high retail data roaming prices in some parts of Europe and accept that this could be considered as very strong evidence that market forces and the ability to use access services for data have not been sufficient to manifest lower roaming data retail prices.

Finally, we note that there have been some initiatives on data pricing by MNOs but it is too early to draw any conclusions on whether or not these will stimulate vigorous competition.

Thus, we conclude that we are not in a position to suggest that a retail data pricing solution is necessary and remain open to arguments and evidence either way before coming to a firm position. We note that this is a similar conclusion to that contained in the Commission's own Interim Report.

Question 3: Do you consider that the current model of regulation would be effective in the future in light of the desired objectives? Will this approach ensure adequate consumer protection and help stimulate competition? Is it efficient and coherent with EU policies?

As noted in response to Q1, there is compelling evidence to suggest that the current model of regulation has not been wholly successful in its aim to promote competition.

HMG notes that the current model appears efficient and consistent with creating adequate consumer protection and transparency of pricing. We also note BEREC's view that this will continue to be a broadly fair and effective method for ensuring that retail prices are consistent with policy objectives but remain open-minded if alternative methodologies would be just as or more effective in doing so.

Finally, HMG notes that the conditions that drove the need for the current regulatory approach as being unique and have the general view that this action was justified by the circumstances of the case in the absence of a viable alternative methodology at the time.

In our view, it is fully consistent with the objectives of the Telecommunications Framework, as set out in Article 8 of the Framework directive.

Question 4: If this model is suitable in principle, what modifications may be required in order to achieve a well functioning single market?

HMG offers the view that no modifications are necessary for voice and SMS services and for wholesale data services, other than to consider adjusting the price caps to make progress towards the European Digital Agenda target set by the Commission, if no other viable alternative methodology can be adopted to replace the current regulatory model.

Should the extension of scope of the Regulation be widened to include a price cap for retail data, we are aware that legitimate concerns have been expressed about using an 'average per Mb' price cap, given the way that data is consumed, and these should be considered fully before possible implementation.

We note that these views are generally in line with those expressed by BEREC.

Question 5: Would regulation of wholesale prices charged to MNOs combined with transparency measures, be effective, efficient and coherent in light of the single market objective?

As already noted above, it is easy to come to the conclusion that market forces alone have not so far proved effective and so it is difficult to assume that there will be a fundamental change in both the short and long terms (with the possible exception in respect of retail data roaming).

There is therefore little reason to believe that wholesale price reductions for voice and SMS services would in general be passed through to end users in the form of lower retail prices. This could be considered a primary evidence that wholesale and retail price regulation must be designed as a single coherent package but we remain open to further discussion and analysis on this specific point.

Question 6: Do you consider that retail regulation of data roaming prices is necessary

Our previous responses cover this matter.

Question 7: If retail regulation of data roaming prices was necessary, what would be an appropriate model for such regulation?

Our previous responses cover this matter.

Question 8: Please indicate the advantages and disadvantages of these approaches, relative to each other and to the current model of price capping, considering also competition aspects such as the possibility of margin squeeze?

HMG notes that BEREC has made a study of the various price capping methodologies and concluded that, in current market circumstances, the Eurotariff should be the preferred approach for the coming years. This could be regarded a quite compelling evidence for the continuation of this approach in the short term.

At the moment, we are considering the attractions of an approach that BEREC has named “Roam like at Home” but this is not to the exclusion

of other methodologies. Our initial assessment is that it does appear to be highly market-oriented and consumer-friendly, as well as appearing to contribute to the Digital Agenda target mentioned above. However, further analysis may reverse this situation, especially if this or any approach adopted resulted in market distortions under the current prevailing conditions.

Further thought also needs to be given to approaches where the consumer price is tied to a domestic benchmark in the visited country, as there are some concerns on how this may impact on consumer understanding of the price of services if they vary from country to country visited whilst roaming. This approach also seems to fly in the face of attempts to create true Single Market.

Question 9: In general, would these decoupling approaches be effective in terms of stimulating greater competition for roaming services? Would all customer segments be able to benefit? Would such increased competition be sufficient to give consumers and effective choice of roaming services at (near) domestic prices?

In principle, HMG would support decoupling approaches where, on balance of evidence, the outcome would be improved competition. It should always be borne in mind that excessive implementation costs should be avoided and this necessitate a robust cost/benefit analysis being required before adopting such decoupling approaches.

However, HMG is still considering the evidence on the effectiveness of such approaches and would need to be convinced of any adopted measure's ability to deliver consumers increased choice and (near) domestic prices whilst roaming.

Question 10: Would such 'structural' approaches be efficient? What are the technical implementation issues associated with these approaches?

Our response to Q9 generally covers this. Additionally, HMG notes that initial reviews have indicated that there may be some be some problematic and significant technical matters needing resolving, for example in relation to data security. We offer the view this drive the need for a standardisation process which may rule out the use of such approaches in the short term.

Question 11: How feasible/efficient is the establishment of a spot sale roaming? Would this approach lead to competitive wholesale rates? How effective would this approach be in terms of achieving competitive retail rates?

At first sight, this methodology is an attractive one but needs further consideration alongside other methodologies as like these, it too has issues that may be resolved.

In particular, the characteristics of this market appear to drive the purchase of roaming services on longer terms as there are few short-term fluctuations in demands. Whilst markets where short-term fluctuations dominate use a spot-rate methodology, HMG remains open to arguments that such market conditions exist in the roaming market.

HMG is also aware that evidence also appears to suggest that any associated drops in wholesale prices associated with the adoption of this methodology are difficult to predict.

Question 12: For each of options (i) to (iii) above, please indicate whether such approaches can stimulate additional competition for roaming services. In order to achieve significant reductions in roaming prices do you consider that these ‘access-based’ approaches may need to be combined with other forms of wholesale price regulation and/or retail price regulation? Please explain?

HMG believes that there are a number of positives and negatives associated with each of the options above. We are of the view that further and fuller consideration needs to be given to each of these options as it is clear that each methodology may have a differing impact the competition and how these impacts could affect the wider ambition of creating the single market.

The same is true of the combination of ‘access-based’ approaches with wholesale/retail regulation and offer the view that serious consideration needs to be given to the proportionality and impact on the market structure in Member States of such a response.

Question 13: In the medium to long term, markets and technologies will possibly evolve to the point where roaming services can be provided by different competing technologies. Such developments seem to be unlikely to be sufficient to eliminate or minimize

roaming problems within the next 5 years. Do respondents share this view?

This would appear to be a fair assumption but we should not then logically extrapolate that regulation is the default option in the shorter term ie the next five years in the above scenario.

Question 14: Do respondents think that the Commission should pursue measures to accelerate these developments (eg to encourage the massive deployment of interconnected WiFi networks? What other measures could be considered? What will the impact be of the transition to an 'all IP' environment on roaming services?

HMG is of the view that the issue of mobile roaming is closely linked to the creation of the Single Market and this should be a filter when considering any technological or market mechanism when attempting to address issues specific to the roaming market.

We also note that the provision of WiFi has clear and obvious links to wider Digital Agenda issues such as Broadband Strategy, so a push for this measure could contribute to wider EU aims.

However, we should guard against the temptation to 'pick winners' and are of the view that solutions should take, wherever possible, a technology/service neutral approach. Further, such solutions should not undermine the competition basis of managing the Single Market.

Question 15: To what extent is the problem of inadvertent roaming still a concern for citizens' living close to the border? What measures could be taken to avoid the adverse effects of inadvertent roaming, whether by means of voluntary co-operation between operators or by means of regulatory or legislative action?

Consumers in border areas of Northern Ireland still regularly experience inadvertent roaming, although complaints to Ofcom are relatively low.

The impact of inadvertent roaming on mobile users' bills has been reduced for voice and SMS following the introduction of special tariffs for roaming between the UK and the Republic of Ireland following a Joint Working Group between Ofcom and its Irish counterpart, ComReg. The impact has also been lessened since the introduction of the Eurotariff and Euro-SMS tariff.

More recently, Ofcom has been made aware of consumer concerns about inadvertent roaming for data services, in line with the increase in uptake of domestic mobile data services and Smartphone devices. HMG understands that Ofcom are in contact with ComReg on this matter although the problem is greater in Northern Ireland due to lower levels of 3G coverage.

As data roaming prices fall, through competition or regulation, we expect the impact of inadvertent roaming will also be minimised for data. In particular, we note that the Commission's EDA target would mostly resolve the effects of any inadvertent roaming.

Question 16: If you are an operator, what measures (technical or otherwise) have you taken to deal with the issue of inadvertent roaming, both to prevent it happening and to compensate for the adverse effects once it has been shown to have occurred? How do you raise awareness of the problem and the potential remedies on the part of your customers?

No response.

Question 17: What has been the impact on mobile users and service providers of the implementation of the Regulation as far as roaming within, from or between the outermost regions is concerned?

No response

Question 18: What additional measures (if any) have been taken by the Member States or their NRAs to address roaming between the outermost regions and other parts of the EU?

No response

Question 19: What has been the financial impact (revenues, costs, profits, volumes etc.) on smaller mobile telephony providers of the application of the Regulation since its entry into force on 30 June 2007 and amended in 2009? Please provide financial data and any other information in this respect wherever possible (which will be treated as confidential if so requested).

HMG has seen no evidence that would allow us to answer this question in any detail. HMG is favourable to arguments that appear to indicate that the wholesale price cap is of most benefit to smaller operators who might otherwise struggle to negotiate wholesale prices low enough to allow them to offer retail roaming services profitably.

We would be interested in reviewing evidence gathered as a result of this Consultation in this area and if this points towards any unforeseen impacts on smaller providers as a result of the current regulatory regime.

Question 20: Has any operator encountered problems when seeking to agree a wholesale roaming agreement with an operator in another Member State? What kind of problems were these (e.g. for SMS interworking)? Were they resolved in the end? Was the issue referred to an NRA? If so, what action has been taken or is in train to address those problems?

Ofcom has been approached on a small number of occasions to intervene when a small operator based outside the UK was having difficulty negotiating an agreement with a UK network operator. In each case, informal action has been sufficient to resolve the issue.

We note that it appears that mobile network operators deal with tens of requests every year for such agreements and, as such, the offer the view difficulties generally do not arise as a consequence of a disinclination to provide service. The issues appear to more related resource-intensive processes used to ensure that traffic-flows are efficient and there may be a tendency to favour agreements that result in larger flows. This situation may indirectly discriminate against new entrants which would be expected to give rise to relatively little traffic.

Question 21: To what extent is the use of traffic steering accompanied by a lower retail price for the roaming customer? Where lower roaming prices are conditional upon the use of a preferred visited network, how effective is the traffic steering in practice in ensuring that the preferred network is used?

No response

Question 22: What techniques are applied to implement traffic steering in practice? Is the roaming customer informed in advance about the steering and does he have the possibility to override it?

No response

Question 23: Have you identified any significant effects on domestic prices or changes in an operators' tariff structure for domestic voice calls or other mobile services introduced after or shortly before the entry into force of the Regulation?

We are of the view that it is difficult to provide a response to this question. We make the observation that a variety of commercial processes drive changes to tariffs and it is difficult for those outside of the decision-taking process to have full knowledge of all the drivers considered to be able to gauge the contribution to any change that can be attributed to regulatory change. We are of the view that there is currently no evidence to support the view that there have been any significant across-the-board increases in domestic tariffs which might have been attributable to the Regulation.

Question 24: What, if any, has been the impact of the Regulation on reciprocal roaming arrangements between EU/EEA mobile operators and their counterparts in other third countries?

No response

Question 25: Have any Community-based providers of mobile roaming services negotiated agreements with third country operators concerning a reduction of wholesale roaming tariffs comparable to those set up in the Regulation?

HMG has no direct experience or evidence to be able to respond fully but note that, in general, note that third-country retail roaming prices have moved relatively little on average since the introduction of the Regulation. Therefore, it could be seen as logical that if such reductions have indeed been negotiated, the effect on end-user prices appears to have been marginal.