

## **Public consultation on the Review of the Functioning of Regulation (EC) No 544/2009 (the „Roaming Regulation“)**

### **Impact of regulation on the Czech roaming market**

The Czech Republic (hereinafter also "CR") by way of the joint opinion of the Czech Telecommunication Office and the Ministry of Industry and Trade welcomes the opportunity to comment on the questions referred to the public consultation on the Review of the Functioning of Regulation (EC) No 544/2009/ES (the “Roaming Regulation”).

Over the effective period of the Roaming Regulation<sup>1</sup>, the Czech Telecommunication Office has been monitoring and evaluating compliance with the Regulation and the changes in wholesale and retail roaming prices in the Czech Republic from the beginning of regulation in 2007. The Office drew up a [Report on Ongoing Compliance with Obligations under the Roaming Regulation](#) and published it in Monthly Monitoring Report No. 50 (September 2010). It follows from the evaluation that the obligations laid down in the Regulation are being fulfilled in the Czech Republic and that:

- in voice services, demand and traffic is on the decline despite price regulation. Both wholesale and retail prices stay at the level of the regulation caps. This indicates that price regulation has not met the expectations and has not encouraged the development of competitive offers;
- in data services, where regulation is only applied to wholesale prices, traffic is increasing and operators do not keep their wholesale prices close to the caps; at the retail level the operators (Telefónica, Vodafone) offer various packages, thus indicating that there is competition in the market for data roaming services. However, it is obvious that in data services the volume growth of data roaming traffic follows the same pattern as the domestic traffic volume growth and that retail service regulation is not necessary at present: hence, regulation should not be continued;
- in SMS, traffic has been increasing over the period under review but all wholesale and retail operators have kept their prices at the level of the regulated price caps. It remains a question to what extent the growth of SMS traffic volume substitutes for voice traffic.

The following conclusions can be drawn from the above:

- Price regulation in voice services and SMS services has not supported the development of the competitive environment as expected, and therefore we do not believe that the continuation of price regulation will improve the situation and encourage the growth of competition;
- In data roaming, development of both price and traffic has shown that there is a competitive environment in these services and therefore regulation should be replaced by an arrangement to enhance service transparency and relevant information availability not causing inconvenience to the consumer.

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<sup>1</sup> Regulation (EC) No. 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC, as amended by Regulation (EC) No. 544/2009 of the European Parliament and of the Council of 19 June 2009

**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?

Please explain and substantiate your responses with data where possible.

- a) Customers are notified of the prices of roaming services through a welcome SMS and, with Eurotariff activated; they pay the same price for both outgoing and incoming calls in all EU/EEA states. Differences occur in prices converted from EUR to the local currency. As to the EU single market, we see it as a market subject to uniform non-discriminatory rules for competitors' market entry, for their business activities, contract negotiations etc., but not as a market in which the prices are the same everywhere regardless of the actual operating and capital prices – prices regulated in this way would lose its content because they would not provide correct information about supply and demand and their relations toward the prices of other electronic communication services would be distorted. For consumers in the Czech Republic, the implementation of regulation in roaming services through the regulated prices of roaming calls (the Eurotariff) has brought a significant reduction (40%–70%) of retail prices for roaming within the EU/EEA over the period of 2007-2011. Such a sharp reduction at the expense of profit (sometimes even below the cost-covering level) may certainly affect the pricing of other (unregulated) services.
- b) The welcome SMS messages, financial caps on data services, the obligation to inform the consumer about roaming tariffs etc. – all this has contributed to enhancing roaming service transparency and consumer protection.
- c) We do not believe that this regulation has promoted competition in voice services: it has only resulted in a slight reduction of the price of these services. Over the period of validity of the Regulation in the Czech Republic, i.e. from 2007, minimum changes have occurred in unregulated voice roaming tariffs (TO2 has removed the O2 Travel tariff; T-Mobile has removed the Europe package and implemented the Incoming Europe Preference Roaming; Vodafone has not changed the roaming tariff it offers). Changes have been made in the data and SMS services: data service packages and SMS service packages have begun to be offered. Increased traffic was recorded in these services during 2007-2010, whereas in voice services both wholesale and retail traffic has been on the decline, rather than increasing (See [Appendix](#), graphs 1 – 7). Hence, price regulation in voice services did not contribute to the development of competition, which is also confirmed by the fact that the prices of regulated calls were close to the price cap.

**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 particular, if you consider that the Roaming Regulation should expire in June 2012, please explain why, and describe how you consider that the market for roaming services will evolve in the absence of regulation.

We do not consider that continuation of voice roaming service regulation will be needed in 2012. Roaming prices have been reduced and we do not expect them to return to higher levels when regulation is lifted because the demand for voice services is falling. This assumption is also supported by the fact that although the Czech price cap, compared to the previous period, was set higher in the national currency from 1 July 2009 because the Czech crown was weak in relation to the euro at that time, operators did not increase their voice call prices and left them at the level of the lower price cap.

	<b>Official exchange rate (CZK/EUR)</b>	<b>Price caps - outgoing calls (CZK/EUR) (incl. VAT)</b>	<b>TO2</b>	<b>T-Mobile</b>	<b>Vodafone</b>
Until 30/06/09	23.724	12.98	13.10	12.98	12.90
From 01/07/09	26.83	13.72	13.10	12.98	12.90

We believe that the same would happen with the data roaming services and SMS. In the case of the data services that are only subject to regulation at the wholesale level it is obvious that some operators develop differentiated retail products (data packages, data tariffs) – a situation which, in our view, indicates that the market is competitive. We would also like to draw attention to the fact that, in our view, the market is still developing and, in addition, involves more substitutes than in the case of voice services. Retail regulation is therefore unnecessary. This is associated with market developments, i.e., with higher demand for data roaming services. Taking all this into account, we do not believe that consumers would be exposed to worse conditions after the termination of regulation.

**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?

The current model of regulation in which price caps decrease each year has no economic foundation. If this squeeze continues, some operators (especially the smaller ones) could find themselves unable to cover their costs and this could lead to increases in unregulated prices, both national and international. The criteria of effectiveness, efficiency and coherence would fail to be met. Therefore there is no need to consider the further regulation.

**Question 4:** If this model is suitable in principle, what modifications may be required in order to achieve a well functioning single market for roaming services? Should this approach be combined with other options?

We do not consider that the current regulation is suitable. We will only support measures that improve the transparency of conditions in roaming service provision. However, any such measures can only be applied to an extent at which they are not perceived as annoying. As to our opinion concerning the single market, see our answer to Question 1.

**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? Would the benefits of regulated wholesale rates be passed through to consumers?

The single market, as we see it, requires first of all that the customer be informed about roaming service prices and conditions, including the option to choose an alternative or foreign roaming service provider.

**Question 6:** Do you consider that retail regulation of data roaming prices is necessary? If not, what are the likely market developments post-June 2012?

We do not consider that this regulation is necessary (see answer to Question 2 for details). Regulation using price caps set without regard to the level of costs is in contravention of the principles of competition.

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

We believe that data roaming price regulation is not necessary. In the Czech Republic, the average price had been decreasing steadily even before regulation was established (graphs 3 and 7 in the Appendix attached hereto).

**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?

- i) The roaming price option based on national prices is unrealistic in our opinion. Its weakness is in the definition of national prices, because the individual operators offer different tariff structures – some tariffs offer toll-free call charges within the monthly flat rate. The determination of the mark-up, where the roaming costs should be covered, is another problem. On the other hand, the strength of this option is that it is easy for the customer to identify the prices of his or her operator's roaming services. The condition is that the mark-up must be determined, including adequate costs and a reasonable profit. With this option, the customer would know well the prices of the calls – a situation that brings the customer closer to the single market.
- ii) This roaming price option based on the visited country's prices is not sufficiently transparent for the customer. The customer would have to seek the best-price operator in the visited country. The discomfort associated with this situation can hardly be alleviated by the benefits of this method of application of roaming prices. We think this option is problematic in terms charging prices to retail customers because call prices vary from country to country.

The greatest weakness of both these options is that their implementation would require excessive costs for operators and that a number of other regulatory measures would have to be taken to protect consumers.

**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 an effective choice of roaming services at (near) domestic prices?

These options could help encourage greater competition for roaming services and provide more benefits to the customer, but would require the customer to be willing to choose another provider and pay service charges to multiple operators both at home and in the visited country.

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

To be considered efficient, such 'structural' approaches would have to meet at least the following conditions:

- 1) benefit to the end user
- 2) the simplest possible implementation on the operator's side (technical background, customer billing)

3) recovery of the implementation costs incurred in the change.

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

We admit that where price depends on the volume of traffic the conditions are unfavourable to small operators, including the MVNOs. Nevertheless, the option of “establishing a spot trading market” would limit contractual arrangements between operators and affect the competitive environment.

**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 (i.e. between MNOs) and/or retail price regulation? Please explain.

MVNOs' involvement would be a benefit but we believe that the development of competition should be based on the 'natural' development of technologies rather than be regulated through the above options.

**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 5 years. Do respondents share this view? Please explain.

This is a question primarily for mobile network operators but we believe that the ever-increasing demand for data services leads to the use and consumption of data services through other methods of data downloading abroad, e.g., the use of WiFi. The regulator does not see any reason to intervene with the natural development of different technologies – especially with respect to the principle of technological neutrality.

**Question 14:** Do respondents think that the Commission should pursue measures to accelerate these developments (e.g. 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?

The Commission's involvement to encourage the deployment of the WiFi or IP data networks is undesirable because remarkable development of these technologies, stimulated by the relevant current developments in the electronic communications market, is already under way and customers show interest in these services, e.g., WiFi in hotels. In addition, specific support would be in contravention of the technological neutrality principle.

**Question 15:** To what extent is the problem of inadvertent roaming still a concern for citizens living close to borders? 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?

The Czech Telecommunication Office had to address several complaints raised by subscribers/users living close to borders about inadvertent roaming in the past. If a foreign operator's permitted GSM signal field strength is found to have exceeded, the issue is addressed jointly with the foreign national regulator, who is requested to take measures to ensure that the electromagnetic field values are kept at levels recommended by CEPT/ECC/ERC(05)08.

In this respect, we favour voluntary cooperation between operators, plus customers' detailed awareness of possible network preferences.

**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?

This is a question for mobile network operators.

**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?

There are no 'outermost' regions in the Czech Republic.

**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?

There are no 'outermost' regions in the Czech Republic.

**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).

Smaller mobile telephony providers in the Czech Republic do not offer roaming services.

**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?

No such information is available.

**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? Please provide detailed data where possible.

Operators in the Czech Republic do not offer retail prices conditional upon the use of a preferred visited network. Special tariffs are always focused a country regardless of which operator is chosen in that country. As to wholesale prices, this is a question for mobile operators.

**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?

This is a question for mobile telephony network operators. We have no available information in this respect.

**Question 23:** Have you identified any significant effects on domestic prices or changes in an operator's tariff structure for domestic voice calls or other mobile services introduced after or shortly before the entry into force of the Regulation? If so, please explain providing details of the changes in terms of timing, scope and prices.

Impacts of roaming regulation in the Czech Republic:

- All the three operators offering roaming services: undesirable increase in the prices of international SMS;
- Two of the operators – Telefónica O2 and T-Mobile: national call tariffs were restructured to consumers' detriment.

**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?

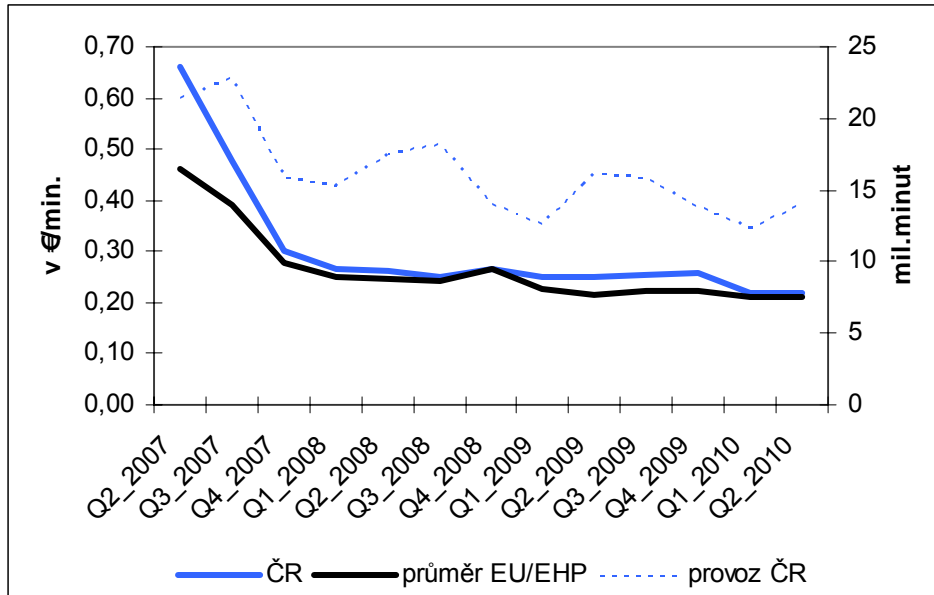
This is a question for mobile telephony network operators. We have no available information in this respect.

**Question 25:** Have any Community-based providers of mobile roaming services negotiated agreements with third country operators concerning

This is a question for mobile telephony network operators. We have no available information in this respect.

## Appendix

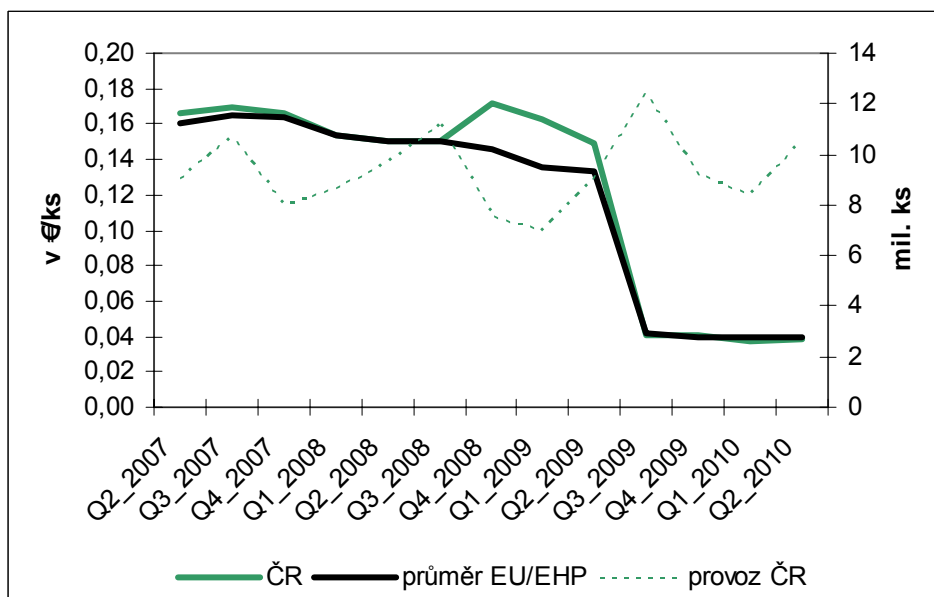
Graph 1: Development of operators' average prices for voice roaming calls at the wholesale level in the EU/EEA zone (in €/min)



v €/min. = in € per min.; mil. minut = million minutes;

— Czech Republic; — EU/EEA average; - - - traffic in the Czech Republic

Graph 2: Development of average prices for a roaming SMS sent at the wholesale level in the EU/EEA zone (in €/SMS message sent)

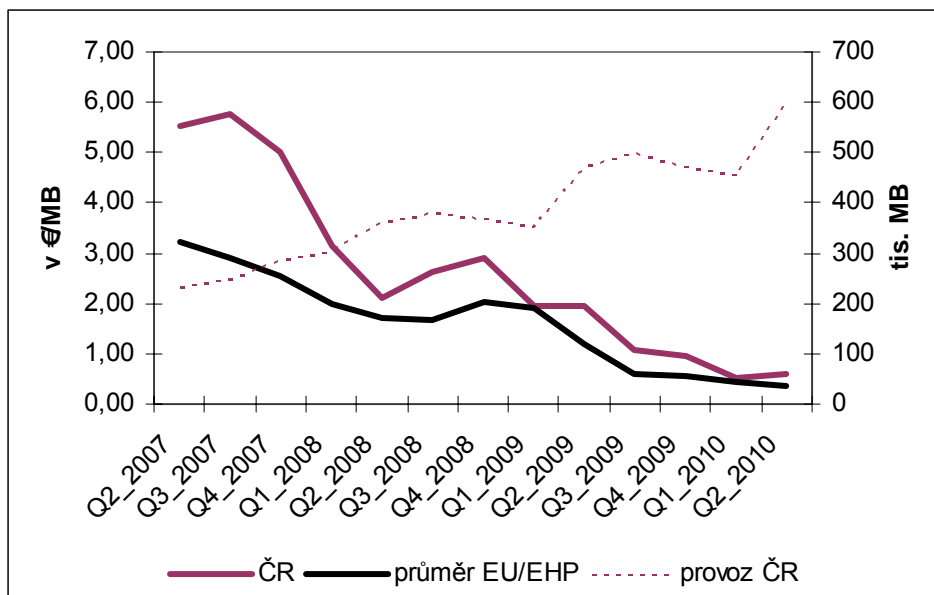


v €/ks = in € per SMS piece; mil. ks = million pieces;

— Czech Republic; — EU/EEA average; - - - traffic in the Czech Republic

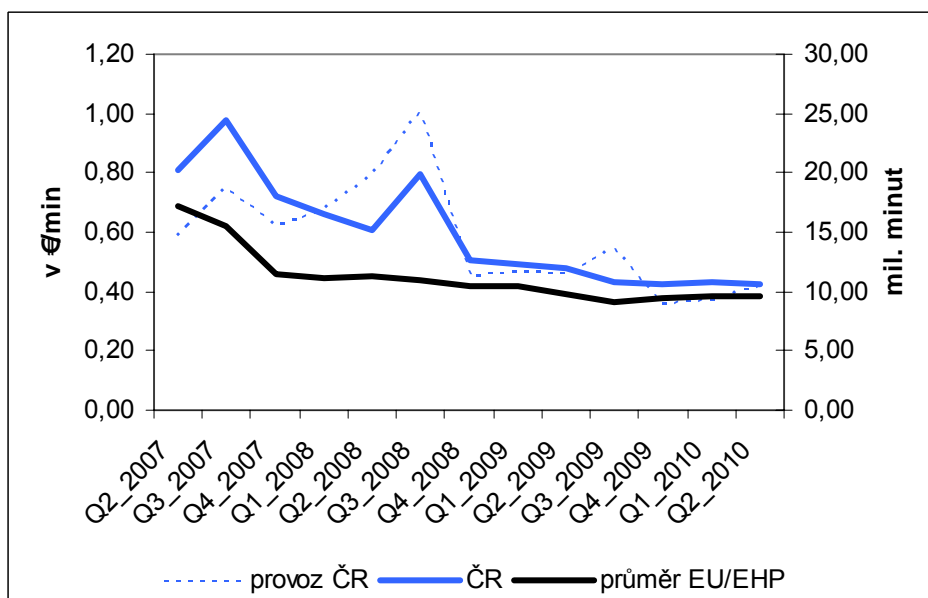


Graph 3: Development of average prices for downloaded roaming data at the wholesale level in the EU/EEA zone (in €/MB)



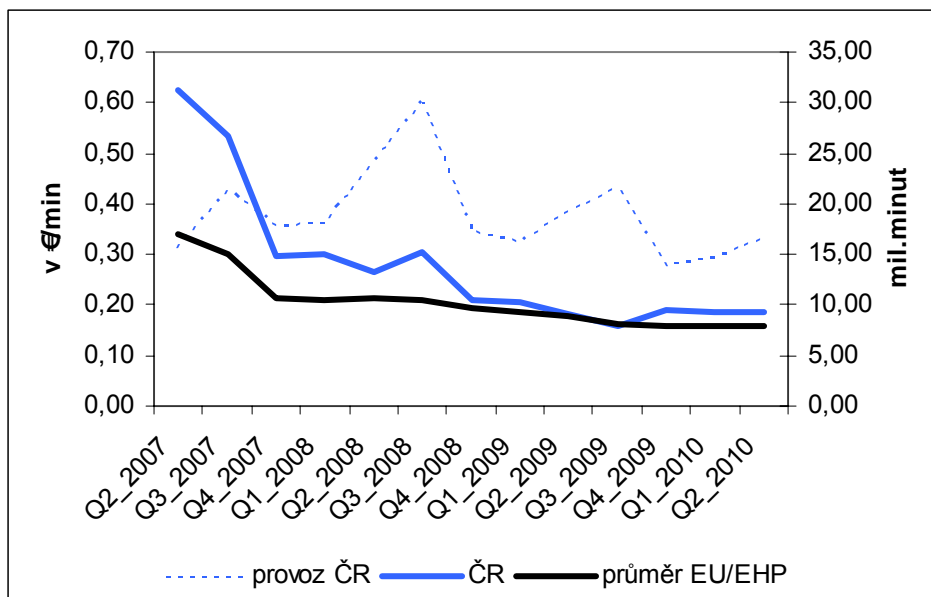
v €/MB = in € per MB; tis. MB = thousand MB;  
 — Czech Republic; — EU/EEA average; - - - traffic in the Czech Republic

Graph 4: Development of average prices for outgoing roaming calls at the retail level in the EU/EEA zone (in €/min)



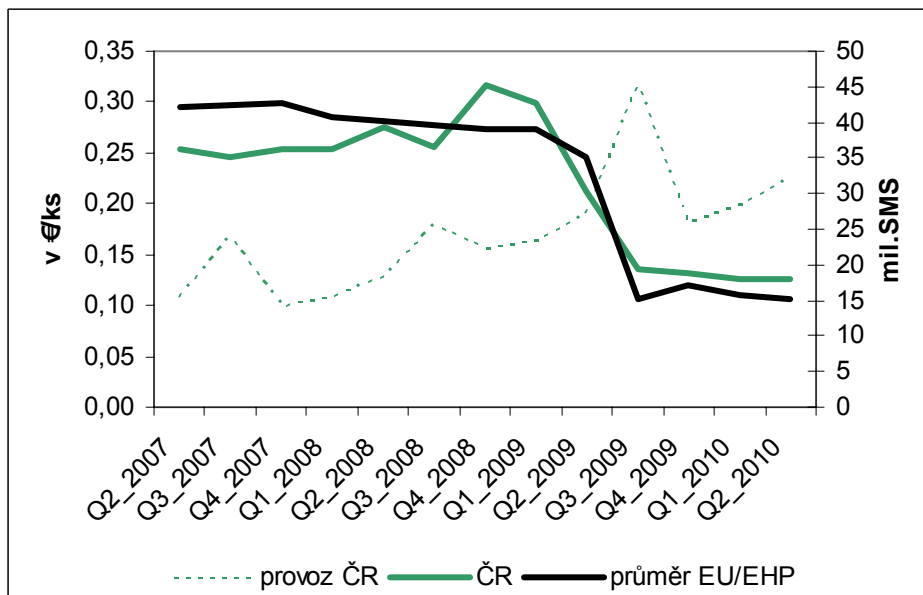
v €/min = in € per minute; mil. minut = million minutes;  
 - - - traffic in the Czech Republic; — Czech Republic; — EU/EEA average

Graph 5: Development of average prices for incoming roaming calls at the retail level in the EU/EEA zone (in €/min)



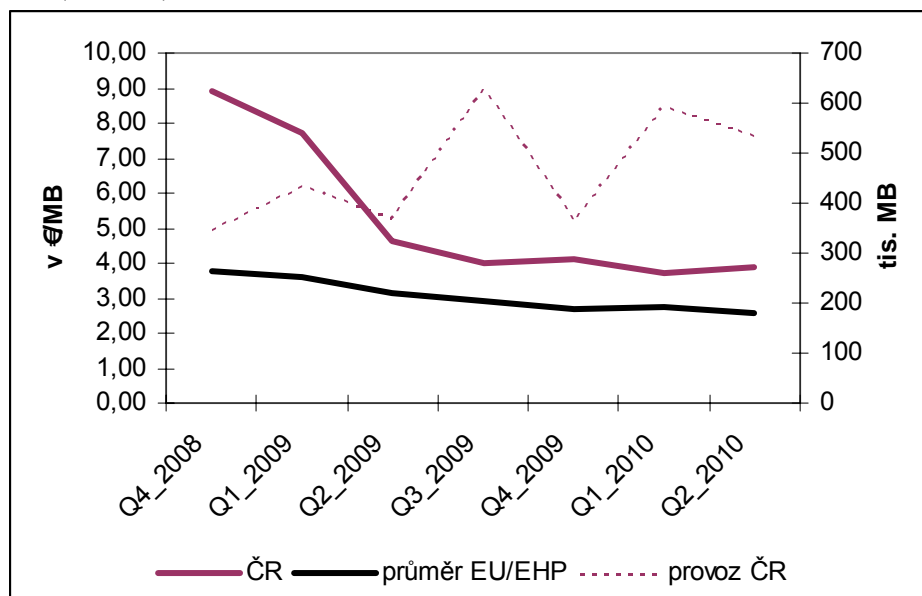
v €/min = in € per minute; mil. minut = million minutes;  
 ----- traffic in the Czech Republic; — Czech Republic; — EU/EEA average

Graph 6: Development of average prices for outgoing roaming SMS at the retail level in the EU/EEA zone (in €/SMS message)



v €/ks = in € per SMS; mil. ks = million SMS pieces;  
 ----- traffic in the Czech Republic; — Czech Republic; — EU/EEA average

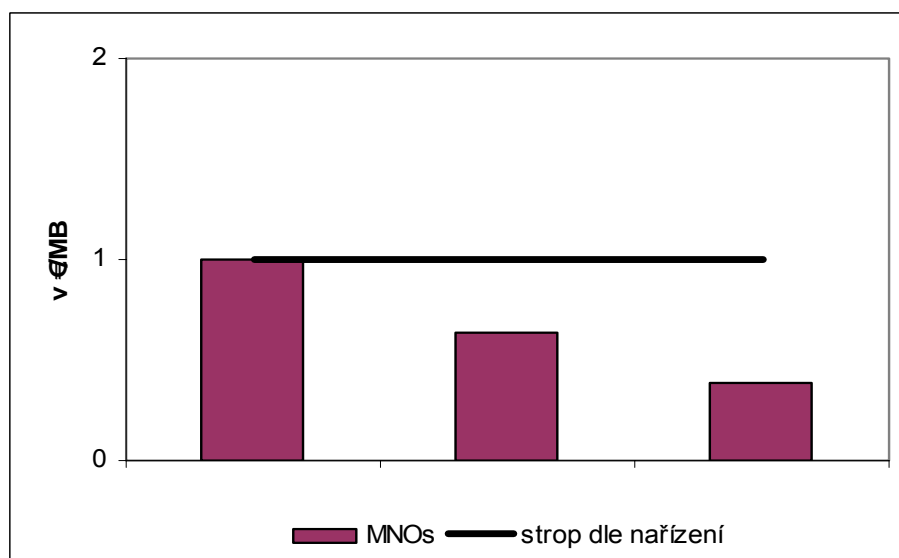
Graph 7: Development of average unit income from roaming data downloaded at the retail level in the EU/EEA zone (in €/ MB)



v €/MB = in € per MB; tis. MB = thousand MB;

— ČR; — průměr EU/EHP; - - - provoz ČR

Graph 8: Average wholesale price for roaming data downloaded in the EU/EEA zone over the period of July 2009 – June 2010 (in €/MB)



v €/MB = in € per MB;

■ MNOs; — stop dle nařízení