

**The Office of Electronic Communications’ reply to the consultation on a review of the functioning of the Roaming Regulation (Regulation (EC) No 544/2009)**

The Office of Electronic Communications [Urząd Komunikacji Elektronicznej – UKE, Poland] would like to thank the Commission for the opportunity to express our view on this important matter. We answered all questions where we think we have the best expertise. In those which were left unanswered, UKE shares the point of view of BEREC, which was communicated in its Report<sup>1</sup> and input to the public consultation.

Alongside the questionnaire please find attached the position of the President of UKE on functioning of the international roaming market within the EU. It includes the proposal of the President of UKE on the structural solution to the problem of lack of competition in the Community-wide roaming market. The solution consists in imposition of the access and non-discrimination obligations for roaming on all European operators, along with the Eurotariff for data. Another attachment is the UKE proposal for amendment of the Roaming Regulation.

Should you have any further questions do not hesitate to contact us. The contact person for any inquiries is Mr. Marcin Krasuski ([m.krasuski@uke.gov.pl](mailto:m.krasuski@uke.gov.pl)).

**QUESTIONNAIRE**

***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.*

According to Recital 47 and Art. 1 (1) of the Roaming Regulation, the fundamental objectives of the Roaming Regulation are: protection of users of public mobile communications networks from excessive prices for Community-wide roaming services when travelling within the Community, thereby contributing to the smooth functioning of the internal market, fostering competition and transparency in the market and offering both incentives for innovation and consumer choice. Moreover, according to the Digital Agenda for Europe<sup>2</sup> (‘DAE), the difference between roaming and national tariffs should approach zero by 2015.

Because of the Regulation the prices for voice calls and text message services, both on the wholesale and retail markets have considerably declined. However, the average prices remain close to price caps imposed by the Regulation. This regularity has been described many times in the BEREC data collection reports. The only exception to that rule includes wholesale prices for data transmission, which fell far below the maximum caps. It is, however, only the

---

<sup>1</sup> BEREC Report on regulation of international roaming, [http://www.erg.eu.int/doc/berec/bor\\_10\\_58.pdf](http://www.erg.eu.int/doc/berec/bor_10_58.pdf)

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Digital Agenda for Europe, [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245\(01\):EN:NOT](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245(01):EN:NOT)

exception to the rule, since the decrease is not reflected in the retail market, which remains the main purpose of the EU regulatory intervention. Thus, it seems that achieving the objectives of Regulation and the DAE target without any regulatory intervention after June 2012 is not possible.

a)

At the current stage of development of the single European market, not just of the telecommunications market, when mobility of the European citizens is still limited, the prices of roaming services are less important to consumers than the prices of domestic services. In order to increase mobility of EU citizens, a number of initiatives are being undertaken, which would bring results – at least in regard to changes in consumer behavior – only in the future. The Regulation brought the EU much closer to creation of the single market for roaming services. Prices for roaming services have fallen considerably all over the EU.

b)

UKE believes that the existence of cut-off limits and welcome SMS probably has a positive influence on consumer protection. This provision should be included in the future legislative proposal. The above solutions increased consumer awareness of the roaming prices on one hand, on the other hand – operators do not charge excessive prices for voice and SMS services anymore. However, it is necessary to assess the cut-off limit after appropriate data collection performed by BEREC.

c)

While the Regulation has had a positive impact on consumer protection and has limited excessive pricing of roaming services, it has inadequately tackled the problem of competition in the roaming market. UKE agrees with the two basic problems constituting barriers to competition in the roaming market described by the Commission in its interim report and consultation document. These two obstacles prevented the establishment of competition in the roaming market. In the wholesale market it is the structure of contractual arrangements, and in the retail market – the dominance of the relevance of domestic prices of roaming services for customers in making their decision on operator's offer.

At the current stage of development of the single European market, not just of the telecommunications market, when mobility of the European citizens is still limited, the prices of roaming services are less important to consumers than the prices of domestic services. In order to increase mobility of EU citizens, a number of initiatives are being undertaken, which would bring results, at least in regard to changes in consumer behavior, only in the future. The structural change, far beyond the simple practice of lowering prices for services, that could trigger a breakthrough in the market for roaming, should therefore be made on the wholesale market. Also, one can expect the increase of competitiveness of the retail roaming market only once the wholesale market has become competitive.

***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.*

In accordance with Art. 13 of the Roaming Regulation, the Regulation shall expire on 30 June 2012. One of the Commission's preliminary conclusions on the situation in the market of Community-wide roaming is that the prices for roaming services remain at a level almost

equal to the maximum prices established by the Roaming Regulation. Thus, it seems that achieving the objectives of regulation and the DAE target without any regulatory intervention after June 2012 is not possible. The only exception to that rule includes wholesale prices for data transmission, which fell far below the maximum caps. It is, however, only the exception to the rule, since the decrease is not reflected in the retail market, while the reduction of prices for retail roaming services remains the main purpose of the EU regulatory intervention. It should be noted that regulation of Community-wide roaming should be extended.

In the absence of price competition in the roaming market, the termination of the regulation would signify losing each of its previous positive effects, i.e. the commencement of the process of closing the gap between excessive prices for roaming services and prices for domestic services, as well as increasing transparency of prices for roaming services.

***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?*

UKE believes that this model is insufficient, as it does not provide adequate pro-competitive stimulus. This is explained in detail in our answer to Question 2.

***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?*

The Commission in its consultation document, based on data collected by BEREC, described two basic problems constituting barriers to competition in the roaming market. In the wholesale market it is the structure of contractual arrangements, and in the retail market – the dominance of the relevance of domestic prices of roaming services for customers<sup>3</sup> in making their decision on operator's offer.

At the current stage of development of the single European market, not just of the telecommunications market, when mobility of the European citizens is still limited, the prices of roaming services are less important to consumers than the prices of domestic services. In order to increase mobility of EU citizens, a number of initiatives are being undertaken, which would bring results – at least in regard to changes in consumer behavior – only in the future. The structural change, far beyond the simple practice of lowering prices for services, that could trigger a breakthrough in the roaming market, should therefore be made in the wholesale market. Also, one can expect the increase of competitiveness of the retail roaming market only once the wholesale market has become competitive.

The basic problem in the wholesale roaming market is, as mentioned above, the structure of contracts. Proper provisioning of roaming services by a home operator in a visited EU country to its customers depends on a possibility to conclude an agreement with the operator of the visited country, whose network covers the whole country. In practice, only the largest operators meet this criterion (according to the criterion of the number of users and revenues from mobile services). If we add to this mechanism the general practice to sign contracts based primarily on the exchange of traffic, then it becomes clear that the smaller telecom operators play no longer any role in the wholesale roaming market. It needs to be noted that these companies tend to give an important impetus to the development of competition in

---

<sup>3</sup> Consumers and entrepreneurs who do not generate sufficient traffic, which would enable them to negotiate more favorable roaming rates.

domestic markets. The situation described above is not likely to change, even if the lowest price is offered by a smaller operator, because the volume of traffic is a major bargaining chip. The rate is not important. Smaller operators are present in such negotiations but tend to lose. This mechanism should be changed in order to create at first price competition in the wholesale roaming market, which at a later stage, could lead to emergence of competition in the retail market.

Another problem blocking price competition in the wholesale market and in consequence in the retail market, is the position of MVNO operators. These companies are not among members of the GSMA. In practice it prevents them from entering into bilateral roaming agreements, thus MVNO operators do not exert competitive pressure in the roaming market.

All these problems have been described in the latest report of BEREC on regulation of international roaming<sup>4</sup> ('BEREC Report').

The optimal solution to the abovementioned problems occurring in the wholesale market would be to introduce an obligation of access to roaming networks and non-discrimination obligation imposed on all MNOs and MVNOs for the Community-wide roaming.

The obligation of network access for roaming is provided for in Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access, and interconnection of, electronic communications networks and associated facilities ('Access Directive') in Recital 5 and in Art. 2 point a (definition of 'access' includes access for roaming). The consultation document in paragraph 3 point g) in subparagraph (i) describes the solution of the obligation to provide access for MVNOs for the purposes of Community-wide roaming, due to specific situation of operators in the roaming market. UKE supports this solution with the limitation that such right (and duty at the same time) should be provided under the Regulation for all operators, including MNO, in order to keep the same regime (the same type of regulation) for both types of operators.

Introduction of the access obligation is justified by competitive problems occurring at the wholesale level. The wholesale market structure created by particular characteristics of contracts for roaming services eliminates smaller operators (according to the criterion of the number of users and revenues from mobile services.) There is no doubt that the types of signed contracts pose limitations, and thus constitute a barrier for small operators to negotiate terms of agreements on access to networks for roaming services. This means that achieving the goal of no restrictions which would prevent undertakings from actual negotiations, including cross-border agreements on access and interconnection referred to in paragraph 5 of the Access Directive, requires the introduction of an adequate and effective remedy.

The effective remedy against anti-competitive problems occurring in the wholesale roaming market is the access obligation linked to the obligation of non-discrimination – imposed by the Regulation. Such a solution would oblige operators, which receive requests for access, to sign contracts on a commercial basis (so the price will become important) and negotiate in good faith.

Introduction of the access obligation alone will not solve the substance of the issue of the wholesale roaming market, where there is no price competition for the reasons described above. As a special solution, concerning the Community-wide roaming, UKE proposes to introduce the non-discrimination obligation. The non-discrimination obligation referring to all MNO and MVNO operators would constitute an effective mechanism for eliminating the practice of non-competitive contracts for the provision of roaming services based solely

---

<sup>4</sup> BEREC Report on regulation of international roaming, [http://www.erg.eu.int/doc/berec/bor\\_10\\_58.pdf](http://www.erg.eu.int/doc/berec/bor_10_58.pdf)

on traffic volume. The legal framework for electronic communications, referred to in Recital 51 of the Roaming Regulation, due to the nature of the service which is a cross-border roaming, is a good reference point for considerations on the lack of competition – including price competition – in the roaming market. These provisions, however, do not constitute the solution to this problem. The practice of functioning of the roaming market indicates that the emergence of competitive retail prices could be triggered by the mechanisms already proven in domestic markets. Actions performed by the national regulatory authorities alone are not sufficient in this regard. Only in this way, the wholesale roaming market is likely to be changed and the price competition could appear. Its functioning will become similar to competitive domestic markets, which in turn will bring the Union closer to creation of a single internal market.

The implementation of the access obligation in connection with the obligation of non-discrimination will provide each operator with network access for roaming services under the terms subject to negotiations conducted in good faith, which should contribute to decline in wholesale prices. Such a regulatory mechanism similar to that prevailing in domestic markets, will lead to meeting the DAE target through structural changes.

Regardless of the implementation of the access obligation and non-discrimination obligation for the Community-wide roaming, price regulation should be maintained and price caps kept. The retail market still needs time before mobility of European citizens increases and in consequence the popularity of roaming services raises, so that the roaming charges would gain importance and result in the emergence of price competition. In turn, the price caps on the wholesale market are necessary because of the risk of margin squeeze. Margin squeeze would appear in a situation when prices of wholesale roaming services were so high, that it would not allow for the creation of competitive retail services by an operator purchasing a roaming service to a retail offer of the operator selling the wholesale service. Thus, the risk of margin squeeze exists when retail charges remain regulated and wholesale price caps are removed. Therefore, it is necessary to maintain the maximum wholesale and retail prices until new competitive mechanisms start to work.

The amount of margin on roaming services should be close to the margin on domestic services. The national margin in this case can be calculated as the difference between the average wholesale rate of a service and its average retail price, in both cases calculated as a quotient of total revenue from domestic service by its traffic volume, and therefore calculated the same way as it is currently done for the roaming monitoring exercise under the Roaming Regulation. At the same time, the need for simultaneous actions for the reduction of inter-operator tariff (IOT) should be stressed. In many cases their current level is not justified in the real costs of provision, and often provides an effective barrier to competition, especially for operators outside brand / capital groups.

The table below illustrates rates for specific roaming services, which in accordance with the provisions of the current Roaming Regulation will apply from 1 July 2011. These are compared with the maximum costs of their provision after 2012, estimated in the abovementioned BEREC Report. The BEREC Report takes into account the decrease in termination rates, LRIC model for cost calculation, and while estimating the costs of providing retail services – sales and marketing costs, assuming a margin of 50%. In view of the fact that the costs of the service provision will be significantly lower than the current maximum prices, UKE suggests further reduction of the prices as proposed in the last three lines of the table. Prices are expressed in EURc.

	Outgoing calls – wholesale price per 1 min.	Outgoing calls – retail price per 1 min.	Incoming calls – retail price per 1 min.	SMS delivery wholesale price per 1 SMS	SMS delivery retail price per 1 SMS	Data transmission – wholesale price per 1 MB
Price after 1.07.2011	18	35	11	4	11	50
Maximum costs of provision in 2012 estimated by BEREC	9.73	14.60	3.94	2.67	4.81	14.99
<b>Proposed maximum price from 2012</b>	<b>15</b>	<b>20</b>	<b>6</b>	<b>4</b>	<b>7</b>	<b>30</b>
<b>Proposed maximum price from 2013</b>	<b>13</b>	<b>18</b>	<b>5</b>	<b>4</b>	<b>6</b>	<b>20</b>
<b>Proposed maximum price from 2015</b>	<b>10</b>	<b>15</b>	<b>4</b>	<b>3</b>	<b>5</b>	<b>15</b>

**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?*

As described in our answer to Questions 3 and 4 we think that this approach would not be sufficient.

**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?*

Yes. Despite the fact, that wholesale prices for data transmission fell far below the maximum caps, it is, however, not reflected in the retail market. Furthermore, with the growing popularity of smart phones constant access to the Internet becomes crucial. Therefore, these arguments confirm the necessity to impose data price regulation. In the retail market, UKE proposes introduction of tariffs that would allow formation of prices at levels that would ensure operators to cover retail and wholesale costs, and to make fair profit margin not higher than 50%.

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

The present situation in the retail market of roaming data transmission, described in section 1.3. of this Position, demonstrates that even a significant drop in wholesale prices is not passed to retail prices. It is difficult to justify different price formation in the roaming data transmission market than for voice calls or SMS messages, because no Member State regulates data transmission. Therefore there are no actual costs data regarding this service. However, BEREC in its report has estimated that at EU level, these costs are maximum 14.99 EURc per 1 MB. In its consultation document, the Commission confirms that the retail prices for data roaming services in some Member States are several times higher than domestic prices for the same service. Consequently, it is desirable to reduce further the maximum

wholesale price for data roaming, as indicated in the table above. In the retail market, UKE proposes introduction of tariffs that would allow formation of prices at levels that would ensure operators to cover retail and wholesale costs, and to make fair profit margin not higher than 50%. The maximum retail rate, calculated in this way by BEREC, assuming maximum wholesale costs at 14.99 EURc, should eventually amount to 22.48 EURc (in 2015). Therefore, the maximum retail rates for data transmission should be kept at the level shown in the table below.

	Data transmission – wholesale price per 1 MB	Data transmission – retail price per 1 MB (Eurotariff)
Price after 1.07.2011	50	–
Maximum costs of provisioning in 2012 estimated by BEREC	14.99	22.48
<b>Proposed maximum price from 2012</b>	<b>30</b>	<b>45</b>
<b>Proposed maximum price from 2013</b>	<b>20</b>	<b>30</b>
<b>Proposed maximum price from 2015</b>	<b>15</b>	<b>23</b>

Introducing the margin at a safe level seems to constitute a mechanism that could lead to safe fulfillment of the DAE target with regard to the retail data transmission in 2015.

**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?*

**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?*

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

With regard to Questions 8 to 11 UKE shares the point of view of BEREC, which was expressed in its Report and input to the public consultation.

**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?*

**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.*

None of the described access solutions is perfect and they do not provide a guarantee to achieve the Regulation's objectives and the DAE target. A new proposal for a structural solution to the problem of lack of competition in the roaming market, and thus for lowering of prices for roaming services is described in our answer to Question 4. This proposal was neither part of the BEREC Report, nor was it included in the consultation document of the Commission.

**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.*

Yes. The detailed explanation of this issue will be included in the BEREC response to the public consultation.

**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?*

**Question 15:** *To what extent is the problem of inadvertent roaming still a concern for citizen's 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?*

**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?*

**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?*

**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?*

**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).*

**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?*

**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.*

**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?*

With regard to Question 14 to 22 UKE shares the point of view of BEREC, which was expressed in its Report and input to the public consultation.



**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.*

Domestic data collection performed by UKE does not prove any such influence.

**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?*

The Roaming Regulation did not influence reciprocal roaming arrangements between EU-EEA mobile operators and their counterparts in other third countries. Therefore, an appropriate structural solution is necessary, as described in our answer to Question 4.

**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?*

UKE has no data that could prove this statement.