

ROAMING SERVICES – ALLOWING CONSUMERS TO BENEFIT

**BEUC's answer to the public consultation on
a review of the roaming regulation¹ and of its possible
extension to SMS and data roaming services**

¹ 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.

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Summary

After having considered the different options and questions put forward by the European Commission in the consultation document, BEUC, the European consumer organisation, concludes that the extension of the voice roaming regulation in time and scope is welcomed. However, we would like to suggest adopting the following legislative measures:

For **voice roaming**:

- We firstly plead for **keeping the regulation in place after June 2010** since the voice roaming market has not yet become competitive. We are convinced the **transparency** requirements, wholesale and retail price caps and the monitoring by National Regulatory Authorities (NRAs) are intertwined and cannot be easily viewed and applied separately. We therefore plead to keep all elements of the regulation. At the very least, for our members, the transparency requirements and the retail price regulation need to be kept.
- Information available on the websites of the operators and the information given to consumers when offers are taken out should be improved.
- At the same time, it is crucial that the Eurotariff better reflects the real cost of providing the service. We therefore plead to **further decrease the Eurotariff** after 2010 to reflect the decreasing costs as apparent from the decreases in the mobile termination rates. We suggest a wholesale rate of 12.50 eurocents.
- Legislative action at Community level to guarantee per second billing and to ban per minute billing is necessary.

As far as **SMS** is concerned:

- Profit margins on SMS roaming are close to 95%, indicating the lack of competition in this market.
- We think a **price cap** is necessary in order to ensure consumers do not pay these high margins.
- At the same time, information on SMS roaming prices is not widely available. We ask to **include roaming SMS prices in the push SMS** sent to consumers when they start roaming.

Regarding **Packed Switched Data (PSD) roaming**:

- We plead for obliging operators to put in place **cost control measures** such as the ability for consumers to receive a **warning** message or operators informing consumers about the amount of data transferred together with an approximation of the costs. We have advocated putting in place these general cost control measures for a number of years now.
- We also plead for a **“protective” Eurotariff**, which would be a **maximum tariff per day of data usage**. This “protective” data Eurotariff would be set at retail level and aims at protecting consumers against bill shocks. This would set a benchmark rate in the market against which consumers can compare other offers and thus increases transparency.

Introduction

BEUC, the European Consumer Organisation represents 41 national consumer organisations from 30 European countries. BEUC welcomes the opportunity to provide its views on the review of the voice roaming regulation².

For BEUC and its members, telecommunications and consumer rights in the digital environment constitute a key issue given the appetite consumers have for using telecommunication services and the difficulties consumers experience when looking for the best offers or trying to limit the duration of their contracts. SMS prices have been a concern for us for a long time.

Taking the problems consumers face as the starting point

Before answering the detailed questions below, we would like to reiterate the problems consumers were faced with before the voice roaming regulation came into force. These problems are in our view the correct framework against which one needs to analyse whether or not the voice roaming regulation needs to be extended, whether or not SMS prices while roaming need to be regulated and whether or not Packed Switched Data (PSD) need to be included in the regulation. In the event that these problems would reappear if the voice roaming regulation were to be abolished, the voice roaming regulation needs to be kept. It should not be forgotten that it took from 1999 onwards to address these problems. In the event that the same problems are present in the SMS and data roaming market, we would plead for extending the voice roaming regulation to include these services.

Before the voice roaming regulation, consumers were confronted with 3 main problems:

1. The first was a **lack of information on the prices of voice roaming**.
2. The second problem for consumers was a **lack of protection**. When consumers are roaming the rules of the game change: consumers are charged for being called. The introduction of RPP while roaming was something consumers were not aware of.
3. The third problem refers to a **lack of choice and competition**. First of all, the price samples of roaming charges indicated that the biggest domestic operators charged their domestic clients most. At the same time, these operators had the biggest bargaining power vis-à-vis their foreign counterparts. Furthermore, although consumers could choose the network which they wanted to use, prices were in many cases comparable.

² 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, hereafter referred to as the voice roaming regulation

DETAILED ANSWERS TO THE PUBLIC CONSULTATION

A. GENERAL EXPERIENCE OF THE FUNCTIONING OF THE REGULATION

Question 1: To what extent do you consider that the Regulation has achieved its objectives (as described above) in relation to the following core elements of the Regulation:

- (i) reduction of retail prices to acceptable levels (the Eurotariff and its opt-out provisions) (Article 4);
- (ii) transparency of retail prices (Article 6);
- (iii) reduction of wholesale prices (Article 3); and
- (iv) supervision and enforcement of compliance, including dispute resolution (Articles 7, 6 8 and 9)?

The retail caps of the voice regulation have **effectively brought down prices** to levels which avoid enormous bills and, thanks to the opt-out provisions, most consumers are actually benefiting from the “Eurotariff”. These provisions effectively protect consumers when they answer their phones while abroad. We have not performed a complete analysis of the prices in the European Union, but partial information indicates price decreases around 50%.

At the same time, we feel that the **level of the Eurotariff, even if combined with a fair profit, is not at all acceptable in relation to the cost of providing the service**. The clearest example is calling a user of the same network when roaming. The service costs the same as an on-net domestic call, but it is charged as a roamed called. The differences are substantial.

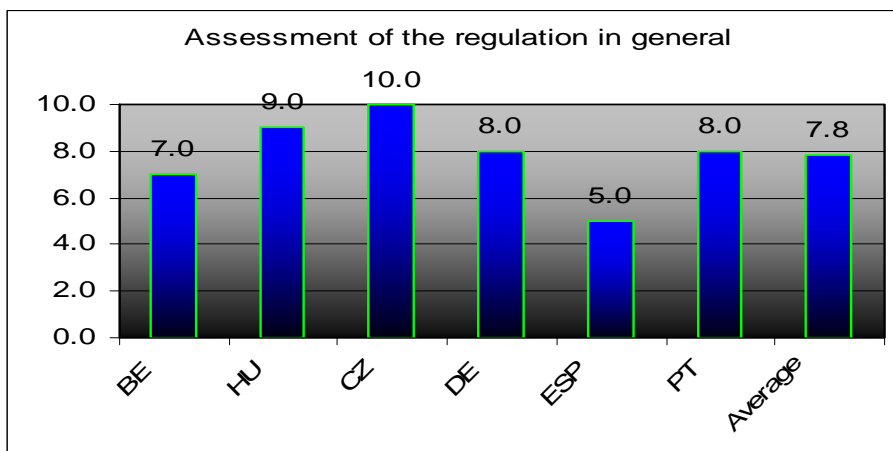
Our Belgian member has communicated the prices on the Belgian market: Proximus, the incumbent operator has set prices at 0.5929 €/min for making calls and 0.2904 €/min to receive calls. At the same time, Proximus continues to commercialise its special roaming offer “Passport” linked to the Vodafone Passport. Mobistar, the second operator has set its tariffs also at the maximum while offering a « traveller advantage » offer. Only Base, the third operator has set lower prices: 0.45 €/min to make calls and 0.28€/min to receive calls. At least for the Belgian market, the tariffs are not very competitive and again, the operator with the biggest market share charges most and can indeed do so without losing clients, which shows the market is not competitive. In Poland, the market situation is comparable: it is the newest entrant PLAY who has the best deals for consumers. It is important to note that also in Poland all operators had to reduce their charges showing once more how expensive calling abroad was.

Last year BEUC’s member UFC Que Choisir compared the cost of national calls and roamed calls with the prices of those services. If we add the current roaming price of €0.49, we see that operators still have a mark-up of 350%. Looking at the roaming prices in such a way, the tariffs can hardly be said to be “acceptable”.

France:	Cost for the operator (€)	Average Retail Price (€)	Mark-up (%)
1 min national communication	0,06 - 0,10	0,184	+ 180 %
1 min roaming	0,10 - 0,14	0,848	+ 600%
1 min roaming	0,10 - 0,14	0,490	+ 350%

One of the other problems consumers were confronted with was the lack of information. BEUC's members found that the roaming regulation has very much **increased the transparency of the prices**. For consumers it is much easier now to know the prices in different countries across the EU. Especially the push-SMS was very much welcomed. None of our members report an information overload or complaints from consumers who received the SMS several times while travelling in border regions. Furthermore, the option to receive more information on the available tariffs through a free phone number was well received.

When surveyed in November 2007, BEUC members felt that the operators have implemented the regulation in a timely and, in most cases, a correct manner; although they had fiercely lobbied against the timing of the implementation using the argument that it was technically impossible. As a matter of fact, our members reported good compliance, except in Belgium and in Spain. Secondly, in less mature markets like Hungary or the Czech Republic, operators took the chance to inform their clients and to promote the Eurotariff. As to the roaming regulation in general, there was a positive assessment.



Source: BEUC

When asked which elements they found the most important, both capping retail prices to ensure consumers benefit from the regulation in practice and informing consumers where seen as the two most important measures.

As far as wholesale charges are concerned, we do not have any information.

Question 2: To what extent has the Regulation produced unintended consequences for mobile customers, whether in terms of the availability or quality of retail roaming services and/or the amount of information provided to end-users by their mobile operators?

Question 3: How have tariffs for making and receiving voice roaming calls on the basis of tariffs other than the Eurotariff evolved since the entry into force of the Regulation? Are these tariffs more advantageous for customers than the Eurotariff offered by their mobile operator? Please supply data which illustrate your reply.

Our members do not report a lot of innovative offers on the market except in those countries where new players have joined the domestic market.

B. SPECIFIC ISSUES

Inadvertent roaming

Question 6: 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?

For the time being, our members have not reported any cases of inadvertent roaming or problems related to receiving too many SMS's. The problem of inadvertent roaming would in any case not be exacerbated by the roaming regulation.

As to the measures to be taken, on a general note, BEUC would applaud a "gentlemen's agreement" between operators to waive the charges of the inadvertent roaming. Unfortunately, our experience with the attempts to have operators decrease their tariffs voluntarily has not been as such to believe that a voluntary approach would be effective. Nevertheless, given the technical nature of inadvertent roaming we do not feel well placed to comment in depth.

Impact on domestic prices

Question 14: 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.

During the discussions about the necessity and the effects of the roaming regulation, the waterbed effect has been used and abused to point out the dangers of the voice roaming regulation. As we stated at the time, the decrease in wholesale and retail prices in our view would not affect the domestic prices because:

1. The mobile termination rates which were used as a basis to calculate the Eurotariff were above costs. Operators would keep on supplying the service simply because they still earned money by doing so.
2. Given that operators were benefiting from providing their domestic clients the roaming service, increasing the domestic prices would prove that the domestic markets are not competitive. In a competitive market, operators would not be able to do this without losing clients.

As we expected, **our members have not reported an increase in prices**. In Slovenia, the contrary even happened. A new operator has entered the market which has decreased prices in certain segments of the market. In our view, it is mostly the competition in the domestic market which determines whether or not operators can raise their prices. Given that operators still have important margins on the roaming service, there is no justification for increasing the domestic prices.

Impact on international roaming arrangements with operators in third countries

Question 15: 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?

Our Austrian and Belgian members have reported cases of increased prices for roaming outside the European Union. In the first case, the price to make calls from Tunisia to Austria has increased from €0.9 to €3.5 after the introduction of the roaming regulation. In the second case, prices for calls from Russia and some African countries to the European Union have increased between 21% and 163,7 %.

Although these price increases are worrisome, in our view, they are not related to the waterbed effect for the simple reason that costs are still far below the price consumers are paying. They are a sign of the lack of competition in the roaming market in general including roaming in non-EU countries.

Actual v. Billed minutes

Question 17: Please provide details of changes from per second to per minute billing for voice roaming services which have occurred since or shortly before the entry into force of the Regulation. Were customers informed of those changes in advance? Have practices for new customers changed? What are the common billing practices for domestic and roaming calls?

Our Norwegian member Forbrugerradet reported on the difference between per minute and per second billing. The roaming regulation came into force in Norway on the 15th January 2008. Calculations made by the Norwegian Post and Telecommunications Authority (NPT) show that European roaming calls have become more expensive because most **operators now charge per minute intervals instead of per second intervals** as before.

As a matter of principle, consumers should pay the amount they actually use. In addition, the practice of per minute charging is even more unacceptable given that consumers are hardly informed about it.

In our mobile survey in 2003, we already stated that consumers had a right to pay for the amount they actually consume. At the time, we found that the practice of per minute versus per second charging for national and roaming calls varied to a great extent in the European Union. At the same time, in more competitive markets, per minute charging was being gradually replaced by per second charging. The fact that operators are changing to per minute billing again in the case of voice roaming is in our view proof that the **market is still not competitive** and that the regulation needs to be extended and fine tuned to tackle this practice.

One of the other practices which our members reported is the charging of a **fixed connexion fee** for voice roaming calls. In our view, this should be very clearly communicated because determining whether or not an offer including a fixed connection fee but at lower rates is beneficial or not, depends on the average length

of calls made by the consumer. The key here is information and transparency, just like in the case of per minute and per second billing. We would therefore like the regulation to be fine tuned so that **operators are obliged to inform their clients correctly based on different realistic and adapted usage patterns**. Only then a consumer can make a well informed choice. This information should be included when contracts are taken out.

Question 18: Do you consider that steps should be taken to ensure that the billing methodology applied to regulated roaming calls guarantees per second rather than per minute billing? If so, what action would be required (i.e. should this be left to the industry to tackle via self-regulation; should the Member States or NRAs intervene under existing powers and responsibilities; or is legislative action at Community level necessary)?

As already mentioned, consumers should be billed for the amount they effectively use. Consumers need to be correctly informed about the effect of connexion charges or set-up charges and should be able to compare the costs of their telecommunication usage under all systems. Given that the voice roaming market is not competitive we do not believe that operators will be able to self-regulate. **The practice of per minute billing should in our view be banned and we consider legislative action at Community level is the best steps to be taken to guarantee per second billing.**

C. EXTENSION OF THE DURATION OF THE REGULATION

Retail pricing obligations

Question 19: Do you think it necessary to maintain the provisions of the Regulation dealing with retail prices for roaming services – in particular the mandatory Eurotariff beyond the current expiry date of the Regulation in June 2010? If yes, why; and if not, why not?

We believe this regulation **should be extended beyond June 2010** because the roaming market has not become competitive.

Some stakeholders argue that the retail cap needs to be abolished because the cap prevents the roaming voice market from becoming competitive. For two reasons, this line of thinking is incorrect:

Firstly, as we have stated earlier, the return on the Eurotariff leaves ample room for price decreases and attractive offers. Operators will not make a loss if they charge the same prices nationally and while roaming in those countries where they have a network. Given the wholesale cap of €0.30, operators who do not have a network in other countries could also provide more competitive offers than we see today.

Secondly, the roaming regulation has not been in place long enough to decide to abolish it right now. The summer of 2008 will be the first one during which many consumers will travel and will receive the push-SMS informing them about the roaming tariff. Only after this summer we might see a slow change with more and more consumers asking for the prices of roaming services and signing up to special offers which are below the regulated Eurotariff. It should not be forgotten that it took many years to address some of the problems in the voice roaming market. **Deciding now that the regulation will be abolished therefore gives the wrong signal to operators.** However, signalling that the Eurotariff is a temporary tariff in the expectation of competition in the market would have a lasting effect on competition or prices.

An additional benefit from having a retail price cap is the increased transparency. **The retail cap has provided consumers with a clear and highly transparent offer.** It sets a benchmark in the market against which the consumer can compare other much more complicated offers. Although it is difficult to foresee the reactions of operators in case the retail tariff would be abolished, we believe that the tariffs will not immediately reach the same unacceptable levels as before the roaming regulation. Operators will be reluctant to start charging their customers immediately the same high charges. Nevertheless, once this benchmark is abolished we fear operators will adapt their special offers and packages. Over time, consumers will be again overcharged. In our view, it is mostly **the wholesale level which should be brought further in line with the costs.**

Question 20: What evidence is there of competition between providers of intra-Community mobile voice roaming services in the provision of such services other than by means of the Eurotariff? To what extent do these alternative offerings satisfy the needs of roaming customers?

For ordinary household consumers, the voice roaming market is still not competitive. This has two reasons: firstly, the summer of 2008 is the first once during which many consumers will be informed and will use the service (demand factor). Secondly, the wholesale tariff is not close to the cost of providing the service (supply factor).

Question 21: In the event that the Regulation were left to expire on 30 June 2010, do you expect that providers of intra-Community mobile roaming services would maintain their Eurotariff or other retail offerings below the price ceilings applicable under the Regulation? What is the basis for your opinion in this regard?

It is difficult to assess whether after the date of expiration of Regulation in 2010 providers will change their roaming charges. This will probably depend on the level of competition on national markets, entry of new market players, development of new telecommunication technologies etc.

Wholesale pricing obligations

Question 22: Should wholesale regulation be maintained and, if so, for how long? If not, why not? What is your estimate of the share of total wholesale roaming capacity that is captive, i.e. produced on an intra-firm basis rather than purchased as an external input factor?

Question 23: What would be the effect if the retail pricing provisions of the Regulation were to expire, while the wholesale price obligations in Article 3 (adjusted as appropriate) were maintained? If so, for how long should the wholesale price obligations be maintained?

Question 24: In the event that you consider that the duration of the Regulation should be extended beyond 30 June 2010, do you think the Regulation's price caps should be adjusted to reflect market and regulatory developments in the mobile sector? If not, why not?

Question 25: If yes, what would you consider to be the right level and periodicity of those price ceilings over the extended duration of the Regulation?

As far as the effect of having only wholesale regulation is concerned, we have stated that given the lack of competition in the roaming market, we believe that this is not the right solution. Our Belgian member highlights that lessons can be drawn from

the decreasing MTR's on national level: although MTR's have been decreasing, the retail prices itself have not decreased significantly. As such, there is not guarantee that decreases at wholesale level are passed on.

In the case of voice roaming, both retail and wholesale caps have been put in place. If the roaming market has become competitive, the two tariffs can be abolished, if not, both caps should stay. In our view, the voice roaming market has not yet become competitive and wholesale and retail prices should be kept.

Furthermore, the voice regulation should re-establish the link between MTR's and the Eurotariff. It should take the average MTR of 2009 into account, just like the average MTR of 2006 was used as a basis for calculating the Eurotariff:

- Current wholesale voice roaming price: 2.5 times (Average MTR of 2006)
- New wholesale: 2.5 times (Average MTR of 2009)

It remains to be seen what the level of the MTR's will be in 2009. Taking the conservative estimate of a decrease of 10% a year, wholesale roaming tariffs should not be higher than 22.5 Eurocents. If we look at the different glide paths of the regulators, we see MTR's which will be lower. The Polish NRA foresees 7.3 Eurocents for 2009, the Italian regulator between 6.6 and 9, the Norwegian NRA a level of 5.0 Eurocents. Basing ourselves on the glide path of the Norwegian NRA, the new wholesale cap would be 12.5 instead of 22.5 Eurocents.

As far as the retail tariff is concerned, we would prefer to see the retail cap decrease by the same level.

Transparency provisions

Question 26: Taking into account the interests of mobile users and operators and the principle of proportionality, should the obligations regarding transparency contained in Article 6 of the Regulation be maintained in place (suitably adjusted), even if the price obligations themselves are allowed to expire? If so, what adjustments to those transparency obligations would need to be made?

Question 27: Do you consider that the transparency requirements of the Regulation should be improved and, if so, how?

For our members, the transparency requirement – together with retail caps- were seen as the most important part of the regulation. As such, this provision should in any case be maintained beyond 2010. Lifting the obligations is considered to be a huge step back and would not be in line with EU message putting consumers in the centre of its policies.

Transparency requirements should be implemented on a bilateral basis to countries outside the EU. Regulators could oblige their operators to provide all visiting customers with information about the applicable rates or alternatively a free-phone number were consumers could obtain the rates and additional information. For the time being, the rates are very high and depress demand, but as in the case of intra-EU roaming, increasing transparency is the first step towards competitive markets.

As to the way of improving the transparency requirements, our members suggest looking into ways of **improving the information available on the websites of the operators and the information given to consumers when offers are taken out.**

D. EXTENSION OF THE SCOPE OF THE REGULATION (DATA AND SMS ROAMING SERVICES)

Data roaming services

Question 29: To what extent is regulation of data roaming services necessary to tackle the problem of high charges? To what extent does competition exist for such retail and/or wholesale services and to what extent can traffic steering be utilised for data services to the benefit of consumers?

Question 30: To what extent do potential substitute services impose competitive constraints on data roaming services? To what extent might future market or technical developments tackle the problem? Are regulatory solutions other than price regulation possible? If so, please explain.

Question 31: Can the problem of high charges for data roaming services be tackled by wholesale regulation alone? If wholesale regulation is to be considered, how should it be constructed? For example, should it be based on linear pricing (i.e. a fixed charge per MB or other charging interval) or should it be non-linear, i.e. with declining rates per MB or other charging interval? What charging intervals should it incorporate (e.g. per 100kb, per MB or other)?

Question 33: Would transparency obligations on mobile operators be enough to tackle the problem of high charges? What sort of transparency mechanism can work effectively to stop the "bill shock"?

Question 34: If retail price regulation is to be considered, how should this be designed and what parameters should be used (e.g. fixed rate per MB or other interval, declining rate or daily/monthly charge)?

Please provide data where deemed necessary. Data which is marked as confidential will be treated as such.

Consumers are currently totally in the dark about the charges of data services especially when taking out subscriptions. Because PSD services are relatively new, consumers are still learning what surfing the internet for a certain period of time or downloading a certain number of pictures on their mobile costs them even in the domestic market.

But the bills which consumers receive after having mis-judged the costs for the data roaming service are of a different magnitude than with voice roaming. In some cases the bills are as big as a yearly salary! Our members have reported bills of more than £9000 for software downloads and online gaming and up to € 19 000 for watching television abroad. The reason is simple: a consumer has no concept of what 1 MB of data represents. How many word documents can you open with it? How many KB's is downloading a picture? It is even more difficult if the data consumption concerns a smart-phone checking whether or not you have received new e-mails or whether or not updates are available. These background processes are beyond what a consumer is aware of and can result in unexpectedly high bills.

In general, charging per MB does not fit the way consumers experience surfing the internet. **The charging of mobile internet per amount of data is for consumers a completely new phenomenon** as is the management of this type of charging. This leads to surprises and 'bill shock'.

At the same time, per MB or per KB charging opens the possibility to have minimum intervals of charging, just as in the case of voice roaming. Rounding can have a huge impact on bills if providers are allowed to charge intervals per session of even per data packet.

Given these problems, we find it undisputable that some form of **regulation to inform consumers needs to be implemented**. Otherwise, we fear that consumers will use the service less or might wait longer before taking up this service. As the networks have been rolled out in many countries, this would be a missed opportunity. If data services are prone to bill shocks, consumers will not consider using them at a larger scale than currently.

The lack of protection is only relevant to the extent that the consumer is charged for receiving data services without having initiated the demand. This is the case for MMS and background processes or the use of peer-to-peer technology. From the information we receive, MMS service is not very much used. Nevertheless, the high cost for receiving MMS might ensure that it will even be used less. As far as background processes and peer-to-peer technology is concerned, we plead to ensure consumers are well protected, but find it difficult to judge to what extent it is needed. Nevertheless, we would find it a missed opportunity not to consider protecting consumers against receiving highly priced MMS's at this stage also.

As far as the lack of competition and choice is concerned, we would plead for a **price cap**, although at a level to avoid bill shocks. We do not take a position on whether or not cost based price regulation is needed as the market is very new and consumers are still exploring the possibilities. Nevertheless, a **"protective" Eurotariff** which is closer to the costs and aimed at avoiding bill shocks **should be considered**. It should be low enough the limit abuses and to set a benchmark in the market. As to the question on whether or not it should be at retail or at wholesale level, we plead to have **both a wholesale and retail regulation**. Setting the cap only at retail level might foreclose the market for the smaller operators which usually are the most competitive once while only a wholesale price cap does not guarantee that consumers are protected.

Yet another advantage of a protective Eurotariff concerns the maturing of the data roaming market. In the case of voice roaming, prices for roaming calls only decreased when the Commission interfered. Although the data service is new, it remains to be seen whether or not the data roaming market will see price decreases and advantageous offers emerging spontaneously. A protective Eurotariff will set an effective bench-mark in the market and will introduce more clarity for consumers.

The protective Eurotariff should be set in a unit which is comprehensible for consumers. At retail level, it should ideally be a price per day subject to a maximum limit of usage per day. A price per MB or KB is simply incomprehensible for consumers. A per hour price could be considered, but this type of offer depends on the operators. From our perspective, we would suggest looking at the flat rates in the national market as a basis for the protective data Eurotariff and allowing an important margin on top of these offers.

At the same time, we think **it is also necessary to put in place cost control mechanisms**. We would like to refer to what we said in our position paper about the review of the regulatory framework of the telecommunication services³:

"Control of expenditure"

Every consumer should have the choice to limit the amount he or she is willing to spend on a service in any given time period. Such a service should not only be available through prepayment, but it should also be offered to users of subscription-based mobile services, broadband services and of landlines. This would imply that

³ "Towards a neutral, secure and consumer friendly telecommunications sector / Beuc's views on the Commission's proposals to review the regulatory framework" Ref: X/033/2008 – 06/05/08

operators should have the obligation to alert/notify consumers in case they exceed their limits or if abnormal calling patterns occur.

Unfortunately, horizontal consumer protection legislation only protects consumers against high expenditure in specific cases such as unfair contract terms, unfair commercial practices or fraudulent use of premium rate services. In the case of unnoticed charges, for example while roaming, this horizontal legislation is not effective. Consumers should be automatically pre-notified of the price of these expensive communications.

The provisions of article 10 of the Universal Services Directive should be enlarged to encompass all undertakings offering telecommunication service. Annex I of this directive should be amended to ensure that undertakings offer sufficient means for subscribers to control the costs of telecommunication services”.

Such systems would help consumers to control their expenditure. We are aware of the fact that the financial settlement happens at a later stage than the use of the service. But just like it is the case for pre-paid services, both operators could exchange data on the financial part of the roaming service. From a technological point of view, this is certainly possible since it has been done for pre-paid customers. At the minimum level the amount of data used together with an estimate of the costs could be provided to the consumer by the visiting network. It would in any case avoid the bills we have seen in the past.

However these transparency requirements alone will not be avoid will shocks. Other measures such as a push SMS or a protective Eurotariff are needed.

SMS

Question 35: Do you think that wholesale charges ('inter-operator tariffs' or 'IOTs') for the provision of SMS services for roaming customers are subject to competitive pressure? Has this competitive pressure resulted in a declining trend in wholesale prices?

If so please explain using data where possible.

Question 36: Wholesale SMS roaming charges (IOTs) appear to be higher than many retail domestic SMS prices. Are wholesale charges at current levels justified in light of the costs to the host operator for the provision of wholesale SMS roaming services?

Please explain using data where possible.

Question 37: Do you believe that wholesale SMS roaming charges (IOTs) should be regulated? If yes, what should be the level and parameters of any wholesale charge limit?

Question 38: If wholesale regulation is necessary, will operators pass on the benefits of lower wholesale charges to consumers or could this only be achieved by retail regulation?

Question 39: If you believe retail regulation is necessary then what should be the level and parameters of any retail charge limit?

As receiving SMS's is costless, fortunately, there is no need to protect consumers against a change to RPP as it was the case of voice roaming.

As far as the lack of information is concerned, it clearly relates to the more general lack of information on data roaming charges which applies for PSD roaming services and SMS roaming services. Providing consumers with information on the price of an SMS is nevertheless easy and could simply be included in the **push-SMS** which consumers currently receive when they start roaming.

The roaming SMS market is one of the least competitive. Firstly, in some countries SMS roaming prices are higher than the Eurotariff, although the cost of providing the service is lower. If competition is to drive prices towards cost levels, SMS roaming prices should be priced below the Eurotariff. Furthermore, our members report that prices of roaming SMS have been stable for a number of years. Given the increased use of the networks, the unit cost has nevertheless decreased and prices should have decreased.

Another way of looking at the costs versus the price is to look at the regulated SMS termination rates. Only the French regulator ARCEP decided to have a separated relevant market for SMS termination and to regulate SMS termination between € 0.035 and € 0.03 depending on the operator. The rates will have to be reviewed at the end of 2008. We can suppose that the SMS termination costs are equal to SMS origination costs. Given that receiving SMS is for free, we consider the SMS termination cost as the relevant cost for using the network –at least in France- for sending a roamed SMS. Comparing the cost of € 0.035 with the average roamed SMS of € 0.29 yield a mark-up of more than 800 %.

Parallel to the mobile termination rates for voice calls, we nevertheless believe the SMS termination in France is still far from cost based. We can find a clear indication if we look at the regulated SMS termination rates in Israel. In Israel SMS termination has to be cost based and termination rates have been set at ILS0.025, or € 0.0047 when taking the exchange rate of June 2008.

Even if we now consider that the costs of terminating are to be taken into account because operators incurred costs for terminating the roamed SMS for free which needed to be recouped through roamed SMS origination, comparing the estimated total cost of an SMS - €0.0094 - with the average price for a roaming SMS of €0.29 is simply staggering: we would obtain a margin of 97% and mark-up of more than 3000%! This makes the roaming SMS the most lucrative product in the whole telecommunications market.

In our view, regulating the IOT's only –wholesale regulation- will not drive prices down automatically. SMS as a product is not even competitively priced in national markets especially those where MVNO's have not yet entered the market or have entered only recently. We thus think it is too optimistic to believe the price of roaming SMS would be subject to competition.

END