

**PUBLIC CONSULTATION**  
**on a Review of the functioning of Regulation (EC) No 717/2007 (the "Roaming Regulation") and of its possible extension to SMS and data roaming services**

**GENERAL EXPERIENCE OF THE FUNCTIONING OF THE REGULATION**

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The objectives of the Regulation set out in Article 1 are to ensure, by means of a common approach at Community level, that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for Community-wide roaming services when making and receiving calls. By means of this common approach the Regulation aims to contribute to the smooth functioning of the internal market while achieving a high level of consumer protection, safeguarding competition between mobile operators and preserving both incentives for innovation and consumer choice.

**Transatel thanks the EU Commission for this public consultation. You will find hereafter the Transatel inputs into "blue color" police. The term "N/A" means that Transatel is not concerned.**

**Transatel is a French company with several MVNO agreements in France, Belgium, Netherlands and Luxembourg (Switzerland will open in the next following months).**

**Transatel, as a MVNO, offers a mobile service to frequent travellers and cross border populations that brings 30% to 100% of price reduction on roaming into those countries (France, Belgium, Netherlands, Luxembourg and soon Switzerland).**

**Transatel concept is based on a multi-IMSI architecture i.e. using one 1 SIM card with several "national" mobile numbers, plus MVNO agreements in each country.**

**Please visit our website: [www.transatel-mobile.com](http://www.transatel-mobile.com)**

**At this stage Transatel (and other MVNO) have not been able to sign MVNO agreement with MNO in major European countries such as Germany, UK, Italy or Spain.**

**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, 8 and 9)?*

**The regulation has completely missed the possibility to increase competition by allowing the development of new entrants i.e. MVNO specialized on the roaming by pass offer.**

**Retail prices have decrease at retail level but have undercut the development of new services.**

**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?*

**N/A**

**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.*

Transatel provides a roaming by pass offer in France, Belgium, Netherlands, Luxembourg and soon Switzerland that is far better than Eurotariff (free access to voicemail, only calls between 0,10€ to 0,22€ compare to 0,49€). Although, Transatel did not get any support from the regulation to extend its activity in other European countries.

In order to illustrate this competitive advantage, you will find in attachment a study which has been realised by Transatel on the SMS roaming market in the EU. You will see in this document that the prices of the SMS in the Transatel countries (where Transatel has an access agreement with a MNO) are at the same level than national SMS.

Roaming tariffs outside of EU tend to have increased.

**Question 4:** *What has been the impact of the Regulation on mobile operators, in terms of revenues, volumes, profits, innovation etc.?*

The Transatel sales turnovers decreased by 8 %, since application of Eurotariff on September 1<sup>st</sup>, 2007. Those decreases apply for roaming traffic outside France, Belgium, Netherlands and Luxembourg, when Transatel has not been able to have MVNO agreements because of refusal of MNO.

The European regulation ignores the action that MVNO have and could have on mobile roaming market.

**Question 5:** *Since the adoption of the Regulation have there been any instances of the termination or threat of termination of wholesale roaming agreements or the refusal to negotiate new ones?*

N/A

## SPECIFIC ISSUES

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### 4.1. Inadvertent roaming

Article 7(3) of the Regulation stipulates that NRAs shall be alert to the particular case of involuntary roaming in the border regions of neighbouring Member States. When a mobile user is close to a border it is possible that he will be connected to a foreign mobile operator's network as a roamer even if he is not actually located in the foreign operator's country. In such cases, the consumer may be charged as if they were internationally roaming. According to the ERG's 1st Benchmark Report operators did not identify this as a significant problem. Many providers claimed to operate a number of mechanisms to deal with the issue. However, some customers have already raised this issue with the Commission and the Commission has in turn raised it in correspondence with several NRAs.

**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?*

The Transatel technology allows to fully eliminating inadvertent roaming effects, provided that Transatel can have a MVNO agreement in each of the country along the borders.

The EC should support actively the development of MVNO deploying similar technology as the one implemented by Transatel.

The most urgent thing would be to support MVNO (incl. Transatel) to get a deal in Germany. None of the 4 German MNO has accepted so far.

**Question 7:** *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?*

As mentioned above Transatel multi-IMSI application allows by design to eliminate all inadvertent roaming. Transatel solution is a substitute to mobile roaming.

#### 4.2. Outermost regions

Article 7(3) of the Regulation in conjunction with Recital 34 requires NRAs, in preparation for the Commission's review of the functioning of the Regulation, to monitor developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, including *in the outermost regions* referred to in Article 299(2) of the Treaty. These are the French overseas departments (French Guiana, Guadeloupe, Martinique and Réunion), the Azores, Madeira and the Canary Islands.

Recital 35 of the Regulation also states that: "*In-country roaming in the outermost regions of the Community where mobile telephony licences are distinct from those issued in respect of the rest of the national territory could benefit from rate reductions equivalent to those practised on the Community roaming market. The implementation of this Regulation should not give rise to less favourable pricing treatment for customers using in-country roaming services as opposed to customers using Community-wide roaming services. To this end, the national authorities may take additional measures consistent with Community law.*"

**Question 8:** *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?*

N/A

**Question 9:** *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?*

N/A

#### 4.3. Impact on smaller operators

Article 11(2) of the Regulation provides that the Commission's report on the functioning of the Regulation and its recommendations as to future roaming policy should take into account (*inter alia*) the effects of the Regulation on the competitive situation of smaller, independent or newly started operators. Recital 39 also states that the Commission should examine the impact of the Regulation on the smaller mobile telephony providers in the Community and their position in the Community-wide roaming market.

**Question 10:** *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? Please provide financial data and any other information in this respect wherever possible (which will be treated as confidential if so requested).*

**The Transatel sales turnovers decreased by 8 %, since application of Eurotariff on September 1<sup>st</sup>, 2007 (please see question 4).**

**Question 11:** *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?*

**N/A**

#### **4.4. Traffic steering**

Traffic steering is a technique by means of which mobile operators guide roaming traffic on to a preferred or partner network. There are a number of methods used to achieve this, but the result is that the consumer will roam onto the foreign network of their home network's choice. According to the operators that responded to the ERG questionnaire for their 1st Benchmark Report, in general such techniques were used to offer consumers a better deal, through either lower retail prices or enhanced services, or both. Article 7(3) of the Regulation stipulates that national regulatory authorities shall (...) monitor whether traffic steering techniques are used to the disadvantage of customers.

**Question 12:** *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.*

**N/A**

**Question 13:** *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?*

**N/A**

#### **4.5. Impact on domestic prices**

Article 11(2) of the Regulation also provides that the Commission's report and recommendations should take into account the developments in charges for mobile voice and data communication services at national level. Prior to adoption of the Regulation some parties expressed concern that the introduction of price regulation for intra-Community roaming services could produce a "waterbed effect" whereby mobile operators would increase their prices for other services (including domestic prices) to compensate for their lost revenue from roaming services.

**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.*

**There is more marketing communication from major MNO.**

**This prevents players such as Transatel offering mobile roaming substitute to easily communicate its offer.**

#### **4.6. Impact on international roaming arrangements with operators in third countries**

Since the Regulation is an internal market measure based upon Article 95 of the EC Treaty, it can only apply to intra-Community roaming services (i.e. roaming services provided between Member States of the European Union and the EEA). It therefore cannot be applied to international roaming arrangements negotiated between Community mobile operators and operators from non-EU or EEA 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?*

**N/A**

**Question 16:** *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?*

**N/A**

#### **4.7. Actual v Billed minutes**

According to the ERG's first Benchmark report, a number of mobile operators have adopted a per minute billing methodology for their roaming charges at both wholesale and retail levels, whereby the per minute charge is levied for every minute or part thereof rather than pro rata on a per second basis. In some cases operators have moved from a per second to a per minute charging methodology since the entry into force of the Regulation.

The ERG notes that it is important to understand the actual average rate charged to consumers for international roaming services. For example a consumer may only use 20 seconds of a call but be charged for a full minute. At the retail level, the difference appears to be typically around 20% although it is often lower at the wholesale level.

**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?*

**Transatel did not change its billing methods within the entry into force of the regulation.**

**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)?*

**Wholesale tariffs from MNO for MVNO on roaming market should be only per second.  
Some MNO do not apply this principle.**

**Moreover, in general the MVNO-MNO deal on roaming mobile should be sold to MVNO with a sufficient discount vs. retail price, to allow the MVNO to cover their marketing, technical and customer support costs. This is clearly not the case today in most MVNO-MNO deals.**

## EXTENSION OF THE DURATION OF THE REGULATION

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### 5.1. Retail pricing obligations

The Regulation has led to reductions in retail prices for voice roaming services and thus to significant benefits for consumers. It may also, in some markets, have enabled mobile operators to rely on the regulated decreases in wholesale prices or on increased transparency in the market to intensify competition. However, the currently available evidence suggests that this second effect may have been rather limited, at least in connection with their Eurotariff offerings, as the overwhelming majority of operators do not seem to compete by pricing their voice roaming significantly below the regulated retail ceilings. In fact, nearly all Eurotariff prices cluster very closely around the regulated caps. Furthermore, in the period since adoption of the Regulation no genuine substitutes to voice roaming services seem to have emerged. These factors might indicate a continued lack of competition at retail level.

**Transatel does not agree with the previous statement. A substitute of the voice roaming exists (Transatel is an example). Several MVNO could grow on the market and increase dramatically competition provided the regulation encourages MNO to make MVNO deals in country such as Spain, Germany, Italy, UK, etc... since solutions already exist in France, Belgium, Luxembourg and NL thanks to one MNO in each country**

***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?*

**Transatel thinks that the regulation should include additional measures in order to bring more competition on the roaming market into the EU. Those measures should encourage / force MNO to force and encourage the agreements between MNO and MVNO players who bring a solution that replace the roaming.**

***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?*

**The Transatel offer can be developed in the whole EU and brings a lot of service differentiation for the consumers.**

**As mentioned, thanks to MVNO agreements in France, Belgium, Netherlands and Luxembourg, and thanks to its multi IMSI technology, Transatel offers:**

- **30 % to 100% of prices reduction versus Eurotariff**
- **Local services in visited country thanks to dynamic sim tool kit application that are not possible with mobile roaming technology**

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***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?*

**N/A**

## 5.2. Wholesale pricing obligations

The competitive conditions on the wholesale roaming services market might significantly differ from the competitive conditions on the retail roaming market. It might be an option to withdraw retail pricing regulation but maintain regulation at wholesale level. On the other hand, if retail regulation is to be maintained, the need for wholesale regulation should be examined.

**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?*

As mentioned, Transatel believes that a major development on the roaming market will come from the MVNO who can be a substitute of the roaming if they have a MVNO agreement in each European country. To have such development, the commission needs to put a framework encouraging / forcing MNO to make MVNO agreements with top priority for Germany, UK and then Italy and Spain since solutions already exist in France, Belgium, Luxembourg and NL thanks to one MNO in each country.

**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?*

Since agreement in June 2007 on the current price caps there have been significant regulatory and market developments. In particular, it is becoming increasingly clear that the projected reduction in mobile termination rates imposed by NRAs might be more pronounced than assumed in mid-2007. As the level of the regulated roaming price ceilings was determined taking into account assumptions about the likely future level of mobile termination rates in the EU, it may be necessary to provide for further reductions in the level of the retail and wholesale price ceilings to apply over the term of any extension of the validity of the Regulation.

N/A

**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?*

N/A

**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?*

N/A

## 5.3. Transparency provisions

The provisions of Article 6 of the Regulation governing the requirement for roaming providers to inform their customers on a systematic basis of the level of the prices they will pay for roaming services while travelling abroad in the EU could be maintained (with appropriate adjustments) even if the pricing obligations themselves expired on 30 June 2010.

**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?*



Transatel thinks that transparency in real-time (SMS reception) when travelling abroad is good from an ethic standpoint. However, the implementation costs are high and finally the consumers pay for it. Moreover, most of those features are technically difficult and costly to implement for a MVNO who does not control the mobile network of its host MNO.

However, transparency on tariffs available on a website should be mandatory and regulated by the EU.

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

Pricing should be much clearer and easy to understand on mobile operator websites.

#### **EXTENSION OF THE SCOPE OF THE REGULATION (DATA AND SMS ROAMING SERVICES)**

The Commission has an obligation under the Regulation to include in its report to the European Parliament and Council a review of developments in wholesale and retail charges for the provision to roaming customers of data communication services, including SMS and MMS, and, if appropriate, to include recommendations regarding the need to regulate these services.

##### **6.1. Data roaming services**

In order to decide whether data roaming services should be regulated, it is necessary to consider a number of issues including to what extent such services are subject to competitive pressure at either wholesale or retail level, the relationship between retail and wholesale prices and underlying costs as well as the extent to which any differences in charges for data roaming services can be justified when compared to equivalent domestic services.

Apart from the work being undertaken by the ERG to gather information on wholesale and retail charges, the Commission Services have commissioned a study on roamed data services which will feed into the Commission's review.

The figures contained in the ERG's first Benchmark Report published in January confirm that the rates for data roaming services are still perceived to be very high and can lead to "bill shocks". Reports of users receiving bills for thousands of Euros for using data roaming services are becoming more common. This is the case particularly for laptop users, using data cards which can transmit high volumes of data traffic.

Data roaming services differ depending on the device being used. While one is unlikely to incur such heavy bills using a 'Blackberry' device, PDA or smart-phone as compared to a laptop computer, the distinction may in the near future become more blurred.

The price for roaming data services in general may vary from domestic services in view of the fact that, particularly for laptop users, operators charge for domestic services on a flat-rate monthly basis. In a roaming context, charges are normally applied on a per MB basis, although operators have in some cases started to adapt their charging models by offering flat rate tariffs for roaming (either on a daily basis or on a monthly basis, though capped at a certain level of data downloads). The cap on the flat rate could still lead to huge bills in view of the fact that users accustomed to broadband services may have no concept of the volume of data being downloaded.

Over the past months, operators have also introduced different wholesale offers which may be considered as offering the prospect of lower charges. However, one still has to assess whether such offers can be translated into attractive retail tariffs in view of the different charging intervals adopted and the implications this can have on particular data roaming services such as small volume sessions.

The growth of Wifi hotspots may also be considered as offering a potential 'competitor' to data roaming services.

**Question 28:** It appears that there are still very significant differences between data roaming prices and those applying at national level. Respondents are invited to explain (preferably using data based on their latest standard and special domestic and roaming offers) how such significant differences can be justified.



On Transatel side, thanks to its 4 MVNO agreements in 4 countries, the SMS, GPRS and EDGE roaming traffic prices for the consumers in those countries are at the same level than the “national” price.

(Please see attached document)

This proves that MVNO can be a substitute to the roaming for voice, SMS and DATA traffic. Moreover, MVNO are likely to provide new offers that can also be a substitute to the roaming thanks to access agreement to WIFI and WIMAX networks.

**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?*

The first step must be to increase competition by encouraging the development of the MVNO i.e. force MNO to make MVNO deal with MVNO that provide substitute to mobile roaming (such as Transatel).

Prices regulation should come after when the MVNO development is not enough in order to increase the competition.

**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.*

As mentioned above MVNO using multi IMSI technology such as Transatel can provide data traffic at local rate in all EU provided they can get at least one MVNO agreement in each country.

**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)?*

N/A

**Question 32:** *What additional costs, apart from the wholesale charges, are incurred by operators when providing data roaming services?*

N/A

**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”?*

N/A

**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.*

N/A

## 6.2. SMS

SMS is a popular consumer service which in a roaming context could in some cases be a substitute for a voice call if roaming voice charges would result in a higher bill. In order to decide whether SMS roaming should be regulated it is necessary to consider a number of issues including the extent to which such services are subject to competitive pressure at either wholesale or retail levels, the relationship between retail and wholesale prices (and underlying costs) as well as the extent to which any differences in charges for SMS roaming services can be justified when compared to equivalent domestic services.

While the costs of providing an SMS roaming service are generally deemed to be very low, the prices charged at wholesale and at retail level seem to bear no relation to cost.

Moreover, while operators have in the past offered reduced voice roaming rates, albeit still at a premium, for heavy users such as business customers, there is little evidence that the same operators are targeting heavy SMS users with cheaper roaming 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.*

**In order to create more competition on the European roaming market MVNO should have access to its own SMS-C interfaced with MNO equipments.**

**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.*

**N/A**

**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?*

**N/A**

**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?*

**N/A**

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

**N/A**

## CONCLUSION

Interested parties are invited to submit their replies to the questions raised in this public consultation document, and comments on any other related matters that they consider to be relevant, to DG

Information Society and Media at the following email address: [infsoroaming@ec.europa.eu](mailto:infsoroaming@ec.europa.eu) by close of business on 2 July 2008. Interested parties are welcome to respond to some of the questions only, if they so wish.

Please state when responding if you wish your contribution to be treated as confidential in whole or in part, indicating clearly which parts of the response are confidential. The Commission services may publish on its website those responses for which confidentiality has not been requested.