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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.9.2008  
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**COMMISSION STAFF WORKING PAPER**

*accompanying the*

**Proposal for a**

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services**

**SUMMARY OF THE IMPACT ASSESSMENT**

{COM(2008) 580 final}  
{SEC(2008) 2489}

## **EXECUTIVE SUMMARY**

### **1. BACKGROUND**

The European Commission must review the functioning of the Roaming Regulation and report to the European Parliament and the Council before 30 December 2008. In its report, the Commission is required to assess whether the objectives of the Roaming Regulation have been achieved and whether there is need to extend its duration and/or to amend it. The European Parliament and Council also charged the Commission specifically with reviewing developments in wholesale and retail charges for roaming data communication services, including SMS and MMS, and, if appropriate, including recommendations regarding the need to regulate these services.

This impact assessment (IA) report examines options arising from the Commission's review of the functioning of the Roaming Regulation. In particular it examines the possible extension of its duration beyond its current expiry date of 30 June 2010 with regard to voice roaming services and the possible extension of its scope to cover SMS roaming and/or packet data roaming services. On 1 September the Impact Assessment Board provided comments on this document which have been taken into account.

### **2. DEVELOPMENTS SINCE THE ADOPTION OF THE ROAMING REGULATION**

The Roaming Regulation entered into force on 30 June 2007 and the Commission services already commenced preparations for the review of the functioning of the Roaming Regulation in the Autumn 2007. Implementation and the transition to the 'Eurotariff' in particular went smoothly, with only a few exceptions noted by National Regulatory Authorities (NRAs).

In association with the Commission, the European Regulators Group (ERG) initiated an extensive six-monthly data collection exercise which has formed the basis for two Benchmark Reports. Under this reporting exercise, it was found that prices at retail and wholesale levels have not varied sufficiently from the maximum allowed ceilings to conclude that these markets are now competitive. The Report also identified an issue with the way many operators bill for roaming services on a per-minute basis as opposed to actual time consumed.

The reports also demonstrate that there appears to have been little movement in prices for SMS roaming services in most Member States, at the retail and wholesale levels. Also, for data services, the average data price per MB shows a diverse picture where the differences in price between countries remain large, and some countries still have very high average prices.

#### **2.1. Public consultation**

The European Commission launched a wide-ranging public consultation on 7 May 2008 asking for comments on the review of the Roaming Regulation and on the possible extension to SMS and data roaming services. While most operators are against extension of the regulation of voice roaming services, most NRAs and Member States and some smaller operators and consumer groups believe it should be extended.

On the issue of per-minute and per-second billing operators generally believe that this should be left to the market to resolve while the ERG and consumer groups believe that urgent action is needed to deal with what they call the 'hidden charge' issue.

The ERG noted that there appears to be little movement in SMS retail roaming prices up to April 2008. They have therefore recommended the introduction of a price cap on the average wholesale SMS roaming rate, and the amendment of the Eurotariff obligation to include an offer of SMS roaming at a retail rate not greater than a specified maximum cap. Consumer organizations have also expressed themselves in favour of SMS regulation at both wholesale and retail level. On the other hand, the GSM Association and mobile operators, with some exceptions, are generally against such regulation.

With regard to data roaming, there was almost a general consensus on the desire to eliminate 'bill shock'. Consumer organisations have also expressed themselves in favour of regulation at both wholesale and retail levels. The ERG believes that formal and immediate regulatory action is required to improve transparency and eliminate bill shock. The GSM Association and the majority of operators have expressed themselves against price regulation although a number of operators support regulation at the wholesale level.

## **2.2. Other developments**

The Commission services have remained open to contacts with interested parties throughout the process. The Commission also commissioned a study by independent consultants which was published by the Commission on 27 June 2008.

Commissioner Reding warned the industry in February 2008 at the GSM World Congress in Barcelona that prices for SMS and data roaming needed to be reduced by July 2008 in order to avoid regulation. Commissioner Reding also wrote to the CEOs of all mobile operators in the European Union on 4 June 2008, requesting information on their price offerings for SMS and data roaming services in the EU, as well as on transparency measures taken for those services, as at 1 July 2008.

All NRAs have provided the operator-specific data which was gathered by them as part of their general monitoring activities. This comprehensive data has enabled the Commission Services to construct an economic model which provides estimates of the impact of the current Regulation as well as the economic impact of the policy options set out in this report.

## **3. PROBLEM DEFINITION**

### **3.1. Voice Roaming**

Even though consumers have benefited from lower voice roaming charges, the evidentiary record since adoption of the Regulation indicates that the structural problems with the voice roaming market have remained intact. In its response to the public consultation, the ERG confirms that the fundamental problems which existed prior to the current Regulation remain.

### **3.2. Voice billing unitisation**

The Regulation imposes price limits on intra-Community voice roaming services which are expressed in terms of a specified monetary amount expressed on a "per minute" basis.. The relevant provisions of the Regulation did not however specify explicitly what should be the

minimum units of time by reference to which the prices for wholesale and retail roaming voice services were to be calculated. The ERG benchmark data report for September 2007–March 2008 estimated that per-minute billing practices add on average around 24% to a typical retail bill for calls made and 19% for calls received using the Eurotariff. The different billing unitisation practices employed by mobile operators seriously undermines the consistent application of the Eurotariff.

### **3.3. SMS**

Similar to the situation for voice services, one of the reasons for high SMS roaming prices is the fact that when choosing a mobile operator, consumers do not take these prices into consideration. As a result, consumers often only become aware of the high prices charged when the service is used. Community SMS roaming prices have an impact on millions of EU citizens. SMS services are particularly used by younger consumers. The level of the wholesale charges for sending an SMS while roaming within the Community does not appear to be justified by the underlying costs and there appears to be insufficient competitive pressures on operators to bring prices down.

### **3.4. Roaming packet switched data services**

Concerns as to the level of charges for data roaming services were raised in the political discussions that preceded the adoption of the Regulation. While there have been some positive developments, prices for EU-wide data roaming services at both wholesale and retail levels are unjustifiably high when compared to the charges for the equivalent domestic services and to the underlying costs of providing the services and frequently give rise to the problem of bill shock. The persistence of high wholesale charges for data roaming services (particularly on non-preferred networks) resulting *inter alia* from traffic steering limitations results in an extreme variation in wholesale costs. These excessive wholesale charges lead to distortions of competitive conditions which undermine the smooth functioning of the internal market.

## **4. OBJECTIVES**

The general objective of EU action is to promote the further development of the single market for electronic communications services, which include voice telephony, SMS and data services, for users of public mobile telephone networks for EU-wide roaming services when travelling within the Community. In concrete terms, the objective is to ensure that prices paid by users of public mobile telephone networks for EU-wide roaming services when travelling within the Community are not unjustifiably higher than the charges payable by that user when calling, sending SMS or data within the consumer's home country.

## **5. ALTERNATIVE POLICY OPTIONS**

This IA considers alternative approaches to targeted regulation such as self-regulation, co-regulation and soft law. However, in light of the particular nature of the problems identified it is concluded that these options are not feasible (see Chapter 5).

Options for regulation are evaluated in accordance with the following criteria: Effectiveness; Competition; Efficiency; Consistency; Coherence.

## **6. VOICE ROAMING POLICY OPTIONS**

A number of policy options are considered for voice roaming. This includes no policy change which in this case would mean that the Regulation would expire on 30 June 2010. However, it is concluded that there is a significant risk that the underlying lack of competitive pressures in the voice roaming market would translate into a return to higher retail and wholesale prices if the pricing obligations in the Regulation were to disappear on its expiry in 2010. For this reason it is concluded that the Regulation should be extended beyond 2010 for three years to 30 June 2013.

The transparency measures for voice roaming services are an indispensable element of the current Regulation. However it is considered that transparency measures alone will not be effective.

It is further concluded that the regulation should be extended at both wholesale and retail level. Without wholesale regulation there is a risk of disrupting the orderly functioning of the roaming market by putting smaller operators at a dramatic competitive disadvantage. Equally, if regulation is applied at wholesale level only, it is likely that the consumer will not see the benefits in the form of lower retail prices.

This IA then considers options for the structure of extended voice regulation, specifically whether there should be a glide path for reductions in the levels of the current price ceilings at wholesale and retail levels and, if so, the magnitude of such reductions. It is concluded that these ceilings should continue to decline to reflect anticipated reductions in costs. It is concluded that the most effective approach is to set a glide path which continues the linear decline inherent in the current regulation at the retail level while allowing for bigger reductions at the wholesale level to reflect forecasted reductions in costs. This approach is pro-competitive as it gives greater flexibility for competition.

## **7. BILLING UNITISATION POLICY OPTIONS**

The divergent approaches applicable to the billing of roaming calls create different conditions, thereby undermining the consistent application of the Eurotariff and distorting competitive conditions in the single market. It is therefore appropriate for the Regulation to harmonise the obligations on mobile operators in this regard.

The options for addressing this issue include no policy change, a move to strict per-second billing, modified per-second billing and adjusting the levels of the caps. It is concluded that modified per second billing is the most effective approach as it means that consumers will generally only be charged for what they consume while allowing operators to recover reasonable call set-up costs and flexibility to differentiate their offers by means of a maximum 30 second charging interval at the commencement of the call. Incoming calls and wholesale calls should be charged on a strict per-second basis.

## **8. SMS POLICY OPTIONS**

As in the case of voice roaming, a variety of options to address the problems identified in the SMS roaming market are considered. However, the discrepancy between domestic SMS prices and SMS roaming prices remains unjustifiably high. Despite recent strong calls from

the European Commission and national regulators for significant price reductions, there has been relatively little movement in the market.

Transparency measures for SMS roaming services are considered essential. However, it is considered that transparency measures alone will not be effective to address these problems.

To regulate only at wholesale level would assume that market forces would be sufficient to guarantee a substantial pass-through of wholesale reductions to the retail level within a relatively short period. Conversely, without wholesale regulation there is a risk that smaller operators could suffer margin squeeze because they may face relatively high wholesale charges while their retail prices are capped.

As for voice, it is considered that a combination of transparency measures as well as retail and wholesale regulation would ensure an effective outcome. This view is supported by ERG which believes that the wholesale SMS charges are not justified by costs to the host operator.

The Commission services conclude that the Regulation should be amended to include regulatory measures at wholesale and retail levels as well as transparency for SMS roaming services with effect from 1 July 2009 for a period of four years to 30 June 2013.

The IA examines three options for regulation of wholesale and retail SMS roaming charges. The first is proposed by the Danish national regulatory authority (NITA) and is a cost-based model while the other options were proposed by ERG. The NITA model proposes 3.48 cents at retail levels and 0.8 cents at wholesale level. The first ERG option proposes a cap at 15 cents at retail level and 8 cents at wholesale level. The second ERG option proposes 11 cents at retail level and 4 cents at wholesale. While the NITA approach has much merit it is considered that it would produce price ceilings which are too aggressive for practical application in almost all Member States.

At wholesale level, the second option is preferred over the first ERG proposal because it provides a better reflection of the wholesale costs actually incurred while at the same time proving greater flexibility than the approach advocated under the NITA proposal. At retail level, the second ERG proposal is clearly preferable from a consumer perspective.

## **9. DATA ROAMING POLICY OPTIONS**

The continuing discrepancy between domestic data prices and roaming data prices remains high with a diverse pattern across Member States, leading to the ongoing possibility of 'bill shock' for consumers. Lack of transparency remains a key problem and it is far from certain that recent efforts by some operators to enhance transparency for this service will ensure that the problem of 'bill shock' is eliminated in all Member States. Therefore, while regulatory intervention should be treated cautiously, it is considered that the 'no policy change' option is not feasible.

It is concluded that two measures in particular should be required to address transparency: the provision of basic price information is essential for consumers and should be proposed as a regulatory measure. Equally, allowing the consumer to choose cut-off limits would provide a very effective tool for dealing with the problem of bill shock and should therefore also be proposed.

The possibility of regulation at retail and wholesale levels is also carefully considered in this IA. High wholesale charges (particularly on non-preferred networks), combined with traffic steering difficulties for data roaming, are distorting competitive conditions and causing a lack of predictability for operators in relation to their wholesale costs. A wholesale safeguard cap would eliminate these excessive charges while allowing competition to play in the rest of the wholesale market. Such a ceiling needs to be sufficiently low to address the 'bill shock' problem while being sufficiently above some current market offers to avoid disruption of competitive forces.

It is therefore considered that wholesale regulation (in combination with transparency measures) is necessary. The period of regulation is aligned with that of voice and SMS i.e. up to 30 June 2013.

It is considered that retail price regulation should not be introduced given the likelihood of competitive pressure arising from potential substitute services in the market.

## **10. EVALUATION AND MONITORING**

Extension of the mobile roaming regulation will continue to be monitored very closely both by the NRAs and the Commission. The Commission services consider that data collection of similar scope and frequency should continue to be carried out during the time span of the proposed extension. NRAs will be asked to collect data on retail and wholesale voice, SMS and data roaming services every six months. Evaluation of the effectiveness, efficiency and relevance of the roaming regulation will be carried out towards the end of its three-year duration as part of the review exercise.