

# **Synopsis report to the public consultation on fair-use policy and the sustainability mechanism**

## **1. Methodology of the public consultation and of this report**

The Commission Services ran a consultation on fair-use policy and the sustainability mechanism for 12 weeks from 26 November 2015 to 18 February 2016 for 12 weeks. The purpose was to gather views on the detailed rules needed for the application of fair use policy to the consumption of roaming services at domestic prices, and on the appropriate content and design of the methodology for assessing whether the abolition of retail roaming surcharges would undermine the sustainability of the domestic price model of a given operator. Contributions will be taken into account in the Commission's implementing act on fair use policy and the sustainability mechanism, provided for in the Roaming Regulation as amended in 2015<sup>1</sup> (hereinafter the Regulation). The replies of contributors who agreed to publication are available on [Digital Single Market website](#). This report analyses the replies to the public consultation.

All online contributions were analysed for the purposes of this report<sup>2</sup>. The consultation targeted mobile operators, national regulators, public authorities, civil society organisations, businesses and citizens.

The analysis was conducted by type of respondents and centres on the two main themes of the consultation:

1. Detailed rules on the application of fair use policy to the consumption of roaming services at domestic prices
2. Methodology for assessing the sustainability of the domestic price model after the abolition of retail roaming surcharges, subject to fair use, in the EU

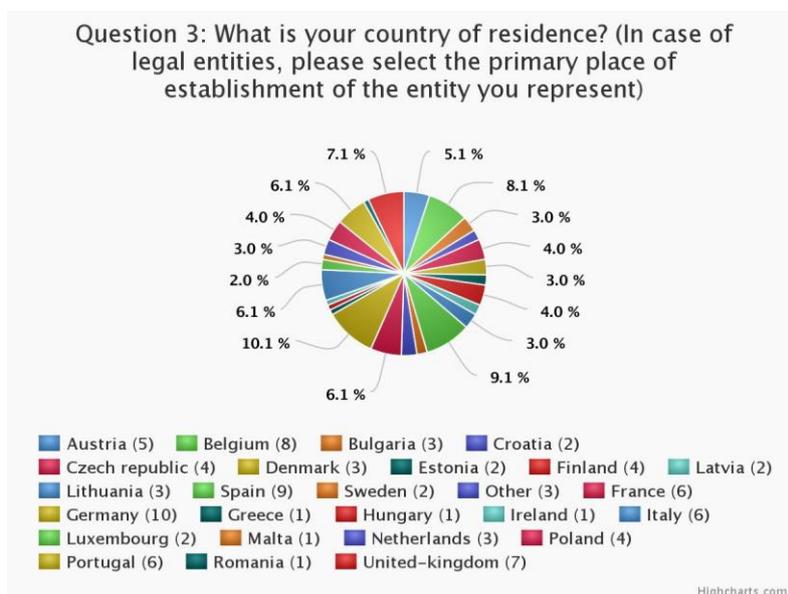
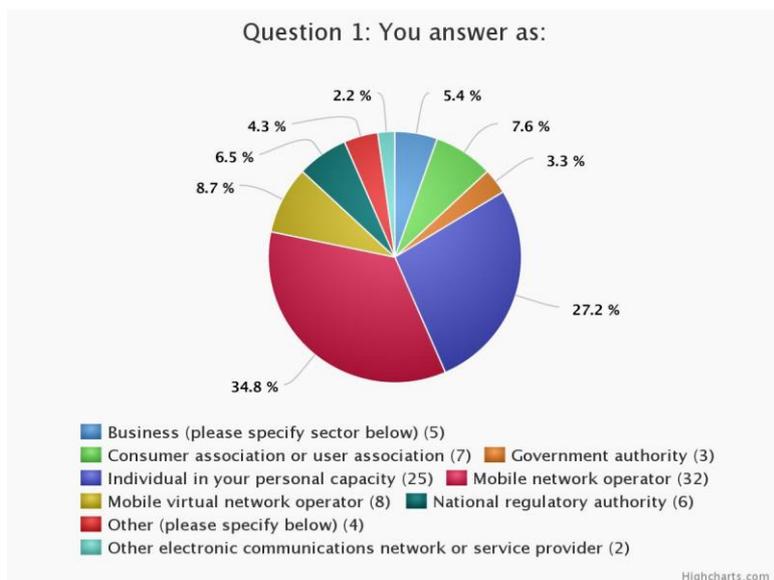
## **2. Respondents' profile**

A total of 92 replies came through the online questionnaire; 3 by e-mail; 2 respondents sent position papers. The response rate is comparable to the Commission Services' last public consultation on roaming in 2011 (90 replies). Respondents came from 25 EU Member States and Norway.

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<sup>1</sup> Regulation EU 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union, as amended by Regulation 2015/2120 of 25 November 2015

<sup>2</sup> The three contributions received by e-mail and the two positions papers received fed into the qualitative analysis but are not included in the statistics. In addition, the Body of European Regulators for Electronic Communications (BEREC) published its [analysis of the wholesale roaming market](#) on 29 February 2016. While this analysis has served as an input to the wholesale roaming review conducted by the Commission, it is not reflected as such in the present Synopsis report, which focuses on the analysis of the replies to the online questionnaire.



Among the 32 mobile network operators (MNOs) that replied to the public consultation, the 9 group operators<sup>3</sup> which operate mobile networks in at least 3 EU countries responded as a group i.e. 1 reply per group. Only one affiliate of one of these nine group operators contributed separately in addition to the group. Therefore, 22 independent MNOs (operating in one or two Member States) replied to the public consultation. Since the 9 group operators represent in total 64 operators in the 28 Member States plus Norway, the responses to the public consultation cover a total of 86 MNOs, plus 8 mobile network operators (MVNOs), thus covering most of the telecom sector in the EU plus Norway (the total number of MNOs and MVNOs is approximately 140; those not having responded are among the smaller operators).

<sup>3</sup> Deutsche Telecom, Hutchinson Europe, Orange, Tele2, Telefonica, Telekom Austria, Telenor, TeliaSonera, Vodafone.

Citizens and consumers' associations responded mainly to the questions related to fair use policy, and only marginally to the questions related to the sustainability mechanism. 6 national regulators and 3 government authorities replied to the questions.

### 3. Fair use policy (FUP)

**Individual consumers defend the most generous fair use policy possible, that would accommodate the roaming needs for tourism/holiday and business, as well as roaming needs in border regions (such as daily border crossing).**

**Mobile operators argue that fair use policy for EU-wide RLAH should apply for occasional travellers i.e. tourism/holiday needs throughout the EU. According to them, more intensive roaming needs for business purposes and border regions are dealt with through specific tariff plans addressing the specific needs of those customers.**

#### 3.1. Consumers and users' associations<sup>4</sup>

Consumers and user associations defend the most generous fair use policy possible, that would accommodate the roaming needs for tourism/holiday, as well as roaming needs in border regions, in particular inadvertent roaming (84% of consumers, 6 out of 7 user associations). There is slightly less, but still massive, support for covering roaming needs for professional purposes (76% of consumers, 4 out of 7 user associations). Consumers consider that FUP should address only very exceptional abuses of roaming services, which however they do not characterise. A few consumers are of the view that there should not be any limitation at all to RLAH. One user association is of the view that a different approach is needed for business users with contracts covering multiple devices based in multiple Member States and being used across the EU (and beyond). Two user associations are of the view that any limitation should occur only for well justified exceptions where proven, additional, unavoidable and significant costs are incurred by the operator in relation to the consumers' own individual consumption patterns, and never in relation to national averages or similar alternatives. The same two user associations are of the view that FUP should in any case be a temporary measure to allow for the market to make its transition to a fully RLAH-based market. FUP or any other type of limitation to RLAH plans should disappear entirely once wholesale caps have been reduced. For now, almost all responding consumers (96%) defend the definition of FUP at EU level, and a large majority (64%) do not suggest that FUP should take other forms than time and volume limits.

Consequently consumers prefer the long duration definitions of periodic travel proposed in the consultation<sup>5</sup> (i.e. the definitions referring to half a year, to the number of working days in the year, to the time period for establishing a residence in a MS), while references to the annual number of days abroad in the EU of EU residents or to paid holidays period to define periodic travel are chosen by a minority (8% and 16% respectively). A substantial proportion of consumers (36%) think that intermittent travelling time (travels for less than 24 hours) should not be counted against the time limit. Consumers and user associations massively support the view that 100% of a fixed-volume domestic tariff plan should be available while roaming (76% of consumers, all user associations replying to that question (4 out of 7)). For unlimited domestic tariff plans, massive support is given to applying on roaming the same fair use policy as at home (72% of consumers, all user associations replying to that question (2 out of 7)). Consumers (68%) and user associations (3 out of the 4 replying to this question) are of

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<sup>4</sup> Users' associations include consumers' and business users' associations.

<sup>5</sup> Question 47.

the view that FUP should not address the issue of using pre-paid SIM cards for receiving calls only while roaming.

### 3.2. Mobile operators

There is a general consensus on the fact that FUP limits should be expressed in terms of time and/or volume limits (70% of responding operators): time limit and volume limit, or volume limit only. In practice, the volume limits discussed and proposed by operators are always linked to a time period of consumption (day, month or year) so that in every FUP formulation, both time and volume limits are in fact present.

Operators call for simple, customer-oriented, easy to understand and communicate, FUP. At the same time, many operators call for a high level of flexibility allowing a wide range of combinations of time and volume limits, possibly adapted by tariff plan. Some of these operators are of the view that this flexibility should in particular allow differentiating the FUP for the mass market customers and business customers, for pre-paid and post-paid customers. The requested flexibility also concerns the implementation itself, in particular the time period over which FUP is applied. In that regard, alignment of the FUP formulation over the billing cycle (usually the month) is seen by many operators as the easiest and least costly way to implement FUP, as well as the most understandable and easy to communicate to the customer. In contrast, a few operators call for a unique minimum FUP applicable to all subscriptions throughout the EU.

About half of the operators are of the view that a minimum FUP should be set at EU level, allowing operators to go beyond and compete on more generous FUP terms than the minimum. Almost one quarter of them think it should be defined at Member State level and the same proportion thinks FUP should be entirely left to the operator. An overwhelming majority (almost 80%) of operators consider that FUP should cover roaming needs of occasional roamers EU wide, while roaming needs of business customers and customers in border regions should be addressed by targeted offers covering the specific needs of these roamers (e.g. geographical coverage, other conditions than pricing).

Operators are more divided as regards the relevant duration of travel to be considered for occasional roamers. About half of the operators consider that the concept of "periodic travel" in the EU is well covered by the average annual number of days abroad in the EU of EU residents (i.e. of the order of 7-10 days per year). However, the other half is of the view that "periodic travel" refers to a longer time period within the year, covering the travelling time abroad in the EU of a larger share of roamers than the simple average (e.g. 20 days, 2 weeks, 70<sup>th</sup> or 80<sup>th</sup> percentile, annual paid holidays).

Operators' views on the volumes to be covered by FUP are scattered. None of the alternatives proposed in the consultation<sup>6</sup> prevails among the operators' replies. Operators have in addition suggested a number of distinct other alternatives. One of the more commonly used principles in the replies is that during the defined periodic travel time of the FUP, roaming consumption at domestic prices should in any case not be (much) higher than domestic consumption; it should at most be similar.

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<sup>6</sup> Question 51 for domestic tariff plans with limited volumes: 100% of the domestic tariff plan, 50%, less than 50%, % share depending on the domestic tariff plan. Question 52 for domestic tariff plans with unlimited volumes: domestic fair use volume, average domestic consumption on the domestic tariff plan, largest fixed volume domestic tariff plan.

This principle is used by operators to justify both that 100% and 50% or less of the fixed volume of a domestic tariff plan should be available without any surcharge to the roaming customer during the defined periodic travel time of the FUP. If the defined periodic travel time of the FUP is less than 6 months in a year, 100% of the domestic fixed volume represents less than 50% of the domestic tariff plan. If no travel time limit within the year is applied, 50% or less of the domestic fixed volume available throughout the year represents by definition no more than 50% of the domestic tariff plan.

For domestic tariff plans with unlimited volumes, each of the three alternatives proposed in the consultation<sup>7</sup> is considered as the easiest to implement and understand and the fairest to customers by a few operators. In contrast, a few operators suggest applying the same volume limit to both limited and unlimited offers, or even to all subscriptions.

A large majority (almost 90%) thinks that FUP should also apply to incoming calls. Some of them think that FUP for incoming calls should be more restrictive than for the other services, even null (retail roaming surcharge to be applied for each call received while roaming) for a few operators. Some operators suggest that a minimum activation period and usage at home and/or a minimum credit available on a pre-paid card for receiving calls should be mandated.

### 3.3. Governments and National Regulatory Authorities (NRAs)

Those NRAs and governments which responded favour the definition of a common minimum FUP at EU level rather than at MS level. They do not suggest other parameters than time and volume to define FUP.

These NRAs and governments consider that the scope of the Regulation is roaming while on travel in the EU for personal purposes. This covers the roaming needs of the vast majority of the users. More intensive users of roaming, like in the business sector, have access to specific tariff plans to meet their roaming needs. Roaming needs in border regions (inadvertent roaming, cross-border workers) are very particular and each of them only concerns at most 2 or 3 countries simultaneously. They cannot be used set the standard for an EU-wide regulation which is of general application. In fact, roaming needs in border regions are daily needs, therefore close or equal to permanent roaming needs which are explicitly considered beyond the scope of the Regulation. Roaming-related issues in border regions need specific measures and solutions provided by market players which are not within the scope of the Regulation.

Respondent NRAs and governments favour making 100% of a fixed-volume domestic tariff plan available for roaming at domestic prices<sup>8</sup>. In case of unlimited domestic tariff plans, the domestic FUP and the FUP allowed in the largest fixed-volume domestic tariff plan of the operator are preferred as being at the same time the closest to the user's need and the simplest to implement for the operator and to understand for the user.

In a nutshell, NRAs and governments are closer to the operators' majority view as regards the scope and objective of FUP (roaming while on travel for personal purposes, holidays, tourism) and thus on the definition of periodic travel, while they are closer to the users' majority view as regards the volumes from the domestic tariff plans to be made available for roaming at domestic prices. On the definition of periodic travel however, NRAs and governments on the one hand and operators on the other hand are not fully aligned since the

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<sup>7</sup> Question 52 see previous footnote.

<sup>8</sup> The one responding 'less than 50%' chose that option in isolation of the time limit, on the ground that roaming consumption at domestic prices should be less than domestic usage. Any time limit below half a year combined with 100% of the domestic fixed volume (instead of 50%) would ensure this.

former favour longer time periods to fully cover the roaming needs of personal travel, while the majority of operators think that shorter time periods (for instance based on an EU average of days abroad) are enough to cover those needs.

#### 4. Sustainability mechanism

**A widespread view among respondents (mostly operators) is that this mechanism should not be overly complex. Individual stakeholders have provided detailed feedback on the different steps it should comprise.**

##### 4.1. Mobile operators

There is a significant percentage of "no answers", and "don't knows", reflecting the view, also expressed in the qualitative answers, that the sustainability mechanism should not be too complex. A number of both big and small operators express reservations about establishing a sustainability mechanism at all.

Most operators favour that the period to assess sustainability (i.e the length of the data series to be reported to the NRAs) should be of 12 months duration, regardless of the proportion between actual and projected data. Some big and small operators claim that 12 months would be the right timeframe to evaluate seasonality. To a lesser extent, shorter terms are also argued for in order to limit losses. On the quantity of actual data that operators need to submit in the first sustainability application, operators are more divided, with 25% of operators arguing that the assessment should be entirely based on projections, 17.5% arguing for 3 months of actual data and 22.5% stating that one year of actual data would be necessary to properly assess sustainability.

The main arguments of those operators that would like longer actual time series, which are generally large operators and incumbents, are that after the changes introduced by RLAH, consumer behaviour will not stabilise for several bill cycles, together with the need to take into account the seasonality effects. Operators arguing for shorter time series maintain that requiring long periods of actual data implies that the operator will incur losses, which is not acceptable, and that the new data on roaming elasticity could be already deduced after a short period of the introduction of RLAH, or taking into account previous RLAH offers.

On the financial ratio that should be used to assess the operator's domestic margin, the majority of operators argue for other options than the ones proposed in the PC (After tax profit, Ebit and Ebitda), which makes the consultation inconclusive in this respect. Some arguments expressed by operators to discard the options are that the proposed measures would not reflect non-telecommunication services that operators might offer or that they would not include enough granular data. However, no clear alternative to the financial ratios proposed emerges from the qualitative answers provided by operators.

In reference to the sustainability percentage that should allow for a derogation, the majority of operators prefer other options than the percentages proposed in the PC (5, 10, 15 or 20%). The most widespread argument for discarding the options is that, according to operators, RLAH should be considered unsustainable as soon as the margin for retail roaming services is negative.

Other questions covered in the PC refer to the sources of information to be used in the sustainability assessment (52.5% of operators agree that the operator's accounts would be a good general source) and the method to calculate wholesale roaming costs (50% of operators

agree that they should be based on unbalanced traffic, as reflected in the TSM Regulation). Overall, there is more divergence on how to take into account in-bundle revenues, and the danger of waterbed effects, reflecting the also stated argument that the extent of this problem might depend also on domestic circumstances.

#### 4.2. Other respondents

On the sustainability section of the consultation, there are too few answers from non-operator respondents to get meaningful comparative results. One consumer association, for example, answered that 6 months of actual data would be optimal to assess the sustainability of an operator, but this contrasts with 6 non-answers from the same category of respondents.

A slightly higher number of NRAs and government agencies provided answers on some of the key issues of the sustainability assessment. 1 government authority answered that 1 full year of data was necessary for the sustainability assessment, while 2 NRAs were of the same opinion.

On the optimal financial ratio to be used in the sustainability mechanism, Ebitda was supported by 1 NRA, while 1 other NRA supported an After Tax measure. 1 NRA supported a 10% sustainability margin as the optimal margin to avoid waterbed effects, while 3 others opted for other percentages, arguing that no negative margins should be tolerated.

### **5. Next steps**

The results of the public consultation are being taken into account in the preparation of the Commission's implementing act on fair use policy and the sustainability mechanism, provided for in the Roaming Regulation<sup>9</sup>. The Commission's implementing act is planned to be adopted by 15 December 2016.

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<sup>9</sup> Regulation EU 531/2012 of 13 June 2012 on roaming on public mobile communications networks within the Union, as amended by Regulation 2015/2120 of 25 November 2015