



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
D(2016)

Opinion

Title **DG CNECT – Review of the wholesale roaming market in the EU**
(draft version of 23 March 2016)*

(A) Context

Regulation 2015/2120, the 'Roaming Regulation', provides for a phased reduction of roaming charges. The regulation mandates an abolition of retail roaming surcharges in the EU from 15 June 2017, subject to fair use of roaming services and a sustainability mechanism: the 'roam-like-at-home' RLAH regime.

The Roaming Regulation stipulates that for the abolition of retail roaming surcharges to be sustainable throughout the EU, national wholesale roaming markets need to be competitive and deliver wholesale roaming prices that enable operators to sustainably offer retail roaming services without any additional charges. As a transitional measure, from May 2016, the current price capping for roaming within the EU will be replaced by a maximum surcharge for roaming services, which may be charged in addition to domestic charges.

This impact assessment looks into problems affecting the functioning of the wholesale roaming market in the EU and analyses options to address them. It is accompanied by a Wholesale Roaming Market Review Report.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion, on the understanding that the impact assessment report will be significantly improved, particularly with respect to the following aspects:

- 1) The problem should be better explained, by putting it in the context of the existing regulation in wholesale and retail roaming markets, and by underpinning it with robust evidence to clearly illustrate its magnitude and justify the need for market intervention.**
- 2) The baseline scenario should be redefined to reflect the assumption of no new action at the EU level. It should clearly describe what could be the consequences of no change to both the current retail roaming surcharges and the wholesale roaming caps, taking into account recent trends in the market and possible future developments.**

*Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

3) The choice of the policy options should be clarified. The sustainability and feasibility of the options should be better presented, in particular when discarding them upfront.

4) The comparison of the options should be improved. In particular, the methodology and comparison criteria should be better described, together with a clearer assessment of the robustness of the results.

(C) Main recommendations for improvements

(1) Clarify the policy context. As the essence of the initiative is to establish the level of caps at the wholesale roaming market, which would enable the elimination of roaming surcharges at the retail market while enabling cost recovery and sustainability of the operators, the report should reiterate the rationale for establishing the roaming caps at both the retail and the wholesale level. A short description should be provided on which parts of the two markets are currently regulated and how, and of developments over the last years.

(2) Better explain the problem. The existence of the problem and its magnitude should be underpinned by evidence that is more robust. For instance, the report should substantiate the justification for continued intervention in the wholesale roaming market by demonstrating the existence of market failures linked to insufficient level of competition. The report should be more explicit about the possible trade-offs and market winners/losers of the abolishment of roaming surcharges and stress uncertainty related to the impact of the future RLAH obligation on competition dynamics.

(3) Redefine the baseline. The baseline scenario should describe the most probable developments in the wholesale and retail roaming markets in case no new action is taken (i.e. keeping the current wholesale roaming caps and retail roaming surcharges). Such a baseline should then become the reference against which the other options should compare. The baseline should present a dynamic scenario taking into account the recent trends related to the termination rates, demand and consumption developments, technological changes, as well as the existence of substitutes.

(4) Refine the choice of the policy options. A redefined baseline would also help better explain why, if RLAH is implemented, option 2 would lead to an unsustainable situation for a large proportion of EU mobile operators. The uncertainties in estimating the wholesale roaming costs and prices and in establishing the maximum wholesale roaming caps should be better reflected in option 3, possibly complemented by a sensitivity analysis. As the level of the caps is largely based on modelling, the report should provide more information on the validity and robustness of the results. The report should further elaborate on the discarded option of establishing a spot market and on whether such an option might have been more effective and efficient than the preferred option, had there been enough time to set it up.

(5) Improve the comparison of policy options. The options should be compared against the redefined baseline scenario. The methodology for the option comparison should be more clearly explained in the main report, and further substantiated in the annexes. The criteria of the assessment of the impacts should be better explained, including any possible differences in the importance of each of the criteria. The headings of the criteria 'RLAH objective' should be refined, to reflect their actual content. The description of the sustainability test should be further developed, in particular in relation to cost recovery.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The report should be shortened and streamlined, in order to respect the Better Regulation guidelines as regards the structure and length (30-40 pages). Greater efforts should be made to increase its readability and accessibility to a non-specialist reader. The document should be self-standing, providing the reader with all the necessary information, appropriately cross-referencing with the Review Report.

(E) RSB scrutiny process

Reference number	2015/CNECT/018
External expertise used	No
Date of RSB meeting	13 April 2016