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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the outcome of the functioning of regulation (EC) No 717/2007 of the European
Parliament and of the Council of 27 June 2007 on roaming on public mobile
communications networks within the Community, as amended by Regulation (EC) No
544/2009**

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1. INTRODUCTION

The EU 2020 Strategy¹ aims at ensuring that Europe 'be turned into a smart, sustainable and inclusive economy delivering high levels of employment, productivity and social cohesion'. One of the building blocks of this new strategy is the Digital Agenda for Europe² (DAE) which defines a number of 'Key Performance Targets' for attaining the Digital Single Market. In relation to international mobile roaming services, the target is that 'the difference between roaming and national tariffs would approach to zero by 2015'³. This target will be achieved if competition in mobile markets gives consumers the rapid and easy choice of a roaming service at, or close to, a relevant competitive domestic price level.

The Regulation (EC) No 717/2007 (amended by Regulation (EC) No544/2009) on roaming on public mobile communications network (hereafter "the Regulation"), which entered into force in June 2007, will expire on 30 June 2012, unless extended – possibly in a modified form - by Parliament and Council on the basis of a proposal from the Commission. The Regulation requires that the Commission review its functioning and report to the European Parliament and to the Council no later than 30 June 2011. Under Article 11 of the Regulation, the Commission is charged with evaluating whether the objectives of the Regulation have been achieved, which are to ensure that consumers do not pay excessive prices for European Union-wide roaming services in comparison with competitive national prices, by contributing to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market and offering both incentives for innovation and consumer choice.

This report presents the results of the Commission's review of the functioning of the Regulation, explains the main policy changes it proposes in order to give effect to its conclusions and is accompanied by a legislative proposal for the Regulation to be amended accordingly. The details and underlying reasoning can be found in the legislative proposal and associated Impact Assessment. As was the case for the Regulation itself, the legal basis for the new proposal is Article 114 of the Treaty on the Functioning of the European Union.(ex-Article 95 of the Treaty establishing the European Community)

2. BACKGROUND

2.1. Current Regulation

Because of the particular structure of the roaming market and its cross-border nature, national regulatory authorities acknowledged already in 2005 that they were not provided with suitable tools to effectively address the competitive problems underlying the high prices of roaming services and that divergent actions among Member States would be ineffective and would harm the establishment and the functioning of the internal market.

Therefore, in order to achieve the objective of managing the issue of high roaming charges in a secure, harmonised and timely manner, measures were taken at EU level in the form of a

¹ See Communication from the Commission: Europe 2020- A strategy for smart, sustainable and inclusive growth, COM (2010) 2020 of 3rd March 2010.

² See Communication from the Commission: A Digital Agenda for Europe, COM(2010)245 final

³ See Digital Agenda- Annex 2

first Regulation on roaming on public mobile telephone networks within the European Union (the Roaming Regulation) adopted by the European Parliament and the Council in June 2007. The Roaming Regulation regulates wholesale and retail voice roaming charges by setting price caps ('Eurotariffs'), the levels of which are decreasing on a yearly basis. Whilst operators are obliged to offer a Eurotariff, they remain free to provide alternative retail offers for roaming services.

In July 2009, a revised Regulation was adopted, which provided for an extension of the validity of the initial Regulation as well as an extension of its scope to the regulation of wholesale and retail SMS charges and wholesale data roaming charges. It also introduced measures to further improve transparency. This revised Regulation is valid until 30 June 2012. Whereas the Regulation foresees that it should be established for a limited time period, it further stipulates that it may, in the light of a review to be carried out by the Commission, be extended or amended.

In the meantime the Commission's task was to monitor and report to the European Parliament and Council on the functioning of the Regulation. An interim report on the functioning of the Roaming Regulation was adopted by the Commission in June 2010⁴.

2.2. Overview of the market

The EU market for mobile roaming services can be divided into voice services, SMS and broadband data services. In terms of size, in 2009, the retail EU roaming market accounted for 4,777 billion EUR in revenues (71% for voice, 17% for data and around 11% for SMS). For wholesale revenues, figures only differ slightly, with respectively 69%, 15% and 16% of wholesale non-group roaming revenues coming from voice, SMS and data services. The total wholesale market size in 2009 amounted to 1,253 billion EUR.

With a total EU mobile market size of about 164 billion EUR in 2008, EU (retail and wholesale) roaming revenues appear to represent around 3,68% of the total EU mobile market. Between 2007 and 2009, revenues for voice roaming fell quite significantly as a result of both lower prices as well as lower volumes of traffic (-3,2%). For SMS roaming, the impact of the Regulation can already be clearly seen as total revenues in 2009 compared to 2008 decreased significantly despite a large increase in volume (+23,1%). Finally, for data services, the increase in volume of 43,6% between 2008 and 2009 combined with the decrease in wholesale prices, due to the Regulation, led to an overall decrease in revenues. At the retail level however where no price ceilings were imposed for data roaming, the total revenues in 2009 remained at the same level as in 2008.

2.3. Developments since the adoption of the Regulation

The Commission has been monitoring developments in the roaming market carefully and in its Interim Report⁵ on the functioning of the Regulation, noted that competition was still not strong enough. In that report the Commission found that, overall, implementation of the Roaming Regulation had gone smoothly and operators had complied with the new provisions.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the interim report on the state of development of roaming services within the Community COM(2010)356 final (29/06/2010).

⁵ See COM(2010)356 final (29/06/2010)

Consumers are benefiting from reductions in the prices for voice and SMS roaming services and from increased transparency and protection against bill shocks.

However, average prices for the Eurotariff offered by operators as well as alternative tariffs are clustered around the levels of the regulated caps. The prices for data roaming have also fallen but consumers are not yet enjoying fully the reductions seen at wholesale level. The Commission services have continued to work closely with the Body of European regulators for Electronic Communications (BEREC), the successor of the ERG, which has provided highly valuable input to the Commission's ongoing monitoring of the Roaming Regulation as well as to this review of the Regulation.

Article 11 of the Roaming Regulation specifically requires that in its assessment of methods other than price regulation which could be used to create a competitive internal market for roaming, the Commission has regard to an analysis carried out by BEREC. To meet this obligation, in December 2010 BEREC published a full analysis on the effects of the Roaming Regulation as well as its views as to possible future regulatory approaches⁶.

In its report, BEREC considers that there continue to be structural problems at retail and wholesale levels, which dampen competition and tend to support prices close to the cap. BEREC also considers that the current Regulation needs to be extended and some form of regulation needs to be maintained, since under the current circumstances, there is a risk that prices would rise once again if regulation is removed.

In addition to the general data gathering exercise undertaken by BEREC referred to above, all NRAs have provided to the Commission directly, operator-specific data as part of their general monitoring exercise. This comprehensive data has enabled the construction of 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.

Moreover, the Commission services have held numerous meetings with mobile operators over the course of the review of the Roaming Regulation. A study on the options for addressing competition problems in the EU roaming market was commissioned by the Commission⁷.

2.4. Consultation process

The European Commission launched a wide-ranging public consultation on 8 December 2010 seeking comments on the review of the Roaming Regulation. The response rate was high – around 90 contributions were received in total.

Most responses argued for the need for further regulatory intervention beyond 2012. Responses from industry players were mixed – most acknowledged the inevitability of further regulation while a few argued that competition has developed to a level that does not warrant future regulatory intervention. Most respondents acknowledged that the current Regulation had succeeded in bringing benefits for consumers. On the other hand, very few believed that competition was stronger since the entry into force of the Regulation. Industry in particular was sceptical of the current model's ability to foster competition.

⁶ Bor (10) 58 BEREC Report on International Mobile Roaming Regulation.

⁷ http://ec.europa.eu/information_society/activities/roaming/docs/cons11/wik_report_final.pdf

The Commission had put forward a number of options for future approaches to regulation. As provided for by the Regulation, these included also methods other than price regulation which could be used to create an internal market for roaming, i.e. possible structural solutions to the problem of lack of competition on the roaming market. These alternative options were assessed by stakeholders but views were quite divergent. Some network operators and national authorities expressed doubts on structural solutions, which were considered to be costly, time consuming and challenging to implement. An access obligation for Mobile Virtual Network Operators (MVNOs) was perceived more neutrally and some responses (from smaller operators) highlighted its potential to promote competition. The continuation of the existing price cap model was favoured by most stakeholder groups.

Most operators were opposed to retail data roaming regulation while consumers, Member States and others supported this approach. If such regulation is to be proposed, network operators suggested a retail cap which would allow flexibility in this new and emerging market. Other stakeholders (Member States, consumer representatives and some MVNOs) however argued that the spread between the retail price and the wholesale cap is too big and shows that competition has not kicked-in. It was widely acknowledged that current technology does not provide for a viable roaming substitute at this stage.

3. REVIEW

In light of the aims of the EU 2020 Strategy and the Digital Agenda for Europe and with reference to the conclusions of the interim report on roaming published in June 2010, the objective of this review is to improve the conditions of the functioning and ensure the further promotion of the development of the Digital Single Market with regard to Union wide roaming services.

3.1. Achievement of objectives

The Commission has continued to monitor the developments in the roaming market. Roaming price levels have declined steadily in the last few years, but this is mainly due to the regulation of wholesale and retail prices. As also noted in the Commission's Interim Report of June 2010⁸, for voice and SMS, the extent to which operators offer prices below the levels of the regulated caps is considered as a key indicator of the level of competition in the market. However, average EU tariffs remain in general very close to the price caps defined by the 2009 amending Regulation, with only the exception of wholesale data roaming tariffs. Consequently, roaming charges for European customers are still high - much higher than those charged at the domestic level- and do not reflect the underlying costs for providing roaming services. Retail charges in particular for data roaming services are sometimes up to seven times higher than wholesale charges⁹.

Data roaming services are the only services for which tariffs are currently not regulated at retail level. Even it has been noted that tariffs are decreasing at wholesale as well as retail level since the introduction of the wholesale cap, the decline in wholesale prices do not appear to have been passed through to the retail level. Consequently, the margins made by mobile operators are still very high.

⁸ See COM(2010)356 final (29/06/2010)

⁹ For more details on the calculation, see Impact assessment.

Transparency measures taken so far have been positively welcomed by consumers and have improved their awareness of roaming prices and their ability to control their invoices.

As to the competitive situation of smaller operators, it has been observed that network access for the provision of roaming services does not exist at this stage for all operators, in particular mobile virtual network operators, which do not always have access to commercial agreements. Although a few alternative processes have recently developed, such as internalization and localization¹⁰, which might create some competitive pressure on wholesale roaming prices, they are not expected to become full roaming substitutes.

In conclusion, at this stage competitive market forces have not developed sufficiently and prices are still clustered at the level of the caps. This lack of competitive pressure is still felt both at wholesale and at retail levels, mostly due to the fact that structural problems such as barriers to market entry and high switching costs that prevail in the roaming market have remained unchallenged. Therefore, there is a significant risk that allowing the Regulation to expire could lead to an increase in prices. It also demonstrates the need to adopt a different regulatory approach. Indeed, the current regulatory approach of price regulation, whilst having delivered significant price reductions for consumers during the period concerned, has not solved the structural problems in the roaming market and does not therefore provide a durable solution.

With regard to alternatives to roaming, it is concluded that none of the technologies currently available are perceived by consumers as a good substitute to roaming. This makes it very unlikely that they will have any impact on competitive pressure on roaming prices in the future.

3.2. Introduction of structural measures

As laid down in Article 11 of the Roaming Regulation, the Commission is required to assess methods other than price regulation which could be used to create a competitive internal market for international roaming. Consequently, the Commission analysed different policy options and this detailed analysis can be found in the accompanying Impact Assessment. With a view to increasing the effectiveness of the roaming market dynamics and based on the assessment of the advantages and disadvantages of the various options put forward, the Commission proposes to introduce the following combination of structural solutions targeted at both the demand and the supply sides of the roaming market.

Measure with likely impact at consumer level (demand side)

The lack of competitive pressure on retail roaming prices can be explained by a number of factors. First of all, operators have little incentive to compete because roaming services are generally offered as part of a larger mobile bundle including domestic mobile services and thus cannot be used as a tool to attract new customers. High switching costs and the lack of adequate substitutes also hinder the development of alternative competitive offers. BEREC also considers that in the retail market, the focus on competition is on domestic services and the current features of the retail market provide little incentive to retail suppliers to compete aggressively on roaming offers. Therefore, increasing consumers' choice and transparency of

¹⁰ For more details, see impact assessment.

roaming prices would contribute to creating the conditions for more competition at retail level to finally emerge.

The proposal

1. Mandate the separate sale ('decoupling') of roaming services in the domestic market

The Commission proposes to allow consumers to opt-out of the default roaming services offered by their provider of domestic services and choose an alternative home operator for roaming services only. Each time the customer roams, the retail roaming service will automatically switch to this alternative provider.

It is expected that such a measure will have a positive impact on competition at retail level by facilitating switching and increasing demand elasticity by raising consumer awareness in roaming when buying subscriptions. It will also allow for more transparency and easily comparable alternative tariff offers.

Measure with likely impact on the structure of the market (supply side)

For the separate sale of roaming services introduced at retail level to be fully effective it needs to be combined with an access obligation which will facilitate market entry by existing or new players including cross-border roaming service providers, in order to increase the competitive dynamics at the retail level.

The proposal

2. Improve market entry by mandating wholesale roaming access

The Commission proposes to introduce the obligation for network operators to meet all reasonable requests for wholesale access for the provision of roaming services.

This will facilitate the development of alternative mobile roaming offers, in particular from smaller operators and MVNOs. MVNOs will indeed be in a position to directly negotiate roaming agreements with MNOs in other Member States or to get regulated wholesale access to roaming services from their host MNOs in the home country.

Furthermore, this will increase competitive pressure on the wholesale market and therefore encourage operators to provide wholesale services at the lowest possible price.

In conjunction with the first structural solution on decoupling proposed above, this measure will also open new business opportunities for smaller operators, enabling them to offer roaming services cross-border, thereby also contributing to the smooth functioning of the Digital Single Market.

3.3. Extension of the Regulation in time and scope

Extension of the Regulation until 2022

The Commission proposes to extend the validity of the Regulation by 10 years, up to 30 June 2022. It is expected that the above mentioned structural solutions will require time to be implemented and produce effects on the market. Hence the Regulation provides for transitory

price caps to be kept in order to ensure high level consumer protection also in the transitory period before the structural solutions become effective. Retail price caps should in principle apply until 30 June 2016. These could however be removed sooner if market data indicates / that competition has developed sufficiently. As regards wholesale price caps, they should in principle be maintained throughout the regulatory period in order to guarantee sufficient stability for new market entrants., also with a possibility of being removed if market data indicates sufficient competitive development. An assessment of the impact of structural solutions in the light of technological developments will be carried at regular intervals out by the Commission before the expiry of the Regulation in 2022.

Safeguard price cap at retail level up to 2016 and extension to data roaming

At retail level, the combination of the structural measures should lead to a sustainable competitive solution to the problem of excessive roaming prices without the need for long term price regulation. However given that these solutions will take time to implement there is a need to ensure continued consumer protection against excessive roaming charges by maintaining transitory safeguard caps for all services at an appropriate level for a period of time. Such transitory caps will be set at sufficiently high levels in order not to distort the potential competitive benefits of structural solutions and could be removed completely once the structural solutions have become effective in delivering benefits for consumers through enhanced competition.

Furthermore, in its review the Commission has concluded that despite the imposition of a price cap on wholesale data charges, retail prices are still very high. The reductions at the wholesale level on data prices are not passed-through to the retail level and, despite all transparency measures introduced in 2009, consumers continue to face very high costs for retail data roaming services. This conclusion is also shared by BEREC, who has observed that competitive pressure in retail data roaming services are not sufficiently strong to bring prices down to reasonable competitive levels and, consequently, recommends regulatory intervention to bring retail data prices down, as was the case for voice and SMS.

The proposal

4. Retain a transitory safety net for retail prices up to 30 June 2016, including a new retail price cap on data roaming services

The transitory retail caps will follow a glide path until the structural solutions are in place (in 2014) after which the safeguard caps would remain flat for up to a further two years, up to 30 June 2016. The retail caps shall be removed completely thereafter or before if market data indicates that competition has developed sufficiently.

The Commission is proposing to extend the retail safeguard caps mechanism to data roaming services. For the provision of regulated roaming data service to which a Euro data tariff applies, the home provider will be required to charge its roaming customers on a per kilobyte basis (unless the customer opts for a price plan).

In addition, measures regarding transparency and the unitization of billing will continue to apply as under the current Regulation with some modifications.

Extension of price caps at wholesale level until 2022

In order to ensure a sustained level playing field, in particular for new entrants in the decoupled roaming market, wholesale caps will have to be maintained for the duration of the new Regulation. Since the structural measures will be well established, it would be possible to remove these caps before 2022 if market data indicates sufficient competitive development. In this respect, it is important to note that the wholesale market for data roaming services exhibits more dynamism than the corresponding wholesale markets for voice and SMS.

The proposal

6. Maintain price caps on wholesale charges until 2022

The price caps on wholesale charges will be retained and will follow a steep decreasing glide path on a yearly basis up to 30 June 2015, after which they will remain flat until expiry of the new Regulation in 2022.

The wholesale price caps could be removed before the expiry of the new Regulation if market data indicates that competition has developed sufficiently.

4. CONCLUSION

This review has established that the measures introduced by the Roaming Regulation have enabled consumers to enjoy significant benefits, both in terms of reduction of prices and improved transparency over the past years. However, despite these positive results, the dynamics of the international mobile roaming market have not changed sufficiently, which demonstrates the limits of the current model's ability to foster competition and ensure a durable solution to a roaming problem.

Furthermore, as confirmed by BEREC's analysis, market forces alone are not expected to deliver significantly lower roaming prices in the forthcoming year. Hence there is a clear need for further regulatory intervention beyond 2012..

The Commission is proposing to revise the Regulation by introducing pro-competitive structural measures and to extend its validity until 30 June 2022. The proposed structural measures aim at tackling the root of the problem, i.e. the lack of competition and consumer choice that lie at the heart of the issue of high roaming prices. This will be done by, on the one hand ensuring that the market is open to different types of providers (thereby increasing roaming offers), while on the other hand raising consumers' awareness of roaming prices and increasing consumers' choice by allowing them to purchase roaming also as a stand alone service.

These measures are expected to lead to a sustainable competitive solution to the roaming market problem, since it is considered that the competitive pressure that they promote will be sufficient in the future to guarantee low retail prices without the need for long term regulation. However, these structural solutions will take time to be implemented and deliver results, which is why the Commission is proposing to retain wholesale caps until the market exhibits sufficient competition and safeguard retail caps for a limited period of time in order to ensure stability and predictability for operators and continued consumer protection. In addition, it is proposed to extend the transitory retail prices caps to the provision of retail data roaming services.

Roaming markets display unique characteristics which justify exceptional measures. Therefore, this intervention should be limited in time so as to expire on 30 June 2022. The Commission will report to Council and Parliament every two years after its entry into force, taking into account the opinion of BEREC.

It is the Commission's intention to do its utmost to assist the European Parliament and the Council in reaching an agreement on the above-mentioned elements in the shortest possible timeframe to ensure that European users of mobile communications services can benefit from these proposals by 1 July 2012. This is important to meet citizens' legitimate expectations and ensure that the EU continues to deliver concrete results for them.