

Telefónica - International Roaming - The importance of proportionate regulation

Telefónica welcomes the opportunity to contribute to the debate on International roaming and the proposed regulation. Telefónica represents one of the few companies with a footprint that covers both the north and south of Europe, together with a range of businesses at different positions in the market. It is from this broad viewpoint that we would like to make a number of observations.

Telefónica continues to believe, that competition not regulation is the best way to maximise benefits to consumers and encourage innovation. Here we are commenting on the proposals for a regulation currently being discussed by the Parliament, not on the need for it.

Telefónica believes that a key issue to address at this time is proportionality. This is especially important in the context of roaming because the intent is effectively to set prices across all 27 member states with a single piece of legislation. If the regulation is to avoid damaging the interests of European consumers, it must do this without distorting markets, reducing competition, disadvantaging some customer groups or removing incentives to invest in infrastructure.

For a roaming regulation to be proportionate it is important that some key facts about roaming are taken into account. First, fewer than 50% of EU citizens travel in any one year for personal reasons. These people can have little or no interest in what happens to roaming tariffs, unless it affects their other mobile services. Secondly, customers do not buy roaming as a discrete service. They buy the ability to make and receive calls overseas as part of their total mobile service (along with a handset, the ability to make and receive calls at home, and numerous other mobile services). Our customers have high levels of overall satisfaction with their mobile service. Customers now have access to a wide choice of tariffs that are designed to meet their varying needs. Thirdly, the costs of providing roaming services vary significantly between operators and from country to country. This is due to a range of factors, including the geography of the country concerned, the seasonality of roaming traffic and the level of coverage offered by the operator in question. Finally, it should be noted that roaming prices (total revenue divided by minutes), have come down by over 20% over the past 12 months.

The proportionate treatment of costs should take account of the differences between operators' costs due to geography, seasonal variations and coverage. For example, in Spain there are extremely high peaks of traffic in tourist areas during July and August when 40% of the users of Spanish networks can be roamers. To provide the network capacity to meet these peaks requires significant investment, even though that capacity might only be used for about two months of the year. The use of Mobile Termination Rates (MTRs) as a simple proxy for international roaming costs does not achieve this. Regulated MTRs are not an assessment of roaming costs. They take no account of the particular characteristics of roaming and tend to exclude or restrict significant common costs such as marketing, customer acquisition (handset subsidies) and billing.

Mobile operators should also be given sufficient pricing flexibility to take into account the particular characteristics of roaming markets. Mobile is a very competitive business, and as capacity costs money, efficient operators always seek to minimise unused capacity. However, all capacity does not have the same value. It is competitively efficient for operators to offer those who are prepared to commit roaming traffic volumes a better price than those who use the networks without any commitment. In order for this to be possible, operators must have sufficient "headroom" within any wholesale price cap regime to negotiate these commercial arrangements.

There have been suggestions that some operators might try to "squeeze" smaller operators in roaming negotiations. If this were to be true it would be a breach of competition law and should be dealt with in that way. However, a sense of proportion is needed. It is hard to believe that most new entrants built business plans that were heavily dependant on international roaming to make them successful. If they are having difficulty with the performance of their business it is unlikely to be due to the price of roaming. Secondly, it is not clear why it would be in any operator's interests to refuse to sell wholesale roaming to a small operator if the business is profitable – although the cost of providing roaming will clearly vary from operator to operator.

Mobile customers range from those who do not roam at all to exceptional high users of roaming, many of whom can be found here in Brussels. Operators must be free to develop competitive tariffs that match individual customers' complete needs, not just roaming. Telefónica O2 for example has a series of tariffs

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under the title of My Europe; in particular a High Roamer option enables customers for a small fixed fee both to have low originating call prices and also to receive incoming calls at no additional charge. These tariffs, which are being progressively rolled out across Europe, are available whatever network you are roaming on, not just those from the Telefónica group. This type of tariff is very attractive to some roaming customers, but not all customers.

A major concern is that retail price controls would prevent customers from benefiting from the My Europe tariffs, because they would not be permitted under the regulation as currently framed. The regulation must be sufficiently flexible to enable customers to choose from a range of tariffs, and must not deliberately or inadvertently create a rigid and ultimately customer unfriendly retail price structure. The currently proposed multiple retail caps would lead to complex retail tariffs.

Proportionate regulation should not be overly complex. As many people are finding out in the course of this legislative process, roaming services are not as simple as they might at first appear. To make sure that any regulation does not have unintended consequences it needs to be kept simple. Multiple caps for different types of calls add complexity and deliver little if anything to users. Any price caps must both deliver confidence to customers but must also allow operators to continue to compete and innovate – across all the member states. A single protective retail cap plus the freedom to choose alternative tariffs would be better than the current proposal. The actual level of any price control is however critical to making a price cap work for all stakeholders. The complicated and inappropriate linking of prices to Mobile Termination Rates should be avoided.

Proportionate regulation should focus on the issue to be addressed and should not go beyond this to regulate areas which have not been the subject of appropriate analysis. It has been suggested that data and SMS should be included in the regulation but this is not appropriate. Data services are still immature and operators are experimenting both with innovative service packages and innovative price packages. There are no obvious winners at this stage. Customers will decide and the market will follow. Introducing regulation while these services are still new and developing risks distorting markets irrevocably. Where SMS is concerned, the issues are not the same as for voice roaming and prices reflect a different cost structure. No justification has been provided for regulation in this area, and there has been no analysis of its potential impact.

Telefónica believes that competitive retail markets should be transparent, and fully supports measures to ensure that prices are clearly indicated to customers. Operators already communicate their prices through many different channels – including web sites, leaflets, customer service, and at point of sale. However, it is important to retain flexibility and deliver information in ways that customers find helpful, that they recognise and without incurring disproportionate costs.

Conclusion

Proportionality

- Proportionate caps should take account of varying wholesale costs and allow innovative retail pricing, without preventing competition and innovation at either the wholesale or retail level. The current proposed caps do not meet this test.
- Proportionate regulation should be simple, as complex regulations nearly always have unintended consequences. Multiple caps should be avoided. The link to Mobile Termination Rates creates an overly complex and inaccurate structure and should also be avoided.
- Proportionate Regulation should address the issue intended – customer confidence in retail voice prices – not unrelated issues. It is not proportionate to extend any regulation to data or SMS services at this time.

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Check roaming prices at www.roaming.gsmeurope.org/