

EUROPEAN PARLIAMENT

2004



2009

Committee on Industry, Research and Energy

PROVISIONAL
2006/0133(COD)

9.1.2007

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services
(COM(2006)0382 – C6-0244/2006 – 2006/0133(COD))

Committee on Industry, Research and Energy

Rapporteur: Paul Rübige

Draftsman(*):
Joseph Muscat, Committee on the Internal Market and Consumer Protection

(*): Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

(COM(2006)0382 – C6-0244/2006 – 2006/0133(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0382)¹,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0244/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Industry, Research and Energy and the opinions of the Committee on Economic and Monetary Affairs, the Committee on the Internal Market and Consumer Protection and the Committee on Culture and Education (A6-0000/2007),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 1

(1) The high level of the prices payable by users of public mobile telephone networks when using their mobile telephones when travelling abroad within the Community is a matter of concern for national regulatory authorities. The European Regulators Group noted at its plenary meeting in May 2005 (inter alia) that retail charges were

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¹ Not yet published in OJ.

very high without clear justification; that this appeared to result both from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator; that reductions in wholesale charges were often not passed *through* to the retail customer; and that there were strong linkages between the markets in the different Member States.

very high without clear justification; that this appeared to result both from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator; that reductions in wholesale charges were often not passed *on* to the retail customer; and that there were strong linkages between the markets in the different Member States. ***Although some operators have recently introduced roaming charges that offer customers more favourable conditions, the evidence remains that prices still do not reflect costs properly.***

Amendment 2
RECITAL 13

(13) The resulting obligations should take effect as soon as possible, ***while providing the operators concerned with a reasonable period to adapt their prices and service offerings to ensure compliance***, and apply directly in all Member States.

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Justification

There has been ongoing discussion over the last months raising awareness among operators. Industry seems already to anticipate price regulation. Therefore a further delay is not justified.

Amendment 3
RECITAL 15 A (new)

(15a) At wholesale level no host network operator should be able to levy charges on any other operator above this maximum per-minute charge. At retail level a tariff below or equal to the maximum per-minute charge (the "Euro Tariff") should also be introduced for which customers should be able to opt at any time and which they should be able to combine with any existing tariff bundle for national

services.

Justification

To introduce a maximum per minute charge opt-in tariff instead of regulating the whole retail market delivers protection to the consumer while leaving industry room to innovate new tariff bundles customized to the individual needs of the user. In connection with transparency requirements obliging industry to support the consumer with price information, customers shall be enabled to make an educated, informed choice between the different offers in the market.

Amendment 4
RECITAL 18

(18) The maximum *price limits* should take account of the ***different*** elements involved in the making of an international roaming call (including overheads, signalling, call origination, transit and termination) ***and the differences in the underlying costs of providing international roaming services in respect of calls made to a destination within a visited country, on the one hand, and calls made back to the roaming customer's home country or a third country within the Community, on the other.***

(18) The maximum *charges* should take account of the ***relevant*** elements involved in the making ***and receiving*** of an international roaming call (including overheads, signalling, call origination, transit and termination). ***Since the differences in the costs of providing international roaming services for calls made or received within a visited country, to or from a customer's home country or to or from a third country seem to be negligible, a single multiplier should be used to calculate the maximum wholesale charge.***

Amendment 5
RECITAL 19

(19) The maximum *price limit* for the provision of an international roaming call at wholesale level should be based on the average per-minute mobile termination rate for operators with significant market power, as such termination rates are already the subject of regulatory supervision in accordance with the 2002 regulatory framework for electronic communications and, therefore, should be determined by reference to the principle of cost-orientation. Given the characteristics of the market for call termination on individual public mobile networks and the

(19) The maximum *charge* for the provision of an international roaming call at wholesale level should be based on the average per-minute mobile termination rate ***calculated as an average of peak and off-peak rates*** for operators with significant market power, as such termination rates are already the subject of regulatory supervision in accordance with the 2002 regulatory framework for electronic communications and, therefore, should be determined by reference to the principle of cost-orientation. Given the characteristics of the market for call termination on

cross-border nature of international roaming, they also provide a stable basis for regulation that is representative of the cost structures of mobile networks across the Community. The average mobile termination rate provides a reliable benchmark for the core cost components at wholesale level and a maximum wholesale price limit based on an appropriate multiple of such an average mobile termination rate should therefore provide an assurance that the real costs of provision of regulated roaming services can be recovered.

individual public mobile networks and the cross-border nature of international roaming, they also provide a stable basis for regulation that is representative of the cost structures of mobile networks across the Community. The average mobile termination rate provides a reliable benchmark for the core cost components at wholesale level and a maximum wholesale price limit based on an appropriate multiple of such an average mobile termination rate should therefore provide an assurance that the real costs of provision of regulated roaming services can be recovered.

Justification

There is evidence that in most Member States national regulatory authorities regulated MTRs as an average over peak and off-peak rates. Therefore this basis seems to be less manipulation prone than taking only peak rates into account.

Amendment 6 RECITAL 20

(20) The *maximum price limit* applicable **at retail level** should provide roaming customers with the assurance that they will not be charged an excessive price when making a regulated roaming call, whilst leaving *the* home operators sufficient margin to differentiate the products they offer to customers.

(20) The *maximum charge* applicable **to the optional Euro Tariff** should provide roaming customers with the assurance that they will not be charged an excessive price when making a regulated roaming call, whilst leaving home operators sufficient margin to differentiate the products they offer to customers.

Amendment 7 RECITAL 20 A (new)

(20a) In order to increase competition in the market for international mobile data communication services and to make charges for new services such as MMS (Multimedia Messaging Service), mobile internet and mobile TV transparent and

comparable for the customer, home providers should be obliged to offer, in addition to the Euro Tariff, an all-inclusive monthly flat-rate, covering all international roaming and data communication services offered by the home provider. The flat rate should enable customers to compare tariff bundles across Europe and should therefore enable them to choose from a wider range of home providers.

Justification

The rapporteur accepts the general stance of the Commission that on the basis of current information (i.e. impact assessment) price regulation of international data services would go beyond the scope of this Regulation. Nevertheless, there is strong evidence that the market for data transfers does not function well. By introducing a European wide flat rate, tariff bundles would become comparable for the consumer across the European Union. This would enhance competition in the market and possibly lead to a downturn in data roaming prices.

Amendment 8
RECITAL 21

(21) Providers of international roaming services for calls made while roaming abroad as covered by this Regulation should have a period within which to adjust their retail prices voluntarily to comply with the maximum limits provided in this Regulation. It is appropriate to allow a period of six months for this purpose, to permit market players to make the necessary adaptations. *deleted*

Amendment 9
RECITAL 22

(22) Similarly, a maximum limit should be applied to the prices that roaming customers may be required to pay for the receipt of voice telephony calls while roaming abroad within the Community in order to ensure that those prices more closely reflect the cost of the provision of such a service, and to give customers *deleted*

greater certainty as to the charges they will incur when answering their mobile phone abroad.

Amendment 10
RECITAL 23

(23) This Regulation should not prejudice innovative offerings to consumers which are more favourable than the maximum per minute charges contained in this Regulation. *deleted*

Amendment 11
RECITAL 26

(26) In order to improve the transparency of retail *prices* for making and receiving roaming calls within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers easily to obtain information on the roaming charges applicable to them in the visited Member State concerned, *on request and* free of charge. *Transparency also requires that providers furnish information on roaming charges when subscriptions are taken out and that they also give their customers periodic updates on roaming charges as well as in the event of substantial changes.*

(26) In order to improve the transparency of retail *charges* for making and receiving roaming calls *as well as for sending and receiving data* within the Community and to help roaming customers make decisions on the use of their mobile telephones while abroad, providers of mobile telephony services should enable their roaming customers easily to obtain information on the roaming charges applicable to them in the visited Member State concerned, free of charge. *This information should include charges for the making and receiving of voice calls and the sending and receiving of data on each available visited network in the Member State concerned. The information should highlight differences between peak and off-peak rates and any other temporal variations. Within one hour of entering another Member State, a roaming customer should be entitled to receive from his/her home provider an automatic SMS, or other appropriate service for visually-impaired customers, that includes personalised pricing information on the retail charges that apply to the making and receiving of calls and to the sending and receiving of data by that customer in the visited Member State. Customers*

should be able to switch between push mode (automatic SMS) to pull mode (SMS on request) at any time.

Amendment 12
RECITAL 26 A (new)

(26a) Transparency also requires that providers should furnish information on roaming charges when subscriptions are taken out and give customers updates on roaming charges periodically as well as in the event of substantial changes. In particular, home providers should furnish customers with full information on the conditions governing the Euro Tariff as well as the all-inclusive monthly flat-rate at regular intervals and to the same extent as customers are informed about co-existing roaming tariffs. Home providers should also inform customers how to switch to either of the mandatory tariff schemes.

Amendment 13
RECITAL 27

(27) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations in this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for mobile customers when roaming within the Community, in particular as regards the specific costs related to roaming calls made in the outermost regions of the Community and the *necessity* to ensure that these costs can be adequately recovered on the wholesale market. **They** should ensure that up-to-date information on the application of this Regulation is made available to mobile

(27) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for electronic communications should have the powers needed to supervise and enforce the obligations in this Regulation within their territory. They should also monitor developments in the pricing of voice and data services for mobile customers when roaming within the Community, in particular as regards the specific costs related to roaming calls made **and received** in the outermost regions of the Community and the *need* to ensure that these costs can be adequately recovered on the wholesale market. **The national regulatory authorities should communicate the results of such monitoring to the Commission every six months following**

users.

the entry into force of this Regulation. Information should be provided on corporate, post-paid and pre-paid customers separately. The Commission should publish a report on developments within the EU every 12 months following the entry into force of this Regulation. The national regulatory authorities should ensure that up-to-date information on the application of this Regulation is made available to mobile users.

Amendment 14
RECITAL 31 A (new)

(31a) Price regulation at wholesale level should cease if a well functioning stock exchange on which roaming minutes and/or bits are traded is present.

Justification

A well functioning stock exchange, on which roaming minutes and/or bits are traded anonymously, would create a level playing field for all operators without discrimination against smaller operators or operators that are in direct competition with each other. A wholesale price cap which aims at reaching the same result would no longer be needed then.

Amendment 15
ARTICLE 1, PARAGRAPH 1

1. This Regulation introduces a common mechanism, ***called*** the European Home Market Approach, for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making calls and receiving calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators. It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating within the Community and applies both to charges levied between

1. This Regulation introduces a common mechanism, ***based on*** the European Home Market Approach, for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making calls and receiving calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators ***and preserving both incentives for innovation and consumer choice***. It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls originating and terminating

network operators at wholesale level and to charges levied by the home provider at retail level.

within the Community and applies both to charges levied between network operators at wholesale level and to charges levied by the home provider at retail level.

Amendment 16

ARTICLE 1, PARAGRAPH 1 A (new)

1a. This Regulation lays down rules to increase price transparency and to improve the provision of tariff information to users of international roaming services, including data communication services.

Amendment 17

ARTICLE 2, PARAGRAPH 2, POINT (D)

(d) “regulated roaming call” means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public telephone network within the Community;

(d) “regulated roaming call” means a mobile voice telephony call made ***or received*** by a roaming customer, originating ***or received*** on a visited network and terminating on a public telephone network within the Community;

Amendment 18

ARTICLE 3, PARAGRAPH 1 A (new)

For the purpose of providing international roaming services every home provider shall have access to and use of the terrestrial public mobile telephony networks situated in the Member States other than that of the home network.

Amendment 19

ARTICLE 4, TITLE

Retail charges for the making of regulated

Retail charges for the making ***and***

roaming calls

receiving of regulated roaming calls

Amendment 20
ARTICLE 4, PARAGRAPH 1

Subject to Article 5, the total retail charge, excluding VAT, which a home provider may levy from its roaming customer for the provision of a regulated roaming call may not exceed **130%** of the applicable maximum wholesale charge for that call determined in accordance with Annex I. The charge limits in this Article shall include any fixed elements associated with the provision of regulated roaming calls, such as call set up charges or opt-in fees.

Subject to Article 5, the total retail charge, excluding VAT, which a home provider may levy from its roaming customer for the **making** of a regulated roaming call may not exceed [*x %*] of the applicable maximum wholesale charge for that call determined in accordance with Annex I. ***For regulated roaming calls received a home provider may not levy on its roaming customers charges exceeding one third of the maximum retail charge applicable to roaming calls made.*** The charge limits in this Article shall include any fixed elements associated with the provision of regulated roaming calls, such as call set up charges or opt-in fees.

The charge limits in this Article shall apply to a Euro Tariff that every home provider must offer. Customers may switch to and from the Euro Tariff voluntarily and any such switch shall be conducted free of charge or penalty and may not entail conditions or restrictions relating to existing components of the subscription. The Euro Tariff may be combined with any tariff bundle.

Justification

To introduce a price regulated standardised opt-in tariff instead of regulating the whole retail market delivers protection to the consumer while leaving industry room to innovate new tariff bundles customized to the individual needs of the user. In connection with transparency requirements obliging industry to support the consumer with price information, customers shall be enabled to make an educated, informed choice between the different offers in the market.

Amendment 21
ARTICLE 4, PARAGRAPH 1 A (new)

1a. In addition to the Euro Tariff

provided for in paragraph 1, every home provider shall offer a fair-use, all-inclusive monthly flat-rate to which no charge limits shall apply. The flat rate shall cover international roaming voice and data communication services (including SMS and MMS) within the Community.

Justification

The rapporteur accepts the general stance of the Commission that on the basis of current information (i.e. impact assessment) price regulation of international data services would go beyond the scope of this Regulation. Nevertheless, there is strong evidence that the market for data transfers does not function well. By introducing a European wide flat rate, tariff bundles would become comparable for the consumer across the European Union. This would enhance competition in the market and possibly lead to a downturn in data roaming prices.

Amendment 22
ARTICLE 5, PARAGRAPH 1

The obligations in Article 4 shall take effect ***six months after the*** entry into force of this Regulation.

The obligations *set out* in Article 4 shall take effect ***on the date of*** entry into force of this Regulation ***subject to Article 10(5).***

Justification

There has been ongoing discussion over the last months raising awareness among operators. Industry seems already to anticipate price regulation. Therefore a further delay is not justified

Amendment 23
ARTICLE 6

Article 6

deleted

Retail charges for the receipt of calls while roaming in the Community

The total retail charge, excluding VAT, which a home provider may levy from its roaming customer in respect of the receipt by that customer of voice telephony calls while roaming on a visited network shall not exceed, on a per minute basis, 130% of the average mobile termination rate

published pursuant to Article 10(3). The charge limits in this Article shall include any fixed elements associated with the provision of regulated roaming calls, such as one-off charges or opt-in fees.

Amendment 24
ARTICLE 7, PARAGRAPH 1

1. *Each* home provider shall provide to its roaming customer ***on request*** personalised pricing information on the retail charges that apply to the making and receipt of calls by that customer in the visited Member State.

1. *Every* home provider shall provide to *each of* its roaming customers personalised pricing information on the retail charges that apply to the making and receiving of calls ***and sending and receiving of SMS and MMS and other international roaming data communication services*** by that customer in the visited Member State.

Amendment 25
ARTICLE 7, PARAGRAPH 2

2. *The customer may choose to make such a request by means of a mobile voice call or by sending an SMS (Short Message Service), in either case to a number designated for this purpose by the home provider, and may choose to receive the information either during the course of that call or by SMS (in the latter case without undue delay).*

deleted

Amendment 26
ARTICLE 7, PARAGRAPH 2 A (new)

2a. Within an hour of entering a Member State other than that of the home provider a roaming customer shall be entitled to receive from his/her home provider an automatic SMS, or other appropriate service for visually-impaired customers, that includes only personalised pricing information on the retail charges that apply to the making and receiving of calls and to the sending and receiving of SMS

and MMS and any other data communication services by that customer on every network in the visited Member State. Customers may switch between push-mode (i.e. automatic price information per SMS) to pull- mode (i.e. price information per SMS on request) at any time.

Amendment 27
ARTICLE 7, PARAGRAPH 3

3. The information service referred to above shall be provided free of charge, *both as regards the making of the request and the receipt of the information requested.*

3. The information service referred to above shall be provided free of charge.

Amendment 28
ARTICLE 7, PARAGRAPH 4

4. The personalised pricing information referred to in this Article shall be the charges applicable under the tariff scheme of the roaming customer concerned to the making and receipt of calls on any visited network in the Member State in which the customer is roaming.

deleted

Amendment 29
ARTICLE 7, PARAGRAPH 5

5. Home providers shall provide new customers with full information on applicable roaming charges when subscriptions are taken out. *Home providers* shall also provide updates on applicable roaming charges to their customers on a periodic basis and, in addition, each time there is a substantial change in these charges.

5. Home providers shall provide new customers with full information on applicable roaming charges when subscriptions are taken out. *They* shall also provide updates on applicable roaming charges to their customers on a periodic basis and, in addition, each time there is a substantial change in these charges. *Home providers shall immediately provide every customer with full information on the conditions governing the Euro Tariff*

provided for in Article 4(1) and the all-inclusive monthly flat-rate provided for in Article 4(2) and shall explain the procedure for switching to either of these mandatory tariffs.

Amendment 30
ARTICLE 8, PARAGRAPH 6

6. National regulatory authorities shall monitor developments in wholesale and retail prices for the provision to roaming customers of voice *and data communications services, including the Short Message Service (SMS) and the Multimedia Messaging Service (MMS)*, in particular in the outermost regions of the Community, and shall communicate the results of such monitoring to the Commission *on request*.

6. National regulatory authorities shall monitor developments in wholesale and retail prices for the provision to roaming customers of voice *roaming services*, in particular in the outermost regions of the Community, and shall communicate the results of such monitoring to the Commission *every six months following the entry into force of this Regulation. Information shall be provided on corporate, post-paid and pre-paid customers separately.*

On the basis of the reports of the national regulatory authorities and having regard to the opinion of the European Regulators Group, the Commission shall, within 12 months of the entry into force of this Regulation, provide the Parliament and the Council with an analysis of wholesale and retail international roaming prices in the Community. If retail international roaming prices have not decreased significantly after the entry into force of this Regulation the Commission shall, acting in accordance with the regulatory procedure with scrutiny referred to in Article 13(2), adapt the mobile termination rate multiplication factor referred to in Annex I.

Amendment 31
ARTICLE 8, PARAGRAPH 6 A (new)

6a. National regulatory authorities shall monitor developments in wholesale and retail prices for the provision to roaming

customers of SMS and other data communication services and shall communicate the results of such monitoring to the Commission every six months following the entry into force of this Regulation. Information shall be provided on corporate, post-paid and pre-paid customers separately.

On the basis of the reports of the national regulatory authorities the Commission shall, within 18 months of the entry into force of this Regulation, provide the Parliament and the Council with an analysis of wholesale and retail charges for international roaming data communication services in the Community. If international roaming data charges have not decreased significantly after the entry into force of this Regulation, the Commission shall assess the need for a regulation to reduce charges for the provision of international roaming data communication services and shall submit a proposal if appropriate.

Amendment 32
ARTICLE 12, PARAGRAPH 1

The Commission shall review the functioning of this Regulation and report to the European Parliament and the Council no later than two years after the date of its entry into force. In its report the Commission shall include its reasoning regarding the continued need for regulation *or* the possibility of *its* repeal, in the light of developments in the market *and* with regard to competition. For this purpose, the Commission may request information from the Member States and the national regulatory authorities, which shall be supplied without undue delay.

The Commission shall review the functioning of this Regulation and report to the European Parliament and the Council no later than two years after the date of its entry into force. In its report the Commission shall include its reasoning regarding the continued need for regulation, ***the appropriateness of introducing "calling-party-pays" provisions*** *and* the possibility of repeal, in the light of developments in the market, with regard to competition ***and the presence or absence of a well functioning stock exchange on which roaming minutes and bits are traded.*** For this purpose, the Commission may request information from the Member States and

the national regulatory authorities, which shall be supplied without undue delay.

Amendment 33
ANNEX I

Wholesale charges for the making of regulated roaming calls referred to in *Article 3*

The total wholesale *charges* that *the* operator of a visited network may levy *from the* operator of the roaming customer's home network for the making of a regulated roaming call originating on that visited network shall not exceed, on a per-minute basis, an amount equal to the average mobile termination rate published pursuant to Article 10(3) multiplied:

a) by a factor of two, in the case of a regulated roaming call to a number assigned to a public telephone network in the Member State in which the visited network is located; or

b) by a factor of three, in the case of a regulated roaming call to a number assigned to a public telephone network in a Member State other than that in which the visited network is located.

The charge limits in this Annex shall include any fixed elements, such as call set-up charges.

Wholesale charges for the making of regulated roaming calls referred to in *Articles 3 and 4*

The total wholesale *charge* that *one* operator of a visited network may levy *on any* operator of a roaming customer's home network for the making of a regulated roaming call originating on that visited network shall not exceed, on a per-minute basis, an amount equal to the average mobile termination rate published pursuant to Article 10(3) multiplied by a factor of *[y] for all calls* to a public telephone network, *whether* in the Member State in which the visited network is located or in a Member State other than that in which the visited network is located.

Amendment 34
ANNEX II, POINT (1), POINT (A)

(a) "National Weighted Average MTR" shall mean the average of the Per-SMP

(a) "National Weighted Average MTR" shall mean the average of the Per-SMP

Operator MTRs, weighted on the basis of *the number of Active Subscribers* per SMP Operator;

Operator MTRs, weighted on the basis of *total traffic minutes* per SMP Operator

Amendment 35

ANNEX II, POINT (1) POINT (B)

(b) “Per-SMP Operator MTR” shall mean the average per-minute charge (including set up charges), based on a three-minute-call at *peak* rate, excluding VAT and in the national currency of the Member State concerned, for the termination of voice calls in its mobile network applied by each SMP Operator, as determined in accordance with a methodology approved by the national regulatory authority;

(b) “Per-SMP Operator MTR” shall mean the average per-minute charge (including set up charges), based on a three-minute-call at *average* rate (*i.e. average of peak and off-peak rates*), excluding VAT and in the national currency of the Member State concerned, for the termination of voice calls in its mobile network applied by each SMP Operator, as determined in accordance with a methodology approved by the national regulatory authority;

Amendment 36

ANNEX II, POINT (1) POINT (D)

(d) “Active Subscribers per SMP Operator” shall mean the aggregate of the number of each SMP Operator’s own active subscribers and the number of active subscribers of each other mobile provider which uses the SMP Operator’s network for the termination of voice calls to its customers;

deleted

Amendment 37

ANNEX II, POINT (1) POINT (E)

(e) “active subscribers” shall mean active mobile subscribers (both pre-paid and post-paid) determined in accordance with a methodology approved by the national regulatory authority.

deleted

Amendment 38
ANNEX II, POINT (2)

(2) The average mobile termination rate published pursuant to Article 10(3) shall be the average of the National Weighted Average MTRs, ***itself weighted on the basis of the total number of active subscribers in each Member State***. It shall be calculated using the information specified in paragraph (3) below which has been communicated to the Commission by the national regulatory authorities in accordance with a request pursuant to Article 10(2) or (4).

(2) The average mobile termination rate published pursuant to Article 10(3) shall be the average of the National Weighted Average MTRs. It shall be calculated using the information specified in paragraph (3) below which has been communicated to the Commission by the national regulatory authorities in accordance with a request pursuant to Article 10(2) or (4).

EXPLANATORY STATEMENT

Introduction

The ability of the European citizens to use their mobile devices while travelling abroad from their home country is a key element when talking about an **internal market in mobile communications in Europe**. The current roaming market shows evident market failure which impedes European citizens in using their mobile devices when going from one Member State to another.

We clearly support the general thrust of the Commission Proposal for a Regulation on roaming on public networks within the community. Nevertheless we see room for improvements as increased price transparency for the consumer is concerned in order to **enable the consumer to make an informed choice** and as creating a level playing field for mobile network operators is concerned in order to **raise competition in the internal roaming market**.

The European Parliament respects the Commission's concerns to regulate prices of international mobile data transfer services on the basis of the current information about this market segment, in particular without a proper impact assessment. Nevertheless the European Parliament points out to the strong need of closely assessing and monitoring this market segment as there seems to be strong evidence for market failure.

I. Market Failure

1. Very high prices

The price level of mobile communication services offered to consumers when roaming have been varying from high to often excessive. Although **especially charges at retail level have been unjustifiably high**, there is evidence that also at wholesale level charges levied by the host network operators, in particular from smaller operators, are way above costs incurred by the host network operators and thus impeding fair competition.

2. Lack of transparency

European citizens are in need of seamless quality communication. Given that eight out of ten EU-citizens have a mobile phone and that in some member states penetration rate exceeds 100% (Italy 123,2%, Portugal 117,1%, UK 116,3%)¹ the need is apparent. To this end, **transparent pricing mechanisms are essential**. At business-to-business level, transparency has to ensure the functioning of the internal market. At business-to-customer level the main objective is to provide the consumer with complete and comparable information on current prices in order to enable the consumer to make a well informed choice.

II. Disadvantages of a non-functioning internal telecommunication market

1. Non attainment of the Lisbon strategy goals

¹As of end Q4/2005

Source: Credit Suisse, Prof. Gerpott Analysis.

The main objective of the Lisbon agenda is to make Europe the most competitive knowledge-based economy in the world by 2010. The European Council of March 2005 called upon the Commission, the Council and the Member States to relaunch the Lisbon Strategy by refocusing on growth and employment in Europe. An equitably functioning labour market could foster growth and could give fresh impetus for a competitive European economy. In order **to ensure the global competitiveness of the European market, a dynamic internal market without internal barriers is needed.** Unjustifiable high prices impeding customers from using their handsets constitute barriers to the internal service market.

2. No creation of knowledge based internal market

The market for mobile communications, being part of the wider market for information society services, comprises not only voice telephony, but also the provision of other newer mobile communication services. In particular VOIP, 3G networks, GPS, Wi-Fi, mobile internet and TV as well as new handsets supporting mobile data transfer at a larger scale are **promising developments which should not be hindered by a lack of demand due to deterrent prices.**

3. Self-regulation is not functioning

Self-regulation would mean that operators or associations would negotiate and agree amongst themselves guidelines at European level. Operators would have to guarantee substantial price reductions at wholesale and retail level. It seems that such proposals have not been put in place so far.

4. Non-functioning in figures

Surveys have shown that

- almost eight out of ten Europeans have a mobile phone.
- mobile phone users rely very heavily on international roaming services, since the majority of users (9 out of 10) opt for that formula when travelling abroad, instead of buying a new SIM-card;
- a clear majority of users limit their mobile communications when travelling abroad
- excessive communication costs are by far (81% of replies) the main reason why Europeans use their phone less often while travelling abroad
- there is a considerable lack of transparency with regard to prices, since 4 out of 10 Europeans do not have a clear idea of what their calls cost
- a clear majority of Europeans (70% of replies) want the European Union to take action in order to regulate the price of calls and text messages so that roaming charges are not unreasonably higher than local prices

B Proposed Improvements

The creation of a well functioning European internal telecommunication market is the ultimate objective of this Regulation. Geographical barriers impeding dynamic competition have to be overcome. Transparency for the consumers as well as for the industry has to be increased and may partly contribute to achieving the overall objective.

5. Wholesale Regulation

Price regulation at wholesale level is the key driver in order to obtain the objectives set out above. Price regulation should create a level playing field for big and small, old and new (market access), northern and southern (tourism) and eastern and western (level of income) operators in order to ensure competition. In order to ensure fair competition all operators shall be submitted to a **must-carry obligation for roaming services** at wholesale level.

The basis for the wholesale regulation has to be transparent, not manipulation-prone, equally applicable in all Member States and should not constitute excessive administrative burden for regulatory authorities.

The Regulation at wholesale level should be based on mobile termination rates (MTRs) calculated as an **average over all 27 member states**. The absolute price cap at wholesale level is calculated by **multiplying the average MTR by a single factor**. No mobile network operator may levy charges above this limit from any other operator.

Price regulation at wholesale level should enter into force without delay.

6. Sunset clause

If industry were to **establish a stock market** which covers the whole European roaming market (incoming and outgoing calls), operators trading their entire volume of roaming minutes on this stock market would be no longer subject to regulation at wholesale level.

7. Retail Regulation

Price regulation at retail level should above all ensure that price reductions granted by operators at wholesale level are passed on to the consumers while leaving operators enough room for innovation of new services and tariff bundles.

The absolute price cap at retail level shall only apply to a **regulated retail tariff ("Euro Tariff")** which has to be offered by any operator on a mandatory basis. This tariff should consist of an all-inclusive price per call or per time unit and may be adapted by the European Parliament and the European Council if necessary. Operators are obliged to provide full information on the conditions of this tariff and allow the consumer to easily opt into the "Euro Tariff".

In order to raise competition in the market for mobile data transfer and to create European wide comparability of roaming service prices, operators shall also be obliged to offer an international **all-inclusive monthly flat rate**. This flat rate has to comprise the basic fee, national and international roaming call charges, charges for mobile data transfer (SMS, MMS, Mobile TV, etc.) and charges for any services offered to the consumer at a later point in time. No price regulation shall apply to the flat rate.

If both requirements ("Euro Tariff" and all-inclusive flat rate) are met by operators **all other existing or new international roaming tariff models are not subject to regulation** thus leaving operators the freedom to customize their service bundles.

Price regulation at retail level should come into force without delay and shall expire when the geographical price barriers are overcome and a well functioning internal market is established.

8. Transparency

An active "push system" is preferable to price information on request ("pull system"). In order to avoid spamming information has to be restricted to the indication of prices and consumers must be given the possibility to switch to a "pull system" if they wish to do so.

Consumers have to be informed in real time about the costs they are encountering while roaming

Proportionality of costs of informing consumers has to be ensured.

In order to be able to pass on price reductions granted at wholesale level, transparency on prices charged among operators has to be increased. As long as there is no European regulatory authority, national regulators are asked to ensure transparency.

9. Further Steps

The European Parliament asks the Commission to **closely monitor price developments in international mobile data transfer** and assess the necessity of further regulation in this field. The rapporteur points out to the high risk for innovation of new technologies and services in this field due to excessive pricing.

C. Goals to be attained

In this context, the proposed regulation has to achieve a **balanced approach** taking into account both the **interests of the customer**, as well as the **interests of the mobile telecommunication industry**. Thus should achieve a significant reduction in roaming prices as well as keep the level playing field for the mobile operators competitive.