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Committee on Economic and Monetary Affairs

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OPINION

of the Committee on Economic and Monetary Affairs

for the Committee on Industry, Research and Energy

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))

Draftsman: Andrea Losco

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SHORT JUSTIFICATION

1. Background

About 147 million European Union citizens (37 million tourists and 110 million business customers)¹ are at present affected by the extremely high charges for international roaming by mobile telephony, that is, the opportunity to make or merely receive mobile phone calls abroad.

Such calls are made possible through international roaming agreements between the operator who has the relationship with the customer, and the foreign operator to whose network the customer gains access.

Consumer associations, national regulatory authorities and most political leaders agree that the charge for roaming services has not fallen as a result of the dynamic effect of competition between telephone service operators, although the phenomenon has been shown to apply to national mobile communications. Instead roaming rates have remained unjustifiably high, lacking in transparency and suspiciously similar between the various operators working in a given Member State.

In view of the obvious unwillingness of telephone service providers to reduce their roaming rates, in spite of warnings voiced for several years at national and European level, and most recently by Parliament itself in its Resolution of December 2005, the Commission put forward the present proposal for a regulation in July last year.

2. Main points of the Commission proposal

A. Regulation of wholesale charges

The proposal sets price limits for wholesale charges. For local calls made within the country visited the wholesale price limit is equal to twice the Community average mobile termination rate. For international calls, made by customers to their country of origin or another Community Member State, the wholesale price limit is equal to three times the Community average mobile termination rate.

B. Regulation of retail charges

The price limit for the supply of retail roaming is 130 % of the limit applied to wholesale charges. For received calls, this threshold applies until the entry into force of the new regulation. But for outward calls the retail charge limits will enter into force automatically after six months.

C. Transparency of retail prices

The proposal also encourages price transparency by introducing the requirement on mobile telephony service providers to give their subscribers personalised information on roaming

¹ Commission impact assessment in SEC (2006) 925, p. 19.

charges on request and free of charge, by Short Message Service (SMS) or orally.

3. The proposals

The draftsman is bound to admit to some perplexity at this anomalous proposal for a regulation. He is firmly convinced that the highly acceptable aim of reducing the price of a product should be pursued through healthy competition between market forces rather than by means of a dirigiste intervention for regulating prices directly.

While bearing these reservations of principle in mind, he does recognise that the normal rules of competition have not worked in the case of this particular service of mobile telephony.

In view of the specific nature of international roaming markets and the cross-border nature of such services, the inadequacy of the current legislative framework, the inability of national regulators to intervene effectively, and the fact that in this case wholesale providers are situated in Member States different from the one in which consumers use their services, he agrees with the Commission on the urgent need to intervene by taking exceptional measures.

So within the framework laid down by the Commission, it seems appropriate to propose a few specific amendments, concerning:

A. Retail charges

The draftsman considers that the 130 % margin proposed by the Commission is excessively low. This threshold, which should cover both retail costs and profits, is likely to result in excessive pressure on the very aim of encouraging competition and diversity of supply. Prices are likely to end up uniformly positioned at the proposed upper limit and this could well have an adverse effect on small operators who are not aligned with the major European groups or partnerships, eliminating an incentive to competition, and more generally on the flexibility of charges. It is therefore proposed to set an upper retail price limit of 150 % of the proposed wholesale value.

B. Transparency

It is important to encourage transparency in retail prices by introducing the automatic requirement on mobile telephony service providers to supply subscribers with information on roaming charges when they cross the frontier.

C. A future legal framework for SMS and multimedia message services (MMS)

Finally, it is proposed to include SNS and MMS in the forthcoming review of the legal framework for electronic communications; these services are at present excluded from the proposal but are the subject of real tariff abuses.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1
RECITAL 14

(14) A common mechanism, to be called the European Home Market Approach, should be employed for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming voice services when making calls or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators. In view of the cross-border nature of the services concerned, a common mechanism is needed so that mobile operators are faced with a single coherent regulatory framework based on objectively established criteria.

(14) A common mechanism, to be called the European Home Market Approach, should be employed for ensuring that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming voice **and data** services when making calls or receiving voice calls **or using data services**, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators. In view of the cross-border nature of the services concerned, a common mechanism is needed so that mobile operators are faced with a single coherent regulatory framework based on objectively established criteria. ***To secure effective retail competition and ensure that all mobile operators in the Community are able to compete effectively, mobile operators should be under an obligation to provide wholesale international roaming services to all other operators based in the Community upon request.***

Justification

In order to compete effectively mobile operators should be obliged to provide wholesale international roaming services to all other operators. This will ensure no operator is excluded from access to wholesale roaming services.

Amendment 2
RECITAL 15

(15) The most effective and proportionate mechanism for regulating the level of prices for making international roaming calls in accordance with the above considerations is the setting at Community level of maximum per-minute charges at both retail and

(15) The most effective and proportionate mechanism for regulating the level of prices for making international roaming **voice** calls in accordance with the above considerations is the setting at Community level of maximum per-minute charges at both retail

¹ Not yet published in OJ.

wholesale level.

and wholesale level. *For data services, in view of the speed of technological change and the growing role of the short message service (SMS) and the multimedia messaging service (MMS), national regulatory authorities and the Commission should supervise wholesale and retail data prices, including SMS and MMS charges, and include them in the future review of the legal framework in the event that prices do not decrease.*

Amendment 3
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 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 **receive** information on **the existence of steering agreements between the home provider and the provider of the visited network and on** the roaming charges applicable to them in the visited Member State concerned free of charge. **This information should include the charges for making and receiving calls in the Member State concerned.** 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.

Amendment 4
RECITAL 27

(27) The national regulatory authorities which are responsible for carrying out tasks under the 2002 regulatory framework for

(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 users.

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. ***The national regulatory authorities should communicate the results of such monitoring to the Commission every six month starting from the date of entry into force of this Regulation.*** They should also ensure that up-to-date information on the application of this Regulation is made available to mobile users.

Amendment 5
RECITAL 31

(31) This Regulation should be reviewed no later than two years after its entry into force, to ensure that *it* remains necessary and appropriate to the conditions prevailing in the electronic communications market at the time.

(31) This Regulation ***aims at correcting a situation of deficient functioning of the market through the introduction of measures that restore immediately an effective competition which grants benefits to consumers. It does not have a permanent vocation and therefore it*** should be reviewed no later than two years after its entry into force, to ensure that ***legal intervention regulating the wholesale and retail charges*** remains necessary and appropriate to the conditions prevailing in the electronic communications market at the time ***and to examine whether the Regulation should be repealed or temporarily substituted by a less restrictive measure.***

Amendment 6
RECITAL 31 A (new)

(31a) The application of this Regulation shall be postponed as regards Bulgaria and Romania, pending the outcome of a specific impact assessment to be carried out

by the Commission in relation to those Member States. In any event, the implementation of any cap on roaming wholesale and retail charges should be phased in by means of a glide path for Bulgaria and Romania.

Justification

The markets in Bulgaria and Romania are relatively immature and need vital investments in network improvements. It is thus essential to have a specific impact analysis on those two new member states before implementing the Roaming Regulation.

Amendment 7

ARTICLE 1, PARAGRAPH -1 (new)

-1. This Regulation lays down rules for increasing price transparency and improving the provision of tariff information to consumers in international roaming services.

Justification

The purposes of the regulation should include that of laying down rules to increase price transparency and improve the provision of information to consumers of international roaming services.

Amendment 8

ARTICLE 2, PARAGRAPH 2, POINTS (E A) AND (E B) (new)

(ea) “new roaming customers” means those roaming customers referred to in point (e) who, after the obligations under Article 4 have come into effect, have (i) signed a contract with a home provider for the first time, (ii) signed a contract with a new home provider, or (iii) purchased a prepaid subscriber identity model (SIM)-card;

(eb) “existing roaming customers” means roaming customers referred to in point (e) not falling within the scope of the definition set out in point (ea) or new roaming customers who have opted out of the consumer protection tariff provided for in Article 4.

Justification

The amendment introduces definitions of 'new roaming customers' and 'existing roaming customers', consistently with tabled amendments.

Amendment 9
ARTICLE 3, TITLE

Wholesale charges for ***the making of***
regulated roaming calls

Wholesale charges for regulated roaming
calls

Justification

The separate cap for local and other calls will cause big confusion. Therefore a single higher cap equal to the average mobile termination rate published pursuant to Article 10(3) multiplied by a factor of 3.0 would be more adequate.

Amendment 10
ARTICLE 4

Retail charges for ***the making of*** regulated
roaming calls

Retail charges for regulated roaming calls

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 ***average*** retail charge, excluding VAT, which a home provider may levy from its roaming customer for ***making and receiving*** a regulated roaming call may not exceed ***150%*** 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.

Justification

The proposed upper limits on retail prices of call charges are too low and leave no space for creative competition amongst different types of operators and services. Therefore it is necessary to set a single and higher average retail cap in combination with maximum price caps for individual calls, in order to allow more flexibility for the operators and thus better services for the consumers.

Amendment 11
ARTICLE 4 A (new)

Article 4a
Consumer protection tariff

- 1. Home providers shall be obliged to make available to all roaming customers, clearly and transparently, a consumer protection tariff complying with paragraph 2.*
- 2. The retail charge per minute (excluding VAT), which a home provider may levy from its roaming customers for the provision of roaming calls may not exceed EUR 0,50 for calls made and EUR 0,25 for calls received.*
- 3. Existing roaming customers shall be given the opportunity to switch to the consumer protection tariff. The switch shall be free of charge and may not be subject to conditions and restrictions pertaining to existing elements of the subscription.*
- 4. The consumer protection tariff shall be offered automatically to new roaming customers taking out a subscription, unless they deliberately opt for another tariff. In the event that a new roaming customer deliberately opts for another tariff, the customer shall be free to revert to the consumer protection tariff within a maximum period of 6 months, while retaining the other elements of the subscription.*
- 5. 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.*

Amendment 12
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 13
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. Each home provider shall ***automatically*** provide to its roaming customer personalised pricing information on the retail charges ***and the existence of specific steering agreements with other mobile telephony service providers*** that apply to the making and receipt of calls by that customer in the visited Member State.

Justification

To improve transparency and competition, the customer should be informed about retail charges and the existence of steering agreements between the home provider and the providers of visited networks in order to make a choice based on a complete information.

Amendment 14
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).***

2. The ***roaming*** customer ***shall receive the information set out in paragraph 1*** by means of a mobile voice call or SMS. ***All providers of mobile telephony service operating in the visited country that have steering agreements with the home provider shall provide that information within one hour of the customer entering the visited Member State.***

Amendment 15
ARTICLE 7, PARAGRAPH 3 A (new)

3a. The customer may at any time request termination of the above free information service.

Justification

To avoid unwanted messages being sent, particularly for transborder customers, there should

be an opportunity to opt for a voluntary 'pull system' at any time.

Amendment 16
ARTICLE 8, PARAGRAPH 1 A

1a. National regulatory authorities shall make information pertaining to the application of this Regulation, in particular Articles 3, 4, and 4a, publicly available in a manner that enables interested parties to have easy access to the information.

Justification

The results of the monitoring and supervising procedure, as set in paragraph 1 of this Article, should be transparent and public, so as to enable interested parties and consumers to be well informed.

Amendment 17
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 services, in particular in the outermost regions of the Community, and shall communicate the results of such monitoring to the Commission ***every six month starting on the date of the entry into force of this Regulation***.

Justification

In order to ensure a quick passage for this regulation data roaming should not be directly included in this regulation. However, it remains important that the national regulators and the Commission monitor the roaming costs in this field, assess the results and bring forward corresponding regulation should it be deemed necessary. The appropriate place for this is in the 'Review' Article 12 – see other amendments.

Amendment 18
ARTICLE 10, PARAGRAPH 5

5. Undertakings subject to the requirements of this Regulation shall ensure that any changes to their charges which are required to ensure compliance with Articles 3, 4 ***and***

5. Undertakings subject to the requirements of this Regulation shall ensure that any changes to their charges which are required to ensure compliance with Articles 3 ***and*** 4

6 take effect within two months from each publication pursuant to the preceding paragraphs of this Article.

take effect within two months from each publication pursuant to the preceding paragraphs of this Article.

Justification

The proposed upper limits on retail prices of call charges are too low and leave no space for creative competition amongst different types of operators and services. Therefore it is necessary to set a single and higher average retail cap in combination with maximum price caps for individual calls, in order to allow more flexibility for the operators and thus better services for the consumers.

Amendment 19
ARTICLE 11 A (new)

Article 11a

Data services

1. National regulatory authorities shall monitor developments in wholesale and retail prices for the provision to roaming customers of data transfers, SMS and MMS, including collecting data on average wholesale international roaming prices charged by mobile operators within the Community and shall communicate the results of such monitoring to the Commission 12 months after the entry into force of this Regulation and thereafter on request.

2. On the basis of the data specified in paragraph 2, the Commission shall, within 18 months of the entry into force of this Regulation, report back to the European Parliament and the Council with an analysis of wholesale international roaming data prices in the Community. If wholesale international roaming data prices have not decreased to levels commensurate with voice roaming after the entry into force of this Regulation, the Commission shall assess the need for a regulation to reduce wholesale prices for the provision to roaming customers of data communication services, and shall propose an appropriate regulation if necessary.

Justification

In order to ensure a quick passage for this regulation data roaming should not be directly included in this regulation. However, it remains important that the national regulators and the Commission monitor the roaming costs in this field, assess the results and bring forward corresponding regulation should it be deemed necessary.

Amendment 20
ARTICLE 12

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 ***or its temporal substitution with a less restrictive intervention*** in the light of developments in the market and with regard to competition, ***in particular, the economic impact on small and independent operators and their competitiveness, as well as in the light of the report of the Commission referred to in Article 11a on charges on roaming for data services.***

Amendment 21
ARTICLE 16 A (new)

Article 16a

Derogation

The provisions of this Regulation shall not apply to Bulgaria and Romania.

The Commission shall monitor all developments relating to wholesale and retail prices for the provision of roaming voice communication services by home operators in Bulgaria and Romania and prepare an impact assessment no later than two years after the entry into force of this Regulation.

Justification

The markets in Bulgaria and Romania are relatively immature and need vital investments in network improvements. It is thus essential to have a specific impact analysis on those two new

member states before implementing the Roaming Regulation.

Amendment 22

ANNEX I

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.

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 ***by a factor of two-and-a-half.***

Justification

The proposed upper limits on wholesale charges are too low and would have serious negative effects on operators especially in tourist countries. Moreover the separate cap for local and other calls will cause big confusion. Therefore a single higher cap equal to the average mobile termination rate published pursuant to Article 10(3) multiplied by a factor of 3.0 would be more adequate.

PROCEDURE

Title	Roaming on public mobile networks
References	COM(2006)0382 - C6-0244/2006 - 2006/0133(COD)
Committee responsible	ITRE
Opinion by Date announced in plenary	ECON 5.9.2006
Enhanced cooperation - date announced in plenary	5.9.2006
Drafts(wo)man Date appointed	Andrea Losco 25.9.2006
Discussed in committee	30.1.2007 20.3.2007
Date adopted	21.3.2007
Result of final vote	+: 24 -: 15 0: 1
Members present for the final vote	Pervenche Berès, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Piia-Noora Kauppi, Wolf Klinz, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Hans-Peter Martin, Gay Mitchell, Cristobal Montoro Romero, Lapo Pistelli, John Purvis, Alexander Radwan, Bernhard Rapkay, Heide Rühle, Eoin Ryan, Antolín Sánchez Presedo, Cristian Stănescu, Margarita Starkevičiūtė, Ieke van den Burg, Sahra Wagenknecht
Substitute(s) present for the final vote	Katerina Batzeli, Valdis Dombrovskis, Harald Ettl, Werner Langen, Janusz Onyszkiewicz, Gianni Pittella, Andreas Schwab, Lars Wohlin