

Presentation BEREC Chairman Chris Fonteijn

on

International Roaming for IMCO

5 October 2011

Thank you, Mr Chairman for giving me the opportunity to speak today. I am honoured to be invited to the IMCO committee as well after having been able to present BEREC's view on international roaming in the ITRE committee. Much of my presentation in ITRE is also relevant to your committee, so I hope that those who were present during my ITRE presentation will forgive me the considerable overlap with this presentation. But nevertheless, as I also expressed in ITRE, I again look forward to a stimulating debate on a subject that has long been a central part of ERG and now BEREC's work.

BEREC is committed to providing any support that may be necessary and appropriate to the European Institutions during the forthcoming period of negotiations. In December last year, BEREC published its advice to the Commission on the future of roaming regulation. We added further detail in our February response to the Commission's consultation. At the end of August, BEREC published a technical analysis of the Commission's proposals. We hope this will contribute to the clarification of the questions that will be discussed during the negotiations.

Today, I would like to share the key points of that analysis with you. In doing so, I would also like to look forward, to touch on the future development of the mobile market in the period of the proposed Regulation, which runs to 2022. What vision do we have for roaming services in the internal market in the next 10 years?

Let me begin with our analysis of the Commission's proposals. BEREC shares the Commission's aims of bringing lower prices, more transparency, and facilitating the development of sustainable competition, as part of delivering a digital single market.

We consider that, over the last five years, roaming regulation has brought considerable benefits to consumers in the form of lower prices and protection from bill shock. But costs have also fallen fast. The gap between prices and costs is still significant and sits uncomfortably with the single market.

Regulation needed for some time

Like the Commission, BEREC expects that market forces will not be strong enough to ensure reasonable prices for consumers. Wholesale and retail regulation will be needed for some time. In particular, wholesale and retail price caps are still appropriate. We agree with the Commission that the caps should fall over time, to come closer to the underlying costs and equivalent domestic mobile prices. This is in line with the Commission's target for roaming prices to approach domestic prices by 2015.

In the medium term, reductions in wholesale costs should make it possible for providers to offer their customers a single European tariff. The prices they would pay for roaming voice, messaging and data services should then approach what they pay at home. We are still some way from that today but the Commission's proposals allow us to make good progress towards it.

Data roaming

We also welcome the proposal to introduce new safeguard price caps for retail data roaming. We have seen recently the launch of some much more attractive tariffs. However, these are not available everywhere and some prices remain unjustifiably high. The price caps should eliminate the extremely high prices still charged to many customers. At the same time they should not unduly affect the development of competition for data roaming. After all, volumes are still increasing and alternatives like WiFi are able to exert some competitive pressure. Even so, it is worth stressing that these caps will bring little comfort for medium to heavy users, including the fast-growing population of smartphone users. They will require much lower tariffs or else will find it completely unaffordable to use their smartphones for data services while abroad – an absurd situation. However, to the extent that demand from such users increases as prices fall, BEREC has reason to hope that operators will cater to the needs of this segment. BEREC will continue to monitor the situation.

Structural solution

No-one wants eternal price regulation. Therefore, we agree with the Commission that in parallel to continuation of price caps, a structural solution should be found. A structural solution that remedies market failures and strengthens competition until retail price regulation can be removed.

The problem is this. We need a solution capable of speedy introduction. Otherwise the window of opportunity may have closed. Eventually, market developments may resolve the problems we see in the roaming market. As I suggested earlier, lower wholesale roaming costs may well stimulate the offer of pan-European tariffs by major players.

And it is not worth introducing a solution that is expensive to implement, compared to the scale of benefits it can realistically be expected to deliver. BEREC believes that a satisfactory structural solution has not yet been identified. By satisfactory, I mean a solution which would deliver competition and consumer benefits proportionate to the commercial and technical implementation requirements. BEREC evaluated a number of structural solutions in its December and February Reports and did not find any of them fully satisfactory.

The Commission has proposed “decoupling” by which a customer can take domestic service from one provider and roaming service from another without the necessity for regular switching of SIMs or change to handset settings. In the Commission’s Impact Assessment, the so-called “dual-IMSI” decoupling solution is discussed extensively. BEREC thinks it has some attractions, but BEREC is very cautious about the extent of the benefits that can realistically be expected. According to BEREC’s competition analysis,

the other wholesale measures proposed by the Commission – reduction in wholesale prices towards costs coupled with a general right of wholesale access – should already produce material competition benefits in the medium term. In particular, these could enable existing providers to offer more attractive roaming rates or bundles. They could also facilitate the entry of new players in retail roaming, such as a Mobile network operator or Mobile Virtual Network Operator providing a „global SIM“ service.

Given these developments, there is a risk that dual-IMSI would deliver relatively little incremental benefit over and above the benefits from the other wholesale measures which I just mentioned and which we strongly support. It would certainly be time and resource intensive to introduce dual-IMSI, with significant implementation and ongoing operational costs.

However, BEREC understands that new options are emerging for implementing decoupling, indicating that it is too early to „pick a winner“. We welcome industry initiatives to actively discuss different options and seek a suitable solution promptly. Equally, it might be the case that a combination of solutions emerges.

BEREC urges that a decision to select a specific means of implementing decoupling should only be adopted when it is clear that there are significant benefits to consumers which outweigh the costs of implementation and ongoing operation. It must also be capable of being implemented reasonably quickly and economically. But it is also important that it commands the support of a critical mass of market players to ensure that it makes commercial sense. The introduction of a facility which providers

choose not to exploit because the commercial case is not established, will not help consumers at all.

BEREC is very much open for discussions on these options and is ready to work with the Commission and the industry to develop Guidelines to support implementation.

For these reasons, we do have a more cautious view than the Commission of decoupling solutions. The consequence is that we believe strongly that retail price regulation cannot be removed until it is clear that market forces are working effectively for all consumers. This is not what we want. During the negotiations on the current Regulation, a number of Parliamentarians wanted price caps to be lifted as soon as possible. We share this wish, but must conclude that it is still too early to realise it. We do not want to take risks with consumer protection.

So, if we must retain retail price caps for the next few years, we must address the question of the levels of those caps. The Commission has embarked on a strategy of introducing competition as soon as possible. In such a strategy, it would be self-defeating to set price caps which are so low that they deter new players from entering the market. On the other hand, they should not be set so high that they provide no useful protection. It is a difficult balance to strike and there is no scientific formula to help us. I therefore have a lot of sympathy with the problem the Commission faced.

Nevertheless, I have to say that BEREC would strike the balance differently, giving rise to lower retail caps than proposed by the Commission

from 2014. Our professional view is that a retail margin of 200% (I mean that the retail cap should be no more than 3 times the wholesale cap) would be comfortably sufficient to allow market entry and the development of competition. Furthermore, while competition is developing, consumers will obviously be better protected.

Given all of the uncertainties and the long time frame for this draft Regulation, BEREC considers that the 2015 review proposed by the Commission should provide for a thorough review of strategy. The Regulation should specifically provide for a re-assessment of a number of issues:

- First, the extent to which market forces (whether stimulated by structural measures or not) are having an impact on prices for all types of consumer and not just for frequent travellers
- Second, the extent to which expectations about costs have been borne out. 10 years is a very long time to set regulated caps considering the likely market developments, especially in mobile data. As regulators, we conduct market reviews every 2-3 years under the Framework for this reason
- And third, the need for continuation of the price caps, the levels of those caps, the relationship between the wholesale and retail caps and between roaming and domestic prices. We feel these issues must be re-examined in the Review.

Finally, I would like to turn to something which does not feature in the Commission's proposals. I would like to argue strongly for its inclusion and believe this issue falls at the heart of IMCO's concerns and responsibilities.

We believe strongly that the current very effective bill shock measures introduced in 2010 in relation to data roaming should be extended to be applicable outside of Europe. I know they were technically difficult to implement. But the hard work is now done.

These measures have largely removed from the press the horror stories of consumers who returned from holiday to a bill of several thousand €, without using data very differently from the way they use it at home. At least, those horror stories are now rare for travel within Europe. But we still see them regarding travel outside Europe, where unit prices are higher and there is no statutory bill shock protection.

I am delighted that some operators have already implemented such measures voluntarily. We believe that this would be reasonably quick and cheap to roll out for travel beyond the EU. We think it could be justified as a “single market” measure given that retail data roaming services are provided by companies established in Europe to citizens based in Europe. I would like to strongly commend this proposal to this Committee in particular.

So, to conclude my presentation today.

Conclusions

The Commission has put forward an interesting proposal. For both the Commission and BEREC it is of paramount importance that the interests of all consumers are protected. We have some suggestions which we believe

will strengthen the proposals further. We are committed to developing a structural solution that enhances competition in the international roaming market, together with the Commission, and the industry. But until and unless that structural solution is seen to be achieving lower prices for the benefit of all consumers, it will remain appropriate to retain the retail price caps.

And thinking in particular of my audience today, we are fully committed to providing any technical support you need to assist you in your discussions over the coming months.

Thank you.

Chris Fonteijn, 5 October 2011