

EUROPEAN PARLIAMENT

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Committee on the Internal Market and Consumer Protection

2008/0187(COD)

13.3.2009

OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Industry, Research and Energy

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services

(COM(2008)0580 – C6-0333/2008 – 2008/0187(COD))

Rapporteur (*): Syed Kamall

(*): Associated committee – Rule 47 of the Rules of Procedure

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SHORT JUSTIFICATION

1. INTRODUCTION

The draft opinion turns the Regulation into an instrument providing for price transparency and monitoring of roaming services until 30 June 2013, but would let the price caps currently in effect lapse on 30 June 2010. No new price regulation would be introduced.

The intention – at this stage - is to stimulate a proper debate on both the merits of the Commission's proposal and on the need to evaluate reasonable alternatives to the blunt instrument of price caps, while maintaining a high level of consumer protection.

2. THE PROBLEM

2.1 The Commission's proposal is intended to solve the perceived problem that there is a lack of competition in roaming services and that prices do not reasonably reflect underlying costs in providing the service.

However, the independent study by Europe Economics (EE) commissioned by IMCO and ITRE found that:

- the reduction in prices for voice calls imposed by the existing Regulation did not lead to a significant increase in volume, indicating that the perceived problem with "unjustifiable" prices did not exist. (The ERG's own preliminary figures show that for Q3 2008, SMS volumes - without price caps - have increased by even more than voice calls. This undermines one of the arguments for SMS retail price caps)
- the Commission's impact assessment has not established that the effect of extending the regulation would be to increase overall welfare. (In some EU countries, the poorest pre-pay customers are paying more for some domestic voice calls than relatively wealthier roamers pay for international calls)

Moreover, the EE study concludes that the most likely effects of not extending the regulation would be:

- a stabilisation of voice prices around the levels imposed for 2010 - not an increase,
- a wider variety of tariffs and more intense competition - leading to increased consumer choice and benefit,
- avoidance of the "waterbed" effect, e.g. low voice, SMS and data tariffs but much higher handset prices or delays in price decreases in other mobile services - to the detriment of consumers overall.

Importantly, the EE study also indicates that roaming can not be seen as a separate market, but instead as an integral part of the overall mobile market, which is highly competitive.

These findings, together with the inherent uncertainty in setting prices politically for a five year period, are strong arguments against both extending the current price regulation on voice and against imposing additional price regulation.

2.2 The Rapporteur believes there is consensus over the need to address the lack of transparency of bills and the issue of bill shock for data roaming services where customers receive a much higher than expected bill. The current transparency measures for voice could be retained and also extended to SMS.

3. THE SOLUTION

3.1 Evidence indicates that lower prices imposed overall have not resulted in higher overall welfare or higher usage of regulated roaming services. In the absence of demonstrated overall welfare from extending the Regulation and given the uncertainties around market definition and the problem of setting prices for five years with no established basis for determining the difference between a "justified" and an "unjustified", extending the Regulation at this stage may be inappropriate.

3.2 It is agreed that lack of price transparency should be addressed, and that there should be continued monitoring of the market. These aspects should also be limited in time, with a view to their eventual integration into the overall regulatory framework for electronic communications. It is unsatisfactory to have a separate Regulation addressing only the small part of the market consisting of roaming services. In particular, the Universal Service Directive contains a number of transparency measures, and once there is enough experience of the application of those measures and of the specific transparency measures for roaming, the Commission could consider any appropriate amendments to the Universal Service Directive, allowing separate regulation of roaming to expire once and for all.

3.3 In a separate working document, the Rapporteur has attempted to outline some alternatives to the blunt instrument of price caps including:

- No extension of regulation
- Leaving the decision to the regulators – even though there are concerns over the independence of the ERG
- Non-discrimination clauses
- Action against individual abusive operators or markets
- Establishing an exchange for wholesale voice, SMS and data

It is hoped that the merits of these alternatives could be properly debated by the parliament.

4. CONCLUSION

In order to generate a proper discussion on the relative merits of the Commission's proposal and possible alternatives, the Rapporteur has - at this stage - rejected the proposals on price caps, instead focusing on transparency for consumers and continuing monitoring of the market. Let the debate begin!

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Industry, Research and Energy, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation – amending act Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Differences in topography and population density and seasonal variations in tourist regions result in different business models for mobile operators, thus leading to higher costs.

Amendment 2

Proposal for a regulation – amending act Recital 7

Text proposed by the Commission

Amendment

(7) The levels of the maximum average wholesale charges for regulated roaming calls set by Regulation (EC) No 717/2007 should continue to decline over the extended duration of the Regulation to reflect declining costs, including decreases in regulated mobile termination rates in the Member States, in order to ensure the smooth functioning of the internal market while at the same time continuing to meet the dual objectives of eliminating excessive prices while allowing operators freedom to compete and innovate.

(7) The levels of the maximum average wholesale charges for regulated roaming calls set by Regulation (EC) No 717/2007 should continue to decline over the extended duration of the Regulation to reflect declining costs, including decreases in regulated mobile termination rates in the Member States, in order to ensure the smooth functioning of the internal market while at the same time continuing to meet the dual objectives of eliminating excessive prices while allowing operators freedom to compete and innovate. ***The levels of the maximum average wholesale charges should on no account be cost-oriented, in order to facilitate the future removal of regulation and provide operators with a margin to compete.***

Justification

The maximum prices set by the Regulation have not been and should not be cost-oriented. Setting cost-oriented maximum prices would be incompatible with fostering competition and would make it more difficult to remove regulation.

Amendment 3

Proposal for a regulation – amending act Recital 16

Text proposed by the Commission

(16) Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per second basis ***for all*** calls subject to a Eurotariff, ***subject only to the possibility to apply a minimum initial charging period of no more than 30 seconds for calls made. This will enable operators to cover any reasonable set-up costs as well as provide flexibility to compete by offering shorter minimum charging periods. However, no minimum initial charging period is justified in the case of Eurotariff calls received, as the underlying wholesale cost is charged on a per second basis and any specific set-up costs are already covered by mobile termination rates.***

Amendment

(16) Providers of regulated roaming calls at the retail level should therefore be required to bill their customers on a per second basis ***and should not apply a minimum initial charging period to*** calls subject to a Eurotariff.

Amendment 4

Proposal for a regulation – amending act Recital 27

Text proposed by the Commission

(27) Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS message.

Amendment

(27) Roaming customers should not be required to pay any additional charge for receiving a regulated roaming SMS ***or voicemail*** message while roaming on a visited network, since such termination costs are already compensated by the retail charge levied for the sending of a roaming SMS ***or voicemail*** message.

Amendment 5

Proposal for a regulation – amending act Recital 33

Text proposed by the Commission

(33) However, measures should be introduced to improve the transparency of retail prices for data roaming services, in particular to eliminate the problem of "bill shock" which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services.

Amendment

(33) However, measures should be introduced to improve the transparency of retail prices for data roaming services, in particular to eliminate the problem of "bill shock" which constitutes a barrier to the smooth functioning of the internal market, and to provide roaming customers with the tools they need to monitor and control their expenditure on data roaming services.

Equally, measures should be put in place to ensure that mobile operators which block applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, VoIP and Instant Messaging services, provide the consumer with this information, thus allowing the consumer to make an informed choice.

Justification

Consumers may want to use alternative technologies such as WiFi and alternative services such as VoIP. If the operator decides to block access to these technologies and services, then consumers should be made aware thus allowing them to make the choice whether or not to move to another operator. This is in line with proposals to amend the Universal Service Directive currently under discussion.

Amendment 6

Proposal for a regulation – amending act Recital 34

Text proposed by the Commission

(34) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to them for data

Amendment

(34) In particular, mobile operators should provide their roaming customers with personalised tariff information on the charges applicable to them for data

roaming services when *they first initiate* a data roaming service *on entering* another Member State. This information should be delivered to their mobile telephone or *other mobile device* in the manner best suited to its easy receipt and comprehension.

roaming services when *the roaming customer initiates* a data roaming service *in a particular Member State or enters* another Member State. This information should be delivered *via a message* to their mobile telephone, *email* or *pop-up window on their computer* in the manner best suited to its easy receipt and comprehension.

Amendment 7

Proposal for a regulation – amending act Recital 35

Text proposed by the Commission

(35) In addition, in order to avoid bill shocks, mobile operators should *offer* all their roaming customers, free of charge, *an opportunity* to specify in advance *a maximum financial limit* for their outstanding charges for data roaming services, with an appropriate *warning message* when *this* limit is approached. Upon this maximum limit being reached, the data roaming service should be terminated unless the customer specifically requests its continued provision.

Amendment

(35) In addition, in order to avoid bill shocks, mobile operators should *provide* all their roaming customers, free of charge, *with information on the accumulated consumption expressed in volume or the currency in which the roaming customer is billed, as well as offer* to specify *to them*, in advance, *several maximum usage limits* for their outstanding charges for data roaming services, with appropriate *notifications* when *the specified* limit is *being* approached. Upon this maximum *usage* limit being reached, the data roaming service should be terminated unless the customer specifically requests its continued provision *in accordance with the terms and conditions outlined in the notification*.

Amendment 8

Proposal for a regulation – amending act Recital 40

Text proposed by the Commission

(40) This common approach should nevertheless be maintained for a limited time period but may, in the light of a

Amendment

(40) This common approach should nevertheless be maintained for a limited time period but may, in the light of a

review to be carried out by the Commission, be further extended or amended. The Commission should review the effectiveness of Regulation (EC) No 717/2007 as amended by this Regulation **and** the contribution which it makes to the implementation of the regulatory framework and the smooth functioning of the internal market, **while keeping in mind its** impact on the **smaller** mobile communications providers **in** the Community and their position in the Community-wide roaming market.

review to be carried out by the Commission, be further extended or amended. The Commission should review the effectiveness of Regulation (EC) No 717/2007 as amended by this Regulation **in light of its objectives of removing excessive prices for Community-wide roaming services, achieving a high level of consumer protection, fostering competition between mobile operators and offering incentives for innovation and consumer choice. The Commission should also consider** the contribution which it makes to the implementation of the regulatory framework and the smooth functioning of the internal market. **The Commission should consider the** impact on the **competitive position of** mobile communications providers **of different sizes and from different parts of** the Community and their position in the Community-wide roaming market. **In that context, the Commission should pay particular attention to developments and trends in wholesale charges for data roaming services in relation to the safeguard wholesale limit provided for in this Regulation, while paying special attention to the risks of wholesale prices rising if and when regulation is terminated, as this would be an unfair burden on home providers, who will be unable or reluctant to raise prices towards consumers accordingly. The Commission should evaluate the extent to which competition in the provision of roaming services has developed, taking into account, inter alia, developments in charges for mobile roaming services, the products and offers available for roaming services, the quality of service provided and the impact of technological developments on the provision of roaming services, including substitution by new services such as VoIP. In particular, the Commission should consider whether roaming prices are or might be excessive in light of pricing structures for mobile**

services generally. The Commission should also assess whether the regulation of roaming services could be appropriately covered within the regulatory framework for electronic communications. Prior to the review referred to above, and in order to ensure the continuous monitoring of roaming services in the Community, the Commission should submit an interim report to the European Parliament and the Council including a general analysis of the latest wholesale and retail price trend information for voice, SMS and data roaming services broken down by post-paid and pre-paid customers separately.

Justification

In order to ensure an appropriate regulation of the market in the long term, it is necessary that the European Commission analyses in detail a series of relevant aspects of the market. An intermediary report is also necessary in order to have more indications about the progress towards achieving the objectives of the regulation and the behaviour of market participants.

Amendment 9

Proposal for a regulation – amending act

Article 1 – point 2 – point (a)

Regulation (EC) No 717/2007

Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission

It lays down rules on the charges that may be levied by mobile operators for the provision of international roaming services for voice calls and SMS messages originating and terminating within the Community and for packet switched data communication services used by roaming customers while roaming on a mobile network in another Member State. It applies both to charges levied between network operators at wholesale level and, where appropriate, to charges levied by home providers at retail level.

Amendment

Measures shall be put in place to ensure that mobile operators which block applications or technologies which can be a substitute for, or alternative to, roaming services, such as WiFi, VoIP and messaging services, provide the consumer with this information, thus allowing the consumer to make an informed choice.

Justification

Consumers may want to use alternative technologies such as WiFi and alternative services such as VoIP. If the operator decides to block access to these technologies and services, then consumers should be made aware thus allowing them to make the choice whether or not to move to another operator. This is in line with proposals to amend the Universal Service Directive currently under discussion.

Amendment 10

Proposal for a regulation – amending act

Article 1 – point 5 – point (a)

Regulation (EC) No 717/2007

Article 4 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

By way of derogation from the second subparagraph, the home provider may apply an initial minimum charging period not exceeding 30 seconds to calls made which are subject to a Eurotariff.

deleted

Amendment 11

Proposal for a regulation – amending act

Article 1 – point 5 – point (a a) (new)

Regulation (EC) No 717/2007

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(aa) the following paragraph shall be inserted:

"2a. Home providers shall not levy any charge from their roaming customers for the receipt by them of a roaming voicemail message."

Justification

In reference to Article 4b paragraph 3 of this Regulation, where the receipt of a regulated roaming SMS message shall be free of charge. In order to protect customers from unduly high costs incurred by roaming voice mail messages which length cannot be controlled by the customer, the same provision as outlined in Article 4b paragraph 3 shall also apply to roaming voice mail messages.

Amendment 12

Proposal for a regulation – amending act

Article 1 – point 11

Regulation (EC) No 717/2007

Article 6a – paragraphs 1 to 3

Text proposed by the Commission

1. Home providers shall **ensure that** their **roaming** customers **are kept adequately informed** of the charges **which** apply to **their** use of regulated data roaming services, in ways which facilitate the customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3.

2. From 1 July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except when the customer has notified his home provider that he does not require this information.

Such personalised tariff information shall be delivered to the roaming customer's mobile telephone or **other device**, when the roaming customer initiates a regulated data roaming service in a particular Member State other than that of his home network for the first time after having entered that Member State. It shall be provided without

Amendment

1. Home providers shall **adequately inform** their customers **before conclusion of the contract** of the charges **applicable to the chosen tariff plan**. **Furthermore, they shall give examples of data roaming applications, such as email, picture and web-browsing, indicating their approximate size in terms of data usage. Those examples shall** apply to **the** use of regulated data roaming services in ways which facilitate the customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3. **In addition, data shall not be downloaded unless agreed or requested.**

2. From 1 July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide **basic** personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except when the customer has notified his home provider that he does not require this information.

Such **basic** personalised tariff information shall be delivered to the roaming customer's mobile telephone or **email address or via a pop-up window on the computer**, when the roaming customer **enters another Member State or** initiates a regulated data roaming service in a particular Member State other than that of

undue delay and free of charge, by an appropriate means adapted to facilitate its receipt and easy comprehension.

A customer who has notified his home provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the home provider to provide this service again.

3. By **1 July 2010** at the latest, *the home providers* shall provide a **'Cut-Off Limit' facility whereby they offer and keep available** to all *their* roaming customers, free of charge, **the possibility to specify in advance a maximum financial limit**, expressed in the currency in which the roaming customer is billed, for their outstanding charges for regulated data roaming services.

When this **Cut-Off Limit** is reached, the home provider shall immediately cease to provide the roaming customer **with** regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services.

The home provider shall also ensure that an appropriate **warning message** is sent to the roaming **customer's** mobile telephone **or other device before one or more intermediate charge limits, agreed**

his home network for the first time after having entered that Member State. It shall be provided without undue delay and free of charge, by an appropriate means adapted to facilitate its receipt and easy comprehension.

A customer who has notified his home provider that he does not require the automatic tariff information shall have the right at any time and free of charge to require the home provider to provide this service again.

3. By **1 January 2010** at the latest, *each* home **provider** shall provide to all *its* roaming customers, free of charge, **a facility which provides information on accumulated consumption** expressed in **volume or** in the currency in which the roaming customer is billed for regulated data roaming services. **To this end, the home provider shall make available one or more maximum usage limits for specified periods of use. One of these limits shall be close to, but not exceed, 50 EUR (excluding VAT) or 20 MB per monthly billing period.**

When this **maximum usage limit** is reached, **a notification shall be sent to the roaming customer. If the roaming customer does not respond as prompted in the notification received**, the home provider shall immediately cease to provide **and to charge** the roaming customer **for** regulated data roaming services, unless and until the roaming customer requests the continued or renewed provision of those services. **The notification shall indicate the procedure to be followed if the customer wishes to continue the provision of those services and the cost associated with each additional unit to be consumed.**

Each home provider shall also ensure that an appropriate **notification** is sent to the roaming **customer via** mobile telephone, **email address or a pop-up window on the computer when the data roaming services**

between the customer and the home provider in advance, are reached. This warning message shall inform the roaming customer that the Cut-Off Limit is about to be reached and indicate the procedure to be followed by the customer if he or she wishes to request the continued or renewed provision of those services.

have reached 80% of the agreed maximum usage limit. Customers shall have the right to require their operators to stop sending such notifications, and shall have the right at any time and free of charge to require the home provider to provide the service again.

Amendment 13

Proposal for a regulation – amending act Article 1 – point 11

Regulation (EC) No 717/2007

Article 6a – paragraph 4 – point (a)

Text proposed by the Commission

(a) The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of **EUR 1.00** per megabyte of data transmitted.

Amendment

(a) The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of **EUR 0,25 (excluding VAT)** per megabyte of data transmitted.

Amendment 14

Proposal for a regulation – amending act Article 1 – point 11

Regulation (EC) No 717/2007

Article 6a – paragraph 4 – point (c)

Text proposed by the Commission

(c) The average wholesale charge referred to in point a shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network for the provision of regulated data roaming services in the relevant period by the total number of megabytes of data consumed by the provision of those services within that

Amendment

(c) The average wholesale charge referred to in point a shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network for the provision of regulated data roaming services in the relevant period by the total number of megabytes of data **actually** consumed by the provision of those

period.

services within that period, **aggregated on a per kilobyte basis.**

Justification

It is important to specify that billing should be on a per kilobyte basis. Otherwise operators may be incited to charge on a per megabyte basis, which would lead to higher retail charges as it did regarding voice services.

Amendment 15

Proposal for a regulation – amending act

Article 1 – point 11 a (new)

Regulation (EC) No 717/2007

Article 6 b (new)

Text proposed by the Commission

Amendment

(11a) the following Article shall be inserted:

"Article 6b

Transparency for roaming customers relating to the visited network

1. Each home provider shall provide its roaming customers, automatically and free of charge, with full information on available networks in visited Member States and on their ability to choose the network on which they wish to roam.

Home providers shall in particular communicate to all roaming customers, in a clear and unbiased manner, how to choose the visited network.

2. Home providers shall ensure that their roaming customers are able to choose, easily and at the first attempt, the visited network while abroad.

3. In order to ensure that roaming customers are free to choose the visited network, network operators shall not prohibit or make difficult manual selection by roaming customers.

4. If a roaming customer can benefit from different tariffs in a Member State

depending on the visited network chosen, the home provider shall inform the roaming customer of the tariff differences."

Justification

Most of the time, consumers are not free to choose the visited network. Indeed, the tools are more and more efficient in order to divert roaming traffic and are widely used by Alliances. In most cases, consumers are not even aware of this practice. Therefore, there is no real consumers' benefit, especially since consumers are systematically diverted by Alliances members to the partner and not to the most efficient or less expensive host network. In the end, as consumers are not those who choose the visited network, there is no pressure on retail roaming prices and thus no price competition.

Amendment 16

Proposal for a regulation – amending act

Article 1 – point 12 – point (a a) (new)

Regulation (EC) No 717/2007

Article 7 – paragraph 3

Text proposed by the Commission

Amendment

(aa) paragraph 3 shall be replaced by the following:

"3. National regulatory authorities shall in preparation for the review provided for in Article 11, monitor developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, including in the outermost regions referred to in Article 299(2) of the Treaty. National regulatory authorities shall monitor the availability and quality of data services with an emphasis on minimum speed and connection reliability. National regulatory authorities shall also be alert to the particular case of involuntary roaming in the border regions of neighbouring Member States and monitor whether traffic steering techniques are used to the disadvantage of customers. They shall communicate

the results of such monitoring to the Commission, including separate information on corporate, post-paid and pre-paid customers, every six months."

PROCEDURE

Title	Amendment of Regulation (EC) No 717/2007 (mobile telephone networks) and Directive 2002/21/EC (electronic communications)		
References	COM(2008)0580 – C6-0333/2008 – 2008/0187(COD)		
Committee responsible	ITRE		
Opinion by Date announced in plenary	IMCO 9.10.2008		
Associated committee(s) - date announced in plenary	20.11.2008		
Drafts(wo)man Date appointed	Syed Kamall 10.11.2008		
Discussed in committee	2.12.2008	21.1.2009	10.2.2009
Date adopted	2.3.2009		
Result of final vote	+: -: 0:	18 0 14	
Members present for the final vote	Gabriela Crețu, Mia De Vits, Janelly Fourtou, Evelyne Gebhardt, Hélène Goudin, Martí Grau i Segú, Małgorzata Handzlik, Malcolm Harbour, Edit Herczog, Pierre Jonckheer, Alexander Graf Lambsdorff, Kurt Lechner, Toine Manders, Catuscia Marini, Arlene McCarthy, Nickolay Mladenov, Bill Newton Dunn, Karin Riis-Jørgensen, Giovanni Rivera, Heide Rühle, Christel Schaldemose, Marianne Thyssen, Jacques Toubon		
Substitute(s) present for the final vote	Jan Cremers, Benoît Hamon, Syed Kamall, Manuel Medina Ortega, Diana Wallis		
Substitute(s) under Rule 178(2) present for the final vote	Richard Corbett, Ingeborg Gräßle, Jörg Leichtfried, Véronique Mathieu, Peter Skinner		