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Committee on the Internal Market and Consumer Protection

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DRAFT 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 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-C6-0244/2006 – 2006/0133(COD))

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

PA_Legam

SHORT JUSTIFICATION

Introduction

We support the general thrust of the Commission proposal and think it is a good basis on which to build pro-active legislation.

There is room for improvement of the proposal, in order to better defend consumer rights and make it more sustainable from an industry perspective.

This will be an opportunity for the European Parliament to show it can broker a fair deal for operators and, most importantly, consumers.

Rationale

There is an evident market failure in the roaming sector and it needs to be addressed.

Consumers, especially the most vulnerable, are entitled to be protected. Nevertheless, consumers are smart and can decide for themselves. Our role is not to make a decision for them but to give them full information, prevent abuses and allow them to make a fully informed decision.

Operators, many of which have invested heavily and improved telecommunications in Europe, are entitled to make a fair and legitimate profit.

There should be more competition, with both small and large operators in the market, thus offering consumers high-level services at a fair price.

The long-term vision is of an effective European internal market in telecommunications.

Principles

Transparency

A clear, transparent and sustainable solution, with no hidden surprises for consumers.

Simplicity

An understandable and straight-forward Regulation.

Flexibility

Consumers should be given full information in order to be able to decide between the various offers which operators make.

Specific Issues

Transparency

We are proposing a "push" SMS information system, whereby consumers will automatically receive an SMS with abridged information once they register on a network.

Full information should be available free of charge by means of a "pull" SMS system and via voice call.

Consumers should be given the possibility to opt-out of receiving "push" information at any time. Similarly, they will have the opportunity to revert back at no extra cost at any time.

Operators that implement a "real time" call cost information system will be exempted from providing a "push" SMS information system.

There are specific provisions for persons with disability (visually-impaired).

Wholesale

We are proposing one wholesale cap, which simplifies the system and on which there is a broad agreement in Parliament, with the Commission and in Council.

The levels of the suggested caps are based on a technical study carried out by contractors retained by the Committee on the Internal Market and Consumer Protection, attached to this opinion.

Retail

Retail regulation is necessary to make sure that savings are passed on to consumers.

The levels of the suggested caps are based on the technical study attached to this opinion.

Regulation should not lead to a single offer across the market. We are thus in favour of adequately reviewing caps to take into consideration the relevant overheads and allow competition while not jeopardising consumer interests.

Flexibility

We want more competition at fairer prices. Consumers should be able to choose between different packages, while safeguarded from unfair prices. That is why we propose a system whereby all existing and new consumers will by default be put on the EU Tariff. Given full information, consumers will be able to choose whether to keep this tariff or opt for something else.

Simplicity

The Regulation should provide a maximum price over which consumers will not be charged unless they make an informed choice about an alternative. This maximum price will be a single one across the European Union. It will be a clear and tangible achievement of the European Parliament in favour of consumers.

National Prices

We are making it clear that given that as legislators we are showing the necessary flexibility, re-balancing of national tariffs by operators in order to make up for lost revenue on roaming will not be acceptable and will be open to scrutiny.

Smaller, Independent Operators

There does not seem to be an economic argument to back the emotional and sensitive issue of some smaller, independent operators asking for a non-discrimination clause whereby a small operator would be charged the same wholesale tariff by another operator as the one offered to a larger operator (maybe of the same network). There is reason to believe that with such a provision, wholesale prices would stabilise at the higher end, and in some cases they could reduce the bargaining power of smaller operators.

This is a problem that already exists and has not been caused by the proposed Regulation. Similarly, the proposed Regulation is not the ideal medium to address it.

Even though there might be issues for competition authorities, that procedure might not be carried out expediently enough to be effective.

Thus, given the fact that we regard smaller, independent operators as essential for competition, we are asking the Commission to analyse the problem and present a proposal within 12 months.

SMS, MMS and data

The analysis made by the Commission is limited to voice telephony. There is no analysis of the situation in the SMS, MMS and data markets, which are of a different nature even amongst them.

Regulation absent analysis would breach the principles of Better Regulation, would make the Regulation vulnerable, and would effectively delay legislation by at least one year.

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:

Text proposed by the Commission¹

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 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.

(1) ***Many operators have recently introduced tariff schemes reducing roaming charges to consumers. Nevertheless, 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 ***remains*** a matter of concern for national regulatory authorities, ***as well as for consumer organisations and the European Parliament.*** The European Regulators Group noted at its plenary meeting in May 2005 (inter alia) that retail charges were 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.

Justification

To reflect the current situation.

Amendment 2

RECITAL 9

¹ OJ C ... /Not yet published in OJ.

(9) ***Although the*** 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, ***provided for the removal of*** all ***obstacles*** to trade in the area that it harmonises, ***that fact cannot*** prevent the adaptation of the harmonised rules ***in step with other considerations in order to find the most*** effective means of achieving a high level of consumer protection ***whilst improving the conditions for the functioning of the internal market.***

(9) ***The*** 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, ***aimed at removing*** all ***barriers*** to trade ***between Member States*** in the area that it harmonises, ***inter alia as regards measures which affect prices for users in other Member States.*** However, ***this should not*** prevent the adaptation of the harmonised rules ***where, in the light of experience, such adaptation proves necessary in order to improve the conditions for the functioning of the internal market and at the same time to provide more*** effective means of achieving a high level of consumer protection.

Justification

To highlight the impact of the proposal on the functioning of internal market and on consumer protection.

Amendment 3 RECITAL 9 A (new)

(9a) The retail and wholesale roaming markets exhibit particular characteristics which justify the adoption of specific measures completing the mechanisms generally available under the 2002 regulatory framework. The fact that the level of roaming charges remains much higher than the level of charges for internal voice calls is capable of inducing consumers travelling in a different Member State to purchase local cards instead of making use of cross-border roaming services and thereby to hamper the provision of such services. This would amount to an obstacle to the proper functioning of the internal market. On the other hand, the lack of transparency in retail roaming charges does not afford sufficient information to users in order for them to choose between different service providers and therefore does not ensure an

appropriate level of consumer protection.

Justification

See justification to recital 9.

Amendment 4
RECITAL 10

(10) It is therefore necessary to amend the 2002 regulatory framework for electronic communications to allow for a departure from the rules otherwise applicable, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and thereby to accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of international roaming services.

(10) The 2002 regulatory framework for electronic communications should accordingly be completed by specific rules on international roaming services. Those specific rules should include complementary regulatory obligations which reflect the particular characteristics of international roaming services.

Justification

See justification to recital 9.

Amendment 5
RECITAL 11

(11) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework.

deleted

Justification

Merged into new recital 9a.

Amendment 6
RECITAL 12

(12) Regulatory obligations should be

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imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for international roaming services may not be reflected in lower retail prices for roaming, due to the absence of incentives to do so. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the international roaming market.

imposed at both retail and wholesale level to protect the interests of roaming customers, since experience has shown that reductions in wholesale prices for international roaming services may not be reflected in lower retail prices for roaming, due to the absence of incentives to do so. On the other hand, action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the international roaming market. ***Particular attention should be paid to the risk that smaller, independent or newly started operators are offered terms for the provision of roaming services that impede their ability to compete, to enable prompt and appropriate action to be taken in case any abuse is ascertained. The Commission shall analyse the effects of this Regulation on the competitive situation of smaller, independent or newly started operators.***

Justification

To emphasise the need to closely follow any negative impact on competition.

Amendment 7
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.

(13) The resulting obligations should take effect as soon as possible and apply directly in all Member States.

Justification

To reflect the deletion of Article 5 of the Commission proposal, which contained a six month period before regulation of retail prices for calls made would come into effect. The two month adaptation period set out in Article 10(5) will apply uniformly at both wholesale and retail levels.

Amendment 8
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 services when making or receiving voice calls ***by providing for default average prices that more closely reflect the cost of providing the service, combined with maximum price caps, while allowing users the right to accept higher roaming prices,*** 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.

Justification

To reflect the amended structure of the price caps.

Amendment 9
RECITAL 16

(16) This common mechanism should ensure that retail charges for international roaming provide a more reasonable reflection of the underlying costs involved in the provision of the service than has been the case whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preference.

(16) This common mechanism should ensure that retail charges for international roaming provide a more reasonable reflection of the underlying costs involved in the provision of the service than has been the case, ***by way of introducing average price caps based on a proxy for the underlying costs,*** whilst allowing operators the freedom to compete by differentiating their offerings and adapting their pricing structures to market conditions and consumer preference.

Justification

See justification to recital 14.

Amendment 10
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 price limits should take account of **all relevant** 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. **For the sake of simplicity, the wholesale price limit shall be expressed as a single blended maximum.**

Justification

See justification to recital 14.

Amendment 11
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 **prices** applicable at retail level should provide roaming customers with the assurance that they will not be charged an excessive price when making **or receiving** a roaming **voice** call, **by providing for a maximum price more closely related to the cost of providing the service**, whilst leaving the home operators sufficient margin to differentiate the products they offer to customers.

Justification

See justification to recital 14.

Amendment 12
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

Justification

See justification to recital 13.

Amendment 13
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 greater certainty as to the charges they will incur when answering their mobile phone abroad.

deleted

Justification

See justification to recital 14.

Amendment 14
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.

(23) This Regulation should not prejudice innovative offerings to consumers which are more favourable than the **default prices** contained in this Regulation, **due either to the price being lower or, if not, to being part of an offering the consumer has chosen to accept as more favourable overall. Such roaming prices should however be included when calculating compliance with the default prices. For the**

avoidance of doubt, this Regulation does not require roaming charges to be reintroduced in those cases where they may have been abolished altogether, nor does it require existing roaming charges to be maintained.

Justification

See justification to recital 14.

Amendment 15
RECITAL 23 A (new)

(23a) While traffic steering techniques may contribute towards ensuring that users always pay the lowest roaming price available, they could also limit user choice. The user should always be able to manually choose a preferred visited network.

Justification

Explains the new Article 6a.

Amendment 16
RECITAL 24

(24) The pricing requirements in this Regulation should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their home provider, to ensure that all users of mobile voice telephony may benefit from its provisions.

(24) The pricing requirements in this Regulation should apply regardless of whether roaming customers have a pre-paid or a post-paid contract with their home provider, ***and irrespective of whether the home provider is a reseller of mobile voice services or not***, to ensure that all users of mobile voice telephony may benefit from its provisions.

Justification

Clarifies that the Regulation applies also to so called mobile virtual network operators.

Amendment 17
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 obtain information on the roaming charges applicable to them in the visited Member State concerned, free of charge. ***This information should include charges for making and receiving voice calls and sending and receiving data on any available visited network in the visited Member State. The information should highlight differences in peak and off-peak rates or any other temporal variations. Within one hour of entering another Member State the customer should be entitled to receive an SMS from his home provider providing summarised pricing information. The complete detailed information referred to above should be made available at the customer's request.*** 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.

Justification

Addresses the enhanced transparency measures.

Amendment 18
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

(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.

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. ***They should publish the results of this monitoring every six months. Information should be provided on corporate, post-paid and pre-paid customers separately.***

Justification

To address the need to reinforce the monitoring by the national regulatory authorities, and for transparency of that monitoring.

Amendment 19 RECITAL 29

(29) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

(29) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹.

¹ OJ L 184, 17.7.1999, p. 23.

¹ OJ L 184, 17.7.1999, p. 23. ***Decision as amended by Decision 2006/512/EC (OJ L200, 22.7.2006, p.11).***

Justification

Technical amendment regarding new comitology procedure.

Amendment 20 RECITAL 29 A (new)

(29a) In particular, the Commission should be empowered to adopt amendments to the

annexes to this Regulation in order to adapt them to technical or market developments. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, they should be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

Justification

See justification to recital 19.

Amendment 21
RECITAL 30

(30) Since the objectives of the proposed action, to establish a common mechanism to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making or receiving voice calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators, cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the same Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(30) Since the objectives of the proposed action, to establish a common mechanism to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making or receiving voice calls, ***by providing a maximum default price more closely related to the cost of providing the service,*** thereby achieving a high level of consumer protection while safeguarding competition between mobile operators, cannot be achieved by the Member States in a secure, harmonised and timely manner and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in the same Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Justification

See justification to recital 14.

Amendment 22

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

1. This Regulation introduces a common mechanism 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 and receiving ***voice calls by providing for a maximum default price more closely related to the cost of providing the service***. ***It also lays down rules to improve the provision of tariff information to users of roaming services, including data communication services***, 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 network operators at wholesale level and to charges levied by the home provider at retail level.

Justification

Clarification.

Amendment 23

ARTICLE 2, PARAGRAPH 2, POINT (A)

(a) “home provider” means the undertaking that provides the roaming customer with terrestrial public mobile telephony services ***at retail level***;

(a) “home provider” means the undertaking that provides the roaming customer with terrestrial public mobile telephony services;

Justification

This amendment together with the following amendments to Article 2 aim at simplifying and clarifying the definitions proposed by the Commission.

Amendment 24

ARTICLE 2, PARAGRAPH 2, POINT (B)

(b) “home network” means the terrestrial public mobile network located within a Member State and used by the home provider for the provision of terrestrial public mobile telephony services to the roaming customer;

(b) “home network” means the terrestrial public mobile **telephony** network located within a Member State and used by the home provider, **whether as a reseller or not**, for the provision of terrestrial public mobile telephony services to the roaming customer;

Justification

To make explicit that mobile virtual network operators are included, as intended by the Commission proposal.

Amendment 25

ARTICLE 2, PARAGRAPH 2, POINT (C)

(c) “international roaming” means the use of a mobile **telephone or other** device by a roaming customer to make or receive calls, while outside the Member State in which the customer’s home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;

(c) “international roaming” means the use of a mobile device by a roaming customer to make or receive **voice** calls, while outside the Member State in which the customer’s home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;

Justification

See justification to Article 2, paragraph 2, point (a).

Amendment 26

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;**

deleted

Justification

See justification to Article 2, paragraph 2, point (a).

Amendment 27

ARTICLE 2, PARAGRAPH 2, POINT (E)

(e) “roaming customer” means a customer of a provider **of terrestrial public mobile telephony services, by means of a terrestrial public mobile network situated in the Community**, who uses a mobile **telephone or other** device to make or to receive calls on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;

(e) “roaming customer” means a customer of a **home** provider, **irrespective of whether the customer has a pre-paid or post-paid contract**, who uses a mobile device to make or to receive **voice** calls on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;

Justification

See justification to Article 2, paragraph 2, point (a).

Amendment 28
ARTICLE 2, PARAGRAPH 2, POINT (F)

(f) “visited network” means a terrestrial public mobile telephony network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls by reason of arrangements with the operator of the home network.

(f) “visited network” means a terrestrial public mobile telephony network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive **voice** calls by reason of arrangements with the operator of the home network.

Justification

See justification to Article 2, paragraph 2, point (a).

Amendment 29
ARTICLE 3, TITLE

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

Wholesale charges for roaming **voice** calls

Justification

Reflects changes to the definitions.

Amendment 30
ARTICLE 3

The total wholesale charge that the operator

The total wholesale charge that the operator

of a visited network may levy from the operator of the roaming customer's home network for the provision of a **regulated** roaming call, including inter alia origination, transit and termination, shall not exceed the applicable amount per minute determined in accordance with Annex I.

of a visited network may levy from the operator of the roaming customer's home network for the provision of a roaming **voice** call, including inter alia origination, transit and termination, shall not, **subject to Article 10(5)**, exceed the applicable amount per minute determined in accordance with Annex I.

Justification

See justification to Annex I.

Amendment 31
ARTICLE 4, TITLE

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

Retail charges for roaming **voice** calls

Justification

Reflects changes to the definitions.

Amendment 32
ARTICLE 4

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 4a(1) and Article 10(5)**, the total **average default** retail **prices, on a per minute basis and** excluding VAT, which a home provider may levy from its roaming customer **shall be as set out below:**

- the average price for a roaming voice call made shall not exceed the applicable maximum wholesale charge for that call determined in accordance with Annex I by more than 14 eurocents,

- the average price for a roaming voice call received shall not exceed the mobile termination rate published pursuant to Article 10(3) by more than 14 eurocents.

In no case shall a roaming customer be charged more than 48 eurocents per minute for a call made or more than 33 eurocents per minute for a call received, exclusive of

VAT.

The **price** limits in this Article shall include **all** elements associated with the provision of roaming **voice** calls, **including but not limited to** call set up charges **and** opt-in fees.

Justification

Operator-level average price caps at the retail level, to allow flexibility, combined with maximum price caps at individual call level, to allow consumer protection. Represents a merger of Articles 4 and 6 of the Commission proposal.

Amendment 33 ARTICLE 4 A (new)

Article 4a

Alternative tariff schemes

1. Home operators may offer customers on post-paid contracts roaming prices exceeding the limits set out in Article 4, provided that each customer accepting such an offer has a right at any time, at no more than 30 days' notice and without any financial penalty, to switch to roaming prices meeting the requirements of Article 4. All roaming prices shall be included by the national regulatory authorities in their monitoring of prices pursuant to Article 8(1) for the purposes of determining compliance with the average prices set out in Article 4.

Subject to the giving of 30 days' notice, users shall be able to opt in and out of roaming prices meeting or not meeting the requirements of Article 4 at no cost an unlimited number of times.

Notice by users for the purposes of this paragraph shall be made in writing.

2. Except for any existing users that subsequent to the entry into force of this Regulation have been offered and have accepted roaming prices as set out in paragraph 1, home operators shall at the latest at the expiry of the time limit set out

in Article 10(5) have adjusted the tariff schemes of existing users so that their tariffs for roaming voice calls do not exceed the limits set out in Article 4.

Justification

Any higher roaming prices would have to be balanced by some other benefit for the user to be accepted.

Unregulated prices are included in calculating the average prices in Article 4. Other options considered include to leave higher roaming prices entirely unregulated, or to not allow them at all.

Alternatively to a right to switch at any time, it has been considered to allow such a switch within 30 days after a change of tariffs.

Under the second paragraph, existing customers not accepting higher roaming prices will automatically have their roaming prices adjusted to the regulated levels.

Amendment 34
ARTICLE 5

Article 5 *deleted*

Timing of application of maximum retail charge limits for regulated roaming calls

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

Justification

Deletion to bring regulation of calls made into force at the same time as regulation at wholesale level and for calls received.

Amendment 35
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.

Justification

Merged into Article 4.

Amendment 36
ARTICLE 6 A (new)

Article 6a

Traffic steering

Traffic steering techniques shall not be employed to hinder roaming customers from manually choosing a visited network. Such a choice shall remain operative until the roaming customer has switched off the device or has left the visited network.

Justification

See justification to recital 23a.

Amendment 37
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. Unless the roaming customer has notified the home provider to the contrary, each home provider shall automatically, by sending an SMS, provide, within one hour of the roaming customer's entry into another Member State, the personalised pricing information provided for in paragraph 4, first subparagraph. A customer that has given notice that it does

not require the automatic SMS shall have the right at any time to require the home provider to provide the service again.

Home operators shall not be required to provide information by automatic SMS if they make per minute price information relating to an individual call the customer is intending to make available through a message immediately preceding the connection of that call, enabling the customer to desist from making the call without any charge, or, whether the call is made or received, if they make the information, including the cost of the call while the call is in progress, accessible on the device display throughout the call.

Home operators shall offer blind or partially sighted customers information by voice on request.

Justification

Among other things, the amendments to Article 7 introduce a system where abridged information on roaming prices will be provided automatically, unless the customer has decided otherwise, by SMS, and where complete information will be available on request. As alternatives, operators may offer information in real time with respect to individual calls.

Amendment 38 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 customer may request ***complete pricing information*** by means of a mobile voice call 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).

Justification

See justification to Article 7, paragraph 1.

Amendment 39
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 *services* referred to above shall be provided free of charge, both as regards the making of the request, ***if any***, and the receipt of the information requested.

Justification

See justification to Article 7, paragraph 1.

Amendment 40
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.

4. The personalised pricing information referred to in ***paragraph 1*** shall ***summarise in a standardised format*** the charges, ***inclusive of VAT***, applicable under the tariff scheme of the roaming customer concerned to the making and receipt of ***voice*** calls on ***the*** visited network in the Member State in which the customer is roaming.

The complete pricing information referred to in paragraph 2 shall comprise the charges applicable under the tariff scheme of the roaming customer concerned to the making and receipt of voice calls and to the sending and receipt of data on the visited network in the Member State in which the customer is roaming to any destination within the Community. The information will highlight differences in peak and off-peak rates or any other temporal variations.

Justification

See justification to Article 7, paragraph 1

Amendment 41
ARTICLE 7, PARAGRAPH 5

5. Home providers shall provide ***new customers*** with full information on applicable roaming charges when

5. Home providers shall, ***without undue delay following every publication as referred to in Article 10(3)***, provide ***each***

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.**

customer with full information on applicable roaming charges. **That information shall include the per minute price currently payable by the customer for roaming voice calls and also the price per roaming SMS, MMS and unit of data, where applicable. New customers shall be given such information in writing** when subscriptions are taken out. Home providers shall also **include** updates on applicable roaming charges to their customers **when they provide information on tariffs or changes thereto generally, and when roaming charges are changed. Current roaming charges shall be featured prominently on the website of the home provider at all times.**

Justification

See justification to Article 7, paragraph 1

Amendment 42
ARTICLE 8, PARAGRAPH 1

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory. **They shall in particular monitor compliance with the average prices for calls made and received, on the basis of the total retail roaming prices charged and the total number of roaming minutes for calls made and received.**

Justification

To state the basis for the monitoring of compliance with the average prices in Article 4. The calculation of compliance shall be done separately for calls made and received, as they are subject to separate regulation

Amendment 43
ARTICLE 8, PARAGRAPH 5

5. National regulatory authorities shall make

5. National regulatory authorities shall make

up-to-date information pertaining to the application of this Regulation publicly available in a manner that enables interested parties to have easy access to that information.

up-to-date information pertaining to the application of this Regulation publicly available in a manner that enables interested parties to have easy access to that information. ***They shall monitor developments in wholesale and retail prices for the provision to roaming customers of voice and data communications services, including SMS and Multimedia Messaging Service (MMS), in particular but not limited to developments in the outermost regions of the Community, and shall publicise the results of such monitoring every 12 months. Information shall be provided on corporate, post-paid and pre-paid customers separately.***

(See amendment for Article 8 paragraph 6)

Justification

Merger of Article 8, paragraphs 5 and 6 of the Commission proposal, and reinforcement of obligations of national regulatory authorities to monitor application of the Regulation and to make the results available to all.

The obligation regarding monitoring of the Regulation is described very broadly ("...pertaining to the application..."). That could lead to disparate information being made available across the Community. A core set of data to be collected and made public in each Member State should therefore be identified and included before the Regulation is finalised.

Amendment 44
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. ***deleted***

(See amendment for Article 8 paragraph 5)

Justification

Merged with Article 8, paragraph 5, AM43

Amendment 45
ARTICLE 8, PARAGRAPH 8

8. The out-of-court dispute resolution procedures established in conformity with Article 34 of Directive 2002/22/EC shall also be available to deal with unresolved disputes involving consumers and (if applicable under national law) other **end-users** concerning issues included in this Regulation.

8. The out-of-court dispute resolution procedures established in conformity with Article 34 of Directive 2002/22/EC shall also be available to deal with unresolved disputes involving **roaming customers who are** consumers and (if applicable under national law) other **roaming customers** concerning issues included in this Regulation.

Justification

Minor technical adjustments to reflect that the Regulation deals with roaming customers.

Amendment 46
ARTICLE 10, TITLE

Average mobile termination rate

Mobile termination rate

Justification

Reflects changes of the method of determining the MTR, see Annex I and II.

Amendment 47
ARTICLE 10, PARAGRAPH 1

1. The **average** mobile termination rate shall be determined in accordance with the criteria and methodology set out in Annex II, on the basis of information communicated by the national regulatory authorities in accordance with paragraphs 2 and 4.

1. The mobile termination rate shall be determined **by the Commission every two years** in accordance with the criteria and methodology set out in Annex II, on the basis of information communicated by the national regulatory authorities in accordance with paragraphs 2 and 4. **The first mobile termination rate shall be determined within ...¹.**

¹ *Three weeks of the entry into force of this Regulation.*

Justification

To make the review of the regulated roaming prices biannual provides some planning certainty for operators.

Amendment 48
ARTICLE 10, PARAGRAPH 2

2. Each national regulatory authority shall communicate to the Commission on request, and within the time limit specified by the Commission in that request, the information specified in Annex II.

2. Each national regulatory authority shall communicate to the Commission on request, and within the time limit specified by the Commission in that request, the information specified in Annex II. ***The Commission may determine the mobile termination rate also in case of missing or delayed information, provided that the missing information is not such as to substantially impair the reliability of that determination.***

Justification

The Commission, if necessary and assuming sufficient information is available, should be able to determine the MTR even in the absence of information from all national regulatory authorities.

Amendment 49
ARTICLE 10, PARAGRAPH 3

3. The Commission shall publish in the Official Journal of the European Union, ***on a regular basis***, the ***average*** mobile termination rate determined in accordance with paragraphs 1, 2 and 4.

3. The Commission shall publish in the Official Journal of the European Union the mobile termination rate determined in accordance with paragraphs 1, 2 and 4.

Justification

Technical changes reflecting Article 10(1) and changes in Annex I and II.

Amendment 50
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 6** take effect within two months from each publication pursuant to the preceding paragraphs of this Article.

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

Justification

To conform to deletion of Article 6.

Amendment 51
ARTICLE 10, PARAGRAPH 6

6. Amendments **necessary** to adapt Annex II to technical or market developments shall be adopted **by the Commission, acting** in accordance with the procedure referred to in **Article 13(3)**.

6. Amendments **designed** to adapt **non-essential elements of** Annex II to technical or market developments shall be adopted in accordance with the **regulatory** procedure **with scrutiny** referred to in **Article 13(2a)**.

Justification

New comitology procedure.

Amendment 52
ARTICLE 12, TITLE

Review procedure

Review procedure **and Commission reports**

Justification

Three separate Commission reporting obligations have been added.

Amendment 53
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**

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. **That report shall include a detailed analysis of the continued need for regulation and shall be accompanied, if**

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.

necessary, by the appropriate legislative proposals. For this purpose, the Commission may request information from the Member States and the national regulatory authorities, which shall be supplied without undue delay.

Justification

To provide some additional detail to the review report and align the language to standard formulations.

Amendment 54

ARTICLE 12, PARAGRAPH 1 A (new)

1a. The Commission shall continually follow price developments in the market for data communications, including SMS and MMS. It shall present a report on developments in that market by ...¹. That report shall include a proposal for intervention, if considered necessary, and shall give exhaustive reasons for any action proposed. Any such proposal may also be presented separately, whenever warranted by market developments or a lack thereof.

¹ 12 months of the date of entry into force of this Regulation.

Justification

To enable prompt regulation if necessary on data communications which the present lack of data does not allow.

Amendment 55

ARTICLE 12, PARAGRAPH 1 B (new)

1b. The Commission shall analyse the effects of this Regulation on the competitive situation of smaller, independent or newly started operators. It shall present a report by ...¹. That report shall include a proposal for intervention, if considered necessary.

Any such proposal may also be presented separately, whenever warranted by market developments or a lack thereof.

¹ ***12 months of the date of entry into force of this Regulation.***

Justification

To enable prompt regulation if necessary on to counteract any negative effects on competition.

Amendment 56
ARTICLE 12, PARAGRAPH 1 C (new)

1c. The Commission shall publish an annual report on developments within the Community in the area covered by this Regulation.

Justification

To provide for a broader annual review.

Amendment 57
ARTICLE 13, PARAGRAPH 2 A (new)

2a. Where reference is made to this paragraph, Article 5a(1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Justification

New comitology procedure.

Amendment 58
ANNEX I, TITLE

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

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

Justification

To conform to changes of the definitions.

Amendment 59

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 **voice** call originating on that visited network shall not exceed, on a per-minute basis, an amount equal to the mobile termination rate published pursuant to Article 10(3) multiplied **by a factor of 2**.

The charge **limit** in this Annex shall include **all** elements **associated with the provision of the call, including but not limited to** call set up charges **or opt-in fees**.

Justification

A single price cap at wholesale level. The cap is not subject to averaging and applies regardless of where the call terminates. The formula, based on the Copenhagen Economics report attached to this draft opinion and included as a basis for discussion, would currently result in a maximum price of 25 eurocents

Amendment 60

ANNEX II, TITLE

Methodology for the determination of the **average** mobile termination rate referred to in Article 10

Methodology for the determination of the mobile termination rate referred to in Article 10

Justification

To conform to changes in determining the MTR.

Amendment 61
ANNEX II, POINT 1, POINT (A)

(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;

(a) “National Weighted Average MTR” shall mean the average of the Per-SMP Operator MTRs, weighted on the basis of the **Total Voice Termination Minutes** per SMP Operator;

Justification

Follows from the Copenhagen Economics report attached to this draft opinion, as a basis for discussion.

Amendment 62
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 per-minute charge (including set up charges), based on a three-minute-call at **average** 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. ***If the MTR is not regulated for an SMP operator, the average termination rate for that SMP operator must be used. The average termination rate shall be calculated as turnover from voice termination divided by total voice termination minutes;***

Justification

Follows from the Copenhagen Economics report attached to this draft opinion, as a basis for discussion.

Amendment 63

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**

Justification

Follows from the Copenhagen Economics report attached to this draft opinion, as a basis for discussion.

Amendment 64
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 mobile termination rate published pursuant to Article 10(3) shall be the **75th percentile** 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). **Each Member State shall have the same weight in calculating the 75th percentile of the National Weighted Average MTRs. If the 75th percentile of the National Weighted Average MTRs falls between two Member States, a simple average of the MTRs in those two Member States shall be used.**

Justification

Follows from the Copenhagen Economics report attached to this draft opinion, as a basis for discussion.

Amendment 65
ANNEX II, POINT 3, POINT (B)

(b) the sum of all the **Active Subscribers** per SMP Operator within their Member State,

(b) the sum of all the **Total Voice Termination Minutes** per SMP Operator within their Member State,

Justification

Follows from the Copenhagen Economics report attached to this draft opinion, as a basis for discussion.

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