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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document
THE COMMISSION'S REVIEW OF THE FUNCTIONING OF REGULATION (EC) N° 544/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 18 JUNE 2009
ON
ROAMING ON PUBLIC MOBILE TELEPHONE NETWORKS WITHIN THE COMMUNITY

1. BACKGROUND

This impact assessment (IA) report examines options arising from the review of the functioning of the Roaming Regulation[1]. It examines whether it is necessary to extend regulatory intervention beyond its expiry date of 30 June 2012 and the options for any such intervention.

The Commission has been monitoring developments in the roaming market since the amended Roaming Regulation came into effect on 1 July 2009. Public consultation was launched on 8 December 2010 seeking views on the review of the Roaming Regulation. The Commission adopted an Interim Report on 30 June 2010. This Report found that the Regulation had been implemented well but that competition had not yet developed.

2. PROBLEM DEFINITION

Before regulatory intervention roaming prices were excessive and were not justified by the underlying costs of providing the services. The current and previous Roaming Regulations aimed to eliminate the excessive prices and to stimulate competition. Price levels have fallen in the last few years, but this is mainly due to the effects of regulation of prices and not the result of emerging forces of competition. The margin between wholesale and retail prices in absolute terms has remained constant or has slightly declined. This means that the margin in relative terms has risen. Average EU tariffs remain close to the price caps defined by the Regulation. These developments suggest that the roaming market is not yet competitive.

Market and technological developments

While there are a number of partial substitutes for roaming services, these should be considered as a *complement* as they do not put competitive pressure on the roaming market. Development of new networks (e.g. LTE) allowing higher capacity and possibly leading to a more intensive use of data cannot be expected to bring down retail prices in the absence of pro-competitive structural measures.

Underlying causes

[1] OJ L 171 of 29 June 2007 p 32-40

At the wholesale level bilateral negotiations between operators are greatly affected by the amount of traffic that the other operator will in return steer onto the other operator's network which has the effect of limiting competition. At the retail level, there are little or no substitutes to roaming. Another cause of concern in the retail market is the limited demand elasticity for bundled roaming services. Users are not concerned about the price of roaming when they purchase a bundle of mobile services which means that operators are not competing on the basis of this element of the mobile bundle. There is also a lack of transparency, since comparison of roaming tariffs within bundles of mobile services is a complex and time-consuming task.

3. IS EU ACTION JUSTIFIED ON GROUNDS OF SUBSIDIARITY?

Regulatory intervention at EU level is required because of the cross-border nature of the international roaming market the NRAs cannot tackle the problem of high prices at the national level. Since individual Member States have no incentive to regulate in a way that takes into account the possible effect of its regulation on the other Member States, an intervention at the EU level is preferable as this would better take into account the general interest of all EU Member States. A European approach would avoid that Member States take divergent approaches for dealing with the problem of high prices, which would create obstacles to the Internal Market.

On the basis of Article 114 of the Treaty[2], the European legislator has already adopted two Regulations in 2007 and 2009. Although the legal basis for these Regulations was contested by some mobile operators, the European Court of Justice (ECJ) recently confirmed the validity of the application of Art 95 TEC[3] as legal basis for the 2007 Regulation[4]. In the same judgment, the ECJ also considered and confirmed the subsidiarity and the proportionality of the European legislator's action.

4. OBJECTIVES

One of the building blocks of EU 2020 strategy is the new Digital Agenda for Europe (DAE)[5] which defines a number of the 'Key Performance Targets' for attaining the Digital Single Market. In relation to roaming, the target is that *'the difference between roaming and national tariffs would approach to zero by 2015'*[6]. This target can be considered to be met if competition allows consumers to access roaming charges which are approaching competitive domestic level prices. In that context three general policy objectives can be identified:

- The first relates to ensuring the development of a single coherent regulatory framework, *contributing to the development of the internal market.*

- The second relates to stimulating and strengthening sustainable *competition* in the Digital Single Market.

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2 Previous Art.95 TEC
3 See New Art. 114 Treaty on the functioning of the European Union
4 See Case C-58/08: Judgment of the Court of 8 June 2010
5 See http://ec.europa.eu/information_society/digital-agenda/index_en.htm.
6 See Annex 2 of the Digital Agenda for Europe

- The third general objective is to *promote the interest of citizens*, in particular by ensuring a high level of *consumer protection* in the EU.

The IA also defines a range of specific and operational objectives which support the above general objectives. Policy options are assessed against their ability to achieve these objectives.

5. POLICY OPTIONS

This IA considers a variety of policy options for addressing the issues identified in the previous section. It should be noted that structural measures aim to tackle the underlying causes of high roaming charges i.e. to stimulate greater competition. Structural measures can include measures to facilitate market entry or measures which enhance consumer choice by allowing them to purchase roaming as a separate service. Pure price capping does not improve competition in the roaming market and, while protecting consumers for a certain period of time, leaves the underlying problems unresolved and would most likely have to be repeated after the next regulatory period. The policy options for consideration in this IA are:

1. **No regulation**

2. **Maintaining the current approach** of applying both wholesale and retail price cap regulation, including the extension of the retail price caps to data roaming services (in b and c below):

   (a) *Continuation à l'identique* with the same price caps; this scenario is considered as a 'baseline' scenario.

   (b) Extension of the current model with adjusted annual price caps and with retail data roaming price caps; this option involves a steeper glide path than the current Regulation, leading to retail prices which are close to domestic prices.

   (c) Roam-Like-Home/Roam-like-a-Local with fixed mark-up; this is a form of price capping whereby a regulated mark-up to cover roaming wholesale and retail costs is permitted to be added to domestic prices (either in the customer's home market or in the visited market).

3. **Structural solution -** introduction of a combination of 2 or 3 new elements at the wholesale and retail levels:

   (a) Decoupling - a structural measure at the retail level. Customers would be able to purchase roaming services from another operator than the provider of the domestic services.

   (b) granting access to mobile virtual network operators (MVNOs)[7]; Option relates to the introduction of a structural measure at the wholesale level, allowing MVNO roaming access to specific *levels of wholesale charges.* This can operate as a 'stand-alone' option or in conjunction with 3(a) above.

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7 And mobile network operators wishing to enter new markets

(c) the above (a and b) combined with safeguard price caps for a period of time. The unbundling measure combined with MVNO access is assumed to introduce competitive pressure in the retail market.

4. Spot market

It is a trading mechanism aimed to remove the current barrier related to the fact that the volume of roaming traffic that an operator can offer in return, largely determines the wholesale prices in the wholesale inbound market. This option could lead to cost oriented wholesale prices for all roaming traffic and all operators. It is not expected that the drastic change in the roaming market structure would be beneficial to the European industry since it would be unsure if the advantageous offers by multi-country alliances would still be possible once all of the national partners of these alliances would need to pass via the spot market. Establishing a spot market would not bring competition at retail level.

6. ASSESSMENT OF IMPACTS

All of the policy options are first subjected to a qualitative assessment against the objectives. A shortlist of options is then drawn up and each of these is subjected to a quantitative analysis using an economic model to assess the effects on industry profits, consumer surplus and overall welfare. Cost benefit analysis is carried out on the short listed options.

Qualitative analysis

Option 1 No regulation

In the case of expiry of the current Regulation, the lack of competition at the wholesale and at the retail level indicates that prices will not decrease. They are much more likely to increase due to a reduced number of operators able to actually compete on the retail market.

Option 2a Continuation with the current prices caps

The baseline scenario would focus on preventing excessive retail tariffs while ensuring transparency of roaming charges and preventing 'bill shock' for data roaming services. However consumers would not experience the benefits of lower roaming charges which should arise as a result of declining costs and will continue to face the risk of excessive retail data roaming prices. The current regulatory approach does not deal in a structured way with a number of barriers at both the wholesale (inbound and resale) market and retail market.

Option 2b Extension of the current model with adjusted price caps and with retail data price caps

This approach would lead to an automatic reduction of retail prices for voice, sms and data roaming, for the period concerned, at levels approaching domestic level prices. This would ensure a high level of consumer protection. On the other hand, this approach does not promote competition in the internal market and does not therefore address the underlying structural problems. This approach does not allow a sustainable long term solution and is likely to have to be repeated after the expiry of the next regulatory period.

Option 2c Roam-Like-Home/Roam-like-a-Local with fixed mark-up

While doing very little to promote competition in the provision of roaming services since they do not address underlying structural issues, these methods ensure that the benefits of domestic retail competition are automatically passed through to roaming users. While this would lead to lower prices than are typical at present for some consumer segments, overall the option has less advantages compared to Eurotariff price caps (in Option 2b above) as regards bringing roaming prices closer to domestic levels for all consumers.

Option 3a: Decoupling

It is expected that this option could allow the problems of lack of competition and limited consumer choice to be tackled. However it will take some time to implement this solution which suggests that the continuation of safeguard retail price caps may be necessary. Decoupling alone may not create the conditions for new entry to the roaming market. It may therefore need to be accompanied by access obligations (see Option 3b below).

Option 3b: Access obligation at regulated prices for wholesale roaming

This could boost competition by leading to the development of pan-European virtual networks and could enable them to offer the same roaming tariff plans to customers in different countries. It is expected that Option 3b would have a positive impact on competitive market conditions, at least at the wholesale level. However the chances of boosting competition are increased significantly if this option is combined with retail structural obligations (Option 3a).

Option 3c: Decoupling/access obligation /safeguard price caps

For decoupling to be fully effective it would need to be combined with an access obligation which will facilitate market entry by new or existing players including pan-European roaming service providers. Such a combination would enhance competition and would not require stringent retail price caps to get lower prices for the consumers. However, given that this solution will take time to implement, it would be appropriate to keep safeguard retail caps for a period of time, set at a sufficiently high level to leave room for competition, to ensure a safety-net for consumers until the unbundling measures have had an opportunity to become fully operational and effective. This solution would tackle the underlining roaming problems and allow a sustainable competitive solution to the roaming without the need for long term price regulation.

Option 3d: Spot market

This option does not enhance retail competition and, therefore, provides no guarantee that that roaming prices would be aligned to the domestic charges of the different Member States. When stacked against the highly uncertain benefits of this approach, it is considered that this option is unlikely to meet the objectives in an effective or proportionate manner.

Quantitative analysis

On the basis of the above assessment it is proposed to carry out quantitative assessment on Option 1, Option 2a, Option 2b and Option 3c. For the assessment of the economic impact, a detailed economic model has been developed. The aim of this model is the determination in the aggregate and for each country the effect of different regulatory options on roaming quantities and revenues, consumer and producer surplus, and total social welfare.

Options 2b and 3c involve the application and removal of price caps at different times. To simplify the comparison, the quantitative effects of these options have been calculated with regard to the respective retail caps, without taking into account the downward pricing effect arising from additional competition under option 3c.

The significant negative impact of removing regulation (Option 1) can be clearly identified. This is primarily due to the current lack of competition at both the wholesale and the retail levels. Options 2b and 3c involve a positive and comparable gain of social welfare. These options have in common that consumers would benefit from a retail data price-cap, in addition to the existing price-cap for the rest of services. Option 3c is expected to deliver similar results to Option 2b albeit without long term price regulation. It should be mentioned that Option 3c is based on a less strict price-cap approach, leaving space for market forces to determine prices.

The general finding of low elasticity for roaming services, except for retail data, implies that the effects on total welfare are small, and therefore the differences between these options are also small since reductions in prices only imply that consumers pay less for roughly the same consumption - that is, create a transfer from firms to consumers. However, this may change due to the expected growth of data, as lower data roaming prices are expected to lead to higher data roaming consumption.

Administrative costs

Option 1, 2a and 2b would not result in significant incremental costs since these either involve no regulation or the continuation of the status quo - the costs of compliance and the administrative costs are the same as those already being incurred. Option 3c will take time to implement since there is a number of technical, security and routing issues to be dealt with through collaboration of the Commission, BEREC, operators, and possibly standardization bodies. On the other hand, once the structural solution is in place and retail price caps are lifted, the costs of monitoring and compliance are expected to decrease.

7. COMPARISON OF OPTIONS

When measured on a qualitative and quantitative basis Option 2b and 3c both demonstrate positive social welfare. Option 2b (price capping) performs marginally better from a consumer protection point of view, as it foresees a direct incisive intervention at retail level, ensuring by regulation that - irrespective of market conditions - all consumers would at any moment pay lower prices. On the other hand Options 3c offers the possibility of enhanced competition for roaming services, allowing lower prices for consumers, while keeping safeguard price caps for a certain period, in order to ensure a degree of consumer protection until the unbundling measure have had an opportunity to become fully operational and effective. By increasing competition this option would lead to a more stable regulatory intervention over a longer period of time. Option 2b would not introduce pro-competitive structural changes and would probably need to be followed by new regulated retail prices after 2015. It is therefore proposed to apply a revised Roaming Regulation implementing option 3c for a period of ten years with a full report on its functioning by the Commission every two years.

8. EVALUATION AND MONITORING

Extension of the mobile roaming regulation will continue to be monitored very closely both by the individual NRAs, BEREC and the Commission. NRAs will continue to be charged with the tasks of monitoring and supervising compliance and may intervene on their own initiative to ensure compliance in accordance with the terms of the amended Regulation. With respect to evaluation of the extended Roaming Regulation, it is considered that a similar approach to the current regulation can be adopted. It is foreseen that the Commission would review, taking into the account the opinion of BEREC, and report to Council and Parliament in 2015. Thereafter the Commission will carry out regular reports every 2 years before the Regulation expires in 2022.