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- Executive Summary -

IMPACT ASSESSMENT OF POLICY OPTIONS IN RELATION TO A COMMISSION PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

ON

ROAMING ON PUBLIC MOBILE NETWORKS WITHIN THE COMMUNITY

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Executive summary

BACKGROUND

This impact assessment (IA) report examines options for achieving substantial reductions in international roaming charges in the EU, and their impact on consumers, users and the industry. National regulatory authorities (NRAs), Member States, the European Parliament, consumers and users are concerned that these prices are unjustifiably high. There is little evidence that the market alone can deliver.

Charges for international roaming have been the focus of Commission attention for some time. The Commission is conducting competition investigations under both Article 81 (*ex-officio)* and Article 82 of the Treaty. The wholesale market for international roaming is covered under the regulatory framework in the Commission's Recommendation on relevant markets. The Commission urged NRAs to hasten the process of analysing this market in October 2004. A subsequent common position by the European Regulators' Group (ERG) indicated that high retail charges appeared to result from high wholesale charges and high retail mark-ups, with little pass-through of reductions in wholesale charges. In December 2005 the ERG alerted the Commission to the difficulties of applying the regulatory framework to resolve this case of consumer detriment.

The Commission has also drawn attention to high roaming prices on a number of occasions and has published a website showing unjustifiably high prices across the EU.

Consultation

In the first round of consultation on this issue the Commission's focus on international roaming was broadly welcomed by Ministries, NRAs, consumer and user associations and some smaller mobile operators. Operator groups and most individual operators were opposed to regulatory intervention, and stressed the effective competitiveness of roaming markets.

The second round of consultation introduced a concrete concept for regulation (the 'home pricing principle') involving 'pegging' retail roaming prices to the customer's home prices for comparable domestic mobile services. The customer would not pay for receiving a call. Most market players in the second round were against any form of regulation. However, six operators favoured wholesale regulation. The ERG supported the Commission's objectives but was against the approach as set out in the consultation document. It favoured wholesale regulation, with a 'wait and see' approach to retail regulation. The 10 Member States that responded took the same line as the ERG.

The nature of the problem

Prices for EU-wide roaming at both wholesale and retail levels are not justified by the underlying costs of providing the service. This is compounded by a lack of retail price transparency and cannot be solved using existing regulatory tools. The EU market for international roaming is estimated at around €8.5 billion, which is 5.7% of total mobile industry revenues estimated at around €150 billion.

Roaming prices have an impact on at least 147 million EU citizens, of whom 110 million are business customers, while 37 million are travelling for leisure purposes. Consumer groups believe that the benefits of lower roaming charges would be welcomed by a very wide cross-section of consumers, including SMEs.

International roaming services differ from other telecoms services in that the customer buys the services of an operator in one Member State but is connected to the network of a foreign operator when roaming abroad. The latter bills the home operator for this 'wholesale' service. Most operators claim that competition in the wholesale market is working and is helping to bring down prices. However, at €1.15 per minute, the average retail charge for a roamed call (residential) is more than five times higher than the actual cost of providing wholesale service and 50% higher than the average IOT. Retail roaming charges are roughly four times higher than domestic tariffs.

Transparency is still a significant problem. Furthermore, many consumers are not aware of the high charges for receiving calls which are probably at least four times the average cost to the operator.

Technological and market evolution

A number of technological developments could have an impact on roaming prices, including voice over IP. However, IP mobile telephony is set to become a reality only in the medium term. Traffic direction which enables operators to direct consumers to their chosen networks while roaming for around 80% of roamed calls has had some effect but wholesale charges remain high.

The case for EU action (subsidiarity test)

NRAs are not fully equipped to deal with this issue at national level. Moreover, attempts to enhance price transparency have not had the effect of lowering prices. In these circumstances there is pressure for Member States to take measures to address roaming charges. However, any such measures could create divergent results and be ineffective, given the particular cross-border characteristics of the services concerned. Consequently, the regulatory framework needs to be amended to ensure a harmonised approach.

OBJECTIVES

The objective of EU action is to promote the development of the single market for EU-wide roaming services so that the prices paid for roaming when travelling within the Community are not unjustifiably higher than the charges payable for calls within the consumer's home country.

POLICY OPTIONS AND ANALYSIS

No policy change

If no new policy were introduced, there would be continued reliance on existing tools for regulatory intervention, political pressure could be maintained and market and technological developments would take their course.

Remaining with existing policy is unlikely to lead to substantial reductions in roaming charges. Despite recent activity by operators, consumers are still faced with unjustified prices. NRAs have already stated that they believe existing regulatory tools to be insufficient to address this problem. Furthermore, Commission decisions under EU competition rules are only applicable to their addressees and have no direct legal effect on other operators who may behave in a similar way.

Self regulation

Self-regulation in the context of roaming is the possibility for operators or associations to adopt amongst themselves common guidelines at European level (particularly codes of practice).

The Commission services have not received any general industry proposals for self-regulation. Moreover, any such approach would have to meet competition law requirements. Self-regulation would have to deliver guaranteed substantial price reductions across the board, most likely at wholesale and retail levels. This seems to be difficult to achieve given the fact that many operators do not acknowledge that there is a problem with roaming charges.

Co-regulation

This approach implies regulation in which an overall framework is set out and the role of operators and other actors determined. In the context of international roaming, targets for price reductions could be set by regulation.

Under this approach, regulation at wholesale level could be combined with robust retail price transparency. However, price transparency is problematic, and could be easy for operators to by-pass. Moreover, arriving at an agreement which could form the basis of a co-regulatory approach could give rise to competition concerns.

Soft law

The Commission could issue a recommendation on the appropriate prices to be charged for international roaming, possibly based on benchmarked best practice prices.

While soft law approaches in the form of benchmarking have proved effective in the past, lengthy processes are involved, supervision by NRAs is required, and the fact that they are non-binding means they do not provide certainty of outcome.

Targeted regulation

Regulation could be used to tackle wholesale prices, retail prices or both. Wholesale regulation could be based on cost orientation or a price cap. From a retail perspective, there are a number of options, such as prices linked to home pricing, visited country pricing or a cap on retail prices (based on regulated wholesale rates).

Regulatory intervention could also take the form of measures to stimulate further competition, using a concept similar to pre-selection in fixed networks.

Wholesale regulation only

This is the approach suggested by the ERG, which believes wholesale roaming charges should be controlled by means of a uniform European price cap. An index of retail charges would show whether wholesale price reductions were being passed through to retail customers. A form of retail price control could be necessary at a later stage.

The Commission services believe that a modified approach to that of ERG, but which is still based on the use of MTRs as a benchmark, may be required at wholesale level. They also believe that including a trigger mechanism for retail regulation if benefits are not passed through to consumers would be highly complex and raise significant procedural and legal problems.

In their responses to the consultation some EU operators expressed concern that they could be required under the GATS to offer wholesale roaming tariffs to non EC-based operators at a level not exceeding the regulated level. Pursuant to the GATS, national treatment has to be accorded to like services and service suppliers.

Retail regulation only

This option depends on whether wholesale prices are in effect low and whether retail margins are such that retail-only regulation would bring about a decrease in retail prices without creating price squeeze for certain operators.

Intervening only at a retail level could mean that some operators might be forced to offer roaming services below cost. Retail-only regulation is likely to benefit larger operators which already enjoy lower-than-average IOTs, and would not address the problems faced by smaller players.

Wholesale and retail regulation

ERG recognises that if market forces proved insufficient to guarantee substantial pass-through of wholesale gains to the retail level, retail price control might be needed. There is evidence that pass-through of wholesale price reductions to consumers is not automatic. Despite some gains at wholesale level average retail charges have remained high, with margins well above 200% for calls originated while roaming.

Operators have also been making retail margins of close to 300% or 400% for received calls while roaming, even though they could have decreased the prices without the need for wholesale regulation. Economic theory confirms that players do not necessarily have an incentive to use monopoly profits made at wholesale level to compete for the acquisition and retention of domestic retail customers.

There is therefore a serious risk that if applied at wholesale level only, the ultimate aim of regulation would not be achieved.

Home pricing principle

Retail roaming prices would be 'pegged' to the customer's home prices for comparable domestic mobile services. Parallel action would be needed at wholesale level in the form of cost-orientation obligations or a capping mechanism, otherwise market distortions could ensue.

The home pricing principle was the starting point for the Commission for the second phase of consultation. Given the fact that around 80% of the calls go back home, under this principle such calls would equate to international calls. The impact on operators should therefore not be huge given the fact that there is not a large gap between the price of international calls and of international roaming calls. On the other hand gains to consumers are limited for the same reason. The home pricing principle also poses a number of implementation difficulties.

Visited country approach

Consumers would be charged the actual domestic rate for making a call within the visited country and an international rate equivalent to what a subscriber in that country would normally pay to make an international call.

While this option has advantages, it presents a number of problems in terms of enforceability and transparency.

European home market approach

In order to take account of comments received and of practical implementation issues a development of home pricing, the European home market approach, could be envisaged which would mean EU-wide roaming at rates comparable to those paid at home.

Maximum wholesale prices would be set by reference to a benchmark based on multiples of the average EU mobile termination rates (MTR) as set for operators with significant market power. As ERG has pointed out, the MTR provides an excellent starting point as a benchmark for wholesale prices as it provides transparency, simplicity and certainty.

At retail level a ceiling would be set at a 30% margin above the wholesale rate, to ensure that savings are passed on to consumers. Such a margin is reasonable while at the same time guaranteeing price reductions. A transitional period of 6 months would be provided to enable operators to adapt. Operators would be free to compete at lower margins than these levels. A maximum safeguard price would be set for receiving calls at the level of the MTR plus a margin of 30%.

This approach overcomes the implementation difficulties identified with the home pricing principle and provides greater consumer benefits.

Transparency

Transparency of charges remains a very important issue for consumers. While recent initiatives by the Commission and NRAs have been positive, more needs to be done. These measures could be supplemented by a requirement on mobile operators to provide access free of charge by either short message service (SMS) or a mobile call to personalised information on international roaming tariffs while they are roaming.

Economic impact

Focussing principally on consumer surplus, the retail and wholesale regulation policy option, (different elasticity effects notwithstanding), delivers the greatest benefits. Indicative figures suggest that consumer surplus could be between €5.28 and €5.96 billion, compared to between €2.2 and €2.3 billion and €1.50 and €1.55 billion under the 'wholesale only' and 'no policy change' options respectively.

Broader impacts

Dynamic impacts

To the extent that overall mobile revenues would come down as a result of regulation under some of the policy options, it is reasonable to assume *some* reduction of investment following a reduction in roaming charges. However, it is also reasonable to assume targeted cut-backs rather than across-the-board reductions.

Spill-over effects

Some submissions to the consultation suggested that in response to a reduction in roaming revenues, operators could be expected to raise prices for other services. It is reasonable to assume that while at the margin *some* rebalancing of tariffs will occur, a general increase in the price level for other services, given intense competition in major markets, is highly unlikely.

Redistributive issues

The customer segment benefiting most from a reduction in roaming charges will be high-frequency roamers. Other things being equal, business customers who currently are not on large-scale competitive contracts (as would be the case for most SMEs), high-frequency leisure travellers and people living in border regions would profit most from a reduction in roaming charges.

Firm-level effects and consolidation

The impact of regulated price changes at firm level will vary according, first, to any particular firm's exposure to roaming revenues, and second, to the precise nature of the regulatory approach taken.

ASSESSMENT OF ADMINISTRATIVE BURDENS

All regulatory options presented in this Impact Assessment include some administrative costs, but their significance varies. Wholesale regulation based on a price-cap, as proposed by the ERG, would require regular monitoring of wholesale and retail roaming charges, to ascertain the pass-through of wholesale reductions to the retail level. This would imply administrative costs for operators and NRAs, not however significantly different from the current situation. Wholesale and retail regulation in the form of price caps would imply a similar administrative burden.

EVALUATION AND MONITORING

If regulatory intervention is required, NRAs will have to monitor and supervise compliance. The principal indicator for monitoring the implementation of the proposal is tariffs at retail level. NRAs should monitor retail roaming charges for voice calls, SMS and multi-media message services (MMS) and should report findings to the Commission on request. One year prior to the review of the functioning of any regulation the Commission could prepare an evaluation report assessing the impact of the measure on markets and consumers.

CONCLUSION

The proposed regulatory option of combining wholesale and retail regulation under what the Commission's services term the 'European home market approach' ultimately results in the greatest benefit to consumers. Each of the other assessed options has specific merits – from being minimally intrusive to offering maximum flexibility to industry. However, only regulation under the 'European home market approach' makes certain that consumers – no matter where they physically are in the EU – have the same experience of using their mobile phone as if at home.