

BERR

Department for Business
Enterprise & Regulatory Reform

**CONSULTATION ON EU
PROPOSALS FOR A REVISION TO
REGULATION 717/2007 ON
ROAMING ON PUBLIC TELEPHONE
NETWORKS**

OCTOBER 2008

**CONSULTATION ON EU PROPOSALS FOR A REVISION TO REGULATION 717/2007 ON
ROAMING ON PUBLIC TELEPHONE NETWORKS**

Explanation of the wider context for the consultation and what it seeks to achieve

In 2007 the EU adopted a Regulation that addressed high roaming charges for voice calls in Europe. The Commission has now reviewed the operation of that Regulation and proposed that it be extended in duration and scope by covering SMS and data roaming. This consultation seeks the views of stakeholders against a background of an ambitious timetable to bring the revised Regulation into force by June 2009

Issued: 30 October 2008

Respond by: 20 November 2008

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Content Page

Executive Summary *pg 4*

How to respond *pg 4*

Additional copies *pg 6*

Confidentiality and data protection *pg 6*

Help with queries *pg 6*

Comments or complaints *pg 7*

Consultation questions *pg 7*

The proposals and initial UK views *pg 8*

What happens next? *pg 9*

Annex A The Code of practice consultation criteria *pg 10*

Annex B Impact Assessment *pg 11*

Annex C Proposed Amendments to Regulation *pg 17*

Annex D List of consultees *pg 31*

Executive Summary

In 2007, the European Union agreed a Regulation to address the continuing problems with high prices for roaming mobile voice calls within Europe. The Regulation set declining price caps for the wholesale and retail charges for voice roaming calls for three years. It also established transparency requirements. The Regulation acknowledged the need to consider the market for SMS messages at a later date. In the light of market analysis and drawing on the advice of the European Regulators Group, the Commission published a set of documents on September 2008 proposing amendments to the 2007 Regulation. These amendments would extend the regulation of voice charges for an additional three years, extend the scope of the Regulation to SMS wholesale and retail charges and impose ceilings on the wholesale charges for data roaming. They also propose transparency requirements on operators with regard to data roaming to counter the problem of bill shock. The Commission have also proposed measures to address a problem identified with the current regime that is the extent to which billing regimes can undermine the impact of the retail price cap. The Commission has proposed that the billing regime be regulated to allow a set-up charge and subsequent per second billing for retail calls.

This consultation seeks the views of interested parties on the proposals of the Commission. The expected adoption date of the amendment is June 2009 and, to allow for agreement to be reached with the European Parliament, the UK has been asked to take a view in Council towards the end of November. For this reason, a very short timetable which has been approved by Stephen Carter, the Minister for Communications, Technology and Broadcasting, is proposed for this consultation with discussions taking place in parallel with representatives of the operators and consumer groups.

The package of documents can be found at the Commission's website using the following link: http://www.ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm A copy of the Regulation incorporating the proposed amendments is attached as Annex C to this document.

How to respond

1. Comments are invited on the Commission's proposals and on any of the issues raised in this consultation, to be submitted by **20 November 2008** to Anne Grikitis:

Email: Anne.Grikitis@berr.gsi.gov.uk

We prefer to receive responses e-mailed as a Microsoft Word attachment.

Address for postal responses:

Anne Grikitis
Communications and Content Industries
Business Relations 2
BERR
UG27
1 Victoria Street
London
SW1H 0ET

Crynodeb Gweithredol

Yn 2007, cytunodd yr Undeb Ewropeaidd ar Reoliad er mwyn delio â'r problemau parhaus sy'n gysylltiedig â phrisiau uchel am alwadau symudol lleisiol rhwydweithiol yn Ewrop. Roedd y Rheoliad yn gosod capiau gostyngol o ran y taliadau cyfanwerthol ac adwerthol am alwadau rhwydweithiol lleisiol am dair blynedd. Yn ogystal, roedd yn pennu gofynion a oedd yn ymwneud â thryloywder. Roedd y Rheoliad yn cydnabod yr angen i ystyried y farchnad ar gyfer negeseuon testun yn y dyfodol. Yng ngoleuni gwaith a gynhaliwyd i ddadansoddi'r farchnad a chan fanteisio ar gyngor y Grŵp Rheolyddion Ewropeaidd, aeth y Comisiwn ati i gyhoeddi set o ddogfennau ym mis Medi 2008 a oedd yn cynnig diwygiadau i Reoliad 2007. Byddai'r diwygiadau hyn yn ymestyn y broses o reoleiddio taliadau lleisiol am dair blynedd ychwanegol, byddent yn ymestyn cwmpas y Rheoliad i daliadau cyfanwerthol ac adwerthol am negeseuon testun, ac yn pennu terfynau ar gyfer y taliadau cyfanwerthol am rwydweithio data. Yn ogystal, maent yn cynnig gofynion sy'n ymwneud â thryloywder ar weithredwyr o ran rhwydweithio data er mwyn delio â phroblem sioc biliau. Yn ogystal, mae'r Comisiwn wedi cynnig mesurau i ddelio â'r broblem a nodwyd gyda'r gyfundrefn bresennol, hynny yw, y graddau y gall cyfundrefnau bilio danseilio effaith y cap ar brisiau adwerthol. Mae'r Comisiwn wedi cynnig y dylid rheoleiddio'r gyfundrefn filio er mwyn caniatáu tâl sefydlu a threfniant bilio fesul eiliad am alwadau adwerthol.

Mae'r ymgynghoriad yn ceisio safbwyntiau partïon y mae ganddynt ddiddordeb yng nghynigion y Comisiwn. Disgwylir mai Mehefin 2009 fydd y dyddiad ar gyfer mabwysiadau'r diwygiadau ac, er mwyn gallu dod i gytundeb gyda Senedd Ewrop, gofynnwyd i'r DU fynegi barn i'r Cyngor tuag at ddiwedd mis Tachwedd. Am y rheswm hwn, cynigir amserlen fer iawn ar gyfer yr ymgynghoriad hwn, ac y dylid cyd-redeg trafodaethau gyda chynrychiolwyr y gweithredwyr a'r grwpiau defnyddwyr

Mae modd gweld pecyn y dogfennau ar wefan y Comisiwn gan ddefnyddio'r cyswllt canlynol: http://www.ec.europa.eu/information_society/policy/ecomm/tomorrow/index_en.htm Mae copi o'r Rheoliad sy'n cynnwys y diwygiadau arfaethedig, ynghlwm fel Atodiad C y ddogfen hon.

Sut i ymateb

1. Gwahoddir sylwadau am gynigion y Comisiwn ac ynghylch unrhyw rai o'r materion a godwyd yn yr ymgynghoriad hwn, i'w cyflwyno erbyn **20 Tachwedd 2008** i Anne Grikitis:

E-bost: Anne.Grikitis@berr.gsi.gov.uk

Byddai'n well gennym gael ymatebion sy'n cael eu hanfon mewn neges e-bost fel atodiad Microsoft Word.

Cyfeiriad ar gyfer anfon ymatebion yn y post:

Anne Grikitis
Communications and Content Industries
Business Relations 2
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1 Victoria Street
London
SW1H 0ET

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organization represents, and where applicable, how the views of members were assembled.

A list of those organisations and individuals to whom a copy of the consultation document was sent directly is in Annex D. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

2. You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BERR Publications Orderline,
ADMAIL 528, LONDON, SW1W 8YT.
tel: 0845 015 0010, calls are charged at local rate
Fax: 0845 015 0020. Minicom: 0845 015 0030

An electronic version can be found at www.berr.gov.uk/files/file46498.doc

Confidentiality & Data Protection

3. Your response may be made public by BERR. If you do not want all or part of your response or name to be made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT systems or included as a general statement in your fax cover sheet will be taken only to apply to information in your response for which confidentiality has been requested.
4. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
5. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
6. The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

7. Questions about the policy issues raised in the document or if you require this document in an alternative format or in Welsh, please contact:

Triecca Huggins

Communications and Content Industries
Business Relations 2
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London
SW1H 0ET

Triececa.Huggins@berr.gsi.gov.uk

Tel: 020 7215 1653

Comments or complaints

8. If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Vanessa Singhateh
Consultation Co-ordinator
BERR
Better Regulation Team
1 Victoria Street
London
SW1H 0ET

E-mail: Vanessa.singhateh@berr.gsi.gov.uk

Tel: 020 7215 2293

Fax: 020 7215 2234

A copy of the Code of Practice on Consultation is in Annex A.

Consultation questions

- 1. Do you consider the extension of the regulation of voice roaming and the proposed price ceilings to be proportionate?**
- 2. Is the two part billing regime proposed by the Commission a proportionate response and is the structure proposed reasonable?**
- 3. Do you consider that extension of the Regulation to SMS is proportionate and that the rates proposed for wholesale and retail caps are proportionate?**
- 4. Is it appropriate to extend the regulation to data roaming, should the Regulation apply to wholesale charges only and is the proposal of a cap of 1 Euro/MB appropriate?**
- 5. Are the transparency requirements proposed for data roaming charges practical and justified?**
- 6. Are there any other comments you wish to make on this proposal?**

9. An initial Impact Assessment is attached at Annex B and we would welcome comments on it.

The proposals and initial UK view on them

10. The Government has welcomed the proposal from the Commission but indicated that it needed to consult stakeholders on the key questions of the proportionality of the proposals in general terms and whether the detailed proposals are justified.

Summary of the proposals

11. It is proposed to:-

Extend the regulation of Voice Roaming

The Commission proposes extending the operation of Regulation to the voice roaming market for three years until 2012. This would mean both extending the application of the transparency requirements and extending the glide path that lowers prices year by year for both wholesale and retail charges.

The glide path proposed for retail charges follows that proposed by the European Regulators Group (ERG) – 40 cents (Sterling £0.32) in 2011, 37 (0.29) in 2013 and 34 (£0.27) in 2013. The Commission has also based their wholesale cap proposals on ERG advice. It has suggested (in Euro cents) 23 cents (Sterling £0.18) in 2011, 20 (£0.16) in 2012 and 17 (0.13) in 2103. (NB. The exchange rate used throughout this document is Sterling £1 = 1.2653).

Question1: Do you consider the extension of the regulation of voice roaming and the proposed price ceilings to be proportionate?

Address Billing unitization

The Commission has proposed a set-up rate of 30 seconds for calls made, and no set-up charge for calls received.

Question 2: Is the two part billing regime proposed by the Commission a proportionate response and is the structure proposed reasonable?

Regulate SMS charges

The Commission has proposed to introduce a Eurotarif that must be offered to all customers to effectively act as a ceiling on SMS roaming charges. This is being set at 11 Euro cents (£0.99) per outward going message with no charge allowed for incoming messages.

Question 3: Do you consider that extension of the Regulation to SMS is proportionate and that the rates proposed for wholesale and retail caps are proportionate?

Regulate Data Roaming

The Commission has chosen not to regulate wholesale charges at or near cost but to set an upper limit to chase out of the market those wholesale offers that it describes as exorbitant. This is set at 1Euro/MB (0.79). The Commission has elected not to propose regulation on retail roaming charges for data given that it is a new and dynamic market.

Question 4 Is it appropriate to extend the regulation to data roaming, should the Regulation apply to wholesale charges only and is the proposal of a cap of 1 Euro/MB appropriate?

The Commission has also proposed transparency measures – to inform the consumer of the cost of roaming and to develop a cut-off facility on the basis of total cost incurred. We can support an outcome that will increase transparency but will need to be sure that these measures are realistic in terms of cost and practicality.

Question 5: Are the transparency requirements proposed for data roaming charges practical and justified?

The above issues are the most obvious areas for comment. The Government would, however, welcome any other observations you may have on the proposal.

Question 6: Are there any other comments you wish to make on this proposal?

What happens next?

12. Following the closing date of this consultation the Government will consider all responses and use them to develop the UK's negotiating position on the proposals. In addition, the Government will draw on input from stakeholders obtained in other fora
13. The French Presidency of the Council of Ministers would like to achieve political agreement at the Telecoms Council Meeting, which is being held in November 2008. Any remaining issues would need to be resolved by the Czech Republic during their Presidency in the first half of 2009. The whole proposal is subject to co-decision, so both the Council and Parliament will be required to reach agreement before the current term of the European Parliament expires in spring 2009. This would require agreement on the first reading in the European Parliament.
14. The Government will publish a Response by 10 December 2008

ANNEX A

The Consultation Code of Practice Criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address <http://www.cabinetoffice.gov.uk/regulation/consultation/index.asp>

ANNEX B Summary: Intervention & Options

Department /Agency:	Title: Impact Assessment of European Commission proposals to amend the 2007 EU Roaming Regulation	
Stage: Partial	Version: One	Date: 10 October 2008
Related Publications: Consultation on the Proposal for a Regulation of the European Parliament and of the Council on Roaming on Public Mobile Networks within the Community		

Available to view or download at:

<http://www.>

Contact for enquiries: Tim Hogan

Telephone: 020 7215 1628

What is the problem under consideration? Why is government intervention necessary?

Analysis by the European Regulators Group (ERG) of the 2007 EU Roaming Regulation, which introduced caps on the wholesale and retail price of voice calls made and received in other Member States, suggests that further action is needed. For example, the retail price of voice roaming calls is still at, or very near, the cap in two thirds of Member States, the wholesale and retail price of SMS and data roaming services continues to be high across the EU while the quality of information on the cost of roaming remains poor with many instances of 'bill shock' still being reported.

What are the policy objectives and the intended effects?

The European Commission has brought forward proposals to amend the 2007 EU Roaming Regulation. These include: 1) extending the time frame for reducing the wholesale and retail price of voice roaming by three years to 2013; b) introduce price caps on SMS (retail and wholesale) and data roaming (wholesale only) services; and c) increase transparency of information on data roaming charges to counter the problem of 'bill shock'. The aim is to deliver a higher level of consumer protection and competition in the EU mobile telecommunications services sector.

What policy options have been considered? Please justify any preferred option.

The UK welcomes the European Commission's proposals to amend the 2007 EU Roaming Regulation but needs to consult stakeholders on the key questions of proportionality of the proposals in general terms and whether the details proposals are justified. At this stage, the UK is considering three options: a) retain the status quo; b) adopt the Commission's proposals in full; c) adopt the Commission's proposals with changes

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Summary: Analysis & Evidence

Policy Option:

Description:

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Non-users of SMS and data roaming services may face higher tariffs if operators look to offset falling revenues and rebalance their profits. Lower tariffs may reduce operators revenues and profits streams (though these may be offset by increasing tariffs elsewhere and efficiency improvements which deliver cost savings)
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Cost savings to users of SMS and data roaming services as a result of reduction in tariffs. Possibility of productivity gains to operators as they work to generate cost savings through improvements in the efficiency of their business models
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£		Total Benefit (PV) £
Other key non-monetised benefits by 'main affected groups' Greater transparency of information about the price of mobile data roaming services reducing the risk of 'bill shock' whereby users pay significantly more than they would otherwise have chosen to pay.			

Key Assumptions/Sensitivities/Risks Assume that there is no increase in competition since these proposals do not address barriers to entry in the wholesale market or make it easier for consumers to switch in the retail market.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£

What is the value of changes in greenhouse gas emissions?			£	
Will the proposal have a significant impact on competition?			Yes/No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease of £	Net Impact		£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

In response to concerns over the consistently high prices EU citizens paid to make and receive voice calls while roaming in other Member States and the poor availability of transparent information on the prices charged by operators the European Union adopted in 2007 the Roaming Regulation. This placed caps on the wholesale and retail price which mobile phone operators could charge for voice roaming calls and required them to provide a minimum level of price transparency.

Since then, two reviews of the functioning of the Roaming Regulation have been carried out by the European Regulators Group (ERG) for the European Commission. They have noted that while the prices for roaming calls made and received in other Member States has fallen since the Regulation was adopted the price for data and SMS roaming services are still at a high level in many parts of the EU while the quality of information on the price of roaming services remains poor.

Rationale for government intervention

There are two reasons for government intervention in the EU mobile telecommunications sector. Firstly, competition in the EU mobile telecommunications sector is still relatively weak. In the wholesale sub-sector, competition is dampened because there are a limited number of operators and there are high barriers to entry (in the form of licences for the use of the necessary radio spectrum, itself a limited resources). In the retail sub-sector, competition is limited because customers are not particularly well informed by the range and cost of roaming services offered by operators, international calls account for a small proportion of their total mobile phone budget, and customers are often locked into contracts with operators which makes switching in the short-run very difficult and costly.

Consumers suffer as a result of low competition in two ways: higher prices and limited consumer choice. This is because weak competition reduces the incentive for firms to improve the efficiency of their business process, passing on any cost savings to consumers, and also innovate, developing new and better quality services which can be offered to consumers.

A second reason for intervention is that there is also an information asymmetry problem. Consumers do not have transparent information about the range of roaming services offered by different operators and the various tariffs they charge. As a result, consumers may choose those services which do not best serve their needs or face the risk of 'bill shock' whereby they pay considerably more than they would otherwise have wished.

Commission's reform proposals

The European Commission wishes to amend the 2007 Roaming Regulation with a view to delivering a higher level of consumer protection and competition in the EU mobile telecommunications sector as well as a better functioning internal market for mobile voice, data and broadband services. The main elements of its proposals include:

- Extending the downward progression (the 'glide path') for wholesale and retail charges for voice roaming calls by a further three years to 2013 with the wholesale glide path declining steeply
- Set new rules for how these calls are billed, moving from per-minute to per-second billing
- Establish wholesale and retail caps and a glide path for SMS messages
- Set a wholesale cap for data roaming calls and establish new transparency requirements on data roaming

Scope of the Commission's proposals

The European Commission's impact assessment breaks the mobile telecommunications sector down into three sub-sectors: voice services, SMS and broadband data services. The European Commission's proposals to amend the 2007 Roaming Regulation will have a direct impact on the latter two sub-sectors.

According to Ofcom figures¹, the number of mobile phone subscriptions has continued to rise steadily over the last few years, rising from some 50 million in 2002 to 73.5m in 2007. Estimated mobile retail revenue in the UK has increased from some £8.7m in 2002 to some £15.1m in 2007. Of this, voice and access accounted for some 75% of total mobile retail revenue with SMS and data revenue accounting for around 20% and 5% respectively. Ofcom state that at the present time, revenue from mobile broadband remains very small relative to other sources of mobile retail revenue. Assuming, a projection of 3 million mobile broadband subscribers over the next few years paying an average of £15m per month, they estimate that revenues of some £540m would be generated, equal to around 3.5% of the £15.1 total mobile retail revenue generated in the UK in 2007.

The Commission's proposals have the potential to affect a large number of people in the UK. First, research for Ofcom by Enders Analysis estimates that today around 49 million people in the UK use a mobile phone. Second, the percentage of adults who use their mobile phone abroad is likely to be much higher than the 20% figure estimated in research carried out for Oftel in 2001. This can be attributed in part to the steady rise in the number of mobile phone subscriptions, which have risen from some 50 million in 2003 to 73.5m in 2007 and in part, technological advances which have reduced the cost of roaming in other Member States and improved the range, quality and speed of mobile phone services in general.²

Options

The UK is considering three options:

¹ The UK Communications Market 2008, Ofcom.

² According to Ofcom, mobile broadband is becoming increasingly popular driven by a continuing falling prices for internet access on mobile phones and technological developments which have improved the usability of the internet via phone, the growth of 3G mobile USB modems or 'dongles' and the rollout of High Speed Packet Access (HSPA) technology which has enabled mobile operators to offer broadband access at headline speeds comparable to lower-end fixed broadband offers.

Option 1: Do nothing (i.e. keep the status quo)

Option 2: Adopt the Commission's amendment proposals in full

Option 3: Adopt the Commission's amendment proposals with changes

High level costs and benefits

In the very short time since the Commission's proposals were announced, it has only been possible to carry out a preliminary high-level assessment of the likely impact of the Commission's amendment proposals for UK businesses and consumers.

The main beneficiaries of these proposals will be consumers roaming in other Member States who will enjoy lower tariffs for SMS and data roaming services. However, it is possible that these gains may be offset by increases in mobile phone tariffs elsewhere as operators seek to recoup falling revenues and rebalance their profits.

It is also possible that these proposals may lead to productivity gains for operators in the EU mobile telecommunications sector as the prospect of reduced revenues resulting from lower retail prices provide them with an incentive to improve the efficiency of their business models and reduce costs.

Competition assessment

Paragraph 6.5 of OFT guidance states that, "maximum prices (price ceilings) may act as a focal point for suppliers, with prices drawn to the ceiling, reducing the intensity of price competition between suppliers. Price ceilings may be intended to protect consumers from producers with market power but there may be less restrictive means of delivering this objective. The imposition of market prices may also lead to some suppliers exiting the market, may distort the choice of products supplied and may lead to the imposition of hidden charges to circumvent the price ceiling."

In the present context, the Commission's proposals to amend the Roaming Regulation are aimed solely at reducing wholesale and retail prices for SMS and data roaming services charged by operators. They do not attempt to address obstacles to competition in the wholesale and retail sub-sectors of the EU mobile telecommunication sector. As a result, these proposals are unlikely to lead to stronger competition. In fact, it is possible that these proposals may weaken competition even further.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

Annex C

Proposed Amendments to Regulation (EC) No 717/2007/EC

The Regulation with amendments (**in bold**) as proposed by the Commission

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Regulation (EC) No 717/2007 on roaming on public mobile **communications**
networks within the Community and Directive 2002/21/EC on a common regulatory framework
for electronic communications networks and services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular Article 95
thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [2],

[Whereas:]

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter and scope

1. This Regulation introduces a common approach to ensuring that users of public mobile **communications** networks when travelling within the Community do not pay excessive prices for Community-wide roaming services when making calls and receiving calls, **when sending and receiving SMS messages and when using packet switched data communication services**, thereby contributing to the smooth functioning of the internal market while achieving a high level of consumer protection, safeguarding competition between mobile operators and preserving both incentives for innovation and consumer choice.

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

2. This Regulation also lays down rules aimed at increasing price transparency and improving the provision of information on charges to users of Community-wide roaming services.
3. This Regulation constitutes a specific measure within the meaning of Article 1(5) of the Framework Directive.
4. The charge limits set out in this Regulation are expressed in **euros**. Where charges governed by Articles 3, , **4a, 4b, and 6a(4)** are denominated in other currencies, the initial limits pursuant to those Articles shall be determined in those currencies **in the case of Articles 3 and 4** by applying the reference exchange rates prevailing on 30 June 2007, **and in the case of Articles 4a, 4b and 6a(4) by applying the reference exchange rates prevailing on [1 May] 2009, in each case** as published by the European Central Bank in the *Official Journal of the European Union*.

For the purposes of the subsequent reductions in those limits provided for in Article 3(2) and Article 4(2), the revised values shall be determined by applying the reference exchange rates so published one month preceding the date from which the revised values apply.

Article 2
Definitions

1. For the purposes of this Regulation, the definitions set out in Article 2 of the Access Directive, Article 2 of the Framework Directive, and Article 2 of the Universal Service Directive shall apply.
2. In addition to the definitions referred to in paragraph 1, the following definitions shall apply:
 - (a) "Eurotariff" means any tariff not exceeding the maximum charge, provided for in Article 4, which a home provider may levy for the provision of regulated roaming calls in compliance with that Article;
 - (b) "home provider" means an undertaking that provides a roaming customer with terrestrial public mobile **communications** services either via its own network or as a mobile virtual network operator or reseller;
 - (c) "home network" means a terrestrial public mobile **communications** telephone network located within a Member State and used by a home provider for the provision of terrestrial public mobile **communications** services to a roaming customer;
 - (d) "Community-wide roaming" means the use of a mobile telephone or other device by a roaming customer to make or receive intra-Community calls, **or to send or receive SMS messages or packet switched data communications**, while in a Member State other than that in which his home network is located, by means of arrangements between the operator of the home network and the operator of the visited network;
 - (e) "regulated roaming call" means a mobile voice telephony call made by a roaming customer, originating on a visited network and terminating on a public **communications** network within the Community or received by a roaming customer, originating on a public **communications** network within the Community and terminating on a visited network;
 - (f) "roaming customer" means a customer of a provider of terrestrial public mobile **communications** services, by means of a terrestrial public mobile network situated in the Community, whose contract or arrangement with his home provider permits the use of a mobile telephone or other device to make or to receive calls **or to send or receive SMS messages or packet switched data communications** on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;
 - (g) "visited network" means a terrestrial public mobile **communications** network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls, **to send or receive SMS messages or packet switched data communications**, by means of arrangements with the operator of the home network.
 - (h) '**Euro-SMS tariff**' means any tariff not exceeding the maximum charge, provided for in Article 4a, which a home provider may levy for the provision of regulated roaming SMS messages in compliance with that Article;
 - (i) '**SMS message**' means a Short Message Service text message, composed principally of alphabetical and/or numerical characters, capable of being sent between mobile numbers assigned in accordance with the national numbering plans;
 - (j) '**regulated roaming SMS message**' means an SMS message sent by a roaming customer, originating on a visited network and terminating on a public **communications** network within the Community or received by a roaming customer,

originating on a public communications network within the Community and terminating on a visited network;

(k) 'regulated data roaming service' means a roaming service enabling the transmission or receipt of packet switched data communications by a roaming customer by means of his mobile telephone or other mobile device while it is connected to a visited network. A regulated data roaming service does not include the transmission or receipt of regulated roaming calls or SMS messages, but does include the transmission and receipt of Multimedia Messaging Service (MMS) messages.

Article 3

Wholesale charges for the making of regulated roaming calls

1. The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of a regulated roaming call originating on that visited network, inclusive inter alia of origination, transit and termination costs, shall not exceed EUR 0,30 per minute.
2. This average wholesale charge shall apply between any pair of operators and shall be calculated over a twelve month period or any such shorter period as may remain before the **end of the period of application of a maximum average wholesale charge as provided for in this paragraph or the expiry of this Regulation**. The maximum average wholesale charge shall decrease to EUR 0,28 and EUR 0,26, on 30 August 2008 and on **1 July 2009** respectively and shall further decrease to EUR 0.23, EUR 0.20 **and EUR 0.17 on 1 July 2010, on 1 July 2011 and on 1 July 2012 respectively**.
3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes sold for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period. The operator of the visited network shall be permitted to make a distinction between peak and off-peak charges.

However, with effect from 1 July 2009, the average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale roaming revenue received by the total number of wholesale roaming minutes actually utilised for the provision of wholesale roaming calls within the Community by the relevant operator over the relevant period, aggregated on a per second basis.

Article 4

Retail charges for regulated roaming calls

1. Home providers shall make available and actively offer to all their roaming customers, clearly and transparently, a Eurotariff as provided for in paragraph 2. This Eurotariff shall not entail any associated subscription or other fixed or recurring charges and may be combined with any retail tariff.

When making this offer, home providers shall remind any of their roaming customers who, before 30 June 2007, had chosen a specific roaming tariff or package of the conditions applicable to that tariff or package.

2. The retail charge (excluding VAT) of a Eurotariff which a home provider may levy from its roaming customer for the provision of a regulated roaming call may vary for any roaming call but shall not exceed EUR 0,49 per minute for any call made or EUR 0,24 per minute for any call received. The price ceiling for calls made shall decrease to EUR 0,46 and EUR 0,43, and for calls received to EUR 0,22 and EUR 0,19, on 30 August 2008 and on 1 July 2009 respectively. **The price ceiling for calls made shall further decrease to EUR 0.40, EUR 0.37, and EUR 0.34 and for calls received to EUR 0.16, EUR 0.13 and EUR 0.10, on 1 July 2010, on 1 July 2011 and on 1 July 2012 respectively.**

With effect from 1 July 2009 every home provider shall charge its roaming customers for the provision of any regulated roaming call to which a Eurotariff applies, whether made or received, on a per second basis.

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

3. All roaming customers shall be offered a tariff as set out in paragraph 2. All existing roaming customers shall be given the opportunity by 1 July 2009 to opt deliberately for a Eurotariff or any other roaming tariff, and shall be allowed a period of two months within which to make their choice known to their home provider. The requested tariff shall be activated no later than one month after receipt by the home provider of the customer's request. Roaming customers who within that period of two months have not expressed their choice shall automatically be provided with a Eurotariff as set out in paragraph 2.

However, roaming customers who before 30 June 2007 had already made a deliberate choice of a specific roaming tariff or package other than the roaming tariff which they would have been accorded in the absence of such choice, and who fail to express a choice pursuant to this paragraph, shall remain on their previously chosen tariff or package.

4. Any roaming customer may request, at any point after the process set out in paragraph 3 has been completed, to switch to or from a Eurotariff. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to other elements of the subscription, **save that where a roaming customer who has subscribed to a special roaming package which includes more than one roaming service (i.e. voice, SMS and/or data) wishes to switch to a Eurotariff, the home provider may require the switching customer to forego the benefits of the other elements of that package.** A home provider may delay a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months.

Article 4a

Wholesale charges for regulated roaming SMS messages

- 1. With effect from 1 July 2009, the average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network, for the provision of a regulated roaming SMS message originating on that visited network, shall not exceed EUR 0.04 per SMS message.**
- 2. This average wholesale charge shall apply between any pair of operators and shall be calculated over a twelve month period or any such shorter period as may remain before the expiry of this Regulation.**
- 3. The average wholesale charge referred to in paragraph 1 shall be calculated by dividing the total wholesale revenue received by the operator of the visited network from each operator of a home network for the origination and transmission of regulated roaming SMS messages within the Community in the relevant period by the total number of such SMS messages originated and transmitted on behalf of the relevant operator of a home network within that period.**
- 4. The operator of a visited network shall not levy from the home provider any charge, separate from the charge referred to in paragraph 1, for the termination of a regulated roaming SMS message sent to a roaming customer while roaming on its visited network.**

Article 4b

Retail charges for regulated roaming SMS messages

- 1. Home providers shall make available to all their roaming customers, clearly and transparently, a Euro-SMS tariff as provided for in paragraph 2. The Euro-SMS tariff shall not entail any associated subscription or other fixed or recurring charges and may be combined with any retail tariff, subject to the other provisions of this Article.**
- 2. With effect from 1 July 2009, the retail charge (excluding VAT) of a Euro-SMS tariff which a home provider may levy from its roaming customer for a regulated roaming SMS message sent by that roaming customer may vary for any roaming SMS message but shall not exceed EUR 0.11.**
- 3. Home providers shall not levy any charge from their roaming customers for the receipt by them of a regulated roaming SMS message.**
- 4. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all existing roaming customers automatically, with the exception of such roaming customers who have already made a deliberate choice of a specific roaming tariff or package by virtue of which they benefit from a different tariff for regulated roaming SMS message than they would have been accorded in the absence of such a choice.**
- 5. From 1 July 2009 home providers shall apply a Euro-SMS tariff to all new roaming customers who do not make a deliberate choice to select a different roaming SMS tariff or a tariff package for roaming services which includes a different tariff for regulated roaming SMS messages.**
- 6. Any roaming customer may request to switch to or from a Euro-SMS tariff at any time. Any switch must be made within one working day of receipt of the request and free of charge and shall not entail conditions or restrictions pertaining to elements of the subscription other than roaming. A home provider may delay such a switch until the previous roaming tariff has been effective for a minimum specified period not exceeding three months. A Euro-SMS tariff may always be combined with a Eurotariff.**
- 7. Not later than 1 June 2009, home providers shall inform all their roaming customers individually about the Euro-SMS tariff, about the fact that it will apply from 1 July 2009 at the latest to all roaming customers who have not made a deliberate choice of a special tariff or package applicable to regulated SMS messages, and about their right to switch to and from it in accordance with paragraph 6 above.**

Article 4c

Technical characteristics of regulated roaming SMS messages

- 1. No home provider or operator of a visited network shall alter the technical characteristics of regulated roaming SMS messages in such a way as to make them differ from the technical characteristics of SMS messages provided within its domestic market.**

[NB. Article 5 has been deleted.]

Article 6

Transparency of retail charges **for regulated roaming calls and SMS messages**

1. To alert a roaming customer to the fact that he will be subject to roaming charges when making or receiving a call **or when sending an SMS message**, each home provider shall, except when the customer has notified his home provider that he does not require this service, provide the customer, automatically by means of a Message Service, without undue delay and free of charge, when he enters a Member State other than that of his home network, with basic personalised pricing information on the roaming charges (including VAT) that apply to the making and receiving of calls **and to the sending of SMS messages** by that customer in the visited Member State.

This basic personalised pricing information shall include the maximum charges the customer may be subject to under his tariff scheme for:

(a) making calls within the visited country and back to the Member State of his home network, as well as for calls received; **and**

(b) sending regulated roaming SMS messages while in the visited Member State.

It shall also include the free-of-charge number referred to in paragraph 2 for obtaining more detailed information.

A customer who has given notice that he does not require the automatic Message Service shall have the right at any time and free of charge to require the home provider to provide the service again.

Home providers shall provide blind or partially-sighted customers with this basic personalised pricing information automatically, by voice call, free-of-charge, if they so request.

2. In addition to paragraph 1, customers shall have the right to request and receive, free of charge, more detailed personalised pricing information on the roaming charges that apply to voice calls, SMS, MMS and other data communication services, **as well as information on the transparency measures applicable by virtue of this Regulation**, by means of a mobile voice call or by SMS. Such a request shall be to a free-of-charge number designated for this purpose by the home provider.

Home providers shall provide all users with full information on applicable roaming charges, in particular on the Eurotariff **and the Euro-SMS tariff**, when subscriptions are taken out. They shall also provide their roaming customers with updates on applicable roaming charges without undue delay each time there is a change in these charges.

3. Home providers shall take the necessary steps to secure awareness by all their roaming customers of the availability of the Eurotariff **and the Euro-SMS tariff**. They shall in particular communicate to all roaming customers by 30 July 2007 the conditions relating to the Eurotariff **and by 1 June 2009 the conditions relating to the Euro-SMS tariff, in each case** in a clear and unbiased manner. They shall send a reminder at reasonable intervals thereafter to all customers who have opted for another tariff.

Article 6a

Transparency and safeguard mechanisms for regulated data roaming services

- 1. Home providers shall ensure that their roaming customers are kept adequately informed of the charges which apply to their use of regulated data roaming services, in ways which facilitate the customers' understanding of the financial consequences of such use and permit them to monitor and control their expenditure on regulated data roaming services in accordance with paragraphs 2 and 3.**
- 2. From 1 July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned, except when the customer has notified his home provider that he does not require this information.**

Such personalised tariff information shall be delivered to the roaming customer's mobile telephone or other device, when the roaming customer initiates a regulated data roaming service in a particular Member State other than that of his home network for the first time after having entered that Member State. It shall be provided without undue delay and free of charge, by an appropriate means adapted to facilitate its receipt and easy comprehension.

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

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

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

The home provider shall also ensure that an appropriate warning message is sent to the roaming customer's mobile telephone or other device before one or more intermediate charge limits, agreed between the customer and the home provider in advance, are reached. This warning message shall inform the roaming customer that the Cut-Off Limit is about to be reached and indicate the procedure to be followed by the customer if he or she wishes to request the continued or renewed provision of those services.

- 4. With effect from 1 July 2009:**
 - (a) The average wholesale charge that the operator of a visited network may levy from the operator of a roaming customer's home network for the provision of regulated data roaming services by means of that visited network shall not exceed a safeguard limit of EUR 1.00 per megabyte of data transmitted.**
 - (b) This average wholesale charge shall apply between any pair of operators and shall be calculated over a twelve month period or any such shorter period as may remain before the expiry of this Regulation.**

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

Article 7

Supervision and enforcement

1. National regulatory authorities shall monitor and supervise compliance with this Regulation within their territory.
2. National regulatory authorities shall make up-to-date information on the application of this Regulation, in particular Articles 3, 4, **4a, 4b and 6a**, publicly available in a manner that enables interested parties to have easy access to it.
3. National regulatory authorities shall in preparation for the review provided for in Article 11, monitor developments in wholesale and retail charges for the provision to roaming customers of voice and data communications services, including SMS and MMS, including in the outermost regions referred to in Article 299(2) of the Treaty. National regulatory authorities shall also be alert to the particular case of involuntary roaming in the border regions of neighbouring Member States and monitor whether traffic steering techniques are used to the disadvantage of customers. They shall communicate the results of such monitoring to the Commission, including separate information on corporate, post-paid and pre-paid customers, every six months.
4. National regulatory authorities shall have the power to require undertakings subject to obligations under this Regulation to supply all information relevant to the implementation and enforcement of this Regulation. Those undertakings shall provide such information promptly on request and to the timescales and level of detail required by the national regulatory authority.
5. National regulatory authorities may intervene on their own initiative in order to ensure compliance with this Regulation. In particular, they shall, where necessary, make use of the powers under Article 5 of the Access Directive to ensure adequate access and interconnection in order to guarantee the end-to-end connectivity and interoperability of roaming services, **for example where subscribers are unable to exchange regulated roaming SMS messages with subscribers of a terrestrial mobile network in another Member State as a result of the absence of an agreement enabling the delivery of those messages.**
6. Where a national regulatory authority finds that a breach of the obligations set out in this Regulation has occurred, it shall have the power to require the immediate cessation of such a breach.

Article 8

Dispute resolution

1. In the event of a dispute in connection with the obligations laid down in this Regulation between undertakings providing electronic communications networks or services in a Member State, the dispute resolution procedures laid down in Articles 20 and 21 of the Framework Directive shall apply.
2. In the event of an unresolved dispute involving a consumer or end-user and concerning an issue falling within the scope of this Regulation, the Member States shall ensure that the out-of-court dispute resolution procedures laid down in Article 34 of the Universal Service Directive are available.

Article 9
Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission no later than 30 March 2008 **or, in the case of the additional requirements introduced by Regulation [XXXX/YYYY], no later than the date falling nine months after the entry into force of that Regulation** and shall notify it without delay of any subsequent amendment affecting them.

Article 10
Amendment to Directive 2002/21/EC (Framework Directive)

The following paragraph shall be added to Article 1 of Directive 2002/21/EC (Framework Directive):

"5. This Directive and the Specific Directives shall be without prejudice to any specific measure adopted for the regulation of international roaming on public mobile telephone networks within the Community.

Article 11
Review

1. The Commission shall review the functioning of this Regulation and report to the European Parliament and the Council no later than **31 December 2011**. The Commission shall evaluate in particular whether the objectives of this Regulation have been achieved. In its report the Commission shall review developments in wholesale and retail charges for the provision to roaming customers of voice and data communication services, including SMS and MMS, and shall, if appropriate, include recommendations regarding the need to regulate these services. For this purpose the Commission may use the information supplied pursuant to Article 7(3).
2. In its report, the Commission shall assess whether, in the light of developments in the market **including the quality of service provided**, and with regard to both competition and consumer protection, there is need to extend the duration of this Regulation beyond the period set out in Article 13 or to amend it **further**, taking into account the developments in charges for mobile voice and data communication services at national level and the effects of this Regulation **across different parts of the Community and also** on the competitive situation of smaller, independent or newly started operators. **In the light of its findings**, ~~if~~ the Commission **may** submit a proposal to the European Parliament and the Council.

Article 12
Notification requirements

Member States shall notify to the Commission the identity of the national regulatory authorities responsible for carrying out tasks under this Regulation.

Article 13

Entry into force and expiry

This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Union.

It shall expire on 30 June **2013**.

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Brussels,

Amendment to Directive 2002/21/EC (Framework Directive)

Article 1

Scope and aim

1. This Directive and the Specific Directives shall be without prejudice to any specific measure adopted for the regulation of international roaming on public mobile **communications** networks within the Community.

ANNEX D

List of consultees

Organisation
Orange
T-mobile
O2
3UK
Vodafone
Citizens Advice -
Which? -
Citizens Advice -
National Consumer Council
Ofcom
Ofcom Consumer Panel