

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

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Background

This publication sets out Her Majesty's Government's (HMG's) statutory response to a public consultation exercise. The consultation ran for a period of three weeks from 30 October to 20 November 2008. A shortened consultation period was deemed necessary because of the accelerated timetable which the European Commission had adopted for consideration of this legislation.

The EU proposals in brief cover the following areas:

- a) An extension of the voice roaming regulation, so that it terminates in 2012 rather than 2010, as was proposed in the original regulation
- b) The introduction of wholesale and retail price caps for roaming mobile SMS (text messages)
- c) The introduction of a wholesale price cap for roaming mobile data calls roaming
- d) The introduction of mandatory unitisation for mobile billing based upon a fixed initial charge with per second billing thereafter
- e) The introduction of measures to enable greater transparency in billing for roaming data calls, in order to prevent so-called "bill shock".

A copy of the EU proposals can be found at:

http://ec.europa.eu/information_society/activities/roaming/docs/regulation/reg_en.pdf

Response to the Consultation

Seven submissions were received. The breakdown is as follows:

- Five from Mobile Network Operators (MNOs) :3, 02, Orange, T-Mobile and Vodafone
- One from a trade association (the GSMA) and
- One from the Trading Standards Institute.

This response acknowledges the views of these stakeholders.

In addition, a series of bilateral meetings was held with individual stakeholders, details of which are provided in Annex One of this document. The Department also met the MNOs before the start of the Consultation to alert them to the accelerated timetable for consultation

Consultation Methodology

In the public consultation document, HMG:

- summarised the proposals put forward by the European Commission;
- asked stakeholders a series of 6 questions based on the proposals.

Format of HMG Response

Stakeholders chose to respond to the consultation process either on a question by question basis or by responding in areas that were of most interest or concern to them.

Consequently this document presents the feedback in the following format. Each consultation question is presented, and then followed by a summary of HMG's original position on the policy area, where applicable. This is then followed by a summary of stakeholder views and concludes with the position HMG has now adopted as a result of the review process. Given the accelerated timetable, HMG took account of the results of this consultation – prior to their publication in this form - in reaching its position when the proposals was put to the Telecoms Council of 27 November for the agreement of a Common Position.

Summary Of Responses

Analysis of Stakeholder Responses and HMG Response

1. Extension of lifetime of voice roaming regulation

Q1. Do you consider the extension of the regulation of voice roaming and the proposed price ceilings to be proportionate?
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Respondents expressed concern about the evidence base which had been used when assessing the need for an extension to the regulation of voice roaming:

- **the fact that it had only been 12 months since the regulation came into being and the question of whether that had been a sufficiently long period for the effect of the regulation to be assessed**
- **it was argued that the Commission's Impact Assessment had utilised data whose validity could be questioned, and that there was already a healthy level of competition in mobile voice roaming**
- **evidence collected by the GSMA stated:**

- that a large proportion of roaming traffic is still on non-Eurotariff plans, i.e. customers had selected a roaming tariff other than that provided in the regulation.
 - that roaming remains an infrequent service for most EU citizens, because they do not travel abroad often.
 - that voice roaming prices had continued to fall, as a result of continued tariff innovation outside the Eurotariff, and in fact, customers on the Eurotariff were paying more for their roaming calls than those on operator-defined roaming tariffs.
- For these reasons the GSMA does not believe that the regulation should be extended beyond 2010.

With regard to the proposed price ceilings:

- one respondent stated that the proposed “glidepath” (i.e. the rate of reduction of price over a specified period) did not appear to have been based on any analysis and the 3 cents per year decrease did not marry with the state of the mobile market or the economic environment.
- another stated that the “glidepath” should be no more than 2 eurocents per year and for receiving calls no more than 1 eurocent per year.
- Another respondent stated that they believed that 2.5 x Mobile Termination Rate (MTR) (i.e. the cost charged by an incumbent to an operator wishing to access his network) should continue to be used to check the reasonableness of the wholesale caps and support per-second billing at the wholesale level, but stated that they believed there should be no mechanical link between MTRs and roaming price caps.

HMG recognises the importance of the concerns of the industry that regulation should not stifle competition and innovation in the market. The first Roaming Regulation was a response by the European Commission to deal with what were perceived as unnecessarily high prices for voice roaming calls. It was argued that such charges were preventing the single market in telecommunications from functioning effectively. The revised Roaming Regulation tackles SMS and Data Roaming prices, which were explicitly referred to in the first regulation as being potential areas for price reduction.

The Commission's case for the updating of the Roaming Regulation was that competition had not emerged in the roaming market and the extension of the glidepath was required to ensure that the consumer benefits of the original Roaming Regulation were retained. HMG notes the concern expressed on the evidence base but has to give weight to the views expressed by the European Regulators Group – including Ofcom – that supports the Commission’s view of the development of the market. HMG commits, however, to keep the evidence base under

review especially if further evidence that emerges during the latter stages of the negotiation on the extent to which competition is developing. Prior to the discussion at the November Council, HMG could not conclude that a sufficiently strong case has been advanced to act against the views of the European Regulators and the Commission. HMG shares the concerns that there should be a very clearly defined exit strategy for price regulation in this area and agrees to emphasise that this should not be regarded as a precedent for the imposition of price caps in other parts of the communication market. These are areas that can be explored in discussions with the European Parliament prior to the agreement of a text of the Regulation.

2. Unitisation

Q2. Is the two part billing regime proposed by the Commission a proportionate response and is the structure proposed reasonable?

There was considerable opposition to the two-part billing regime proposed by the Commission.

One respondent stated that billing practices regulation should only be imposed at a national level taking account of specific local circumstances. They stated that they would be happy to support an approach which maintained flexibility in pricing structures in conjunction with a requirement to provide information on increments in the SMS which was already sent to roaming customers linking in to their network for the first time.

Another suggested that any attempt to regulate billing increments would constitute micro-regulation and risk undermining competitive differentiation in the market. They pointed out that billing increments are a point of differentiation that competitors can use to appeal to customers with different preferences. They believed that as long as operators were transparent about billing increments and these increments were reasonably simple to understand, this flexibility was entirely appropriate.

a) Set-up charge

Respondents were opposed to the idea that a set-up charge was only to be allowed for making calls but not for receiving them in the proposed regulation.

One respondent stated that any increment should not be below the domestic level, where the first 60 seconds is generally charged, thus creating a risk of distorting practices in domestic markets and causing confusion amongst consumers.

b) Per-second billing

Most of the respondents were opposed to per-second billing, particularly at the retail level, which they believed might undermine existing “bundled” tariffs.

Alternative approaches which were suggested were:

- a) A flat rate set-up charge plus variable charge thereafter.
- b) That NRAs could specify that the roaming charging increment should be no less favourable to customers than the domestic charging increment.

On the issue of “rounding-up” the length of phone calls to the nearest minute, the evidence presented by the ERG, which was used extensively in the Commission’s Impact Assessment indicates that the practice is having a negative impact in terms of delivering the benefits of the Eurotariff for users, and therefore we continue to support the approach in the Regulation to unitisation. We are not convinced of the arguments that the proposed approach to unitisation is a disproportionate approach to solve the problem nor that it impacts in a negative way on the domestic approach to the regulation of mobile services.

HMG does accept that this is another area where flexibility will need to be shown in agreeing a text in the timetable set by the Commission. In particular, HMG has noted the concern about the set-up charge being applicable to calls made, but not those received, and has raised this issue, with a view to seeking amendment in this regard during the passage of the Regulation.

3. Extension of regulation to SMS

Q3. Do you consider that extension of the Regulation to SMS is proportionate and that the rates proposed for wholesale and retail caps are proportionate?

One respondent stated that they believed, as a matter of principle, that retail caps were unnecessary and damaging to competition and that there was very little margin for profit between the proposed wholesale and retail caps. This would undermine some of their existing tariffs and might result in their withdrawing some of their products from the market.

Another stated that there was ample evidence of retail price competition and that regulation was unnecessary. They challenged the figures produced by ARCEP (the French NRA) stating that these were derived

from a sample consisting of heavy-users with post-paid contracts and not therefore representative of the whole market.

A general concern that was raised concerned the proposed price caps for SMS; it was felt that there was a risk that the proposed SMS price cap would be lower than the domestic rates in some Member States and would thus distort the market.

One suggestion was that SMS price controls should be set on the basis of (known) national SMS termination rates and that they should account for cost differences between Member States, for example, by using the 75th percentile of EU SMS termination rates. On this basis, the wholesale cap would be set at 8 Eurocents and the Euro-SMS tariff at 15 Eurocents.

Another respondent stated that changing their roaming pricing plans in the brief period allowed before implementation could be costly and time-consuming. They suggested that a possible short-term solution would be to implement SMS retail caps on a sliding scale, starting at a higher level than the proposed cap (11 Eurocents) or allowing for bundled domestic rates to be offered as part of the Eurotariff.

The GSMA – one of the main trade organisations representing Mobile Network operators was against the proposal to extend the regulation. Their view was that:

- a) SMS are always included in bundles of services, therefore pricing them separately is contrary to market practice
- b) SMS is a very popular service – if consumers have no complaints about pricing, why should regulation be introduced
- c) Receiving SMS while roaming is typically free-of-charge
- d) Legislation is a measure of last resort and the Commission has no basis for justifying regulation of SMS.

HMG appreciates the strength of operator opposition to this measure and appreciates that it could cause market problems if some domestic SMS rates are higher than regulated roaming charges. It also appreciates that the economic climate has worsened in the short period since the introduction of this proposal. While HMG finds it difficult to refute the case of the European Regulators that the costs of out-of-bundle SMS roaming charges are unacceptably high - in the way that voice roaming charges were before the first Roaming Regulation - there is a case that we should retain some flexibility in the final stages of the negotiations to agree appropriate caps in the light of emerging evidence.

4. Extension of regulation to Data

Q4. 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?

One respondent argued that there was no justification for regulatory intervention in this market as retail prices for data roaming had fallen by over 40% in the past year. The respondent stated that in relation to wholesale prices, ERG data showed that these had on average fallen by 3.2 to 2.0 Euros per MB between Q2 2007 and Q1 2008, implying a more than 50% decline per annum.

The view of another was that there was already a well-functioning competitive market and that regulation was therefore unnecessary. In addition, it had only been recently that there had been a significant growth in the use of 3G data in the UK; this was as a result of the rollout of 3G networks and compatible handsets. The cost of these, the correspondent stated, had been considerable and they believed that this had not been taken into account in the formulation of the regulation and that intervention in the market would damage operators' ability to promote growth and innovation.

The GSMA opposed the extension of the regulation to data as:

- a) Significant price reductions are occurring at both wholesale and retail levels
- b) The data roaming market is in the investment and innovation stage
- c) Data roaming traffic is increasing rapidly from a low base
- d) The average data roaming price per megabyte is falling as a result of competition.

Their view was that the mobile data roaming market in Europe is young and undeveloped and that it would be inappropriate for the Commission to introduce regulation at this stage.

a) Wholesale charges

A respondent stated that the proposed wholesale cap ignored the fact that mobile data was a collection of very different services with very different characteristics – bandwidth volume, real-time requirements, latency and willingness to pay – and that it was accessed by a wide range of users – from corporate users connecting to virtual private networks to roaming customers using datacards or dongles, BlackBerry and iPhone users, basic WAP users and users of pull email such as Yahoo! or Hotmail. Usages range from downloads of many megabytes to a couple of kilobytes per session. They stated that operators needed to be able to price different data roaming services differently to avoid

huge price discrepancies between low volume and high volume services and this required more complex charging structures than those used for the provision of voice roaming services. They believed that the Commission's attempt to push through a linear volume based wholesale model with rounding on a per Kb basis, would severely limit the freedom of operators to experiment with innovative retail price models, significantly damage the development of the data roaming market and would not solve the bill-shock issue.

b) One Euro per MB cap

One respondent supported a wholesale cap but believed it should be 25 Eurocents/MB. The respondent also believed that the wholesale cap should be specified to be in increments not exceeding 10KB and that there should be no connection or set-up fees. If a rate of 1 Euro/MB were to be settled upon, they believed that there should be a glide path down from the initial cap level.

HMG have already expressed their reservations about the inclusion of data services in the remit of this regulation, bearing in mind that it is a very young and developing market. The disparity in views expressed by the MNOs shows that the level proposed may be an irrelevance for some operators but might benefit smaller operators who may still be paying high wholesale rates. On balance, HMG still favours the cautious approach at setting a wholesale rate which removes the highest rates from the market and therefore proposes to continue to support this element of the proposal. We believe that it is arguable that the wholesale rate might be set on a per Kb basis and we will maintain the flexibility to argue for that approach in the remainder of the negotiation. We can also see that the cap might send a stronger signal if it were lower. We will continue to oppose the imposition of retail caps in the data download market.

5. Proposal on data transparency and anti-billshock measures

Q5. Are the transparency requirements proposed for data roaming charges practical and justified?

General comments on this subject stated that there had been very few, but well-publicised instances of bill-shock and that rather than introducing regulation, customers should be empowered by receiving the information which would enable them to select the service best suited to their needs. They stated that they were unaware of any other industries or utility companies who were obliged to have similar cut-off tools for post-pay (i.e. contract-based) customers.

Another comment was that any limits on use would need to be in terms of data volume rather than exact monetary amounts and that this should be an overall standard, rather than allowing every individual customer to set their own limit.

The GSMA stated that some of the proposed measures for data transparency would be impractical and proposed some alternatives:

- basic tariff information should be sent to the customer when roaming
- providers should provide a usage limit facility to post-paid customers expressed either in volume or in currency terms
- when the usage limit was reached, the provider would send a warning message to the customer, and at the latter's request, implement the cut-off to the data service.

These proposals were supported by other respondents.

A concern which was expressed by a number of correspondents related to the issue of implementing the cut-off limit. It was stated that the current proposals were impractical and had not considered the limits of post pay (i.e. contract-based) roaming systems and how they differ to systems for pre-pay (i.e. Pay As You Go) customers. Post pay contract systems were not required to carry out real time data exchange as prepay systems were; as a result,, there would always be a gap in time between the customer's data use and their operator being able to monitor it and, if desired, cutting the customer off. In order to institute the necessary changes to obtain real time information, they assessed that there would need to be:

- a new mechanism to link prepay and post pay systems together;
- an upgrade to the existing billing system platform;
- changes to the capacity of the prepay platform to accommodate the post pay customer information;
- additional signalling capacity;
- intra-operator testing of those changes.

They averred that in order to achieve this, very significant time and resources would be required. In addition, there would need to be a solution for every type of operating system, and if a customer were using a virtual private network it would not be possible to interrupt the session to notify the customer of his or her consumption, and if the notification were sent by SMS there might be delays, or inability to deliver a SMS message if the customer had either switched off the phone or if the inbox was full.

On the proposed level of the cut-off limit, one respondent commented that this clause should not apply to prepay customers as companies already has a "cut off" facility in place. With regards to post-pay customers, they suggested that the legislation should not define a

specific cut-off limit for all customers but allow the network to be flexible beneath the proposed default of 50 Euros – a lower limit might be imposed if the customer’s credit profile appeared to warrant it. They would also prefer a limit that was not roaming specific but covered a customer’s total domestic and international roaming usage. In this instance 50 Euros might be too low and would therefore prefer a cap of £75. They would also prefer that the notification point could be in a range of, for example 80%-90% of the limit, rather than being an exact figure.

HMG agree with the respondents that there are some problems with the proposals of the Commission in this area. HMG has already expressed concern about the workability of the data transparency proposals in the draft Regulation and will continue to seek a more satisfactory solution. We have proposed alternative text for Article 6a.

6. Additional comments

Q6. Are there any other comments you wish to make on this proposal?

The response from the TSI, as representing consumer protection interests, indicated that they were happy with the EU proposals and had no further comment to make upon them,

Legal challenge – some of the Mobile Network Operators referred to the fact that there is currently an action taking place in the European Court of Justice, where the main focus of concern is the proportionality of the regulatory control of voice roaming retail pricing. HMG cannot currently comment in detail on this as it is still a live case but notes that the Government’s position in the High Court was that the first Roaming Regulation was proportionate. The Government has concluded that the revision is also proportionate.

Some respondents expressed concerns about the amount of notice that was to be provided for exchange rates between the Euro and Sterling when the regulation came into force.

They commented that any tariff changes required a significant number of changes to complex billing systems and a large amount of manual input work, together with testing and stated that the period of a month that the regulation provided, was not sufficient for this purpose. They recommended that three months’ notice would be more appropriate.

HMG agrees that the issue of exchange rates in relation to the date of implementation of the proposed regulation remains a concern and has proposed actions to mitigate this risk.

Next Stages

The draft amending Regulation reached a Common Position at the November 2008 Council and discussions with the European Parliament are now underway; as this regulation is subject to co-decision, the Council will then discuss these amendments and hopefully a final text will be reached before the European elections in June 2009. This would be with a view to the initial implementation taking place at a national level in July 2009.

Acknowledgements

HMG would like to thank those who took part in the various consultation activities associated with this public consultation. We are particularly grateful for the rapid responses that have informed our negotiating position in the Council and will inform the discussions with the European Parliament going forward.

17 March 2009

ANNEX ONE:

List of stakeholders who submitted written responses:

TSI (Trading Standards Institute)

GSMA (Groupe Speciale Mobile Association)

Hutchison 3G UK Limited

Orange PCS Limited

Telefónica O2 UK Limited

T-Mobile (UK) Limited

Vodafone Limited

List of stakeholders who participated in bilateral meetings

TSI (Trading Standards Institute)

Which?

Hutchison 3G UK Limited

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