

CONSULTATION ON THE
PROPOSAL FOR A REGULATION OF
THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL ON ROAMING ON
PUBLIC MOBILE NETWORKS
WITHIN THE COMMUNITY (COM
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Consultation seeking views on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community

This consultation document seeks your views on the above proposal, which was adopted by the European Commission on 12 July 2006 and is currently under consideration by the European Parliament and Council of Ministers.

Starting date: 23 October 2006

Closing date: 12 January 2007

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Table of Contents

1. Executive Summary
2. How to respond
3. Help with queries
4. What happens next?
5. Consultation questions
6. Glossary

Annexes

Annex A – Partial Regulatory Impact Assessment

Annex B - The Consultation Code of Practice Criteria

Annex C – Organisations consulted and to be consulted

1. Executive Summary

The Commission's proposal¹ aims to control the charges made for mobile telephone calls when travelling abroad ('roaming' calls) within the EU. The proposal is now under consideration by the European Parliament and the Council of Ministers. The Commission's intention is that it should be finalised, with any necessary amendments and implemented by the summer of 2007.

The purpose of this consultation is to obtain views and information on the likely effects of the Commission's proposal on UK consumers, citizens and businesses, to better inform the UK Government's position in negotiations in the Council and elsewhere. This consultation will run from 23 October 2006 to 12 January 2007. Early responses would be appreciated.

A detailed explanation of what roaming is and how it works can be found at:

http://europa.eu.int/information_society/activities/roaming/how_it_works/index_en.htm

The European Commission has conducted two rounds of Community-wide consultation to date, in February - March 2006 and April - May 2006. The results of these consultations can be seen on the Europa website at:

http://europa.eu.int/information_society/activities/roaming/roaming_regulation/first_phase/index_en.htm

and

http://europa.eu.int/information_society/activities/roaming/roaming_regulation/consultation/index_en.htm

The Commission's key proposals are:

- To promote a "European Home Market Approach" to ensure prices paid by users travelling in the European Union should not be more than those when calling in their home country;
- To reduce retail prices by the introduction of a cap for international mobile roaming calls;

¹ Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community: COM (2006) 382 final. The full text of the proposal can be found on the Commission's website, at http://europa.eu.int/information_society/activities/roaming/docs/regulation_en.pdf

- To reduce wholesale prices (also known as Inter-operator Tariffs (IOTs) to facilitate the lowering of retail prices and to ensure that smaller operators are not disadvantaged;
- To introduce a cap for the charges that those receiving international roaming mobile calls pay; and
- To improve transparency on pricing for consumers through the introduction of procedures that will ensure consumers are able to obtain information about roaming tariffs easily and at no cost to themselves.

The UK's current view of the proposal is broadly as follows:

- We fully support the Commission's overall aim of ensuring that mobile roaming charges fall quickly and substantially right across Europe for all consumers.
- We fully support the objective of bringing wholesale prices more closely into alignment with costs. We believe that in the absence of regulation the forces of competition alone would work unacceptably slowly.
- We therefore support the idea of imposing a price-cap on international wholesale roaming charges.
- We consider it possible that operators may not completely pass on the reduction in wholesale costs to retail roaming services. However, we have some concerns about the detail of the Commission's proposed solution to this.
- In particular, we are not convinced that the Commission's proposal to set a retail price cap for outgoing calls will actually lead to substantially lower consumer prices overall, or allow suppliers sufficient flexibility to continue to offer innovative products and packages tailored to consumers' preferences. While imposition of a cap would be likely to ensure lower retail prices for outgoing roaming calls, there is in our view also a risk that as a result, retail prices for some other products, including domestic services, may increase, and/or that roaming services would be restricted or no longer made available to some consumers.
- Our strong preference, instead of imposing such a cap, would be to include a 'sunrise clause' in the regulation, under which retail price regulation would only come into effect after a certain period of time, and only if the mobile operators had not substantially reduced their retail prices by that time.
- We also support the Commission's proposals to regulate charges for receiving roaming calls, subject to agreement on the detail.
- We support the Commission's proposals for improving the transparency of the charges for making and receiving roaming calls, again, subject to agreement on the details of how this will be achieved.

- More information can be found in the Regulatory Impact Assessment published with this consultation.
- The Commission has also prepared a Regulatory Impact Assessment; this can be found, together with further background information, at:

http://ec.europa.eu/information_society/activities/roaming/roaming_regulation/index_en.htm

2. How to respond

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 organisation represents and, where applicable, how the views of members were assembled.

A copy of the Consultation Response form is enclosed. An electronic version is also available at <http://www.dti.gov.uk/consultations/>

We would prefer responses by email, but you may also respond by letter or fax to:

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A list of organisations already consulted and those we intend to consult as part of this process is in Annex C. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

You may make copies of this document without seeking permission. The documents for this consultation are downloadable electronically from the DTI website: <http://www.dti.gov.uk/consultations/> [A Welsh language version is also available]. Further printed copies of the consultation document can be obtained from:

DTI Publications Order line
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010

Fax: 0845 015 0020
Minicom: 0845 015 0030
www.dti.gov.uk/publications

Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

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 any 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.

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.

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.

3. Help with queries

Questions about the policy issues raised in this document can be addressed to:

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If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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Better Regulation Team
1 Victoria Street
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Tel: 020 7215 2146
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A copy of the Code of Practice on Consultation is in Annex B.

4. What happens next?

The final closing date for this consultation will be Friday 12 January 2007. The Government response to consultation should be published on the DTI website within 3 months of the close of consultation.

5. Consultation questions

Please respond to questions only if applicable. These are repeated in the Consultation Response Form.

Question 1: Which (if any) of the three options proposed in the Regulatory Impact Assessment (**Option 1:** do nothing; **Option 2:** introduce a wholesale price cap with a retail cap triggered by a sunrise clause, only if retail prices do not fall to an agreed level; or **Option 3:** introduce both wholesale and retail price caps) do you prefer and why?

Question 2: To what extent do you currently use mobile telephony for international roaming calls in the EU, for example, how much per annum do you/your business spend on such calls? Do you take advantage of network operators 'deals' to provide lower roaming charges while abroad? Do you think roaming charges are already good value for money? Would you use roaming services more if any or all of incoming, in country or outward calls were cheaper?

Question 3: What impact do you envisage the proposed regulation having on your business and/or personal life? How important to you/your business are the charges you pay for your roaming calls whilst abroad in the EU? Can you identify any unintended consequences or other implications of this proposal? What are your views on the analysis of costs and benefits identified in the attached Regulatory Impact Assessment?

Question 4: Do you find it easy to access information about international mobile roaming tariffs in the EU and other charges both before travel or

when you want to use your phone abroad? If not, how might this be improved?

Question 5: Do you have any other comments that might aid the consultation process as a whole? Are there any particular additions or changes to the Regulation you would like to see? Would you wish SMS and/or data services to be regulated under the Commission proposals?

Glossary

International roaming	The ability to use mobile telephones to make calls when travelling abroad.
RIA	Regulatory Impact Assessment
SMS	Short Message Service otherwise known as text messaging
European Home Market Approach	Prices paid by users travelling in the EU should not be more than when calling within their home countries
Wholesale prices	The price the home network operator pays the operator in country being roamed for use of their network for customers to make calls
Sunrise clause	Here: a provision that retail price regulation would only come into effect after a certain period of time and only if the mobile operators had not reduced their average retail by a pre-determined amount by that time
Treaty of Rome	The Treaty of Rome established the European Economic Community (EEC) and was signed by France, West Germany, Belgium, Italy, the Netherlands and Luxembourg (the latter three as part of the Benelux) on March 25, 1957
Treaty of Maastricht	The Treaty of Maastricht was signed in 1992. Since this treaty the EEC, European Community, is known as the European Union. The existing treaties were extended by provisions on cooperation in policy fields such as economic and monetary policy, foreign and security policy, social policy and parts of the policy fields regarding domestic affairs and justice.

Partial Regulatory Impact Assessment

1. Title of proposal

Proposal for a Regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (COM (2006) 282 final).

The proposal is currently at the negotiating stage.

2. Purpose and intended effect

Objectives

The Commission's main objectives are to bring about, as part of the completion of the Single European Market in services, substantial reductions in the level of mobile roaming charges across the Community, and to increase the transparency of roaming tariffs, thereby helping consumers to select the most advantageous contracts or tariffs for their purposes.

Background

When markets and competition work well, prices reflect costs. This brings two benefits: buyers are, first, able to make well-informed decisions about the bill of goods to demand and, second, to reward those producers who innovate and offer the products that buyers require. The Commission has found that retail prices for international roaming can have significant mark-ups over costs. The Commission in its Impact Assessment estimated that retail price-per-minute of roaming ran on average at about five times the wholesale cost (This estimate is however contested by the industry.) The issue confronting governments is thus how to bring about a reduction in these mark-ups. Three possible ways of moving to this objective are set out in this document.

The European Commission has been concerned about the perceived high cost of international mobile roaming calls for some time. In February 2006, Viviane Reding, Commissioner of DG Information Society, announced that regulations would be introduced to control the level of international roaming prices, and following two rounds of consultation, draft regulations were proposed in July 2006, which are currently under negotiation. The proposal favoured by the Commission (the 'European Home Market Approach') is to set a maximum for both wholesale and retail prices per minute. Wholesale prices would be limited to a maximum of double the average European 'mobile termination rate' (currently some 13 cents) for calls within the visited

country and treble this rate for calls back home or to another EU state. Retail margins would be limited to a maximum of 30% above wholesale levels. If the regulation favoured by the European Commission were in force now, the price of calling home from abroad in the EU would be at most 49 cents (some 33p), the retail price of a local call made while abroad in the EU would be at most 33 cents (some 22p) while the retail price for receiving a mobile call while in another EU country would be capped at 16.5 cents a minute (some 10p). The proposals would affect about 147 million callers per year – 37 million tourists and 110 million business callers across the EU. (It is not known how many are British).

The European Commission is aiming to implement these regulations by the summer of 2007.

There is good evidence to suggest that the forces of competition operate with limited effect in two related markets or sets of markets in the European mobile telecommunications industry. One is the international wholesale market; in which operators in one state lease capacity from an operator in another state so that clients of the first operator can use their phones while in the second operator's territory. The second is the retail market for such services: the onward sale of services to customers, using the leased capacity.

The evidence for the first case is the presence of several conditions that might dampen competition: the number of rivals is small, there are barriers to entry (in the form of licences for the use of the necessary radio spectrum, itself a limited asset), the product is homogeneous – calls do not vary greatly in quality etc between operators - and prices in large measure observable to the market players. There is moreover evidence from the evolution of tariffs. Up to 1998-9, wholesale tariffs were based upon a price-list (Standard International Roaming Agreement – STIRA) provided by the trade association combined with a conventional mark-up for retail charges. Thus both wholesale and retail charges were set collectively. The level of both was relatively high. This system was abolished in 1998-9 in favour of a more liberal approach using Inter-Operator Tariffs (IOT) with no link between wholesale and retail prices. In practice, however, wholesale tariffs have remained high while lower charges converged on the higher ones. These factors have continued to give rise to concern among regulators.

The reasons for believing competition to be restrained in the market for international calls at retail level are all those set out above combined with three other factors: customers for the most part are not well-informed while, for most customers, international roaming calls account for a relatively small proportion of their mobile telephone budgets. Customers are furthermore often (in the short run) locked into contracts with an operator.

The two markets are closely related. The apparent insensitivity of final consumers to higher charges arguably provides operators with the

opportunity to leave retail prices at levels that are high relative to charges for domestic calls and to relevant costs.

3. Rationale for government intervention

UK Governments have accepted that there is a need to ensure that markets are open and that competition is vigorous for over a half a century. These principles also find expression in the Treaties of Rome and Maastricht. The case for intervention rests upon the principle that the exercise of market power can lead to overly-high prices which distort markets; it also however depends upon the condition that the forces of competition are slow-acting or weak due, for example, to barriers to entry. When competition is strong enough to be relied upon, the case for intervention falls. The evidence in this case suggests that the mobile telecoms industry in Europe in respect of international roaming experiences a degree of competition which is not as vigorous as in the rest of the industry and which is unlikely to be disrupted spontaneously in the foreseeable future.

Additionally, under our international obligations, the government is required to comply with EU regulations, which have direct effect in Member States as soon as the final version is published.

4. Consultation

Within government

This is an issue largely confined to DTI; however discussions have taken place with other Government Departments as appropriate. We have also discussed with the UK's independent telecommunications industry regulator Ofcom.

Public consultation

We have consulted to date with the UK's mobile network operators O2, Vodafone, T-Mobile, 3, and Orange and continue to have ongoing discussions with them. It is our intention to consult more widely with trade associations and consumer organisations as part of this ongoing process.

5. Options

Option 1: No policy change.

Option 2: Introduce a wholesale price cap as set out in section two above with a retail price-cap triggered by a Sunrise Clause, if retail prices do not fall to an agreed level.

Option 3: Introduction of a wholesale and a retail price-cap, as set out in section 2 above, as proposed by the Commission.

6. Benefits

The primary benefit of the proposed regulation will be to reduce retail roaming prices across the board by some 40% from current levels. International roamers – individuals and businesses - will enjoy a gain in real income or welfare; they will receive a benefit estimated by the Commission under its favoured 'European Home Market Approach' at almost 6bn Euros (some £4bn) per year. The benefit derives in part from lower prices on existing levels of traffic and in part from the benefit or consumer surplus on extra roaming. (Note: this estimate is contested by the operators).

Insofar as international roamed calls are an input for other businesses, lower charges, by raising demand for this service, will promote international specialisation and exchange (the gains from trade) in the EU, raising productivity across the UK and the European Union. High charges for international roaming at the margin are likely to hinder UK companies' ability to win export orders and to gain access to high-quality, innovative inputs from Continental suppliers.

7. Costs

Of itself, reducing prices for international roaming at wholesale and retail level is likely to reduce the income of operators from roaming. Roaming generates some 7% of the industry's revenues, implying that the regulations favoured by the Commission (which envisage reductions of 50-60% on current levels) would of themselves reduce revenues by some 3%. (Administrative costs associated with implementation and monitoring of the regulation is not considered likely to be significant by comparison.) An important question is however whether and to what extent operators will react to lower roaming-charges by raising charges on other (domestic) services (and/or take measures such as withdrawing roaming services from some customers). Insofar as this occurred, the users affected by those measures would incur costs or welfare-losses. However, as operators would not, due to competition, be able to raise such prices, the losses would remain with them, the operators and consumers would not suffer any loss.

The views of the European Commission and of the UK's independent sectoral regulator, Ofcom, are different on this aspect of the situation. The Commission views international roaming as a distinct sub-market, relatively independent from other mobile sub-markets for telecoms services. On this basis, they argue that any loss of profit for operators will be of the nature of a 'windfall' loss, and as such will have few effects if any on other sub-markets such as that for domestic services. The Commission thus feels confident that controlling prices and thus profit in international roaming will not lead to higher tariffs for other services. Ofcom takes the view however that

international roaming is to be thought as part of a bundle of services that includes SMS, domestic voice telephony as well as other products. This, Ofcom believes, holds for both providers and users. On this perspective, operators compete for customers by offering complex bundles of services, and will do so by providing the most competitive mix of tariffs. Therefore tariffs of all services are related to each other within the bundle. Given this, a change in roaming tariffs (downward) has the potential to change other tariffs in the bundle (upward) such that operators retain their profit levels. Ofcom is accordingly of the view that since the regulation affects all operators, there remains a distinct likelihood that all operators will have the incentive to re-balance tariffs by raising charges for domestic users.

From a revenue perspective, it may be possible, Ofcom believes, that the regulation will result in a rebalancing of profits, and that insofar as consumers make both domestic calls and roaming calls, they would benefit on one hand and might lose on the other.

However, given the nature of roaming services (which are essentially calls made when in another country), domestic calls and other services are likely to be used in significantly greater proportions than roaming calls. Hence, even though roamers may see a reduction in tariffs, all consumers may face an increase in domestic charges. Given the difference in the proportion of usage of roaming services and domestic services, it is likely that a high proportion of consumers will face a dis-benefit from higher domestic charges, relative to the few who benefit from lower roaming charges. The effect of this may be to reduce overall consumer benefit. Consumers who do not use roaming services, may thus pay higher domestic charges but would not gain from lower roaming charges.

Ofcom's view is accordingly that the market is best placed to assess the level of retail roaming charges, and in doing so, such rebalancing effects may be avoided. If the regulation were to reduce the profits of operators, investment and R&D by the industry could be affected.

The following paragraphs attempt to quantify the costs associated with the three main options under consideration. In examining the figures below, it should be noted that widely accepted, peer-reviewed analysis has yet to be undertaken and placed in the public domain; as a result, there are no estimates commanding universal acceptance.

The figures apply to the EU and not to the UK.

Option 1:

In the view of the Commission, under this option, prices at wholesale and retail level will fall but by a smaller proportion than under their favoured option (number 3). Consumer surplus in Option 1 is, the Commission estimate, likely to rise by €1.5bn (£0.9bn) while producers' surplus loss

comes to up to €1 bn (£0.6bn) yielding a net gain of €0.5bn (£300m) per year across the EU. Industry sources argue that this is an over-estimate and offer the far smaller figure of €80m (£50m) per year.

Option 2:

In the view of the Commission, under this option consumer surplus is likely to rise by some €2.2bn per year while producers' surplus fall by some €1.5bn, yielding a net gain in welfare of towards €700m per year (£400m). Again, this figure is contested by industry sources that have calculated that this option may yield the same results as option 1 (€80m or £50m per year) across the EU.

A possible risk with option two is that of uncertainty until operational issues relating to the application of the 'sunrise clause' (e.g. in regard to the associated price monitoring) are clarified. It is however expected that, if this option is adopted in the regulation's final version, it will be possible to make appropriate provision in it to remove or substantially reduce such uncertainty.

Option 3:

This option yields the highest net benefits in the estimates of the Commission. Benefits to consumers are shown as €5.3bn (£3.3bn) per year while operators suffer losses in the region of €4.2bn (£2.6bn) per year, producing a net gain in welfare of €1.1bn (£750m) per year across the EU.

A potentially serious risk with this option, however, is that it would mandate a relatively simplistic tariff (in terms of a maximum price per minute) that might restrict the ability of operators to devise innovative tariffs and packages that more closely meet customers' preferences. These might take other forms, such as a monthly subscription with so many 'free' minutes. In addition, there is a risk that by restricting roaming charges there may be some spill over effects into other services, thereby possibly reducing the overall benefit to consumers of retail regulation.

8. Small Firms Impact Test

This proposed regulation should benefit small firms whose members of staff travel overseas on business using mobile technology as a means of communication. We hope this view and any other impacts will be developed as part of further work and of this consultation.

Insofar as the regulation is successful in achieving its aims, benefits will be conferred upon UK small and medium enterprises (SMEs) that use international roaming.

9. Competition Assessment

New competition in the mobile telecoms industry is limited by the requirement for operators to obtain a license. Competition is thus restricted to firms who hold such licenses. The proposed regulation will not alter this requirement. The understanding of regulators is that competition in international roaming has been subdued in comparison with competition in other sub-sectors or sub-markets. The three options that are offered differ in respect of their intended effects on competition. The first, doing nothing, is based upon the notion that competition is vigorous and thus can be relied upon to drive the charges for international roaming down. It draws attention both to recent trends in charges and to the intentions stated by at least some operators to continue such reductions.

The second and third options are based upon the view that competition is not yet vigorous enough. In this view, recent price-falls may not be a reliable indicator of vigorous wholesale competition among operators. For example, the Commission has suggested that operators began to reduce prices only when the European Commission demonstrated a clear intention to introduce price-caps. Options 2 and 3 accordingly seek to replace (subdued) competition by a price-cap at wholesale level. Option 2 is based upon the view that competition at retail level in the UK is nevertheless vigorous and relies upon competition to ensure a reasonable pass-through of lower wholesale charges to the retail level, whilst keeping the possibility of retail regulation as a reserve power, capable of rapid imposition if retail prices do not fall by the desired amount across the board. The presence of virtual operators in the UK is evidence in favour of this view. Option 3 is based upon the view that competition in international roaming has been and is likely to continue to be subdued at both wholesale and retail levels and thus seeks to substitute price-caps for market-determined prices at both levels.

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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>

List of Organisations already consulted

Vodafone
O2
Orange
T-Mobile
3
GSMA
Ofcom

We intend to consult with the following organisations:

Small Business Service
CBI
FSB
National Consumer Council
Office of Fair Trading
Intellect
FCS
Institute of Directors
CMA
Virgin Mobile
Tesco Mobile
Fresh/Talk Talk
Sirocom
BT Mobile
Pipex Communications Plc
Easy Mobile