

BITKOM Amendments

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services.

21 January 2009

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The German Association for Information Technology, Telecommunications and New Media (BITKOM) represents more than 1,100 companies. Its 900 direct members generate a sales volume of 135 billion euros annually and employ 700,000 people. They include providers of software, IT and telecommunication services, manufacturers of hardware and consumer electronics as well as digital media businesses. BITKOM is working, in particular, to improve the regulatory framework in Germany, for modernization of the education system and for an economic policy which encourages innovation.

German Association for
Information Technology,
Telecommunications and
New Media e.V.

Albrechtstraße 10 A
10117 Berlin
+49. 30. 27576-0
Fax +49. 30. 27576-400
bitkom@bitkom.org
www.bitkom.org

Text proposed by the Commission/ITRE

Amendment

Article 3 - paragraph 2

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.**

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 **[deleted]** on 1 July 2010 **[deleted]**.

Justification

An extension of 1,5 years (ending on 31. December 2011) is seen as a satisfactory solution having in mind that the regulation of voice and SMS roaming prices should be of an exceptional nature as long term price regulation would be damaging. Such a limited extension respects the exceptional and temporary character of the market intervention. The modification to shorten the duration of the regulation explicitly has been brought forward by MEP Paul Rübig during the EEP-ED Hearing on 8 January 2009 and is currently a key argument for reaching agreement in the European Parliament.

Contact

Dr. Tobias Stadler
Telecommunications Policy
+49. 30. 27576-224
Fax +49. 30. 27576-51-224
t.stadler@bitkom.org

President

Prof. Dr. Dr. h. c. mult. August-
Wilhelm Scheer

Director General

Dr. Bernhard Rohleder

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Article 3 - paragraph 3

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.

[deleted]

Justification

Billing increments are an important element of price differentiation between operators and should therefore not be regulated.

Article 4 – paragraph 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.**

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 0.41 and for calls received to EUR 0.18** on 1 July 2010.

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.**

With effect from 1 July 2009 every home provider shall **inform** its roaming customers **via tariff information about the billing increment** of any regulated roaming call to which a Eurotariff applies, whether made or received **[deleted].**

By way of derogation from the second [deleted]

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

Justification

W.r.t. an extension of 1,5 years (ending on 31. December 2011): see justification to Article 3 paragraph 2.

Any further price decrease for voice calls (including the financial impact from regulating billing increments) should be consistent and proportionate to the price caps imposed under the first Regulation. According to the ERG (in the response to the EC public consultation), during the period up to 2013, the fall in input costs is likely to justify a reduction of the outgoing price caps of EUR 0.02 each year, and a reduction of the receiving price caps between EUR 0.01 and 0.02 each year. A EUR 0.01 decrease for a receiving price cap already represents a 5-6% decrease, similar to a EUR 0.02 decrease for an outgoing price cap. We trust that market forces will drive further reductions below the proposed price caps (as also demonstrated by the current average prices when compared to the Eurotariff).

The regulation of billing increments should not be more restrictive than the most commonly used charging practices at a domestic level. Billing increments are an important element of price differentiation between operators (especially on the Eurotariff where it is the only differentiating element that is left) and should therefore not be regulated. In any event, to the extent billing increments are considered a "hidden charge" for customers, additional transparency measures in parallel with existing pricing information are an adequate means to inform customers of the billing methods of their operator.

Article 4a – paragraph 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.

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 **0.08** per SMS message.

Justification

See justification to Article 4b.

Article 4b – paragraph 2

With effect from 1 July 2009, the retail

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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**.

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 **0.18**.

Justification

This amendment is in line with the SMS roaming price caps proposed by the European Regulators Group (for wholesale caps) and by the Europe Economics Study¹ (for retail caps). The SMS Roaming price caps proposed by the Commission would be below the domestic retail SMS price level in a significant number of Member States and is therefore commercially unsustainable. While the average saving per customer is small, the revenue loss for operators will significantly impede their ability to invest into mobile broadband technologies.

Article 6a – paragraph 2 & 3

2. From first 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.

2. From first July 2009 at the latest, an automatic message from the home provider shall inform the roaming customer that he is roaming and provide **basic** 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 customers' 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 a 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.

Such **basic** personalised tariff information shall be delivered to the roaming customers' mobile telephone or other device, when the roaming customer **enters a Member State or** 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 a Member State. It shall be provided without undue delay and free of charge, by an appropriate means adapted to facilitate its receipt and easy

¹ Europe Economics study was requested by the European Parliament's committee on Internal Market and Consumer Protection (IMCO) (1st December 2008) "Review of the Roaming Regulation" p31

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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.

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 **31 December 2009** at the latest, each home provider shall **actively offer and keep available** to all its roaming customers, free of charge, a facility which provides information on the accumulated **expenditure expressed in the currency in which the roaming customer is billed** and which limits the expenditure on regulated roaming services, including provision for suspending the service. To this end, the home provider shall make available one or more maximum **financial** limits for specified periods of use. **One of these limits shall be close to, but not exceed, 50 EUR (excluding VAT) per one month.**

3. By **1st July 2010** at the latest, each home provider shall **provide** to all its roaming customers free of charge, a facility which provides information on the accumulated **consumption over a specified billing period** and which limits the expenditure on regulated **data** roaming services, including provision for suspending the service. To this end, the home provider shall make available one or more maximum **usage** limits for specified periods of use.

When this 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.

When this limit is reached, the home provider shall, **either automatically or upon customer request**, immediately cease to provide the roaming customer with regulated data roaming services, **[deleted]** until the roaming customer requests the **[deleted]** renewed provision of those services.

Each home provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile telephone or other device before the agreed limit is reached. Customers shall have the right to require their operators to stop sending such notifications.

Each home provider shall also ensure that an appropriate notification is sent to the roaming customer's mobile telephone or other device before the agreed limit is reached. **The notification shall provide basic personalised tariff information on the charges applicable to the provision of regulated data roaming services to that roaming customer in the Member State concerned.** Customers shall have the right to require their operators to stop sending such notifications.

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Justification

- *Basic personalized information: wording used under Art. 6 of the current regulation.*
- *Provision of information when the roaming customer enters or initiates a regulated data roaming service: for some usage cases, it is technically difficult to determine the precise moment when the data service is “initiated” (e.g. for Blackberry and devices that are “always on”). Alternative wording proposed would be similar to the provisions of Article 6(1).*
- *By 1st July 2010: the Commission and the ERG had acknowledged that systems development will be necessary to make such a measure effective. They have rightly recognised that such a complex system could not be put in place before the 1st July 2010.*
- *Maximum usage limits: depending on network features, there is a risk of important time lag between the information on expenditures expressed in currency sent to the customer and the actual money spent by this customer. Thus, depending on the network, a maximum financial limit may not be always reliable. Instead, customers could receive reliable near real time information on usage expenditures (depending on technical feasibility, “usage expenditures” meaning either volume or financial expenditures). In any case, customers still receive tariff information on the charges applicable on data service pursuant to Article 6a paragraph 2 and paragraph 3 (the notification should also provide personalised tariff information on the charges applicable).*
- *Automatic or customer-triggered suspension of the regulated data roaming services: depending on national customers’ needs and usages, the operator should set up either an automatic or a customer-triggered suspension of the service. However, the renewed provision of the service should only be at customer request.*

Article 7 – paragraph 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. **National regulatory authorities may also lay down more detailed rules for the application of Article 6a(3).**

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. ~~messages.~~

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Justification

Current Art.6a (3) is sufficiently detailed to be applied without intervention of the National regulatory authorities. Leaving the freedom to National regulatory authorities to lay down more detailed rules for the application of Article 6a (3) could result in a lack of harmonisation of transparency measures in Europe.

Article 11 – paragraph 1

1. The Commission shall review the functioning of this Regulation and, after a full consultation, shall 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 so doing, the Commission shall review, inter alia:

- the developments in wholesale and retail charges for the provision to roaming customers of voice and data communication services, including SMS and MMS **and the corresponding developments in mobile communication services at national level in the different Member States, for pre-paid and post-paid customers separately;**

1. The Commission shall review the functioning of this Regulation and, after a full consultation, shall report to the European Parliament and the Council no later than 30 **June 2010**. The Commission shall evaluate in particular whether the objectives of this Regulation have been achieved. In so doing, the Commission shall review, inter alia:

- the developments in wholesale and retail charges for the provision to roaming customers of voice and data communication services, including SMS and MMS **[deleted];**

Justification

The date has been changed taking into account a different expiry data compared to the date proposed by the Commission. (See justification to Article 3 paragraph 2.)

This amendment is in line with the scope of the review proposed by the Commission. In line with the principle of subsidiarity the Commission's proposal is limited to the regulation of roaming services on public mobile communications networks within the Community.

Article 11 – paragraph 2(a) (new)

In addition, the Commission shall, no later than 31 December 2010 prepare an interim report to the European Parliament and the Council, which shall

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include an analysis and monitoring of the provision of roaming services in the Community and an assessment of the progress towards achieving the objectives of the regulation, including by reference to the matters referred to in paragraph 1.

[deleted]

Justification

Art.11 paragraph 2(a) is unnecessary and redundant. The market is regularly monitored by the ERG pursuant to Art.7 paragraph 2 & 3. Further, pursuant to Art.11 paragraphs 1 & 2, the Commission has to report to the European Parliament and the Council (following a thorough review of the functioning of the Regulation).

Article 13

In Article 13 "2010" is replaced by "**2013**". In Article 13 should read now as follows:

“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 **31 December 2011**.

This Regulation shall be binding in its entirety and directly applicable in all Member States.”

Justification

W.r.t. an extension of 1,5 years (ending on 31 December 2011): see justification to Article 3 paragraph 2.