Response

BITKOM response to the European Commission's public consultation: „Review of the functioning of Regulation (EC) No 717/2007 (the "Roaming Regulation") and of its possible extension to SMS and data roaming services"

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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.

On May 7th the European Commission published a calling for comments on the review of the Roaming Regulation and its possible extension to SMS and data roaming services. In 39 questions, it seeks stakeholders' input on the general functioning of the Roaming Regulation, as well as on specific issues such as:

- inadvertent roaming or involuntary roaming when consumers use their mobile phone close to the border of a neighbouring country and are connected to a foreign network;
- the effect of the Regulation on smaller operators and on domestic prices (e.g. whether the regulation has led to an increase in domestic prices);
- the issue of actual and billed minutes (e.g. whether there has been any change from per second to per minute billing as a result of the Regulation);
- the extension of the Regulation in time.
- In the consultation, the European Commission is also seeking input on whether regulation is necessary for data and SMS roaming services (at wholesale and/or retail levels) in light of current retail prices and market developments.

The SMS and data roaming market in Europe is a young, emerging market. The previous regulation brought forward already declining prices. Nevertheless also without regulation a price competition is taking place in the Roaming market. Roaming has seen rapid reductions in prices: for example, voice roaming prices in the EU25 fell by 13% from 2006 to 2007, well before EU price regulation.

Additionally, with regard to data services, several new tariffs & offers have been launched by mobile operators in the recent past:

- T-Mobile Germany has reduced its standard retail price for data roaming by more than 70 % to € 1,95 per MB. Users of T-Mobile Germany may also choose a tariff for 14,95 € per day (incl. VAT) including 50 MB usage; this corresponds to a retail price of 0,299 € per MB. For any usage above 50 MB the customer will be charged a rate of 1,95 €/MB. Furthermore, T-Mobile Germany has reduced the price for prepaid roaming SMS from € 0.49 to € 0.39 as of July 1, 2008.
- Vodafone D2 launched a data connectivity tariff in July 2007 with a daily price of €14,95 (incl. VAT) for 50 MB. In June 2008, Vodafone introduced a new

monthly data roaming bundle: For a monthly fee of 69,95 € (incl. VAT) the customer may download 150 megabytes. Compared to data roaming bundles offered so far this results in a cost reduction of about 45% in terms of price per megabyte, equivalent to €0.47 (incl. VAT) per megabyte.

- Telefónica O2 has reduced its data roaming charges since March 2008 from 8 to 6 €cent per 10 KB (prepaid-customers moreover from 10 to 6 €cent) combined with a daily spend cap of 15€ incl. VAT. These moves result in a saving ranging from 42% to 97% over November 2007 prices.

This downward trend is expected to continue over the coming months as operators continue to innovate by offering new and attractive tariffs. This intense competition between European mobile operators will even in future lead to greater innovation, lower prices and a wide choice of different packages and services, including roaming.

Against the background of these general remarks and the above examples for price reductions, we respond to the consultation as follows:

Question 7: *If you are an operator, what measures (technical or otherwise) have you taken to deal with the issue of inadvertent roaming, both to prevent it happening and to compensate for the adverse effects once it has been shown to have occurred? How do you raise awareness of the problem and the potential remedies on the part of your customers?*

Response:

Several operators are taking this issue seriously and have implemented broad customer protection actions.

In case of inadvertent roaming calls a call centre advises the customer to switch to manual network selection or uses the ability to bar roaming altogether for the customer.

Furthermore, in all cases, customers already:

- will know when they switch from their home to a visited network whilst making or receiving a call because the call will drop
- have handsets or other devices which inform them of the network they are using
- will receive a push SMS whenever their handset first finds a visited foreign network (assuming that they have not opted out).

It should be noted that these issues – although they are taken seriously by mobile operators – nonetheless remain for a very small group of customers because the technical challenges in resolving these 'spillover' problems are very formidable. It is clearly not possible to engineer mobile networks so that radio signals stop at national boundaries. Some degree of overspill is therefore inevitable unless one removes mobile coverage from these regions altogether.

Question 10 and 11: *Impact on Smaller Operators*

Response:

BITKOM is not aware of any public information on the financial impact of the Roaming Regulation on smaller operators.

Question 17: *Please provide details of changes from per second to per minute billing for voice roaming services which have occurred since or shortly before the entry into force of the Regulation. Were customers informed of those changes in advance? Have practices for new customers changed? What are the common billing practices for domestic and roaming calls?*

Response:

In Germany, billing per minute for voice roaming as well as for national calls was common already before the Regulation came into force. None of the BITKOM members changed their existing unitization practices to the prejudice of the consumer since or shortly before the entry into force of the Regulation.

From our point of view also the following aspect has to be taken into consideration: As billing per minute is usual in Germany, introducing billing per second on a European level would discriminate national customers.

Question 18: *Do you consider that steps should be taken to ensure that the billing methodology applied to regulated roaming calls guarantees per second rather than per minute billing? If so, what action would be required (i.e. should this be left to the industry to tackle via self-regulation; should the Member States or NRAs intervene under existing powers and responsibilities; or is legislative action at Community level necessary)?*

Response:

BITKOM does not support stipulating a per second billing in roaming, as it would effectively have an enormous influence not only the price itself, but also the retail pricing model. It is important to take into account that dictating the charging increments would leave even less flexibility for innovative roaming offers.

In addition, again it should be noted, that billing per minute is quite usual in Germany.

Question 19*: Do you think it necessary to maintain the provisions of the Regulation dealing with retail prices for roaming services – in particular the mandatory Eurotariff - beyond the current expiry date of the Regulation in June 2010? If yes, why; and if not, why not?*

Response:

From our point of view the Roaming Regulation should not be prolonged or extended.

We believe that in fast-moving markets with falling prices, such price regulation is likely to be severely counterproductive, inhibiting the evolution of the market and potentially slowing down price reductions over the longer term.

Taking into consideration the market mechanism in the mobile sector any concerns that roaming prices would be increased after the expiry of the Roaming regulation go astray.

It is too early to properly assess the impact of the Regulation and too early to consider whether to extend it only a few months after the Regulation has actually been implemented. New tariffs and initiatives developed since last year will not be fully visible to policymakers until this summer.

Question 20: *What evidence is there of competition between providers of intra-Community mobile voice roaming services in the provision of such services other than by means of the Eurotariff? To what extent do these alternative offerings satisfy the needs of roaming customers?*

Response:

With maturing markets and vigorous competition, we have seen rapid reductions in mobile prices:

In the past years there have been significant reductions in the prices for mobile services across the EU. Adjusting for inflation, prices for the OECD‘s national mobile medium usage basket declined by 10% p.a. in the EU15 from 2002 to 2006 and by 13% in the EU25 from 2004 to 2006. Mobile call prices have been declining much faster (10% p.a.) than fixed line residential call prices, which fell by an average of 4% p.a. from 1998 to 2006. This trend has continued in 2007, with price decreases between 10% and 14%, as the Commission‘s 13th Implementation Report demonstrates, Progress Report on the Single European Electronic Communications Market 2007 (13th Report).

Alongside falling domestic voice prices, there have also been substantial reductions in voice roaming prices across the EU. The average price for an outbound roaming call fell by 13% from Q1 2006 to Q1 2007. Comparing the Q2 2006 index price (€0.87) with Q2 2007 ERG benchmark price (ERG Benchmark Report (Jan 2008)) (€0.69) shows that the price decline accelerated to 20% p.a. It is therefore clear that voice roaming prices were falling due to market forces well before the introduction of price regulation in late 2007. In Q1 2007 the average price per minute for a roaming EU/EEA call (outbound) was €0.77 per minute.

The Commission, on the other hand, claims the cost of a call home before the regulation came into force was around €1.10 per minute (European Commission, Roaming Regulation Impact Assessment). Shortly after the regulation was launched, the Commission claimed reductions of up to 60% had resulted from the regulation, (European Commission, —Roaming: Consumer prices now reduced by 60%, Brussels, 4 October 2007 (IP/07/1445)). According to the ERG benchmark report, the average price per minute for a roaming EU/EEA call came down from €0.69 to €0.62 from Q2 to Q3 in 2007. It appears that the Commission's claimed reductions exaggerated the impact of the regulation.

When talking about competition another aspect should be taken into account:

Consumers are actively looking for the best deals and benefiting from competition. In fact customers are switching from one network operator to another once better performance is provided. This in itself is one strong indication that mobile markets are functioning properly. Consumers are willing and able to compare products and switch to the best providers. This in turn encourages companies to compete vigorously to attract and retain customers.

Question 21: *In the event that the Regulation were left to expire on 30 June 2010, do you expect that providers of intra-Community mobile roaming services would maintain their Eurotariff or other retail offerings below the price ceilings applicable under the Regulation? What is the basis of your opinion in this regard?*

Response:

Competition in the European mobile industry has ensured that the prices of the vast majority of mobile services, including international roaming, have fallen consistently over the past decade and that they continue to fall today. We therefore find it very difficult to envisage circumstances in which any operator could unilaterally increase the price of international roaming in Europe. In some markets, mobile operators raising roaming charges will risk customers terminating their mobile contracts.

Question 22: *Should wholesale regulation be maintained and, if so, for how long? If not, why not? What is your estimate of the share of total wholesale roaming capacity that is captive, i.e. produced on an intra-firm basis rather than purchased as an external input factor?*

Response:

From our point of view wholesale regulation is not required because competitive pressure will be adequate. As already pointed out there is a lot of competition in the roaming market so that further Roaming regulation is needless.

Wholesale regulation furthermore is not an appropriate instrument to realize fair market conditions. In its analysis of voice roaming prices, the European Commission pointed to material differences in prices between EU Member States for roaming calls. This seems to imply that mobile services should cost the same in different countries and that any prices above the European average must be extreme.

Mobile operators incur varying costs to deliver mobile services in different countries. There are also significant differences in costs between operators within countries. The main drivers for these variations are different traffic volumes and economies of scale and different cost structures including investment costs, labour costs, land and rental costs and regulatory fees.

The costs of providing mobile services for a minute of usage can vary nearly by a factor of four between European countries; but this is quite in line with cost and income differentials in the European Union. As a result, it is not reasonable to expect operators to set identical prices for mobile services across Europe.

Question 26: *Taking into account the interests of mobile users and operators and the principle of proportionality, should the obligations regarding transparency contained in Article 6 of the Regulation be maintained in place (suitably adjusted), even if the price obligations themselves are allowed to expire? If so, what adjustments to those transparency obligations would need to be made?*

Response:

Based upon a mature consumer model transparency rules have reached a disproportionately high level (see response 27). Even though transparency obligations are appropriate to a certain degree they can also inhibit innovation if they are too excessive. In particular specific format and structure of transparency requirements could slow down launching new tariffs as operators are not able to meet these demands of required transparency obligations. In addition, we have not seen any convincing evidence to suggest that the existing ‘push SMS’ transparency provisions deliver sufficient benefits to justify the industry costs associated with delivering hundreds of millions of SMS every year.

Question 27*: Do you consider that the transparency requirements of the Regulation should be improved and, if so, how?*

Response:

From our point of view strengthening transparency requirements is not required.

There is an increasing level of transparency regarding mobile roaming tariffs. Operators offer detailed information on their websites regarding their own and international partner roaming tariffs. In addition, a wide range of price comparison websites, including the European Commission's own website or the GSM Europe website, allow consumers to compare voice and SMS roaming tariffs.

Typically a customer who travels regularly will consider the competitiveness of roaming tariffs when selecting an operator or deciding whether to renew their subscription or corporate contract. Customers also have the option to manually select their preferred roaming network via their handset if they believe it to be better.

Question 29: *To what extent is regulation of data roaming services necessary to tackle the problem of high charges? To what extent does competition exist for such retail and/or wholesale services and to what extent can traffic steering be utilised for data services to the benefit of consumers?*

Response:

To attract new customers and boost usage of data roaming services, many European operators are offering innovative, better value retail pricing packages. Many operators now offer data roaming services in bundles for a flat fee, giving customers better control over their spending and reducing the likelihood of unexpected costs. This is a trend that is expected to continue with many recent announcements from the mobile operators.

There is severe competition in data roaming services:

Operators have announced new wholesale tariff structures. For example, Vodafone's decision in 2007 to offer partner operators a wholesale data roaming price of €0.50 per megabyte on a reciprocal basis provided a public benchmark for the industry to consider.

Whereas, historically, IOT pricing structures and discounting agreements have been largely volume-based, now some operators are exploring alternative forms of bilateral agreements which use other charging parameters including degressive pricing and per user volume aggregation.

The average data roaming price per megabyte is falling as a result of competition. According to the GSMA Price Index, the average retail data roaming price within the EU declined by 25% in the year to April 2008, (Based on a sample of 38 major EU27 operators.). Use of data roaming services has more than doubled in the year to March 2008 – suggesting that price does not represent a barrier to adoption in Europe.

Price reductions and tariff innovation are already flowing through as real savings for customers. Many operators have started to offer daily tariffs as well as low price per MB for both data card Internet users and mobile handset Internet users.

The mobile data roaming market in Europe is a young, emerging market. Although the number of data roamers and data roaming traffic is quite small right now, it is increasing rapidly. There is a healthy level of competitive rivalry as demonstrated by the many innovative tariffs and declining prices.

Against this background it would be inappropriate at this stage of the mobile data roaming development to impose price regulation.

Question 30: *To what extent do potential substitute services impose competitive constraints on data roaming services? To what extent might future market or technical developments tackle the problem? Are regulatory solutions other than price regulation possible? If so, please explain?*

Response:

BITKOM believes that wifi access from hotspots at airports and hotels represents an important and widely available substitute to the data roaming services that mobile operators provide using 3G data cards for PCs.

Question 31: *Can the problem of high charges for data roaming services be tackled by wholesale regulation alone? If wholesale regulation is to be considered, how should it be constructed? For example, should it be based on linear pricing (i.e. a fixed charge per MB or other charging interval) or should it be non-linear, i.e. with declining rates per MB or other charging interval? What charging intervals should it incorporate (e.g. per 100kb, per MB or other)?*

Response:

Data roaming traffic is growing rapidly as more mobile phone and laptop users take advantage of the ability to remain connected, wherever they happen to be, on the move. It will take some time for this market to mature.

However, operators have shown that they are committed to developing wholesale and retail pricing structures to meet customer needs and competitive challenges. There is a healthy level of competitive rivalry as demonstrated by many innovative tariffs and declining prices. It would be inappropriate at this stage of the mobile data roaming development for the Commission to impose more price regulation.

A potential regulation of a “€/MB” price point at wholesale level will stop the development of pricing mechanisms through market forces. Pricing models (both retail and wholesale) are still developing.

While volume-based, per megabyte pricing was effective for 2G data (given the fairly consistent levels of data usage per customer and session), it is not always the most appropriate approach in the high-speed data, 3G world (UMTS/HSPA). Per megabyte pricing for data roaming, applied regardless of device type and usage setting, is not an appropriate pricing structure for a market that includes narrowband (email messaging) as well as broadband usage (file downloads, video streaming, etc).

Perceived value of an application from a customer point of view is not proportional to volume. Enormous spread of daily data volumes, from a few ten kilobytes per day to hundreds of megabytes, therefore linear charging per kilobyte (both retail & wholesale) will either cost almost nothing or produce significant bill shocks. Mobile operators must be able to price different data services differently to avoid huge price discrepancies between low volume and high volume services. This requires much more complex wholesale charging structures.

If at all for wholesale charging the concept of degressive volume-based IOTs, where the average price per MB gets cheaper with increasing session size (volume), meets the requirements. This enables operators to develop attractive retail offers for a broad range of mobile data applications.

Question 33: *Would transparency obligations on mobile operators be enough to tackle the problem of high charges? What sort of transparency mechanism can work effectively to stop the “bill shock”?*

Response:

There have been legitimate concerns about so-called bill shock for a small number of customers who have downloaded multiple video clips and the like while roaming on legacy tariff schemes and faced high bills on their return home. However, operators have shown that they are committed to launching pricing structures to meet the needs of all customers and protect them from unexpectedly high costs.

Operators are also investing considerable effort into improved transparency of data roaming tariffs, aiming to prevent unintended overspending. Although the approaches differ across the different operators, all are aiming to further increase transparency with new tools (e.g. data usage monitoring tools within the software which runs laptop data cards, SMS notifications (free of charge), updated and easy to use operator websites) or new innovative tariffs (e.g. default daily tariffs) or a combination of both.