

Position Paper

Regarding the proposal of the European Commission for a regulation pertaining to roaming services

29 September 2006

Page 1

BITKOM represents more than 1,000 companies, 800 of which are members. Members earn 120 billion Euros annually and employ over 700,000 workers. Included among these members are device manufacturers and providers of software, IT, telecommunications and content services.

Abstract

The EU Commission has published a proposal for a regulation of the European Parliament and of the Council regarding roaming services (COM(2006)382 final). The key elements of the proposal are price regulations on the wholesale and retail levels as well as specific obligations on the side of providers to supply information. In this paper, BITKOM addresses unanswered questions and problems surrounding the proposal.

Bundesverband
Informationswirtschaft,
Telekommunikation und
neue Medien e.V.

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

Ansprechpartner
Dr. Volker Kitz LL.M. (NYU)
Rechtsanwalt
Bereichsleiter
Telekommunikations- und
Medienpolitik
+49. 30. 27576-221
Fax +49. 30. 27576-222
v.kitz@bitkom.org

Präsident
Willi Berchtold

Hauptgeschäftsführer
Dr. Bernhard Rohleder

Position Paper

Proposed Legislation on Roaming Services

Page 2

Content

Page

1	Regulation of whole sale prices (Art. 3)	3
2	Regulation of retail prices (Art. 4 and 6)	3
3	Obligation to supply information (Art. 7)	4

Position Paper

Proposed Legislation on Roaming Services

Page 3

Regulation of wholesale prices (Art. 3)

The European Commission's proposal would limit the wholesale prices for roaming services in a visited network within the Community to twice the Community average termination rate. A visited network outside the Community would be three times the average termination rate according to Article 10.

To begin with, the Commission's proposal ignores the fact that a majority of the mobile technology companies have already committed to voluntary measures. This fact is not mentioned in the European Commission's impact assessment.

Furthermore, the relationship between the Commission proposal and the principle of regulation based upon single-case analysis in competition law (detailed in articles 14 - 16 of the framework directive, articles 8 – 13 of the access directive and article 17 universal service directive) is unclear.

Regulation of retail prices (Articles 4 and 6)

The Commission's proposal would limit retail prices for outgoing and incoming connections to 130% of the whole sale prices. This price regulation should be in accordance with Article 5 following a transitional period of six months after the regulation comes into effect.

This proposal is a novelty. In community law, regulation of the retail market is only necessary if the wholesale regulation is not sufficient enough to achieve the regulatory goals (refer to: Article 17 Paragraph 1 of the Universal Service Rights). Even the European Regulators Group (ERG) regards the present case as disproportionate. Price, as the central and most important competition parameter, is heavily restricted. Consequently, competition between the providers in this market segment is largely levelled. Regardless of whether retail regulation is practical in the present case, the consequences and possible problems of such a step should be well-thought out in advance. BITKOM presently identifies two unanswered problems:

Firstly, the proposed regulation can render innovative products such as bundles, set-up fees and flat rates impossible, since their roaming services are not calculated using the concrete price ceilings. This relieves the market of the right to establish tariffs and limits the competition through various tariff structures. Today's tariffs – being noticeably simpler and more transparent - would be supplanted by tariffs created by a coupling of various wholesale amounts.

Secondly, the proposed regulation could lead to outgoing roaming calls becoming cheaper than national prepaid calls. Since the national markets are affected, the regu-

Position Paper

Proposed Legislation on Roaming Services

Page 4

lation would indirectly regulate the national retail price of other mobile technology products as well. In this respect, the Commission's proposal demonstrates a tightening effect when compared to earlier proposals in the framework of the consultation procedure (in particular the "European Home Market Approach").

Obligation to Supply Information (Art. 7)

The commission would like to obligate providers to give customers personalized price information at any time, either verbally or via SMS.

BITKOM sees good price transparency as an important requirement for functioning competition and lasting customer satisfaction. German ICT companies represented by BITKOM have already been making efforts out of their own interests to inform their customers of comprehensible tariffs. However, expense and profit must be in reasonable relationship with one another.

The providers have already established numerous gateways to information such as service hotlines, downloadable tariff overviews per country, online tariff calculators, pamphlets and personal tariff consulting in shops. An *additional* obligation for individual price consultation for each and every demand of the service seems somewhat excessive in this context. Such individual consultation in a running contract subjects the provider with high internal and external costs, even though the product – for example, an SMS – might cost only a few cents. This under funding could only be compensated through price increases for their retail customers in other mobile technology services. For this reason, the obligations detailed in Article 7 Paragraphs 2 and 3 should therefore be omitted.