


REGULATION ON ROAMING (RECAST)

BEUC position paper on the European Commission's proposal

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SUMMARY

The European Consumers' Organisation (BEUC) welcomes the Commission's proposal for a new Roaming Regulation to be in place for the next 10 years. The proposal aims to tackle the structural problems in the roaming market by separating roaming from national services (decoupling). However, BEUC is concerned that decoupling and guaranteed wholesale roaming access on their own are insufficient tools and therefore price regulation remains necessary in order to achieve a roaming-free Europe.

In particular, we ask:

- To focus on eliminating the barriers of cross border activities and take a more proactive approach in abolishing the roaming charges;
- To extend the safeguard provisions to also include roaming outside the EU and be applicable for all services (not only for Euro-data tariff, but also Euro-tariff and Euro-SMS);
- That the data roaming safeguard limit be applicable to all tariffs and packages – post-paid as well as pre-paid customers;
- For the introduction of the non-discriminatory principle to guarantee the access for all service providers;
- For the assurance that alternative roaming providers be legally established in the country where they provide the service;
- For clear and understandable information for consumers when informing them about the separate sale of roaming services as well as advertising and roaming offer marketing;
- For the switching period between roaming providers to not exceed 3 working days;
- That in cases where a customer has subscribed to a domestic package which includes roaming prices other than Euro-tariff, Euro-SMS tariff or Euro-data tariff, the switching period should not exceed 2 months, including the eventual contractual notice period;
- That any technical solution for decoupling is designed in a consumer-friendly way;
- For a decrease of wholesale caps to €0.10/minute for voice roaming services as the starting point, with further decreases to €0.07 and €0.04 in July 2013 and July 2014 respectively;
- For a reduction of retail caps to €0.15/minute, €0.13 and €0.10 for calls made by 1 July 2012, 1 July 2013 and 1 July 2014 respectively;
- That there be no initial charging interval of 30 seconds;
- For a reduction of prices for calls received: €0.07/minute by 1 July 2012 and further decreases to € 0,05, € 0,03, € 0,00 in July 2013, in July 2014 and in July 2015 respectively so that these charges disappear;
- For a reduction in Euro-SMS tariff to €0.07 per SMS by 1 July 2012 with further decrease to €0.05 per SMS in 2014;
- For a decrease of data roaming wholesale caps to €0.25/1MB as of July 2012 with further decreases to €0.15/1MB and €0.05/1MB by 2013 and 2014 respectively;
- The new Euro-data tariff be set at €0.50/1MB as the next retail price cap followed by further decreases to €0.30/1MB, €0.10/1MB in 2013 and 2014 respectively;
- For the provision of information on actual charges, not maximum charges;
- More information on how much data is needed when using the internet;
- KB as the billing unit, without any round up;
- That the retail caps be removed once the market is competitive - revision in 2016 at the earliest.

Roaming within the EU – state of play

Roaming, in the form we know it, is a clear evidence of a non-sufficiently integrated single market. As there is no technical justification for keeping the concept of roaming itself, the EU should focus on eliminating the barriers of cross border activities, and take a more proactive approach in abolishing the roaming charges, rather than working on their further development or improvement. This is why BEUC believes that this roaming regulation should be considered only a step in a process, but not a final goal, of leading us to a roaming-free Europe.

The importance of roaming has been growing significantly in recent years, as a consequence of globalisation and the increased mobility of people. However, despite previously adopted EU legislation, the objective of establishing a single market is still far from being a reality; the European roaming market is struggling with insufficient competition, with prices clustered around the levels of the regulated caps.¹ Consequently, consumers are facing limited choice and high prices, especially for data roaming services and to a lesser extent also for voice and SMS.

As a result, European consumers are cautious with the use of their mobile devices when travelling abroad. This is proven by the results of the Eurobarometer² which showed that 72% of travellers still limit their roaming calls because of high roaming charges and only 19% of Europe's consumers who use internet-related services on their mobile phones believe the prices of data roaming are fair.

The Commission proposal: a positive step

BEUC firmly believes that the new Roaming Regulation must meet consumers' expectations and meet the objectives set out in the EU Digital Agenda for Europe³ which states "*the difference between roaming and national tariffs should approach zero by 2015*". We strongly believe that the new regulatory framework should be designed in such a way that consumers do not feel they have to limit the use of their mobile devices while abroad and be afraid of receiving high bills when returning back home.

We welcome the Commission's proposal for a new Roaming Regulation to be in place for the next 10 years. The proposal is rather ambitious and aims to tackle the structural problems in the roaming market by separating roaming from national services, a process known as 'decoupling'. However, BEUC is concerned that decoupling and guaranteed wholesale roaming access on their own are insufficient tools and therefore price regulation remains necessary.

¹ For instance, a Belgian consumer when abroad is currently paying €0.42/min (roaming with Proximus) or €0.40/min (roaming with Base) for calls made and €0.13/min for calls received. Sending a SMS costs €0.13.

² Special Eurobarometer 356, Roaming in 2010.

³ <http://ec.europa.eu/europe2020/pdf/digital-agenda-communication-en.pdf>

I. Scope of the Regulation (Art.1)

- **Automatic safeguard limit to include roaming outside the EU**

European consumers are under the current provisions protected by an automatic safeguard against data roaming bill-shocks when travelling within the EU⁴ and as highlighted by BEREC in its analysis of the Commission's proposal,⁵ "*there would be considerable merit in extending the successful provisions governing bill-shock to apply to data roaming outside the EU*". As consumers are still in danger of bill-shock when travelling outside the EU, we feel this measure is needed to strengthen consumer protection and therefore call upon the European Parliament and the Council to realise it in law.

We are also convinced that in order to ensure an effective consumer protection for those roaming outside the EU, an automatic safeguard against bill-shocks should be extended also to voice and SMS services (please, see chapter IV. on Transparency).

We ask:

- To extend the safeguard provisions to also include roaming outside the EU.

II. Structural remedies

We welcome the Commission's proposal to support the creation of a competitive roaming market in the EU. However, there are still certain points which need to be clarified, while specific risks need to be addressed prior to the adoption of the next regulation in order to ensure the market is supported by the right tools and incentives.

- **Wholesale roaming access (Art. 3)**

According to Article 3 of the proposal, access to networks will be guaranteed for those operators who do not have their own spectrum allocation, i.e. Mobile Virtual Network Operators (MVNOs) and resellers. This should encourage more companies to enter the market and offer roaming-only packages. However, we are concerned that wholesale roaming access alone will not ensure that access is guaranteed to all service providers. Therefore, we believe the introduction of non-discrimination obligation related to all Mobile Network Operators (MNOs) and Mobile Virtual Network Operators (MVNOs) would constitute an effective mechanism for eliminating the practice of non-competitive contracts for the provision of roaming services based solely on traffic volume.

We ask:

- For the introduction of the non-discriminatory principle to guarantee the access for all service providers.

⁴ International Roaming compliance report, BEREC (http://erg.eu.int/doc/berec/bor_11_22.pdf)

⁵ http://erg.eu.int/doc/berec/text_voting.pdf

- **Decoupling (Art. 4)**

The proposal aims to prompt market competition by decoupling – the separate sale of roaming services. It envisages a new system where roaming services could be offered by operators different to the consumer's home provider. This new structural remedy should be in place as of 1 July 2014 when, according to the proposal "*home providers should inform all their customers about the possibility to unsubscribe from their existing roaming services and to opt for roaming services from an alternative roaming provider.*" We strongly believe that reassurances are still needed that every alternative roaming provider should be legally established under the national law of the particular Member State where it provides its services.

In theory, decoupling combined with wholesale roaming access and non-discrimination obligation may improve competition to a certain extent and bring new offers of roaming services (particularly of data roaming services as data traffic is constantly increasing). If implemented properly, such structural changes may foster competition to the benefit of consumer choice and lead to a decrease in prices for consumers, as stronger pressure from competitors could encourage incumbents to lower their prices. However, it must be ensured that consumers are provided with impartial, up-to-date and accurate information in a format allowing them to switch for a better deal. In this respect, the focus should be put also on the prohibition of long term contracts tying consumers in for a too long period. To conclude, we are also concerned that only certain groups of consumers⁶ will enjoy the benefits and not consumers who use roaming services only a few times a year.

We ask:

- For the assurance that alternative roaming providers be legally established in the country where they provide the service.

- **Changing consumers' habits**

As roaming services will be sold separately from national mobile services it may bring more transparency as to the charges for different mobile services but also greater tariff complexity. Moreover, considering that roaming represents only a minor share of the entire mobile market,⁷ the main challenge will be how operators approach their current as well as potential customers and how they motivate consumers to become interested in roaming services as these have previously been sold as part of the domestic service.

It is also important to bear in mind that consumers are usually less willing to switch to other offers.⁸ Therefore, home providers are required to inform their customers about the changes and the possibility to choose an alternative roaming provider in a clear and understandable manner. It is obvious that if operators want to attract new customers, they will have to engage a means of communication which is consumer-

⁶ Especially business customers who are usually more sensitive about the prices of roaming services and, considering their higher usage, these customers will be able to negotiate attractive terms of contract.

⁷ According to the Commission's report to the European Parliament and Council (July 2011), EU roaming revenues represent around 3.68 % of the total EU mobile market.

⁸ This was also proved by the Eurobarometer on "*eCommunications household survey*" published in July 2011 where the consumers were asked if they have considered switching their internet provider and their service packages provider. According to results, six out of ten households say they have never considered switching to another service provider. Moreover, 77% of households said they would never switch their bundle and only 12% of households are "active switchers". Lack of clarity about the steps required for switching is one of the main reasons for these low switching rates.

friendly, will motivate consumers to decide the provider of the roaming service and be more sensitive about the prices for roaming services in general.

However, it is important that all information and offers are understandable and transparent with regard to prices, service characteristics and do not result in misleading consumers and unclear terms and conditions. Therefore, it is crucial that advertising of roaming offers and marketing to consumers fully complies with consumer protection legislation, particularly the Unfair Commercial Practices Directive.⁹

We ask:

- For clear and understandable information for consumers when informing them about the separate sale of roaming services as well as advertising and roaming offer marketing.

- **Switching**

The Commission puts forward different switching periods depending on the service (i.e. the switching period to or from a Eurotariff must be made within one working day; the switching period between roaming providers should be five working days; and the switching period should not exceed three months if the consumer has subscribed to a domestic package which includes roaming prices other than the Eurotariff, Euro-SMS tariff or Euro-data tariff).

We support that the switching to or from a Eurotariff should be possible within a maximum of **one** working day but consider the switching period between different roaming providers too long and propose **three** working days. Next to this, in case the customer subscribes to a domestic package which includes roaming prices other than Eurotariff, Euro-SMS tariff or Euro-data tariff, we are concerned that the suggested switching period of three months is too extensive and propose the switching period should not exceed **two** months, including the eventual contractual notice period.

We ask:

- For the switching period between roaming providers to not exceed 3 working days;
- That in cases where a customer has subscribed to a domestic package which includes roaming prices other than Eurotariff, Euro-SMS tariff or Euro-data tariff, the switching period should not exceed 2 months, including the eventual contractual notice period.

Practical implementation can bring some **negative technical as well as commercial implications**, as mentioned below. Therefore we call on EU policy makers to address all potential risks prior to the implementation of the next Roaming Regulation.

⁹ Directive 2005/29.

- **Two services – one SIM card (Art. 5)**

The current proposal for a regulation does not contain enough explanation of what the practical consequences will be when the consumer decides to choose an alternative roaming provider. Although Article 5 mentions that *“in order to enable the separate sale of roaming services, operators may in particular allow the use of a ‘EU roaming profile’ on the same SIM card and the use of the same terminal alongside domestic mobile services”*, the proposal does not specify how this will be technically solved. In order to manage the separate sale of roaming services, the SIM card of the consumer should be able to simultaneously manage the functionality of the domestic operator and of the roaming operator. Thus, new technical and administrative processes which will have to be implemented should be designed in such a way as to entail as little inconvenience as possible for the consumer (e.g. so they will not have to change the SIM card when choosing an alternative roaming provider) and will be highly transparent and clear to the consumer.

We ask:

- That any technical solution is designed in a consumer-friendly way.

III. Price regulation (Art. 6-12)

Despite the reduction in prices of voice and SMS roaming services¹⁰, the price of data roaming services is still too high.¹¹ BEUC believes that the right approach is to maintain the current system¹² and adopt retail caps for data roaming (Euro-data tariff). However, we are concerned that the proposed caps envisaged in the Commission's proposal for all types of roaming services do not adequately reflect the actual cost and it is unlikely they will result in real protective and fair tariffs for consumers.

- **Voice**

BEUC welcomes the Commission's proposal to further lower the Eurotariff. However, we are concerned that the reduction is not ambitious enough, especially with regard to the principle that there is no justification in the mid-term to maintain roaming within an integrated single market. Moreover, considering the real costs of providing voice roaming service and the declining level of mobile termination rates (MTRs)¹³ which should converge to 1 cent per minute or even less by 2015¹⁴, we consider **€0.10 per minute as an appropriate starting level of an average wholesale charge** to be set as of 1 July 2012. Further decreases should be to **€0.07 and €0.04** in July 2013 and July 2014 respectively.¹⁵

¹⁰ http://ec.europa.eu/information_society/activities//roaming/docs/roaming_report_11.pdf

¹¹ For instance in Belgium – when roaming with Proximus, a consumer may pay €5.99/ 10MB per usage day; when roaming with Mobistar the standard rate in Europe is €3.63/MB but may also get 2MB per €2; when roaming with Base, it depends what network the consumer is roaming on – the price per MB may differ from €2.50 to €13.

¹² Current regulation is based on wholesale and retail caps for voice and SMS as well as wholesale caps for data roaming.

¹³ According to the BEREC report, the average EU MTR was €0.049 (January 2011).

¹⁴ For instance, in France the MTR should decrease to €0.8c/min by 2013 as envisaged by ARCEP, the French Telecoms Regulator in September 2011.

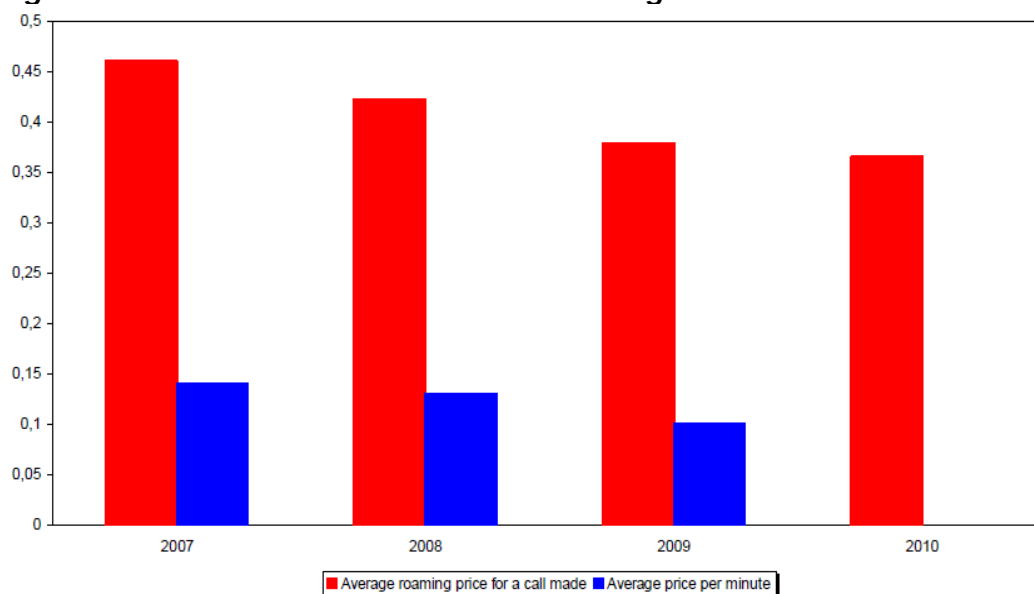
¹⁵ The costs are based on the average European mobile termination rate which was €0.049 in January

As regards the retail price of voice roaming services, the margins of operators are high and alarming. In order for telecoms operators to have a fair return on their investments and for new entrants to enter the market, a 50% mark-up on the costs of providing the wholesale service (including managing costs) should be allowed. Consequently, considering that for making call the cost equals 2 times MTR and by adding the 50% margin, one arrives to **€0.15 per minute in July 2012** as the appropriate starting level of retail price. Further decrease should be to **€0.13** and **€0.10 for calls made** by 1 July 2013 and 1 July 2014 respectively.

Moreover, it is unacceptable that consumers pay for receiving the roaming call as no mobile provider in Europe is charging its customers for receiving calls at national level. Therefore, in order to make this a reality in the mid-term also for those consumers who are roaming, a more ambitious approach should be taken. So that these charges disappear, BEUC proposes **€0.07 per minute** by 1 July 2012 as a starting point with further decreases to **€ 0,05, € 0,03, € 0,00** in July 2013, in July 2014 and in July 2015 respectively.

If the target of eliminating differences between roaming and domestic prices is to be achieved, the EU must adopt a more ambitious approach. Currently, as stated in the Commission’s impact assessment,¹⁶ roaming prices for voice services are on average 200% higher compared to the domestic Average Price Per Minute. Significant differences between domestic and roaming prices for voice services have also been reported by our members and shown in the recently published Digital Agenda Scoreboard¹⁷.

Figure 1: Price differences between roaming and national calls in €



Source: Digital Agenda Scoreboard, 2011

2011. Terminating a call costs as much as originating a call and therefore the wholesale charge is 2 times the average mobile termination rate.

¹⁶ http://ec.europa.eu/information_society/activities/roaming/docs/impac_ass_11.pdf

¹⁷ http://ec.europa.eu/information_society/digital-agenda/scoreboard/docs/scoreboard.pdf

Moreover, even the European Commission, when analysing different regulatory scenarios¹⁸, considered the retail caps for voice as follows: "€0.24 per minute as of July 2012 with further decreases to €0.17 and €0.10 by 2014". However, the retail caps in the current proposal are significantly higher (€0.32) and it is open to question what the basis is for setting the Eurotariff at such a level. Although we acknowledge that the price caps should be set at the level supporting competition on the market and that separate sale of roaming and domestic services to be technically possible will be conditioned by further investments, these should not be passed on to the consumers. We are also concerned about the rationale for the initial charging interval of 30 seconds which, in our view, should be not allowed.

	EC proposal			BEUC's proposal		
	Wholesale	Retail(made/received)		Wholesale	Retail(made/received)	
2012	€0.14	€0.32	€0.11	€0.10	€0.15	€0.07
2013	€0.10	€0.28	€0.10	€0.07	€0.13	€0.05
2014	€0.06 (till 2022)	€0.24 (till 2016)	€0.10 (till 2016)	€0.04	€0.10	€0.03
2015						€0.00

- **SMS**

As also stated in the Commission's assessment, the current operating costs of SMS are almost negligible and can range between c€0.06 and c€2.67. We do agree with the proposed level of wholesale caps. However, we do not see any reason why there should be such a huge difference between the wholesale and retail prices and thus we consider €0.10 retail charge of a Euro-SMS tariff as disproportionate and propose **€0.07 per SMS** as apt, starting as of 1 July 2012 with further decrease to **€0.05 per SMS** in 2014.

	EC proposal		BEUC's proposal	
	Wholesale	Retail	Wholesale	Retail
2012	€0.03	€0.10 (till 2016)	€0.03	€0.07
2014	€0.02 (till 2022)		€0.02	€0.05

- **Data**

We welcome the Commission's decision to introduce retail caps for data roaming services. Although the previous Roaming Regulation¹⁹ introduced maximum wholesale data roaming charges, the reductions seen at wholesale level have not been passed on to retail level, so consumers are still charged high prices for data roaming.

National retail charges for data services are decreasing²⁰ and the same trend should also be applied to Euro-data roaming. For instance, as noted by Vice President Kroes in February 2011, European consumers often pay less than five cents to download a MB via a cell phone in their own country. However, they pay up to €2.60 per MB in another EU country.²¹

¹⁸ http://ec.europa.eu/information_society/activities/roaming/docs/impac_ass_11.pdf

¹⁹ Regulation (EC) No 544/2009 amending Regulation (EC) No 717/2007.

²⁰ For instance, a German consumer can already download 1 MB via cell phone for less than one cent. It is also possible to buy data packages which consist of 1000 MB for €9.95. Each additional MB costs €0.24/1MB.

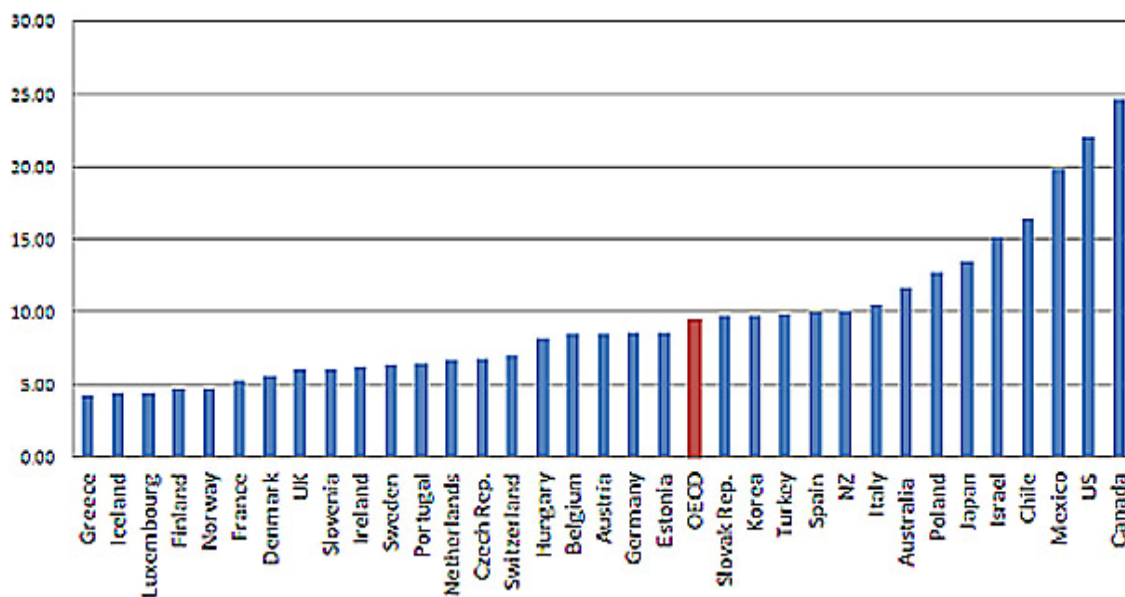
²¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/11/99>

We strongly support a more ambitious approach in this respect, as some communications operators in Belgium and France offer wholesale rates at €0.25/1MB and retail rates at €0.50/1MB.²² Therefore, we believe the **wholesale price cap should not be higher than €0.25/1MB as of July 2012 and then at €0.15/1MB and €0.05/1MB** in 2013 and 2014 respectively.

BEUC is concerned that the Euro-data tariff of €0.90 proposed by the Commission cannot be justified, as it does not reflect the real costs of the service and will not bring the prices for data roaming to national level. Thus, we propose **€0.50/1MB as the next retail price cap followed by further decrease to €0.30/1MB, €0.10/1MB** in 2013 and 2014 respectively. We strongly believe that such levels of cap will still provide considerable space for competition bringing in new offers.

A need for further decreases of data roaming charges are also supported by the recent OECD study²³ which compares average roaming fees (in US \$) for one megabyte of data usage charged by two prominent wireless providers in each of the 34 OECD countries. Apart from the data proving the high prices consumers are paying all around the world, this study also shows for example how consumers in two different EU countries (i.e. Greece and Poland) are paying prices that in their case have a difference of more than 230%.

Figure 2: 1MB in one session – average price by country of origin of the traveller



Source: OECD

²² BEUC response to the European Commission's public consultation on the revision of the functioning of the Roaming Regulation (EC) NO 544/2009, February 2011.

²³ <http://www.oecd.org/dataoecd/57/62/48127892.pdf>

	EC proposal		BEUC's proposal	
	<i>Wholesale</i>	<i>Retail</i>	<i>Wholesale</i>	<i>Retail</i>
2012	€0.30	€0.90	€0.25	€0.50
2013	€0.20	€0.70	€0.15	€0.30
2014	€0.10 (till 2022)	€0.50 (till 2016)	€0.05	€0.10

IV. Transparency (Art. 15)

It must be stressed that the current transparency provisions have not been properly implemented by all operators. There are many reasons to believe that consumers are not effectively informed about the applicable charges and that there is an absence of clear information on the price of voice, SMS as well as data roaming services, which runs contrary to consumer protection.

In addition, further transparency will be needed with the new Regulation, particularly when decoupling comes into effect. The information on separate sales of roaming services should be easy to find and provided in a simple and understandable way. Moreover, we do believe that the information requirements regarding applicable tariffs, actual charges (not maximum charges) together with information on how to avoid uncontrolled data roaming need to be further strengthened and accompanied by more information on how much data is needed to use different services (e.g. checking email, downloading music etc.) as there is a lack of awareness in this respect.

- **Need for clear rules**

Clear rules on how the consumer should choose the roaming operator will be needed. For example, a customer who does not travel very often chooses a roaming operator providing an interesting deal at that particular moment, but when on his first trip abroad (which may be few months later) he will probably have a roaming operator who no longer offers the best solution as the market has changed in the meantime. We are also concerned that this will be the case for all consumers because it can be that markets change quickly, certainly in the first months when the new market conditions will be tested by the operators.

- **Automatic safeguard limit for all consumers (post-paid & pre-paid)**

As highlighted above, European consumers are effectively protected by an automatic safeguard against data roaming bill-shocks. BEUC strongly supports these being strengthened also for roaming outside the EU and for all kinds of packages and tariffs, as we believe the safeguard mechanism to be equally important, not only for post-paid, but also pre-paid customers. As stated in the Commission's proposal, the roaming provider will not have to inform the pre-paid customer about the volume and currency for the data roaming service. Also, he does not need to provide the pre-paid customer with a financial limit for data roaming or inform the customer in advance of

the corresponding volume amount. However, we strongly believe that pre-paid customers need the same level of protection.²⁴

- **Automatic safeguard limit for all services**

In order for consumers to be completely protected against any bill-shock, we propose to apply this cut-off limit not only to the Euro-data tariff, but also the Euro-tariff and Euro-SMS.

- **Billing methods**

As regards the billing unit/method, consumers are often not charged per 1KB, but rather per 10KB or even 100KB, without any legitimate justification. When downloading data, users often download only a few KB of data per session²⁵ and thus would benefit from lower billing intervals. Therefore, in order to solve both the above mentioned issues, BEUC supports the use of KB as the billing unit bearing in mind that no round up should be allowed and consumers should pay for the data service they really use. To conclude, with regards MMS, BEUC believes this service should become a uniquely billed service with no additional charges for data transfer.

We ask:

- For the provision of information on actual charges, not maximum charges;
- That the data roaming safeguard limit be applicable to all tariffs and packages – post-paid as well as pre-paid customers;
- That the safeguard limit be applicable for all services (not only for Euro-data tariff, but also for Eurotariff and Euro-SMS);
- More information on how much data is needed when using the internet;
- KB as the billing unit, without any round up.

V. IV. Review (Art. 19)

We are concerned that given the implementation of structural changes in 2014, it might be premature to already assess the impact on the roaming market in 2015 - one year after decoupling is implemented. It is essential that the retail caps are removed only when there is a competitive market. We would therefore propose that the evaluation takes place later, in 2016 at the earliest.

We ask:

- That the retail caps be removed once the market is competitive - revision in 2016 at the earliest.

²⁴ For instance, in Germany it is possible for a pre-paid customer to use their mobile even if the credit is empty (so called artificial pre-paid tariff). But even if consumer has a 'normal- pre-paid tariff, he needs to be protected in order not to lose his entire credit while using data services. For instance, in Denmark and UK, there are cases when pre-paid customers who have an "automatic fill-up option" in their agreement, whereby their operator fills up their prepaid card from the customer's bank account, whenever it reaches a certain lower limit.

²⁵ For instance WAP, e-mail checking, location and navigation services.

- **A long-term vision**

Looking beyond the proposed Roaming Regulation, which should take a more proactive approach towards affordable roaming charges, we believe that European policymakers should take appropriate long-term measures to achieve a “true single market for roaming services without borders”. This requires that in the future the market operates on a European scale and not that of different national territories. One way to achieve this result would be to oblige each telecom company belonging to the parent company to couple their national licenses under the umbrella of a single European operator and clearly avoid price differentiation for intra-European calls. Furthermore, it might also be advisable to establish in an appropriate European regulation that existing telecommunication licences as well as new licenses for mobile networks cover all EU territory and not only a single Member State for each licence. As a consequence, the allocation of telecommunication network licenses at European level will result in the stimulation of competition among operators and bring prices down for consumers.

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