

The Consumer Voice in Europe

## TOWARDS THE COMPLETE ABOLITION OF RETAIL ROAMING FEES

BEUC input on 'fair use' and the roaming wholesale reform



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EC register for interest representatives: identification number 9505781573-45



Co-funded by the European Union

Ref: BEUC-X-2016-085 - 21/09/2016

## **1. A single market for consumers is overdue<sup>1</sup>**

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For many years BEUC has called on the EU institutions to create a single market for digital and telecommunication services. Unavoidably, such a project entails abolishing the roaming fees that keep consumers from moving freely throughout the Union and using their smartphones and tablets without fear of a bill shock<sup>2</sup>.

Creating a single market for digital and telecommunication services is a win for Europe as a whole. It's a win for consumers because it allows them to stay connected while travelling, brings down geographical barriers, and lets them use that extra money on other things such as better broadband services. It's a win for mobile providers because it opens the door to increased consumer demand that they can monetise and thus increase their network investments. For example, in 2014 over half of European travellers turned off their data connections out of fear of bill shocks. If roaming fees disappear, this is great news in the form of additional demand for mobile providers' broadband services. The European Commission's own data shows that the abolition of roaming fees for consumers would pave the way for an extra 300 million customers for mobile providers<sup>3</sup>.

## **2. The new roaming rules agreed in 2015 do not require limiting RLAH by default**

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Against this vision of building a single market, we criticised<sup>4</sup> the lack of ambition with which the co-legislators finalised the deal on the Regulation 2120/2015 which amends the Roaming Regulation 531/2012, and had to explain to consumers that the complete abolition of roaming was being postponed.

With the new amendments to the roaming rules<sup>5</sup>, Roam Like at Home (RLAH) must be the default plan for all consumers as of 15 June 2017, provided the wholesale market reform is completed by that date. Such RLAH can be limited by 'fair use' policies, which means that the way in which these 'fair use' policies are defined is essential to determine whether or not consumers will truly enjoy RLAH as of June 2017.

It is very important to note that the declared objective of the 'fair use' provision<sup>6</sup> is strictly to avoid "abusive or anomalous usage". The concept "abusive or anomalous usage" remains undefined by the Regulation, and the co-legislator only provides the use of RLAH "for purposes other than periodic travel" as a matter of example of a type of usage that could be considered abusive or anomalous. In order to clarify the rules on how to avoid any "abusive or anomalous usage" that might arise, the co-legislator mandates the European Commission to adopt an Implementing Act on the issue. Crucially, the co-legislator did not define what "periodic travel" shall mean and did not task the European Commission with defining what "periodic travel" shall mean.

Therefore, we do not believe it is the European Commission's mandate nor obligation to define the concept of "periodic travel". The Commission's mandate is to use the Implementing Act to enable mobile providers and National Regulatory Authorities (NRAs)

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<sup>1</sup> Our UK member Which? is not a signatory to this paper.

<sup>2</sup> Eurobarometer 2014, [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_414\\_sum\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_414_sum_en.pdf)

<sup>3</sup> [http://europa.eu/rapid/press-release\\_IP-14-152\\_en.htm](http://europa.eu/rapid/press-release_IP-14-152_en.htm)

<sup>4</sup> <http://www.beuc.eu/publications/end-roaming-%E2%80%93-still-distant-promise/html>

<sup>5</sup> See Article 6a of Regulation 531/2012 as inserted by Regulation 2120/2015.

<sup>6</sup> See Recital 22 of Regulation 2120/2015 and Article 6b of Regulation 531/2012 as inserted by Regulation 2120/2015.

to identify any “abusive or anomalous usage” that might arise, and give them the necessary tools to address it.

We welcome the European Commission’s announced decision<sup>7</sup> to publish a new draft Implementing Act that will not impose any time-limitation on all consumers, thereby limiting the application of ‘fair use’ policies to situations where abusive practices might arise.

In the subsequently withdrawn first draft Implementing Act<sup>8</sup>, the European Commission had decided to adopt a multi-layered protective ‘fair use’ mechanism for mobile providers. First, a set of rules to detect “the risk of abusive or anomalous use”<sup>9</sup> and second, the authorisation to establish a horizontal time limitation applicable to all consumers of RLAH offers<sup>10</sup>.

Together with the option to activate the exceptional sustainability mechanism<sup>11</sup> and the possibility to offer non-RLAH tariffs to their customers<sup>12</sup>, these two additional protective layers would have meant that mobile providers have four different ways of protecting themselves from undesired effects of RLAH, an accumulation of measures that we consider disproportionate.

The European Commission’s initial decision to add a fourth protective layer ie: allowing time-limitations on the use of RLAH for all consumers by default, was an unnecessary measure that would have led to an unfair, over restrictive and hardly comprehensible situation for consumers.

The announced approach to drop such an additional protective layer is compatible with what the end objective should be: achieving a fully-functional digital single market for consumers. In order to set the course towards a transitory period towards that objective few years after 2017, BEUC calls on the European Commission, European Parliament and Council of the EU to **respect the following principles** when working on the wholesale market reform<sup>13</sup> and ‘fair use’ Implementing Act.

## **2.1. Any limitation to RLAH via ‘fair use’ should exist exclusively to prevent “abusive or anomalous usage”**

Considering that the exclusive objective of the Roaming Regulation is to prevent “abusive or anomalous usage”, there is no need to set a default limit, whether time or volume-based, on consumer’s ability to Roam Like at Home. Setting a default cap on all consumers would be a scenario which we consider profoundly unfair.

Firstly, it is an unfair scenario because the “abusive or anomalous usage” of RLAH is only a theoretical idea which has not been empirically proven, precisely because RLAH is not yet a reality. If national markets are truly competitive, consumers should not have the economic incentive to go to a country they don’t live in to get a mobile subscription. Instead of pre-emptively assuming that all consumers could try to abuse the rules, EU policy-makers should focus on boosting competition in national mobile markets, a long-term solution that would dissipate the fear of abuse or fraud.

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<sup>7</sup> European Commission Press Conference and press release, 21 September 2016 - [http://europa.eu/rapid/press-release\\_IP-16-3111\\_en.htm](http://europa.eu/rapid/press-release_IP-16-3111_en.htm)

<sup>8</sup> Draft Implementing Act, 5 September 2016, as withdrawn by the European Commission.

<sup>9</sup> Article 4 of draft Implementing Act, 5 September 2016, as withdrawn by the European Commission.

<sup>10</sup> Article 3 of draft Implementing Act, 5 September 2016, as withdrawn by the European Commission.

<sup>11</sup> Article 6c of Regulation 531/2012 as inserted by Regulation 2120/2015.

<sup>12</sup> Article 6e, subparagraph 3 of Regulation 531/2013 as inserted by Regulation 2120/2015.

<sup>13</sup> Proposed Regulation amending Regulation 531/2012 as regards rules for wholesale roaming markets - [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2016/0399/COM\\_COM\(2016\)0399\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0399/COM_COM(2016)0399_EN.pdf)

Secondly, it is an unfair scenario because if a default limit is set, then all consumers will have been pre-emptively sanctioned for the “abusive or anomalous” actions that a small percentage of them could theoretically undertake.

Instead of using a time or volume-based limit to cap the amount of RLAH that consumers can enjoy, the ‘fair use’ rules should set out some well-defined, general principles that NRAs and mobile providers can use to understand what type of usage is to be considered “abusive or anomalous”, a list of indicators to detect and a set of tools to address any such type of usage that might arise.

Getting the rules that will govern how ‘fair use’ policies tackle potential abusive or anomalous usage right is essential. We call on the Commission to make sure that these rules, indicators and tools are always be fair, reasonable, non-discriminatory, and transparent, and do not require the monitoring of consumers’ consumption patterns any more than what is strictly necessary to identify abusive or anomalous usage. The rules must also be clearly detailed in the Implementing Act in order to ensure consumers can understand what they can and cannot do and what their mobile providers can and cannot do, to prevent any type of abusive misuse by mobile providers, and to enable NRAs to adequately monitor and enforce the rules.

In addition, it is important to maintain a period during which a consumer, after having been notified by the mobile provider that his/her consumption is being considered abusive or anomalous, has the opportunity to modify his/her consumption pattern before being charged extra. In that sense, a similar concept as was included in Article 4, paragraph 3 of the withdrawn Implementing Act should be included in the final version. Ideally, the two-week period should be expanded. In addition, a complaint mechanism is necessary for consumers to initiate complaints if they feel the rules have been misused.

## **2.2. Any limitation to RLAH via ‘fair use’ must be temporary**

BEUC has always argued that any limitation to the RLAH default rule would only be acceptable as a temporary measure that allows the sector and its market players to transition towards a roaming-less reality.

The Roaming Regulation 531/2012 as amended by Regulation 2120/2015 provides the legal basis for any ‘fair use’ limitation that is to be used. As soon as the Roaming Regulation is first reviewed after the kick-off date of RLAH as default on 15 June 2017 (currently the proposed date for review is 15 June 2019<sup>14</sup>), the Implementing Act defining the ‘fair use’ limitations must be reviewed too. The objective from now and until that review date should be to get all wholesale and retail markets ready for the complete abolition of roaming fees, without any limitation. Permanent roaming should not be considered “abusive or anomalous usage” as of then.

In order to allow this transition to take place, the last sentence of Article 19, paragraph 1 of Regulation 531/2012 as amended by Regulation 2120/2015<sup>15</sup> should be deleted. Firstly because this review objective is in contradiction with the objective of enabling permanent roaming after the transitory phase and secondly, because this review objective is contradictory with the Regulation’s own provisions on abolition of retail surcharges (Article 6a) and fair use (Article 6b), as the concept of periodic travel is only used as an

<sup>14</sup> See Article 1, paragraph 6 of proposed Regulation amending Regulation 531/2012 as regards rules for wholesale roaming markets - [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2016/0399/COM\\_COM\(2016\)0399\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2016/0399/COM_COM(2016)0399_EN.pdf)

<sup>15</sup> “The Commission shall also take into account the need to prevent permanent roaming or anomalous or abusive use of wholesale roaming access for purposes other than the provision of regulated roaming services to roaming providers’ customers while the latter are periodically travelling within the Union”.

*example* of what could constitute anomalous or abusive behaviour, and not a substantive criteria in itself.

### **2.3. A sustainable and consumer-friendly plan requires a very ambitious wholesale market reform**

We are concerned the proposed wholesale market reform is not ambitious enough to allow for the transition to a roaming-less market. If wholesale caps are not reduced sufficiently, there could be a risk that in countries with lower domestic prices, some mobile providers feel obliged to increase their prices. Nevertheless, this is a hypothetical scenario that would contradict the available evidence of past years: as retail roaming fees have continuously decreased, so have domestic prices too.

In addition, if wholesale caps are not reduced sufficiently, there is a risk that smaller operators could have to stop providing roaming services or might fall off the market altogether. Both scenarios described go against consumer interests and therefore must be avoided by bringing wholesale caps as low as is economically feasible.

In particular, the proposed wholesale cap for voice (4 eurocents/min) appears to be particularly high, considering that the average Mobile Termination Rate (MTR, the most significant cost for a mobile provider to connect with the destination network) in the EU is 1.06 eurocents/min<sup>16</sup>.

Similarly, the cap for data (0.85 eurocents/MB) appears to be too high for the transition to a roaming-less market to be efficient and sustainable. If one looks at national markets with efficient wholesale competition, real costs for network operators to provide data connectivity are around 0.3 eurocents/MB. There's no reason why roaming costs should be much higher than that if the markets are truly competitive.

EU policy-maker's objective here should be to inject more competition, not less, into wholesale markets. Setting wholesale caps as low as possible would in fact incentivise those countries where wholesale competition is less efficient to boost competition in their national market so that real costs are brought down. This would be a win-win both for market participants (lower operational and wholesale costs), and for retail consumers (lower retail prices).

Lastly, as argued earlier, co-legislators should ensure that the review clause of the wholesale market reform enables the transition to a roaming-less market. With regards to the lifespan of the reviewed wholesale caps, the proposed reform sets the new wholesale caps until 2022 which is much too long as a validity period. For the EU to be able to deliver on its promise to abolish roaming, the caps should be reduced, and the validity period has to be shortened so that subsequent decreases of wholesale caps can be decided.

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<sup>16</sup> Termination Rates at European Level, BEREC January 2016  
[http://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/6086-termination-rates-at-european-level-january-2016](http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/6086-termination-rates-at-european-level-january-2016)



*This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).*

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