

The Consumer Voice in Europe

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European consumers demand clear, friendly rules on roaming Fair Use Policies

Dear Deputy Ambassador,

I write on behalf of The European Consumer Organisation (BEUC) to urge you to work on consumer-friendly rules on roaming fair use policies (FUPs) so that consumers can safely enjoy their right to Roam Like at Home (RLAH)¹.

We welcome the European Commission's change of approach with regards to rules on FUPs because the new approach goes in the right direction and should better meet consumers' expectations.

In light of the upcoming vote in the Communications Committee (COCOM) on the implementing regulation, **we urge you to take into account the following key consumer concerns:**

1. The sole objective of fair use policies should be to prevent abuse

Article 3 of the implementing regulation should therefore clearly stipulate this objective.

2. Indicators to determine abuse need to be clear and consumer-friendly

Beyond the requirement to provide proof of residence or stable link, mobile providers must be required to verify certain indicators *cumulatively* before they can apply a surcharge to consumers' roaming consumption.

Indicators that require the comparison between domestic and roaming presence and between domestic and roaming consumption need to be well defined so that mobile providers do not use them to the consumers' disadvantage.

3. Indicators need to be observed during a well-defined period of at least 4 months

The minimum period of time during which the mobile provider has to evaluate the indicators before being allowed to impose a surcharge must be *clearly defined* to prevent consumer detriment and fragmentation across the EU.

Since this observation period could in practice be used to effectively limit the time during which consumers can freely exercise their right to RLAH, the period should not be shorter than 4 months. The stipulation

¹ This letter refers to the work being done on the draft implementing regulation on fair use policies by the Communications Committee - COCOM16-10.

of general principles for defining the length of the observation period would not be sufficient to shield consumers from unjustified restrictions.

This concrete minimum period of observation should be made *explicit* in the substantive articles of the implementing regulation to ensure full legal applicability.

4. Any volume limit on unlimited data tariffs needs to be as permissive as possible

Without an ambitious reform of wholesale markets in place, it is economically understandable that mobile providers that offer low-priced unlimited data tariffs will have incentives to either increase domestic prices or to request to be exempted from the obligation to offer RLAH.

Against this background, an exceptional volume limit could be inserted to mitigate such undesired consequences. However, any such limit must be constructed in the most permissive manner for consumers. A volume limit that depends on how much a consumer pays domestically might be too restrictive and could lead to undesirable incentives for both consumers and mobile providers.

Lastly, the rules on volume limits should lead to the phasing out of such volume limits as wholesale caps are reduced because the risk for mobile providers will also gradually disappear.

5. Consumers who buy pre-paid SIM cards should not bear a volume limit by default

The implementing regulation must ensure that consumers always have the option to decide whether they want to provide proof of residence (or stable link) in order to benefit from RLAH in the case of pre-paid SIM cards.

FUPs are closely interlinked to wholesale caps – ambition needed

Without an ambitious wholesale market reform, consumers will pay the consequences. The lower the wholesale caps, the less restrictive FUPs can be for consumers. When a consumer travels, if the domestic operator has higher wholesale costs to pay for the roaming use, it will have an incentive to limit the consumer's Roam Like at Home right as much as possible. Instead, if wholesale caps are low, the risk for the home operator decreases, and so the operator can be more permissive with its Fair Use Policies.

It is therefore crucial that alongside defining consumer-friendly rules with FUPs, an ambitious decrease of wholesale caps is agreed on in order to enable consumers to exercise their RLAH right.

Yours faithfully,

Ursula Pachl
Deputy Director General