

## **The European Commission**

28-04-2021

### **Public Consultation response to European Commission's proposal for recast of the Regulation on roaming on public mobile communications networks within the Union**

#### **General**

The Telecom Industry Association – Denmark ("TI") has noted the European Commission's ("EC") proposal for a recast of the Regulation on roaming on public mobile communications networks within the Union ("Roaming Regulation") and we are pleased to provide our comments.

Since the Roaming Regulation entered into force, the EU roaming markets have developed significantly. However, at the same time, competition dynamics based on commercial agreements are crucial elements in the development of the roaming markets over time. The original purpose of the Roaming Regulation has been achieved and is, in general, considered a great victory for citizens and businesses including SMEs who can now travel and roam almost without limitation in all EU/EEA countries. There has been a significant increase in roaming traffic especially for data and this development is expected to continue when the COVID-19 crisis is behind us.

The intervention in retail prices has required substantial changes in IT systems and invoicing systems as well as wholesale and retail contracts on top of the increased network costs. Therefore, it continues to be important to ensure cost recovery and reasonable usage requirements and that additional obligations are only directed at clear market failures.

#### **Wholesale price caps**

Operators across the EU will update their networks to 5G in the coming years. 5G is different from earlier technologies – not only in speed but also Quality of Service ("QoS") as it will be possible to offer 'network slicing'. Network slicing will enable operators to offer a number of different quality parameters for each 'slice' such as low latency, high bandwidth or 'best effort' connections. These different 'network slices' may be priced differently because the underlying cost of sup-

plying the 'slices' vary. This means that operators will compete at a national level to offer the different quality parameters, which 5G can offer.

Today, the wholesale price regulation for roaming is divided into three services: voice, text messages and data with one price per service. However, the future Roaming Regulation should be able to handle the coming era of 5G QoS networks and must take many more elements into account in the wholesale price regulation. That means that the data service can be divided into several wholesale prices dependent on a number of network slices, which may have different cost levels. TI supports the proposed reduction in wholesale price caps which may benefit competition and ultimately the goal of lower end-user prices, cf. the proposed Art. 10-12. An additional downward transition is positive among other things because EU roaming is a service with high demand which is offered to most end-users today. Significantly lower wholesale price caps are essential to ensure continued possibility for European consumers to increase data usage and reap the benefits of future innovative digital service as well as the full potential of the Digital Single Market.

### **Service quality**

TI considers different levels of QoS across member states as a matter of course. This is not a significant issue for consumers or business customers as mentioned in the Commission Staff Working Document (SWD (2019) 416 final) where it is noted that end-users have a very low level of dissatisfaction with the QoS provided during roaming in general. As a consequence, TI finds the requirement to include information in end-users' contracts about the expected QoS in other EU member states, cf. the proposed Art. 9(5), reasonable, but we stress that individual service providers do not have control over the QoS of roaming partners or the individual customers' local network opportunities vis á vis subscriptions. Further, as it may be necessary to change roaming partners from time to time, it will be difficult to fulfil the information requirement.

TI does not see an indication that neither Danish citizens nor citizens from other EU Member States consider QoS while roaming an issue that requires regulatory intervention. This is why we are apprehensive about the proposed QoS requirements in the proposed Art. 9(3)(c) and 9(4). TI finds it essential that the proposed rules ensure that operators do not have the opportunity to discriminate or throttle inbound roaming customers compared to the operator's own national customers.

In addition, TI anticipates a deeper understanding of how the proposed QoS rules will work in relation to the existing network neutrality rules. TI also expects more clarity about how the proposed rules are intended to intervene in the market in practice.

### **Sustainability mechanism**

TI agrees with the Commission's assessment that the proposed lower wholesale price caps will promote competition and ultimately lead to EU roaming being considered a quality parameter in end-user products and, thereby, making roaming financially viable over time. However, TI is not aware that the sustainability mechanism has been used to any significant extent – especially not in Denmark.

### **Emergency communication**

With the expansion of emergency communication from merely being voice calls to SMS messages and beyond, e.g. based on Member States' implementation of the European Electronic Communications Code, it should be ensured that new, national solutions are harmonized with solutions in other Member States. This will ensure uniform functionalities across borders when roaming and will promote a rational, common development of services, which will also assist in reducing the cost of the technical services.

As it is now, there will be a number of technical challenges in contacting the emergency services (PSAP) via SMS during inbound or outbound roaming. There is currently no technical solution or standard which can ensure a reliable handling of emergency communication using SMS for e.g. Danes abroad and foreign nationals in Denmark.

In the case of inbound roaming, the emergency SMS will be sent directly to the home operator's SMSC, which will try to forward the SMS as an emergency-SMS to the emergency response unit in the end-user's home country. The same is true for outbound roaming, where the emergency-SMS e.g. for a Danish national will be sent to the Danish emergency response unit despite the end-user being physically present in another country. The operator cannot identify where the end-user is and, therefore, cannot send the emergency-SMS to the emergency response unit in the relevant country. The same issue applies to the location information by SMS in case of calls to 112 (originally Android ELS), which is sent by newer mobile phones and will be sent to the home operator.

There is a need to ensure that the terminal itself picks the country code and a matching setup at the operator to receive these through interconnect. Work is ongoing in EENA ("European Emergency Number Association") in the project "Help 112 II". TI encourages the Commission to achieve a global standard for emergency communication by SMS or alternatively a European standard.

In case of VoLTE-roaming, there is a need for local handling of the 112 call to ensure that the call is directed to the visited country. This has been standardized in GSMA PRD IR.65 but implementation is lacking in some European countries. Where some countries use specific numbers for specific situations, the calls will be directed to the home operator, which will not work as planned and will lead to inconveniences for the end-user. For VoLTE calls – apart from 112 – which are handled locally, TI recommend that a global standard is sought.

Therefore, TI supports the proposed Art. 13 which states that operators of the visited networks may not levy any charges related to the emergency communications for a roaming customer.

In the proposed recital 19, it is mentioned that: "In addition, wholesale roaming agreements should include [...] as well as for ensuring the transmission of caller location information to the most appropriate PSAP in the visited Member State. Such information should allow the roaming provider to identify and provide the emergency communication and the transmission of caller location free of charge". TI is surprised by the reference to 'caller location information' ("CLI"). If CLI is synonymous to advanced mobile location ("AML"), it may pose a problem if the countries use short codes for PSAP. The problem arises as the operator's SMSC cannot route these national short codes correctly as the operator's SMSC does not know which country the individual code belongs to. This issue can be avoided if 8-digit numbers with country codes are used.

TI recognizes the rationale for informing the end-user about the provision of emergency services in the visited country, cf. the proposed Art. 16. Taking into consideration that the term emergency communication services is expanded in the Code, and may be further expanded in the future, the end-user should be informed about which emergency services that apply in the visited country. TI recommends that a list is kept up to date at the national level, which operators can rely on. Alternatively, a Pan-European list can be monitored by BEREC where national NRAs are subject to keep a list of national emergency services up to date. However, TI notes that differentiated communication across countries will increase the administrative burden and does not necessarily contribute to the understanding of the communication by the end-user.

### **Value added services**

TI agrees that there have been some unclarities with regards to value added services since the introduction of the Roaming Regulation. In particular, this has applied to unknown price levels for such services in the visited country, which have been invoiced at a high rate to the operator in the home country. Therefore, TI welcomes the proposal for transparency for roaming customers, cf. the proposed Art. 14(1). In addition, TI recognizes the rationale for development of a BEREC database of all value added services, cf. the proposed Art. 17, as long as the reporting to this database is handled in an appropriate administrative approach which does not add unnecessary cost or need for resources for operators.

TI finds it worrisome and particularly difficult to communicate in an easily understandable and cohesive way to end-users (e.g. by welcome SMS) with the required tailored information. A solution could be that it is allowed for operators to link to the BEREC database with the updated and necessary information about services in the visited country.

Finally, TI worries about the divergent timelines regarding entry into force of these transparency requirements being July 1st 2022, whereas the BEREC database should only be available by December 31st 2023. Ultimately, TI calls for streamlined entry into force in this context.

### **M2M services**

IoT and M2M services are complex issues in connection with roaming. By summer of 2020, TI reminded the Commission of the fundamentally different characteristics of IoT/ M2M services and traditional voice and data service. TI recommends that M2M and IoT services are kept out of the Roaming Regulation. TI finds that there is a need for more in-depth analysis to uncover potential problems with permanent roaming, the effect on domestic services as well as specific issues about very small data transmissions e.g. on 2G, 3G, 4G and 5G and new mobile technologies such as Narrowband IoT and LTE-M.

One of the challenges is that some types of M2M/ IoT traffic generate very low chargeable or no consumption at all and solely rely on signalling. In this way, it will constitute a constraint on the host network, which will find it difficult to achieve an acceptable cost recovery for this type of traffic.

In the current regulation, it is difficult to establish clear criteria that must be met before M2M-traffic is considered permanent roaming, which again makes it difficult for operators to make unambiguous agreements concerning permanent roaming traffic.

In addition, M2M-terminals are not necessarily active generating signalling data every day which makes it difficult for the host network to document and assess permanent roaming as it cannot be excluded that the M2M-terminal has visited another country during the period of time between updates. TI suggest a clarification of how operators can enter into agreements on ordinary commercial terms for permanent roaming without risking a violation of the Roaming Regulation.

One suggestion could be to allow operators to dedicate certain IMSI-numbers for permanent roaming. TI propose that there should be a common European approach to M2M-regulation to avoid discrimination of national operators who will undeniably be competing internationally. A gradual harmonization is the only way forward with regards to M2M. Experience between TI-members shows that companies that request M2M-solutions understand these challenges very well and understand how to cater for this in their agreements. Potential challenges with regards to public tenders could also be solved relatively easily by setting specific requirements for suppliers already at the point of the public tender for procurement of M2M-services.

To sum up, TI recommends that M2M and IoT services are kept out of the Roaming Regulation until a proposal for specific regulation of M2M/ IoT-services has been made. In case there will not be a gradual, international harmonization of the M2M-rules towards 2025, TI al-

so supports that M2M is included as an evaluation milestone for the Commission to examine further, cf. the proposed Art. 21(1)(c).

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### **Fair use policy**

In the 2019 report, the Commission acknowledged that only an extremely small minority of the most intensive roaming consumers is affected by the fair use policy, cf. the current Art. 6(b), while the overwhelming majority of consumers are not. TI supports upholding the fair use rules as they are at present in particular due to the complexity and the cost of the process of fair use. TI agrees with the Commission that the lower wholesale price caps in general will be to the advantage of consumers with unlimited data subscriptions.

### **Exceptional application of retail surcharges**

TI finds it proportional to continue to propose that the surcharge which retail companies may charge of end-users is maintained at the level of the wholesale price cap, cf. the proposed Art. 6 and recital 32. In addition, TI supports the new proposal to remove the cap for the sum of the national retail price and the roaming surcharge in case the end-user's consumption exceeds the consumption included in the subscription. Furthermore, TI supports that a correlation between the proposed Art. 9 about exceptional retail surcharges and the Code's regulation about voice termination, including the Commission's upcoming implementing act on the same topic.


### **Fluctuating currency exchange rates**

Mobile operators who are based in countries that do not use Euro will no longer be required to update the currency exchange rates twice a year, cf. the proposed Art. 1(4) and recital 13. This removes an administrative burden on the operators and creates consistency in the regulation. Nevertheless, TI finds it cumbersome to find the correct currency exchange rates which the average calculation must be based on. TI proposes that the Commission shall publish the exchange rate on the last date to be included in the conversion on the day following that last day. This could be published on the Commission's website after the last day to be included in the average calculation.

### **Final remarks**

TI is at the Commission's disposal for any clarifications needed of the above position.

Best regards,



Jakob Willer  
Director  
Telecom Industry Association - Denmark