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Subject: Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012
- Latvian Presidency roadmap

In preparation for the Working Party meeting on 13 January, delegations will find attached a Presidency roadmap, with an Annex outlining a possible new approach on roaming.

The Presidency invites your views on the proposed roadmap, to allow it to decide whether this constitutes an acceptable basis for further work. In addition, the Presidency would like to discuss the proposed general principles on roaming, including preferences between the options (A or B) to implement the RLAH+ principle as well as the need to introduce a “basic roaming allowance”.

Latvian Presidency roadmap – TSM

Our work programme presented at the Transport, Telecommunications and Energy (TTE) Council on 27 November 2014 outlined that the Latvian Presidency will, depending on the state of play and respecting the interests of different stakeholders, give due consideration to the Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, and amending Directives 2002/20/EC, 2002/21/EC and 2002/22/EC and Regulations (EC) No 1211/2009 and (EU) No 531/2012 (TSM proposal).

As the TTE Council expressed general support to continue further examining the TSM proposal, our intention is to make substantial progress at Working Party level until the end of February. We also expect active and thorough involvement of the Commission, especially when it comes to the technical and analytical efforts to further elaborate on the new elements of the Presidency's compromise proposals in order to pave the way for a Council position. However, it is important to note that we also need strong political support by the Member States if we want to progress and give a clear answer to the European Parliament's invitation to engage in trilogues.

The Latvian Presidency plans to continue examining provisions concerning roaming and net neutrality, building upon the solid basis we now take over from the Italian Presidency, and aiming for a Council agreement in order to engage with the European Parliament in due time. Taking into account the observed lack of support by the Member States during the October and November ministerial meetings to further consider provisions related to spectrum management, as well as the fact that reaching an agreement would require lengthy discussions, we propose not to continue examining spectrum management. These provisions could instead be considered in the Commission's upcoming review of the Regulatory Framework.

More specifically, the Latvian Presidency envisages the following:

- Regarding roaming, the Annex sets out a list of general principles which, depending on the feedback received, could provide a basis for a new draft legislative text. The roam like at home “plus” (RLAH+) general principles try to address the core problems identified so far in our discussions, namely the possible negative impact on retail prices across Member States, and in this respect, the issues of wholesale price revision and defining the fair use criteria. The principles take into consideration BEREC’s analysis of RLAH impacts presented at the Working Party of 18 December 2014 (BoR (14) 209), as well as the proposal then introduced by Sweden. We intend to examine these principles in the Working Party of 13 January.
- Regarding net neutrality, we propose to continue with a principle-based approach, which gained broad support in the November TTE Council. In January we therefore plan to engage in an article by article examination of a consolidated text which will be based on Italian Presidency’s note of 14 November 2014 (15541/14 ADD 1, Annex III), also taking into account Member States’ written contributions from November and December 2014.

At our first meeting on 13 January, we would be grateful to hear your views on the suggested way forward, including on the proposed principles on roaming set out in the Annex.

General principles of the “roam like at home “plus”” (RLAH+) proposal

Introduction

Since the European Commission presented the TSM proposal on 11 September 2013 and the European Parliament voted on the proposal in the first reading on 3 April 2014, in-depth and complex discussions at the Working Party level have been conducted. These discussions have also included analysis of two compromise proposals by the Italian Presidency and several proposals prepared by some of the Member States. However, no uniformity of views has been achieved, especially regarding the timing of the possible revision of the wholesale market and the definition of adequate fair use criteria.

At the TTE Council on 27 November 2014, the need to further decrease roaming fees was reiterated, and that in this respect further work at technical level is necessary. However, there was a clear divergence of views on how to move forward and achieve this aim. One of the main dividing lines has been the timing of the review of the wholesale market, where a significant part of the Member States considered it necessary to conduct the review no later than at the time of introducing “roam like at home” (RLAH), while another significant part insisted to have the review only once RLAH is in place.

The complexity of the issue has been further underlined by BEREC. At the last Working Party in 2014, BEREC presented its analysis of the impacts of RLAH (BoR (14) 209), stating that “the removal of retail roaming surcharges across Europe is not currently sustainable or feasible in practice, given the significant variations in a number of important parameters across Member States, including (but not limited to) the levels of retail tariffs, costs, and travelling and consumption patterns”.

Despite this complexity, BEREC however outlined different options on the possible way forward. We believe that prospects of both Option 1 and Option 2 have already been discussed in the Working Party and neither of them could be acceptable to a significant part of the Member States. Essentially, under Option 1 (no revision of wholesale market before that currently scheduled for mid-2016) some operators would risk operating at a loss (i.e. the retail charge would not cover the wholesale costs), and Option 2 (tighter wholesale regulation) risks reducing investment incentives in visited markets. Both options would entail setting a fair use limit that would by any definition be contrary to the RLAH principle, as the consumers would in practice never be able to confidently replicate their consumption when travelling across the Union. In addition, we also have to keep in mind the lengthy discussions at technical level and conclusions by BEREC on the complexity of defining a fair use clause, namely due to the very different consumption and travel patterns not only between Member States, but also between consumers in each Member State.

Given that an agreement on either of these options is unlikely, we set out below a possible way forward, in the form of general principles, which takes into account a combination of Options 3 and 1, as outlined in BEREC's analysis, and the proposal introduced by Sweden on 18 December 2014.

General principles

In order to find an acceptable solution and to take into account diverging situations in the Member States and accordingly their views, we consider that both wholesale and retail level need to be addressed.

Wholesale level:

- 0 months from the entry into force of the new regulation – the Commission would initiate a review of the current roaming wholesale market (relevant amendments to Article 19 of the Regulation 531/2012).
- 24 months from the entry into force of the new regulation – a legislative proposal from the Commission on amendments to the wholesale regulation, based on a thorough analysis of the wholesale market and consultation of all stakeholders concerned.
- 36 to 42 months (estimate) from the entry into force of the new regulation – adoption and entry into force of the aforementioned legislative proposal on revised wholesale market.

Retail level:

From the entry into force of the new regulation until the entry into force of the regulation resulting from the review of the wholesale roaming market (estimated 36 to 42 months after):

- RLAH+ is the default retail pricing rule, meaning that operators are allowed to, in addition to the retail domestic price, charge consumers a surcharge for roaming services, as elaborated further in options A and B below.
- However, within the default RLAH+ regime, the introduction of a “basic roaming allowance” could be envisaged, allowing customers to roam at domestic prices up to a minimum limit. The aim of such an allowance would be to provide basic mobile phone usage (essential when travelling) at domestic prices, rather than replicating customers’ domestic consumption pattern or avoiding abnormal usage. It should be defined in a simple and transparent manner for instance in terms of minimum volumes and time periods. BEREC would be tasked to give further guidance on the application of these minimum limits.
- In addition to the default regime, a possibility to opt-out in line with the current roaming regulation could be maintained. This would allow end-users to deliberately choose a different roaming tariff or package in order to gain another benefit.

The described default regime could be implemented in different ways, and, as a basis for discussion, we briefly present two possible options.

Under Option A, operators could be allowed to additionally charge end-users for regulated roaming services, if provision of the regulated roaming services at domestic price levels is financially unsustainable. This would be the case where the average wholesale charges paid to other operators exceed revenues on a per-unit basis. Such additional retail charges should be fair, proportionate, transparent and predictable. These charges should cover only unavoidable costs (in particular, wholesale roaming charges paid to other EU operators) associated with the provision of regulated roaming services. Guidelines for the implementation of these principles would be determined by BEREC and would allow a country specific approach.

Under Option B, the maximum surcharge an operator could levy in addition to the domestic price per unit would be equal to the wholesale caps, i.e. currently EUR 0,05 per minute for voice calls, EUR 0,05 per MB for data and EUR 0,02 per SMS. Alternatively, the surcharge could also take the form of a daily, weekly or monthly flat fee, as long as it is consistent with the principles set out above.

Option A would ensure that national circumstances are taken into account and that only unavoidable costs are passed-on to end-customers. However, the implementation of option A could encounter practical difficulties due to the fact that operators enter into multiple wholesale contracts which are commercially negotiated. This coupled with the existence of widely diverse retail offerings, many of them being flat rate, could make it difficult to assess whether the “unavoidable” costs exceed the retail revenue per unit.

Option B would be by far easier to implement, both for operators and national regulatory authorities, and the amount of the maximum surcharge would be harmonized across the European Union. It would also remove any disincentive for operators with negative traffic balances to seek to negotiate wholesale rates below the maximum wholesale cap since the amount of the retail surcharge does not depend on the actual wholesale costs (price paid at wholesale level), which allows for competition at wholesale level. Finally, both options would allow operators to differentiate their retail roaming packages, including by offering daily, weekly or monthly flat fees.

Conclusion

We believe that a solution based on the general principles above would alleviate the concerns of the Member States that oppose reviewing the wholesale caps before the introduction of RLAH, as it leaves sufficient time for the market to react to the new circumstances. Since wholesale roaming caps would remain above cost in all Member States, there should be no negative impact on investment incentives in the visited markets, as well as on mobile virtual network operator (MVNO) competition.

From a consumer perspective, the advantage of this approach is the resulting reduction in the average retail prices for roaming, especially in cases where the euro-tariff from Regulation 531/2012 is applied (currently EUR 0,19 per min for calls made, EUR 0,20 per MB and EUR 0,06 per SMS), as the maximum surcharge an operator could levy on top of the domestic price should not exceed the wholesale cap (currently EUR 0,05 per min, EUR 0,05 per MB and EUR 0,02 per SMS).

Moreover, the risk of permanent roaming would be removed, as retail roaming prices would in all cases sufficiently cover wholesale costs. Therefore, it is less likely that retail prices for roaming in one market would be lower than retail prices for domestic services in another market. If such a possibility would exist, it would not cause any significant distortions. Furthermore, the additional surcharge is likely to limit the roaming usage growth in the short term.

Finally, the proposed approach provides a transitional path towards the ultimate goal of enabling European customers to roam like at home across the European Union, once the wholesale cost issue has been resolved. At the moment, however, we cannot draw conclusions beyond the review of the wholesale market. In case the Commission would propose a substantially different approach towards wholesale regulation as a result of its analysis, the approach to retail regulation should be reassessed as well.