

## **Public Consultation on a Review of the Functioning of Regulation (EC) No 544/2009 (the “Roaming” Regulation)**

### **response from the International Telecommunications Users Group (INTUG)**

#### **Summary**

Mobile communications are now an indispensable and integral part of the ICT environment and a vital business tool. Geographic reach, reliability, function, speed and cost are all crucial to successful ICT deployment in support of new innovative business processes and in improving productivity via transformation and consolidation of existing processes.

However, business users still report little progress in reducing mobile communication costs, improving service quality and coverage, and they continue to experience difficulties in obtaining global contracts, adequate billing and reporting. Mobile tariffs remain too complex and inconsistent. But above all these, the greatest concern for multinational business users remains the cost of roaming for voice, text and especially for mobile data.

Despite the Roaming regulation adopted in 2006, and renewed in 2009, expenditure on roaming remains an expensive and unjustified tax on trans-border trade for business customers. Within the EU, it runs counter to the whole principle of the Single Market.

Business users continue to apply various avoidance mechanisms, some behavioural and some technical, such as mobile VoIP, multiple SIM cards, Gateways and MVNOs where these are allowed, with varying degrees of self-inflicted inconvenience. For the largest customers, negotiations with major operators has delivered some limited benefits.

The absence of effective competition for roaming charges has meant that wholesale and retail price regulation remains essential. The behaviour of the market continues to prove this, as operators cluster together below the latest cap, whilst seeking to recover their perceived lost revenue by pushing up roaming outside the EU, and by international calls from within the home country, which sometimes exceed the roaming cap.

Until a different market structure evolves, enabling business customers to secure truly international contracts on a competitive basis, the roaming regulation in some form will continue to be necessary. The efforts of other bodies on a broader basis than the EU, for example the OECD, and other regional initiatives, will help the process. In some cases, this may provide a lead, which the EU would be wise to follow.

The roll out of the next generation of mobile services, through licences for 4G/LTE provide an opportunity to resolve the roaming problem once and for all, given that the alternative industry structure of a small number of major international MNOs, operating in every Member State, still seems a long way from being achievable.

## **Background**

After a long campaign by INTUG and others, starting in 1999, the European Commission adopted a roaming regulation on 12 July 2006, which came into force on 30 June 2007. This was succeeded by Regulation 544/2009, which expires on 30 June 2012.

INTUG believes that elimination of the financial impact from roaming within the EU, as advocated by the Commissioner, will make a valuable contribution towards achievement of the Digital Agenda, and is consistent with the aims of establishing the Single Market.

## **International Telecommunications Users Group (INTUG)**

The International Telecommunications Users Group (INTUG) represents the interests of business users of telecommunications. These include some of the world's largest financial institutions, car manufacturers, pharmaceutical companies, fast moving consumer goods enterprises, retail and distribution companies, and small and medium enterprises (SMEs).

The INTUG community includes user associations in many large Member States, including Belgium, Denmark, France, Germany, Spain, the Netherlands, Sweden and the UK, and the multinational user group EVUA. Each group represents public and private sector customers of communications service providers.

INTUG consulted its members on the questions in the Commission's roaming consultation document, and has mainly limited its response to questions appropriate to customers.

The numbering of the Commission document has been broadly retained, although most of the multiple questions have been separated for convenience of answering.

## **Confidentiality and Contact information**

Nothing in this submission is confidential and the contents can be considered to be in the public domain. The submission is available on the INTUG web site at [www.intug.org](http://www.intug.org).

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## **Detailed INTUG Response to Roaming Consultation Document**

**Question 1:** To what extent do you believe current regulation achieves its objectives of:

- (a) Contributing to the single market for roaming services?
- (b) Ensuring consumer protection?
- (c) Promoting competition?

**Answer 1a:** Not at all. There is no “market” for roaming services - it is simply a levy imposed by MNOs on their customers, based on a rate agreed bilaterally between the operators. It has made very little contribution towards enabling the overall EU Single Market, as it has only reduced the deterrent to use of international ICT services in support of business development and growth. Competition has not been promoted.

**Answer 1b:** The cap on Mobile Data Roaming has protected customers from the most extreme bill shock scenarios, but only moderately protected them from high prices.

**Answer 1c:** Not at all. It is not possible to get competitive bids for roaming as these are imposed as part of most mobile operators’ contracts for the remaining services.

**Question 2:** Do you consider that regulatory intervention for roaming services is needed beyond June 2012? Please consider voice, SMS and data roaming services separately. In particular, if you consider that the Roaming Regulation should expire in June 2012, please explain why, and describe how you consider that the market for roaming services will evolve in the absence of regulation.

**Answer 2:** Yes, this is essential, and hence the existing roaming regulation, which expires in June 2012, must be succeeded by a further period of customer protection. Without regulation, customers would be exposed to profiteering by MNOs. Charges for roaming outside the EU illustrate the kind of behaviour customers could expect. Whilst voice and text roaming retail prices are a concern, the greatest damage is done by mobile data roaming charges, which obstruct international applications.

**Question 3:** Do you consider the current model of regulation would be effective in the future in light of the desired objectives? Will this approach ensure adequate consumer protection and help stimulate competition? Is it efficient and coherent with EU policies?

**Answer 3:** The current regulatory model cannot eliminate roaming charges totally. In the absence of a market structure enabling competition in roaming charges, the desired objective of eliminating roaming charges within the EU could only be obtained by setting a retail price cap of zero. This is not really “effective”. Competition can only be established if customers can choose who to obtain roaming services from, independent of their home network operator, but billing for

**such a structure would be unduly complex in the current environment. Extension of the current price cap regime does have the advantage of affording customers some degree of protection.**

**Question 4a:** If this model is suitable in principle, what modifications may be required in order to achieve a well functioning single market for roaming services?

**Answer 4a:** We consider the current model unsuitable. Given the response to Question 3 above regarding the shortcomings of the current model, modification from the absolute value price caps may improve the functioning of the single market.

**Question 4b:** Should this approach be combined with other options?

**Answer 4b:** An alternative option would be to express the retail cap on roaming charges in terms of a percentage mark up on domestic prices for the same services. This would make arbitrary setting of high IOTs for balanced traffic more difficult.

**Question 5a:** Would regulation of wholesale prices charged to MNOs, plus transparency measures, be effective, efficient and coherent in light of the single market objective?

**Answer 5a:** No, no and no. Wholesale regulation alone has proven to be ineffective, inefficient and incoherent in achieving the single market objective.

**Question 5b:** Would the benefits of regulated wholesale rates pass to consumers?

**Answer 5b:** No. A retail price cap is also required, based on past experience. Even then, MNOs reduce their prices en masse to just below the new cap. Wholesale regulation must be combined with retail regulation and not be based on absolute price, given the reciprocal arrangements which limit MNO costs to residual traffic.

**Question 6:** Do you consider that retail regulation of data roaming prices is necessary?

**Answer 6:** Yes. Wholesale regulation alone has demonstrably failed to enable competition and reductions in wholesale prices have only been passed on to retail customers to a very limited extent, for example through the bill shock safeguard. Customers cannot choose their roaming operator and cannot predict future usage.

**Question 7:** If retail regulation of data roaming prices was necessary, what would be an appropriate model for such regulation?

**Answer 7:** Whilst a glide path of retail price caps towards zero by 2015 would afford customers some protection, evidence with voice retail caps suggests that it will not generate competition, and MNOs will continue to cluster below the regulated caps.

**Price regulation related to domestic prices, with a glide path to a zero premium over**

**domestic rates by 2015, would leverage domestic retail competition and competition between MNOs in each Member State. This would be more effective in driving down/eliminating overall roaming rates via competition. (See Answer 8 below also)**

**A long term solution for the LTE environment is proposed elsewhere in this response.**

**Question 8:** Please indicate the advantages and disadvantages of the following approaches, relative to each other and to the current model of price capping, considering also competition aspects such as the possibility of margin squeeze?

- (a) Roaming prices based on domestic prices in the home market
- (b) Roaming prices based on domestic prices in the visited country

**Answer 8a:** As indicated in the answer to question 7 above, INTUG believes a price cap based on domestic pricing has advantages over a fixed price cap. As customers normally contract in their home market, roaming prices based on the home market might be considered to leverage competition at the point of purchase, but roaming charges are currently part of the package controlled by the home market operator. It would have the added challenge that the visited country might charge the home operator more than the home operator wished to charge its customer.

**Answer 8b:** Roaming charges based on domestic prices in the visited country more accurately reflect the cost/value of the service being provided, since the access is in the visited country, and would generate incentives for visited countries to make themselves attractive to visitors. In a zero roaming charge situation, the customer would simply pay as if it were a domestic call in the visited country, regardless of home country. This has the added benefit of being easy to understand and would drive competition between the operators in the visited country.

**Question 9a:** In general, how would the following decoupling approaches be effective in terms of stimulating greater competition for roaming services?

- (i) Carrier Pre-select (CPS) in the domestic market
- (ii) Carrier Pre-select (CPS) in the visited network
- (iii) Choose operator at the border (based on local retail price)

**Answer 9a:** Separating roaming service provision creates some competition and could avoid burdening an attractive domestic deal with exorbitant roaming charges.

**For Option (i), evidence suggests that with CPS in the domestic market, domestic MNOs would continue to charge at just below the regulated retail price cap, regardless of the amount they negotiated with visited network operators.**

**Option (ii) would presumably require customers to make a selection for every country they visit at the time of contract signature, which could be onerous. It might generate competition for roaming traffic in the visited networks, but as pricing would be agreed by the home operator with each operator in the visited**

**countries, they might still cluster just below a regulated wholesale or retail price cap collectively.**

**Option (iii), presumably with a regulated percentage mark-up cap, would stimulate competition between visited country MNOs for traffic from roamers, but business customers would find the complexity unwelcome and they need central control to block individual employees removing the valuable cap. Choice would need to be flexible for voice, text and data roaming, where tariffs are not all volume related domestically, and it should therefore be possible to use flat rate bundles as well.**

**Question 9b:** Would all customer segments be able to benefit?

**Answer 9b:** For options (i) and (ii), since proportion of spend from roaming is greater in the business market, especially for data roaming, there might be greater potential for benefit in that market than in the mass consumer market, where consumers are unlikely to research competing offers at the time of contract signature, and lack knowledge about likely destinations. Business customers, with potentially more predictable visited countries might be able to compare more effectively, but the benefits are questionable for the reasons above.

For option (iii), the consumer and business markets might both benefit equally, and there may be greater appetite by business customers to analyse options in advance.

**Question 9c:** Would such increased competition be sufficient to give consumers an effective choice of roaming services at (near) domestic prices?

**Options (i) and (ii) would not stimulate enough competition for customers to achieve near domestic prices for the reasons stated above.**

**Option (iii) might generate competition to exert downward pressure on prices, but would require a regulatory mechanism based on percentage mark up on domestic prices to give customers near domestic price levels. For data, this would need to include flat rate options as well as volume-based charges.**

**Overall, decoupling approaches could be unwieldy and would be unnecessary when roaming charges are the same or close to domestic charges. The patchwork of national operators only makes sense with high roaming charges. Elimination will create a greater opportunity for a single market with international competitors.**

**Question 10a:** Would such 'structural' approaches be efficient?

**The answer depends on where “efficiency” is being measured. MNOs may argue that the added sales and billing complexity is “inefficient” for them, i.e. it adds cost for no greater traffic volume, but lower roaming charges enable business customers to implement more efficient international business processes, which outweigh the narrow measure of efficiency in the mobile telecommunications industry itself, and greater roaming competition will presumably drive MNOs to become more efficient.**

**Question 10b:** What technical implementation issues are associated with these?

**For option (i), technical implementation includes the visited operator effecting the CPS choice when the customer roams to the countries identified, which should not be greatly different from the current arrangement.**

**For option (ii), it will include effecting the cost recovery via the home MNO which may vary from visited MNO to visited MNO in the same country, unlike now, perhaps with a default choice for an unplanned visited country where no CPS has been**

specified.

**For option (iii), it will include effecting the operator choice for the duration of the visit, and hence may include cost recovery from multiple operators at different rates from the same visited country within the billing period.**

**Each option will also require technical implementation of more billing information.**

**Question 11a:** How feasible/efficient is establishing wholesale roaming spot trading?

**Answer 11a:** The current practice of negotiating a high notional rate for balanced exchanges of traffic, which spills over into a high wholesale rate for the remaining unbalanced roaming traffic, suggest that spot trading may not occur in a pure sense.

**International spot trading would not work with domestic price mark up for wholesale.**

**Question 11b:** Would this approach lead to competitive wholesale rates?

**Answer 11b:** This will depend on the collective behaviour of MNOs, which has not to date wholly embraced the concept of competition in roaming to drive down rates.

**Question 11c:** How effective would this be in terms of achieving competitive retail rates?

**Answer 11c:** Whilst it might theoretically be effective at wholesale level, evidence to date shows no indication of lower wholesale prices being passed to customers in the form of lower retail prices.

**Question 12a:** Will these options stimulate additional competition for roaming services?

- (i) Mandatory wholesale access for MVNOs, for roaming only, at regulated prices
- (ii) Obligation on home MNOs not to charge MVNOs above regulated wholesale cap
- (iii) Mandatory full wholesale access for MVNOs, not just for roaming

**Answer 12a:** Business users need MVNOs for international mobile services. Their absence is a major cause of the dysfunctional fragmented patchwork which exists. Regulation causes artificial competition. Long term, natural competition is preferred.

**Option (i) would add to competitive pressures inherent in the “visited country CPS” and “at the border selection” options in Question 9.**

**Option (ii) would be a pre-requisite to an effectively functioning MVNO market to avoid a loophole permitting margin squeeze.**

**Option (iii) is required by business users for pan-EU contracts, and this should be implemented without delay, regardless of the outcome of the roaming consultation.**



**Question 12b:** In order to achieve significant reductions in roaming prices do you consider that these 'access-based' approaches may need to be combined with other forms of wholesale price regulation (i.e. between MNOs) and/or retail price regulation?

**Answer 12b: Yes. This will help create an environment for innovation in services to accompany the overdue downward trend in exorbitant margins on roaming traffic.**

**Question 13:** In the medium to long term, markets and technologies may evolve to where roaming services can be provided by different competing technologies. Such developments seem to be unlikely to be sufficient to eliminate or minimize roaming problems within 5 years. Do respondents share this view?

**Answer 13: The roll out of 4G/LTE provides a long term opportunity for a radical change in the way roaming services are delivered, with more efficient infrastructure investment and mobile access sharing, better coverage and service quality for customers, and domestic and international roaming at reasonable prices. These opportunities should be pursued, but are unlikely to eliminate problems by 2015.**

**Question 14a:** Should the Commission pursue measures to accelerate technology developments (e.g. to encourage massive deployment of interconnected Wifi networks?)

**Answer 14a: As indicated in Answer 13, this coupled with encouraging investment in FTTM (Fibre to the Mast), would transform the debate and improve customer service.**

**Whilst users are very keen to see the roll-out of WiFi continue and indeed accelerate, additional regulatory action to achieve this does not seem necessary at present.**

**Question 14b:** What other measures could be considered?

**Answer 14b: 4G Licences should require operators to allow soft SIMs which pick up the strongest signal available on a call by call basis, with mandatory domestic (and international) roaming, charged on a domestic price basis. There should also be the option for customers to contract for flat rate bundles in this arrangement.**

**Question 14c:** What will be the impact of the transition to an 'all-IP' environment?

**Answer 14c: Eventually, as with some current VoIP and video over IP services, "roaming" will become an irrelevant historical concept since the Internet knows no borders, and home and visited country will mean nothing. Charging for a "voice call" will become an outdated concept, as will volume related charging for voice and text, which will be very small consumers of IP traffic within an overall access service.**

**Question 15a:** To what extent is the problem of inadvertent roaming still a concern for citizen's living close to borders?

**Answer 15a: INTUG represents business users, whereas home location of a citizen near to a border is mainly a mass market consumer issue. For business users, including “frontaliers” who commute across a border, and those who often use mobile services whilst on the move, the differential between domestic and roaming charges, especially for data, does make inadvertent roaming a continuing concern. INTUG’s member associations in countries with many borders do receive complaints from their members about unwanted roaming. Inadvertent roaming ceases to be a problem, of course, once roaming charges are eliminated.**

**Question 15b:** What measures could be taken to avoid the adverse effects of inadvertent roaming, whether by means of voluntary co-operation between operators or by means of regulatory or legislative action?

**Answer 15b:** The most obvious and desirable solution is to eliminate the roaming mark up, so that there is no additional charge anyway. Prior to this occurring, MNOs could voluntarily implement an “exclusion zone” so that roaming charges do not apply for calls serviced within the first few kilometers of crossing a border.

**Question 16:** If you are an operator, what measures (technical or otherwise) have you taken to deal with inadvertent roaming, both to prevent it happening and to compensate for the adverse effects once it has been shown to have occurred? How do you raise awareness of the problem and the potential remedies on the part of your customers?

**Answer 16:** No response as INTUG is not an operator.

**Question 17:** What has been the impact of the implementation of the Regulation as far as roaming within, from or between the outermost regions is concerned?

**Answer 17:** MNEs within INTUG’s member associations, both within and outside the EU, report significant instances of increased charges for roaming outside the EU and for other services (the “waterbed” effect). One MNO raised the domestic rate for an international text to exceed the roaming price cap, and an international outgoing call within the EU was increased to exceed a roaming call in the reverse direction.

**Question 18:** What additional measures (if any) have been taken by Member States or their NRAs to address roaming between outermost regions and other parts of the EU?

**Answer 18:** Several regional initiatives are active outside the EU to eliminate or reduce roaming charges (e.g. in Africa with Zain, in the Middle East, in Australia/ New Zealand, and in Latin America/Spanish speaking countries). The OECD has an active programme to expose and reduce roaming charges within its member countries.

**Question 19:** What has been the financial impact (revenues, costs, profits, volumes etc.) on smaller mobile telephony providers of the application of the Regulation since its entry into force on 30 June 2007 and amended in 2009? Please provide financial data and any other information in this respect wherever possible.

**Answer 19:** No response as INTUG is not an operator.

**Question 20:** Has any operator encountered problems seeking to agree a wholesale roaming agreement with an operator in another Member State? What kind of problems were these (e.g. SMS interworking)? Were they resolved? Was the issue referred to an NRA? If so, what action has been taken or is in train to address those problems?

**Answer 20: No response as INTUG is not an operator.**

**Question 21:** To what extent is the use of traffic steering accompanied by a lower retail price for the roaming customer? Where lower roaming prices are conditional upon the use of a preferred visited network, how effective is the traffic steering in practice in ensuring that the preferred network is used?

**Answer 21: INTUG has no information from its member associations or their own members concerning this issue. If such practices are currently implemented, there is no known discernible benefits to customers. In the context of the CPS options in Question 9 above, such steering would have to be transparent and driven by customer selection, and not by MNO preference.**

**Question 22:** What techniques are applied to implement traffic steering in practice? Is the roaming customer informed in advance about the steering and does he have the possibility to override it?

**Answer 22: INTUG is not an operator and cannot respond regarding techniques. INTUG has no information from its member associations' customers about steering.**

**Question 23:** Have you identified any significant effects on domestic prices or changes in an operator's tariff structure for domestic voice calls or other mobile services introduced after or shortly before the entry into force of the Regulation?

**Answer 23: MNEs within INTUG's member associations, both within and outside the EU, report significant instances of increased charges for roaming outside the EU and for other services (the "waterbed" effect). One MNO raised international outgoing text rates to nearly three times the roaming price cap, and an international outgoing call within the EU was increased to exceed a roaming call in the reverse direction.**

**Question 24:** What has been the regulatory impact on reciprocal roaming arrangements between EU/EEA mobile operators and counterparts in other third countries?

**Answer 24: No response as INTUG is not an operator.**

**Question 25:** Have any Community-based providers of mobile roaming services negotiated agreements with third country operators concerning a reduction of wholesale roaming tariffs comparable to those set up in the Regulation?

**Answer 25: No response as INTUG is not an operator.**

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