



**DET KONGELIGE
SAMFERDSELSDEPARTEMENT**

Ministry of Transport and Communications

EU - European Commission
Rue de la Loi 200
BE-1049, Brussel
Belgium

Your ref

Our ref
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International roaming - Second phase of consultation - Comments from Norway

The Norwegian Ministry of Transport and Communications welcomes the opportunity to send additional comments to the second phase of consultation on the EU regulation proposal to the European Parliament and the Council. Norway also responded to the first call for comments, and reference is made to this reply.

Initially, Norway has some general comments, and thereafter we will offer our views to the more specific proposals raised by the Commission, concerning wholesale and retail regulation.

General comments

Norway would like to emphasize the support for the new roaming initiative taken by the Commission to start the work on an EU regulation on international roaming charges. Our common view is that there is a need for a new approach on international roaming charges and regulation at EU level to avoid that the consumers will continue to pay unreasonably high prices for using their mobile phones abroad.

Another argument supporting the regulation of international roaming is that reduced prices probably will result in an increased traffic volume, at least regarding the consumer market. The estimates are uncertain, but information the Ministry has received from Telenor show that if the roaming prices decrease – there will be approximately a 10% increase in the traffic volume for the consumer markets. Regarding the business markets, the effects will be of less significance.

Postal address:
Postboks 8010 Dep
0030 OSLO

Office address:
Akersg. 59

Tel. - switchboard
+47 22 24 90 90 /
+47 22248353
Org. no.: 972 417 904

Department of Civil
Aviation, Postal Services
and Telecommunications
Telefax: +47 22 24 56 09

Reference:
Ingeborg Kjærnli
+47 22 24 82 36 and
Haakon Gjesdahl

So far, the Commission has not proposed any action as regards SMS. Norway would like the Commission to re-assess this question following responses to the consultation. We would like to propose that the Commission considers whether the new regulation also should include SMS. If SMS is not included, the operators could have an incentive to increase SMS-prices to "regain" lost profits from lower roaming charges. This scenario would be negative for the consumers.

As a regulation is a very strong legislative tool, being direct applicable in all Member States, the effects of the proposed regulation should be considered very thoroughly, in particular possibilities for negative effect.

Wholesale regulatory proposals

In Norway's opinion regulation on international roaming charges should preferably target the underlying causes of the high retail prices the consumers have to pay, and hence be imposed on the wholesale level. Regulation on the wholesale level might also be best in accordance with the principles of the regulatory framework. However, if sufficient pass-through of wholesale savings is not realised, retail regulation could be deemed necessary on a later stage.

In its second phase consultation, the Commission recognises the need for parallel wholesale regulation if retail regulation is to be applied. The Commission proposes cost-orientation as well as a price cap mechanism. As regards cost-orientation, it is the Norwegian view that this tool is less suitable under these circumstances. The main reason is the complexity associated with detailed cost modelling. If introducing cost-orientation, there is a significant possibility that the regulation will not be effective in reducing prevailing roaming charges by the summer of 2007, the timeframe within the Commission expects to achieve the results of the proposed regulation. Hence, cost-orientation is unlikely to deliver the desired benefits within the stipulated time period, and this would be very unfortunate from the consumer perspective.

As regards a price cap mechanism, Norway's view is that a wholesale price cap is the most appropriate approach to wholesale regulation, since it meets the requirements for harmonisation in the Member States, and has the practical benefit of being easier to implement in a coordinated manner. Nevertheless, it is very important to closely assess which prices the wholesale cap shall be based upon. For instance, requiring operators to set their wholesale roaming prices based on their domestic prices would penalise operators that have the lowest domestic prices. Instead, an EU-wide benchmark for a price cap on wholesale charges where no European MNO would be permitted to charge more to another European MNO for wholesale roaming services might be a suitable approach for wholesale regulation. An EU-wide price cap on wholesale charges facilitates a coordinated approach across the EU. The degree of effectiveness will be dependent on the level of charge set.

Retail regulatory proposals

In Norway's opinion regulation at the wholesale level should be considered prior to the application of regulation at the retail level. Evidence drawn from the analysis of market 17 performed by the Norwegian Post and Telecommunications Authority indicate that high wholesale prices levied by the different EU operators appear to be the source of high retail prices for making calls abroad. Regulation should thus be targeted, in the first instance, at those services that are not competitively supplied.

Further, we would like to elaborate on some possible unintended consequences of the said proposal:

Home Pricing Principle

The proposed regulation for roaming calls is an approach whereby the retail roaming prices are tied to the customer's home prices for comparable domestic mobile services, the so called Home Pricing Principle (HPP). The proposal for a retail regulation implies that consumers would face similar charges while roaming as if they were in their home country.

In general, remedies where the price of the product in question is tied to the prices of other services suffer from various implementation challenges – it can prove difficult to calculate and monitor the appropriate price of the tied services – and more significantly, it is likely to lead to distortion of the prices of the tied services.

A potential risk of any regulation that ties a charge to the unregulated charge of another service is the risk of a "spill-over" effect. Driven by the incentives to influence the price of the regulated service, the operators might change the price of the unregulated service. The risk of this occurring is aggravated if the tied services are the result of a competitive market, whereas the prices of the services being regulated do not reflect the outcome of a competitive environment. In such a case, there is a risk that the lack of competition in the services being regulated may spill-over to the tied services, causing the prices of these services to increase and consequently the prices of the regulated service not to fall significantly, potentially rendering the regulation ineffective.

In the following we provide a brief discussion of some examples of the possible unintended consequences of HPP based regulation:

- *Making a local call*

According to the Commissions proposal making a local call to a fixed or mobile network within the visited country while roaming should be charged as if the roaming customer was making a national call to a fixed or mobile network when in his/her home country.

National tariffs for mobile originated traffic vary significantly within the EU/EEA countries providing incentives for consumers and potentially third party commercial

entities or other providers of mobile services to arbitrage the difference in national tariffs between different countries within the EU/EEA. This could result in a situation where customers purchase their subscription in a country with low national tariffs to use in their home country with higher national tariffs.

- *Making a call home or to a third country*

Retail prices for calls made home or to a third country should, according to the Commissions proposal and based on the HPP, be linked to mobile International Direct Dialling (IDD) prices for the equivalent calls made from the subscriber's home market.

Mobile-originated IDD calls are a very different service from roaming calls made home whilst abroad and have very different demand characteristics. In general mobile originated IDD calls make up a fairly limited amount of total originated volumes. For Norway the relevant figure for the year 2005 was 3.8 percent. In contrast, approximately 80 percent of the calls made while roaming abroad are calls made back home.

Current mobile IDD rates are in general lower than the current roaming rates, although typically much higher than mobile domestic calls. By tying the price of roaming calls home and to a third country to the price of mobile IDD calls, there is a high risk that mobile IDD prices (which are unregulated) may increase, thereby bringing them to current levels of roaming charges and failing to reduce roaming prices significantly as intended.

- *Receiving calls – abolition of retail roaming charges*

The Commission proposes to abolish retail charges for calls received while roaming in another Member State. Furthermore, it follows that customers originating calls in their home country should not face an additional charge.

Contrary to a situation where a mobile subscriber receives a call while in his home country (calling party pays principle), the subscriber is charged for receiving calls while abroad. At the wholesale level the mobile operator does however face additional costs by the recipient's home mobile network. This is due to the international routing (transit) of the call and the fact that the cost of termination in the visited country could be above the cost of termination in the home network. The abolition of the retail roaming charge for receiving calls could thus have several unintended consequences such as increased prices for domestic mobile service, that mobile operators stop offering the possibility to receive calls while abroad for specific user groups (typically pre-pay customers) or may limit the customer's ability to receive calls while roaming.

- *Other concerns*

The possible unintended consequences as mentioned above, could potentially lead to new types of subscriptions that limit the consumer's possibility to use their mobile phones abroad, in order to offer attractive rates for national calls. Thus, there is a risk

that the proposed retail regulation could cause a need for double subscriptions, one to be used in their home country and one for international roaming purposes.

Norway is looking forward to see the final proposals of the Commission, and we would very much like to share our experiences and take part in the future work.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ottar Ostnes". The signature is written in a cursive style with some loops and flourishes.

Ottar Ostnes
Director General