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European Union Committee

17th Report of Session 2006–07

**Mobile Phone
Charges in the EU:
Curbing the
Excesses**

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NOTE: References in the text of the report are as follows:

(Q) refers to a question in oral evidence

(p) refers to a page of written evidence

The Report of the Committee is published in Volume I (HL Paper 79-I) and the Evidence is published in Volume II (HL Paper 79-II)

FOREWORD—What this Report is about

This report examines the Commission's proposal to introduce price caps into the mobile roaming market. This market is the provision of international mobile phone services and we specifically limit ourselves to calls across the EU.

The draft Regulation addresses what are perceived to be excessively high charges affecting consumers when they travel across the EU; and forming a barrier to the functioning of the single market. The Commission intends the Regulation to deliver immediate benefits to consumers without hampering competition or innovation in the market.

We conclude that there is strong, albeit circumstantial, evidence of market failure in roaming. Competition and transparency are lacking, and national regulators have been unable to address this. Roaming services are also fundamentally cross-border in nature, and we agree that action is best taken at a Community level.

We conclude that regulation at the wholesale level (i.e. transmission of messages between national mobile phone networks before domestic delivery to retail customers) is appropriate at a rate of approximately 30 eurocents per minute. We would regulate wholesale charges on the basis of average, rather than absolute caps. This means that network operators could have a range of charges between themselves, but that the average of these charges is regulated.

We were less clear on the need for immediate regulation of the total charges for the ultimate retail customer. Effective wholesale regulation combined with increased competition at the retail level should be given a chance to work. Prescriptive retail regulation could lead to market rigidities and create unintended consequences for other related markets.

We support the proposed Consumer Protection Tariff, which would set an upper safety net rate for retail charges, and protect more vulnerable consumers, such as infrequent travellers. This tariff should be based on an opt-in model for existing customers—who would have to make a decision to leave their present tariff arrangements and opt for a simpler but perhaps higher price level protection—and an opt-out model for new customers.

We believe that the Regulation should only remain in operation for the minimum time required, and support the idea of a 'sunset' clause. Our witnesses focussed on roaming charges for voice services, but we suspect that, if there are market abuses, they are likely to be even more prevalent in data roaming services, which is a rapidly growing market. The Commission must undertake rigorous studies of the data market and consider the extension of regulation to such services as a priority.

Underlying all of the above points, we were seriously concerned at the lack of coherent evidence on the actual, underlying costs of providing roaming services. Regulatory intervention in the market should not be undertaken on the basis of guess-work. More and better research must be carried out on the market, and should form the basis for a review of the Regulation in the short term. This work will require close cooperation between the Commission and national regulators.

Mobile Phone Charges in the EU: Curbing the Excesses

CHAPTER 1: BACKGROUND

1. It is estimated that around 140 million EU citizens are affected by charges for using their mobile phones abroad, or 'roaming' charges.
2. The Commission first raised the perceived problem of what it saw as excessive and opaque charges for mobile roaming in 2003.
3. By July 2006, Viviane Reding, the EU Information Society Commissioner, had taken the view that the mobile telecoms industry had failed to address this problem through self-regulation. Other Commission efforts to deal with the problem through competition investigations (such as the current investigation into the UK's market) and by empowering National Regulatory Authorities to take action, were seen as limited in their effectiveness for what was inevitably a cross-border issue. In response to these perceived failures the Commission published a draft Regulation to introduce caps on charges at both wholesale (the fee one operator charges another) and retail (the fee charged to the consumer) levels.
4. This draft Regulation prompted a good deal of controversy among operators across the EU, who claimed that competition should be allowed to address any problems in charges. Rob Conway CEO of the GSM Association said that the proposed Regulation "amounts to a straitjacket that will stifle innovation, dampen competition and ultimately harm consumers".
5. This report attempts to untangle the many competing views on the fairness of existing roaming charges; the adequacy of the market; and likely consequences of any Regulation.
6. The Commission's original proposal has now been substantially amended, with a number of alternative schemes under consideration in both the Council of Ministers and the European Parliament. The German Presidency expects to reach an agreement before the end of their term in June 2007.
7. Our report will discuss what we have found to be the key issues and present our conclusions and recommendations based on the wide range of evidence we received.
8. We make this report to the House for debate.

CHAPTER 2: IS THERE A NEED FOR REGULATION?

9. The Commission's Impact Assessment, based on consultation with stakeholders such as the European Regulators Group (ERG), national regulatory authorities, national governments, mobile operators and consumer groups, concluded that roaming prices charged to consumers, were "unjustifiably high" and that they had no relation to the cost of roaming born by operators.
10. The substantial, although uneven, price reductions made by operators since the proposed Regulation was announced has lent some weight to this argument. **We agree with the Commission that this is an indication of the scope operators had to reduce roaming charges.** (p 47)
11. The Commission also noted that, even though the wholesale price of roaming had been decreasing steadily over the past few years, this reduction had not been passed on to a reduction in the retail cost of roaming. (Q 147)
12. The UK Government support the Commission's position. Margaret Hodge, Minister of State for Industry and the Regions, told us that "the market has not worked; there is market failure and there is purpose for intervention". (Q 108)
13. In their evidence, Ofcom also recognised that roaming prices were high and identified that high wholesale prices due to general lack of competition at the wholesale level is the primary cause for the high cost of roaming charges. The larger mobile operators had agreed a code of conduct between them, but this had little effect. (p 26)
14. Some of the smaller operators agreed that roaming charges are too high. Hutchinson 3G told us that they agreed with the Commission's position that "roaming per se was expensive". High wholesale charges between operators were seen as the main cause of what was described by the witness as "a problem in the market." (Q 2)
15. Other witnesses like British Telecom and Meteor (both Mobile Virtual Network Operators¹) shared the view that the market is not competitive enough and that wholesale charges set by Mobile Network Operators were too high.
16. Larger mobile operators like Orange and Vodafone disagreed and pointed to reductions made in retail prices; up to 20% in the last two years. However we note that such reductions were made possible mainly because these companies had a presence in a large number of Member States and thus were able to offer cheaper roaming services when a customer was roaming in one of their sister networks. Such a possibility would not exist if a customer was using the network of another, non-affiliated, provider. It was also often the case that cheaper roaming rates were available, but that the information on how to connect with cheaper local operators was not made readily available to the consumer.
17. **In our view the data used by the Commission to calculate the cost of roaming is incomplete. Nevertheless, from the majority of the evidence we have received there is a circumstantially compelling case for agreeing with the Commission that operators' profit margins, as far as roaming services are concerned, are excessively high, compared to the wholesale cost of roaming for operators.**

¹ MVNOs do not also provide network services, for which they rely on other operators.

CHAPTER 3: IS EU ACTION APPROPRIATE?

18. The majority of our witnesses agreed that due to the cross border nature of roaming, national regulatory authorities are not able to resolve the problem of high roaming prices. Commissioner Reding made this point when she told us that the European Regulators Group alerted her to its concern that national regulators were unable to address these prices. (Q 147)
19. This point was echoed to us by the European Parliament Rapporteurs for the Industry, Research and Energy and the Internal Market and Consumer Protection Committees. Based on the evidence they had received in their own scrutiny of the proposal, they agreed that national regulatory authorities were not able to tackle the problem on their own.
20. Ofcom also recognised the cross-border nature of the problem as the main reason why there was a need for Community action in this area. They saw “legislation in the form of directly-effective EU Regulation as an appropriate way to address the problem” (p 25). The European Consumers’ Organisation (BEUC) shared this view. (p 57)
21. It was also suggested to us that even though competition had worked efficiently at national level resulting in lower retail prices for mobile telephony products, the same was not the case with roaming charges which had remained consistently high. All reductions were marginal and occurred mainly after the Commission had announced the draft Regulation. BEUC argued for Community level action as a result of the lack of proposals by industry for self-regulation and because co-regulation could not properly address the issue due to its cross border nature (p 57). **We agree that there is a clear case for regulation at a Community level.**
22. The case has also been made that high roaming prices have an effect on the functioning of the Single Market. **We consider that high roaming prices have an impact on the efficiency of Small and Medium-sized Enterprises (SMEs) and their ability to conduct business when having to operate from abroad. Furthermore the lack of transparency in prices has reduced the consumer’s ability to compare costs of roaming across the Single Market and between operators.**
23. The industry did not, as a whole, agree that regulation at the EU level was the right response to the issue at hand. In their evidence their representative body, the GSM Association, stated that the proposed Regulation would “adversely affect consumers, reduce competition and innovation among European operators and damage the competitiveness of the EU” (p 108). This sentiment was echoed, to varying degrees, by all operators who gave evidence. The majority of operators advocated leaving the market to reduce retail prices by itself, using the reductions in the cost of roaming in the past two years as proof that the market works.
24. We are also aware that Orange and Vodaphone have raised serious legal objections to the Commission’s use of Article 95 TEC as a legal base. The Commission as well as the Minister, in their evidence, were confident that Article 95 constitutes the appropriate legal basis for this Regulation (QQ 170,114). **We do however expect the Government to give this issue close attention.**
25. **We feel that the evidence we received on the need for action at the EU level to reduce the cost of roaming is convincing. But we do not want to see excessive regulation that will harm the operation of an otherwise healthy and innovative industry.**
26. Our position on the details of the legislation we see as necessary will be reflected in the sections that deal with our view on the various legislative proposals as presented by the different EU institutions involved in the decision making process.

TABLE 1**What are the options proposed by various parties?**

	European Commission	Council of Ministers	European Parliament
Wholesale	<p>The Commission has proposed a wholesale price cap of 23 eurocents per minute for calls made within the country and a wholesale price cap of 35 eurocents per minute for calls made between Member States.</p> <p>The Commission strongly believes in the idea of absolute caps and rejects averages as cumbersome.</p>	<p>The German Presidency of the Council is proposing a wholesale average of 30 eurocents per minute (the equivalent of 2.6 times the average domestic Mobile termination Rate).</p>	<p>The Committee on Industry, Research and Energy of the European Parliament is proposing wholesale regulation based on domestic Mobile Termination Rates multiplied by the factor X (revised by national regulatory authorities) leading to a single European cap.</p>
Retail	<p>The original Commission proposal for retail regulation envisaged that operators may not add a margin of more than 30% to their wholesale prices. In view of developments in the negotiations between the EP and the Council they are prepared to accept a Consumer Protection Tariff. The Commission also supports the idea of an opt-out.</p>	<p>Due to the resistance to retail regulation by several member states the Presidency has proposed as a compromise the Consumer Protection Tariff (at 50 eurocents) with opt-in and opt-out provision.</p>	<p>Proposal for a Euro-tariff with upper price limit (similar to the Presidency proposal). The EP Committee is split on the issue of retail regulation but the possibility of a compromise for a Consumer Protection Tariff in order to achieve agreement on the 1st Reading is very strong. The EP rapporteur favours the possibility of an opt-in.</p>
Sunrise-Sunset clause	<p>The Commission expressively rejected the idea of a sunrise clause from the beginning on the grounds that further delays in enforcing the regulation will cause further costs to consumers.</p>	<p>The British and French proposal for a sunrise clause met with a limited amount of support from the beginning before it was replaced by the German Presidency's compromise proposal for a sunset clause. This proposal has recently lost most of its support in the Council.</p>	<p>The sentiment in the European Parliament is against the idea of time-limiting the regulation.</p>
Data-roaming			
<p>There is consensus between the institutions that the scope of the legislation should not be extended at this point to cover data roaming. This is mainly due to the fact that the Commission did not conduct an Impact Assessment for data roaming when in made its original proposals. It is agreed that data roaming should be regulated in the future but trying to do so now would delay significantly the adoption of the regulation for voice roaming.</p>			

CHAPTER 4: WHOLESALE REGULATION

Introduction

27. The original Commission and all subsequent proposals have highlighted the need for the regulation of wholesale prices for mobile roaming (wholesale regulation) across the EU. This approach has been commended by both consumer groups (p 48) and a number of submissions by private individuals. We have also received evidence from a variety of operators who have suggested that wholesale regulation is not required (Q 2, p 21). However, a number of other operators have conceded the case for some regulation at this level. (Q 25)

What is wholesale regulation and how could it work?

28. As identified above, we believe that:
- There is evidence that roaming prices charged to end customers are excessive and have remained so over time (QQ 2, 147);
 - The primary driver of high retail rates is the level of wholesale rates that the operators charge each other and which appear significantly above cost (Q 297); and
 - The lack of transparency of such prices, particularly across national borders, means that such excessive prices are likely to continue into the future without some form of regulatory intervention at the European level.
29. Wholesale regulation has been successfully applied to national telecommunications markets since the liberalisation of the telecommunications sector. **We believe that wholesale regulation at the European level is an appropriate response to the regulation of roaming within the EU. There are several possible approaches to such regulation. It is important that the approach taken delivers immediate benefits to consumers; encourages market competition; and sends appropriate signals to the market to encourage competition and innovation.**
30. The various proposals made have suggested several approaches to wholesale regulation. These can be simplified to two main regulatory techniques, absolute and average price caps.
31. The Commission proposed the use of absolute price caps, imposing the same wholesale charge for a call from any network in the EU to any other network within the EU (p 47). Proponents of the absolute price cap method of regulation have suggested that the cap be calculated based on reference to domestic Mobile Termination Rates (MTRs), collated across the EU by NRAs. There are several variants to this approach (see table 1 above) relating to the calculation of any absolute cap and each lead to slightly different caps on wholesale tariffs being applied.
32. The advantage of the absolute price cap approach is that it is simple to calculate and transparent. It may also be that this approach best lends itself to an absolute price cap for retail regulation (see Chapter 5 below), providing the basis for subsequent regulation of retail tariffs on a simple per minute price.

33. **We believe that the absolute price cap approach suffers from a number of defects that question its application to this issue. We note that the absolute price cap model:**
- **May remove the incentive for operators to be efficient and innovative, as the market settles on a single pricing point for all wholesale services and there are limited incentives to move away from this point (Q 64);**
 - **Does not provide the flexibility for operators to vary their charges to reflect cost differences. Evidence from the operators suggests that they need the ability to set higher prices at peak times and lower prices when their networks are less congested, thereby sending the appropriate signals to the consumers to maximise efficient use of networks (Q 61); and**
 - **Does not fully reflect the cost structure of the industry. We accept that costs vary across networks and that an absolute cap should not be set so as to lead to wholesale call charges that are below cost. Whilst this places some limitations on the level of an absolute price cap it does not rule out the absolute cap approach, based on the limited evidence available to us on cost differentials for networks across the EU.**
34. The main alternative approach is the use of average price caps. Using this approach, recommended by both the German Presidency (Q 219) and Ofcom (p 26), the wholesale average roaming charge for each operator would be calculated by dividing total wholesale roaming revenues received (from providing wholesale roaming to other mobile operators) by the total number of wholesale minutes sold. The advantage of this approach is that in not setting a specific limit on the price for every individual charge, operators are allowed greater flexibility which encourages efficiency in costing (peak and off peak) and innovation.
35. This approach has been criticised by the Commission for being too complicated and requiring the collection of considerable data (Q 147). **However, we are satisfied that the NRAs across the EU are capable of collating data in a consistent manner set out by the Commission.**
36. A final issue worthy of discussion is the level of any price cap that is put in place. The various suggestions provided to the Committee for wholesale tariffs range between 25 and 35 eurocents per minute. **We would support an average wholesale cap of approximately 30 eurocents per minute. We believe that wholesale regulation should reflect costs, and therefore that the cap should be on the ‘tougher’ end of this spectrum.** This is particularly the case if the focus of the regulatory intervention is to be at the wholesale level (see Chapter 5 below) not the retail level. The German Presidency has also suggested that the cap should be reduced annually by 5%. Such RPI-X schemes have been shown to drive efficiency but rely on costs being accurately estimated at the initial point and plausible efficiency reductions being achieved.
37. **We are concerned that the current data supporting the level of wholesale price caps is limited; and that the true cost of wholesale roaming cannot be identified with sufficient accuracy at present.**

CHAPTER 5: RETAIL REGULATION

Introduction

38. The question of whether operator's retail tariffs should be regulated has been the most controversial considered in our report. Operators have suggested to us that if wholesale tariffs are regulated this will allow competition to continue to develop over retail prices (QQ 25, 297); and that the developing levels of competition would be stifled and innovative pricing models already in place would need to be removed.
39. However, the Commission told us that operators would be unlikely to pass on the reduced wholesale levels to consumers in the form of reduced retail tariffs (Q 160). BEUC meanwhile argued that the recent moves made by operators were too late; that the nature of current retail price reductions was confusing to consumers; and that they did not provide sufficient coverage. (p 59)

What is retail regulation and how could it work?

40. The various proposals made for the retail regulation of roaming have focused on two overall regulatory mechanisms: full retail regulation and a consumer protection tariff (CPT).
41. The majority of the proposals made to date for full retail regulation have focused on absolute price caps based on some form of mark up on purely domestic Mobile Termination Rates and/or the wholesale regulatory tariff applied. These approaches are relatively simple in construction and seek to impose a consistent retail price per minute for all mobile roaming calls within the EU.
42. As noted above, we doubt whether an appropriate price can be set, given the very limited information on the true costs of regulation and the rather blunt averaging models proposed by the Commission. We note that retail regulation needs to be set at the correct level lest it have either only a limited impact on prices paid by consumers; or remove the incentives for operators to set charges at anything other than the maximum level.
43. We note Ofcom's conclusions that "setting overly restrictive retail controls will not achieve the best outcome for consumers over the longer term, as tariff innovation and differentiation could be severely constrained." (p 10)
44. The 'Anglo-French' proposals sought to address some of these concerns by proposing an average retail tariff regulatory model. In this approach, the average retail charge would be calculated by dividing the total retail roaming revenues received by an operator from its subscribers (for calls made and received whilst roaming) by the total number of retail roaming minutes used (for making and receiving calls) by subscribers, over the period specified. This average retail charge would need to be below a target average cap level. Witnesses in favour of absolute price caps suggested that this approach would be too complicated and require the NRAs to collect considerable levels of information. (Q 147)
45. Witnesses favoured no detailed retail price cap but a higher safety net in the form of the CPT.

46. **On balance, we believe that this structure provides a better form for any retail intervention, as it allows operators to innovate and compete through the differentiation of their own tariffs and offers, as well as from those of their competitors. However, we also stress the importance of base information upon which to set the appropriate cap.**
47. The CPT is proposed to be an absolute price capped tariff which would be available to all customers. **We believe that a CPT is a logical regulatory instrument in the absence of full retail regulation, i.e. setting a ‘safety net’ tariff which would protect the most vulnerable consumers.** The most obvious application of a CPT is to a consumer who only travels internationally on limited occasions and is seeking certainty in his or her call costs for these periods. **It therefore follows that any CPT should be set at a level that provides this safety net, but allows retail competition below this level.**
48. There has also been debate over how consumers would be able to select a CPT. The Commission proposes an ‘opt out’ model, where all consumers would automatically have the CPT applied unless they chose to opt out of this tariff (QQ 147, 154). Operators and the Government have suggested an ‘opt in’ model, where consumers would need to select to take the tariff (Q 121). **Whilst the ‘opt out’ approach provides the maximum consumer protection, it is also likely to lead to some consumers facing higher tariffs as they inadvertently choose not to take a lower competitive tariff (assuming no retail regulation) and greater costs for operators.** The Presidency has combined these two options and proposed an ‘opt in’ model for existing customers and an ‘opt out’ model for new customers (QQ 236, 239). **This approach appears to have received support from many parties, and we endorse it.**

CHAPTER 6: DATA REGULATION

49. Witnesses proposing the regulation of roaming charges have, in the main, focused on voice services. However, roaming customers can also send and receive SMS (Short Message Service), MMS (Multimedia Message Service) and other data services.
50. The evidence presented to us has suggested the need to focus on voice services because of their relative importance in terms of roaming traffic (QQ 249, 251); and the lack of data on the costs of data services upon which regulation could be targeted.
51. Evidence from operators has suggested that competition was currently reducing, and would continue to reduce, roaming prices for SMS, MMS and other data services, the same argument as for voice services. They also told us that data services were a developing market, it may be too early to impose regulation. (Q 322)
52. **We believe that the underlying market failure that exists in roaming for voice services is every bit as evident for data services, which have even less price transparency than their voice counterparts. It is thus important that this regulatory initiative should also consider these services. However, there is even less evidence as to whether roaming charges for SMS, MMS and data services are more excessive than for voice services.**
53. Evidence from the Commission, European Parliament and Presidency has suggested that, in varying degrees, all three bodies share our concern in this area. However, they also expressed concern that the regulation of voice roaming should not be delayed whilst these services are considered. In particular, we note that the Commission's Regulatory Impact Assessment would need to be substantially extended to support data regulation and that this may prove difficult and time consuming given the immediate lack of available data.
54. **We agree with the German Presidency that a separate study of SMS, MMS and data roaming should be conducted. As with our previous recommendation to collect more data to support the regulation of voice roaming, this study must be conducted on a consistent pan European basis. We would again suggest that the Commission coordinates this study supported by the NRAs.**
55. **We do not believe that voice regulation should be delayed whilst this study is conducted. We would, however, suggest that if regulation is considered appropriate a similar approach as outlined for the regulation of voice (see above) should be considered.**

CHAPTER 7: A SUNSET CLAUSE?

56. We have accepted the need for regulatory intervention in the European roaming market. However, we believe that regulation will over time tend to lead to rigidities in markets and hence should be applied in such a manner as to encourage competition and innovation which will eventually replace regulation. This principle is at the core of our conclusion that wholesale and not retail regulation should be adopted in the first instance. Following this rationale, we also believe that this regulation should only remain in place for the minimum time required.
57. We took evidence from many sources on this issue and have found a general agreement on the suggestions of the German Presidency that any Regulation put in place:
- Should be reviewed after 18 months from its imposition to judge the extent to which they are successfully delivering the required benefits. In particular, the German Presidency notes the need to consider both the development of competition and consumer protection (QQ 324, 136); and
 - Should be removed after three years from its imposition, if the evidence were to indicate that this was justified (Q 270). However, the possibility of renewed or new regulation exists if the required benefits were judged not to have been met.
58. **We agree with the suggestions of the German Presidency on the introduction and timing of such a review and sunset clause for this regulatory intervention. This must be in tandem with better data collection; as such data will be critical in reviewing the success of the Regulation.**

CHAPTER 8: CONCLUSIONS AND RECOMMENDATIONS

Is there a need for regulation?

59. In our view the data used by the Commission to calculate the cost of roaming is incomplete. Nevertheless, from the majority of the evidence we have received there is a circumstantially compelling case for agreeing with the Commission that operators' profit margins, as far as roaming services are concerned, are excessively high, compared to the wholesale cost of roaming for operators. (para 17)

Is EU action appropriate?

60. We agree that there is a clear case for regulation at a Community level. (para 21)
61. We consider that high roaming prices have an impact on the efficiency of Small and Medium-sized Enterprises (SMEs) and their ability to conduct business when having to operate from abroad. Furthermore the lack of transparency in prices has reduced the consumer's ability to compare costs of roaming across the Single Market and between operators. (para 22)
62. We are aware of the differences of opinion on the use of Article 95 as the legal base for the Regulation. We expect the Government to give this issue close attention. (para 24)
63. We feel that the evidence we received on the need for action at the EU level to reduce the cost of roaming is convincing. But we do not want to see excessive regulation that will harm the operation of an otherwise healthy and innovative industry. (para 25)

Wholesale regulation

64. We believe that wholesale regulation at the European level is an appropriate response to the regulation of roaming within the EU. There are several possible approaches to such regulation. It is important that the approach taken delivers immediate benefits to consumers; encourages market competition; and sends appropriate signals to the market to encourage competition and innovation. (para 29)
65. We believe that the absolute price cap approach suffers from a number of defects that question its applicability to this issue. We note that the absolute price cap model:
- May remove the incentive for operators to be efficient and innovative, as the market settles on a single pricing point for all wholesale services and there are limited incentives to move away from this point (Q 64);
 - Does not provide the flexibility for operators to vary their charges to reflect cost differences. Evidence from the operators suggests that they need the ability to set higher prices at peak times and lower prices when their networks are less congested, thereby sending the appropriate signals to the consumers to maximise efficient use of networks (Q 61); and
 - Does not fully reflect the cost structure of the industry. We accept that costs vary across networks and that an absolute cap should not be set so as to lead to wholesale call charges that are below cost. Whilst this places some limitations on the level of an absolute price cap it does not rule out

the absolute cap approach, based on the limited evidence available to us on cost differentials for networks across the EU. (para 33)

66. We are satisfied that national regulators are capable of carrying out the necessary cost studies for this approach to be effectively targeted. (para 35)
67. We would support an average wholesale cap of approximately 30 eurocents per minute. We believe that wholesale regulation should reflect costs, and as therefore that the cap should be on the ‘tougher’ end of this spectrum. (para 36)
68. We are however concerned that the current data supporting the level of wholesale price caps is limited; and that the true cost of wholesale roaming cannot be identified with sufficient accuracy at present. (para 37)

Retail regulation

69. On balance, we believe that the consumer protection tariff provides the best form for any retail intervention, as it allows operators to innovate and compete through the differentiation of their own tariffs and offers, as well as from those of their competitors. However, we also stress the importance of base information upon which to set the appropriate cap. (para 46)
70. We believe that a CPT is a logical regulatory instrument in the absence of full retail regulation, i.e. setting a ‘safety net’ tariff which would protect the most vulnerable consumers. It therefore follows that any CPT should be set at a level that provides this safety net, but allows retail competition below this level. (para 47)
71. We agree with the German Presidency proposal for the CPT to operate under an ‘opt in’ model for existing customers and an ‘opt out’ model for new customers. This approach appears to have received support from many parties, and we endorse it. (para 48)

Data regulation

72. We believe that the underlying market failure that exists in roaming for voice services is every bit as evident for data services, which have even less price transparency than their voice counterparts. It is thus important that this regulatory initiative should also consider these services. However, there is even less evidence as to whether roaming charges for SMS, MMS and data services are more excessive than for voice services. (para 52)
73. We agree with the German Presidency that a separate study of SMS, MMS and data roaming should be conducted. As with our previous recommendation to collect more data to support the regulation of voice roaming, this study must be conducted on a consistent pan European basis. We would again suggest that the Commission co-ordinates this study supported by the NRAs. (para 54)
74. We do not believe that voice regulation should be delayed whilst this study is conducted. We would, however, suggest that if regulation is considered appropriate a similar approach as outlined for the regulation of voice (see above) should be considered. (para 55)

A Sunset clause?

75. We agree with the suggestions of the German Presidency on the introduction and timing of a review and sunset clause for this regulatory intervention. This must be in tandem with better data collection; as such data will be critical in reviewing the success, or failure, of the Regulation. (para 58)
76. We make this report to the House for debate.

APPENDIX 1: SUB-COMMITTEE B (INTERNAL MARKET)

The Members of the Sub-Committee which conducted this inquiry were:

Lord Dykes
Baroness Eccles of Moulton
Lord Freeman (Chairman)
Lord Fyfe of Fairfield
Lord Geddes
Lord Haskel
Lord Lee of Trafford
Lord Mitchell
Lord Powell of Bayswater
Lord St John of Bletso

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

Members declared no interests relevant to this inquiry.

APPENDIX 2: LIST OF WITNESSES

The following witnesses gave evidence. Those marked * gave oral evidence.

- * Bureau Européen des Unions de Consommateurs (BEUC)
BT
Communications Management Association (CMA)
- * Department of Trade and Industry (DTI)
- * European Commission
- * European Parliament
EVUA
Finnish Communications Regulatory Authority (FICORA)
- * German Presidency of the Council
GSM Association (GSMA)
- * Hutchison Europe Telecommunications Ltd
- * Hutchison Whampoa (Europe) Ltd
- * Meteor Mobile Communications Ltd
Joseph Muscat MEP
- * O2 UK
- * Ofcom
OneCompare.com
- * Orange
Keith Porteous Wood
Ewan Sutherland
TeliaSonera
- * T-Mobile UK
Stephen Townsley
- * Vodafone

APPENDIX 3: CALL FOR EVIDENCE

1. The Internal Market Sub-Committee (Sub-Committee B) of the House of Lords Select Committee on the European Union is undertaking an inquiry into issues raised by the European Commission's proposal for a Regulation on roaming on public mobile networks within the Community (11724/06 COM(2006) 382 final).
2. The objective of the draft Regulation is to ensure that users of public mobile telephone networks when travelling within the Community do not pay excessive prices for international roaming services when making and receiving calls, thereby achieving a high level of consumer protection while safeguarding competition between mobile operators.
3. Sub-Committee B's inquiry will address the following issues:
 - (i) Do you consider charges for making and receiving calls on mobile phones when in a different EU Member State to be appropriate or excessive as some have argued? Do you think there is currently sufficient competition in the market?
 - (ii) Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?
 - (iii) Do you think that the mobile telecoms industry has done enough in the last two years to address, through self-regulation, concerns expressed by the Commission? Are National Regulatory Authorities in a co-regulated environment able to address these concerns on their own?
 - (iv) Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?
 - (v) Do you think that the pressure for lower roaming charges could potentially spill-over into higher prices for other mobile telephony services? Would you anticipate any other unintended consequences that may affect consumers?
 - (vi) Do you think that the proposed regulation will allow non-EU operators to take advantage of lower wholesale roaming prices in the EU through international trade agreements and arbitrage opportunities?
 - (vii) Is the Commission's estimate that 147 million EU citizens are affected by excessively high international mobile roaming charges accurate? Do you have any other figures to offer?
 - (viii) Do you think that the UK and French proposal for a sunrise clause during the initial period after the Regulation comes into force can better achieve the desired effect? Should legislation apply solely to wholesale fees rather than retail tariffs?
 - (ix) Do you believe that separate sub caps for making and receiving calls should be applied or a single average cap? Should the linkage between Mobile Termination Rates and wholesale prices, and percentage mark-ups for determining retail prices, be retained or should target prices simply be included in the regulation?

19 January 2007

APPENDIX 4: GLOSSARY OF TERMS

Absolute price caps	imposing the same wholesale cost for a call from any network in the EU to any other network within the EU
Average price caps	charges calculated by dividing wholesale roaming revenues received (from providing wholesale roaming to other mobile operators) by the number of wholesale minutes sold
Consumer Protection Tariff	an absolute price capped tariff which would be available to all customers
Data services	Services for data, rather than voice, transfer; short message services (SMS) and multimedia message services (MMS) are examples
GSM Association	the representative body of mobile operators
Impact Assessment	a study carried out by the Commission before drafting legislation to assess the impact that legislation will have
Mobile Termination Rate	fee that mobile network operators charge to connect calls that are made from another fixed or mobile network
Mobile Virtual Network Operators	a company that does not own a licenced frequency spectrum, but resells mobile telephony services under their own brand name, using the network of another mobile phone operator
Ofcom	UK regulator
Rapporteur	the person in the European Parliament for the drafting on a report on a Commission proposal for legislation
Retail	the fee charged to the consumer
Roaming	the fee a mobile phone user is charged when using their phone abroad
RPI-X	a standard price cap methodology widely applied in telecommunications markets whereby prices are linked to the inflation rate (the retail price index or RPI) minus an X factor
Sunrise	an initial period after the application of the legislation where no retail regulations will apply
Sunset	an expiration date for the Regulation
Wholesale	the fee one operator charges another

APPENDIX 5: CORRESPONDENCE WITH THE MINISTER

EM 11724/06 COM(2006) 382 final - Explanatory Memorandum on a European Community Document

Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services and Commission Staff Working Paper—Impact Assessment of policy options in relation to a Commission proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community plus a Commission Working Document—Executive Summary—Impact Assessment thereto.

Submitted by the Department of Trade and Industry on 12 September 2006.

Subject Matter

Context of Regulation

1. This regulation has been proposed to tackle what is perceived to be a long-running problem; namely the continuing high price of international mobile roaming calls. The European Commission has stated that very high international mobile roaming charges currently affect at least 147 million EU citizens (37 million tourists and 110 million business customers). “International roaming” is the ability of mobile phone subscribers to use their phones whilst travelling abroad. Users can make and receive calls using the same number as they do at home. For this, a mobile network operator needs to conclude international roaming agreements with operators in other countries.

2. The European Commission had previously issued a number of warnings to mobile phone operators on this subject, indicating that action would be taken at a European level, if the high prices, which were perceived as threatening the efficient operation of the telecommunications single market, were not lowered.

3. These concerns were explicitly expressed in a series of communications by the European Commission, to a range of audiences. Further details of these are given in Annex I.

4. In July 1999 the Commission (DG Competition) launched a Sector Inquiry into mobile roaming charges. The investigation covered the period from 1997 until the beginning of 2000. In December 2000, the Commission published a “Working Document on the initial findings of the Sector Inquiry into Mobile Roaming Charges”.

5. On the basis of the preliminary findings of the Sector Inquiry, the Commission decided to carry out two separate antitrust investigations, into the UK and German WIR (wholesale) markets and as a result:

- (a) In July 2004, the Commission sent two separate “statements of objections” to two UK mobile network operators (MNOs), O2 and Vodafone. The objections relate to the rates that both O2 and Vodafone charged other MNOs for international roaming at wholesale level. Other MNOs needed to roam on O2’s and Vodafone’s UK networks in order to enable their own subscribers to use their mobile phones while in the UK. The high roaming fees were deemed to be detrimental to consumers travelling to the UK.

- (b) In February 2005, the European Commission sent two separate ‘statements of objections’ to the German mobile network operators (MNOs) T-Mobile and Vodafone because it believed the companies’ practices might be contrary to EC Treaty rules on abuse of monopoly power (Article 82). In particular, the Commission challenged the high rates that T-Mobile and Vodafone had charged other MNOs for international roaming services at wholesale level. Foreign MNOs pay Inter-Operator-Tariffs (IOTs) for the use of T-Mobile and Vodafone’s German networks when their own subscribers use their mobile phones when visiting Germany (so-called ‘roaming’). It was believed that high IOTs hurt consumers because they were passed on in full to the MNO’s subscribers.
6. (a) In the UK investigation, the Commission has concluded that each individual UK network constituted, at least for the period specified (1997/1998–Sept. 2003) a separate market, where both Vodafone and O2 enjoyed a dominant position (100% dominance) and that both companies have abused their dominant position by charging excessive prices within the meaning of art. 82 of the Treaty.
- (b) The four proceedings are currently on-going.
7. In an attempt to provide consumers with greater clarity about comparative roaming prices, the Commission set up a website about the costs of mobile roaming in Europe in October 2005

(europa.eu.int/information_society/activities/roaming/index_en.htm).

The website offers general information about finding the best deal for roaming calls, and provides a database of some of the available tariffs.

8. The European Commission signalled their intention to legislate in a speech by the Commissioner for Telecommunications and the Information Society (Vivian Reding) in March 2006. This was followed by two rounds of consultation earlier in the year before the issuing of the proposed Regulation and accompanying Regulatory Impact Assessment on 12 July 2006. Details of responses to these consultation exercises are given in Annex II–IV.

Main Issues/Detailed Proposals

9. These are outlined in the Roaming Regulation proposal (COM(2006)382 final). The regulations cover the following key areas:

i) Wholesale pricing

Article 3 states that a “wholesale” price cap should be introduced for the charges made between the operator of the roaming customer and the operator of the network the customer will use while roaming in the EU. This cap is proposed to be based on the (so called) termination rate a mobile operator pays when a call from a customer is made to (i.e. terminates on) another network. This rate is already regulated within the EU. For calls made within a country the “cap” would be twice the average termination rate, whilst it would three times the rate for calls made back home.

ii) Retail pricing

Article 4 states that a “retail” cap for calls made abroad should be introduced; which would be 130% of the maximum wholesale price.

iii) **Timing of application of maximum retail charge limits for regulated roaming calls**

Article 5 states that the retail price cap on international mobile roaming calls should be implemented six months after the regulation enters into force.

iv) **Receiving Party Pays**

Article 6 introduces a cap of 130% of the average termination rate of calls for the cost of receiving calls while travelling abroad.

v) **Transparency of pricing information**

Article 7 obliges the home provider to give its roaming customers information on the costs they will incur on request and free of charge. In addition, the home provider must provide new customers with full information about roaming charges when they take out a subscription for a mobile phone service.

vi) **Supervision and enforcement**

Articles 8 and 9 state that national regulatory authorities (in the UK's case, OFCOM) will be responsible for monitoring and supervising compliance with this regulation within their territory and for devising appropriate penalties for infringements of it.

vii) **Calculation of the average mobile termination rate**

Article 10 explains the way in which this is to be done—this rate is used for calculating the maximum price limits in Articles 3 and 6.

viii) Articles 11–16 deal with procedural issues relating to the effective implementation and review of the Regulation.

Scrutiny History

10. There is no scrutiny history with respect to this proposed Regulation.

Ministerial Responsibility

11. The Secretary of State for Trade & Industry is primarily responsible for the telecommunications issues covered in this report.

Legal and Procedural Issues

12. The legal base for the regulation is Article 95 of the Treaty. This has been the legal base for a number of measures in the past, which have established a community framework for regulating electronic communications under which certain price restrictions on operators with significant market power have been made. However, we will need to explore the issue of legal base further in the course of the discussions in Council on the proposed regulation. The measure is subject to the qualified majority voting by the Council as well as to the co decision procedure involving both the Council and the European Parliament. In terms of impact on UK law, EC regulations are directly applicable and there are currently no other provisions which cover this area in UK law.

Subsidiarity

13. The European Regulators Group (ERG) stated that, as a result of the cross-border nature of mobile telecommunications, it was beyond the competence of each individual Member State to legislate on the matter of international mobile

roaming prices effectively. Hence they requested that the European Commission take action on this matter on an EU-wide basis.

Financial Implications

Administrative Costs—National Regulatory Association (OFCOM)

It should be noted that these are draft assessments based on the information currently to hand.

14. The additional administrative cost for OFCOM in fulfilling the monitoring and reporting requirements in the proposed draft Regulation will not be significant. The current estimate is that this should be no more than £30,000–£60,000 and perhaps less if retail regulation was avoided through the adoption of a “sunrise” clause.

Administrative Costs—Mobile Network Operators (MNOs)

15. Based upon the feedback we have had from the MNOs in our discussions with them, there should not be a huge impact upon them from a ‘compliance cost’ point of view, as they already gather information for their own purposes.

16. The ‘transparency’ measures could however be more costly, again depending on the requirements of the final regulation (with specific messages to customers about tariffs every time they switch on their phones being the dearest option), though again not necessarily worryingly so.

Operating Costs—Mobile Network Operators (MNOs)

17. As might be expected there is a degree of dispute between the Commission (in their draft Regulatory Impact Assessment) and the operators on what the true economic cost of the proposals is. The Commission—on the basis of what they say are current roaming revenues of euro8.5 billion—estimate that the overall benefit of their proposals could represent a consumer surplus of up to euro6 billion. The operators argue that this estimate is too simplistic, is based on erroneous revenue projections, and would in fact vary between euro39 million and euro187 million. What is clear, however, is that the thrust of the proposal would benefit consumers who roam while affecting the revenue (and thus the capitalisation) of the operators.

18. The current proposals (with the current retail cap proposed in Article 4) could lead to inefficiencies and unintended ‘spillover effects’ in related markets, as operators seek to recover the shortfall in their roaming costs in other ways (subscriptions, restrictions, higher domestic rates etc). Such actions could bear especially heavily on infrequent roamers (since they will have least countervailing power) and especially those on pre-pay contracts, who are often the most disadvantaged in society. Pre-pay customers are at risk as it is easier (than it is for those contracted customers) for operators to terminate their ability to roam or (if arbitrage in the EU market for SIMs takes place) to terminate the sale of SIMs altogether. Arbitrage becomes a potential issue where the regulated “roaming” price dips below the domestic price for calls in an EU country.

19. Non-aligned operators (i.e. those without major networks of their own) are potentially badly affected by the introduction of retail caps since they are less able to internalise their costs to the same extent as larger ones (e.g. Vodafone and Orange).

Some of these may as a result be forced to exit the roaming market altogether, with a consequence depressive impact on competition and innovation.

Policy Implications

20. This proposed Regulation has potentially significant policy implications. Not only does it affect a sector already subject to Community legislation but it also is proposing specific, and detailed, retail price controls that would be binding on all EU mobile operators. We therefore, in our consideration of the proposal, have to be aware of the precedent it could set, in addition to the merits, or otherwise, of the measure.

21. The UK position during the run-up to the issuing of the draft regulation has been that, whilst we fully support the aim of the regulation, which is to enable consumers to benefit from lower mobile roaming costs, we have some reservations about the way in which the Commission has been proposing to achieve this. The proposal the Commission consulted on in March (paragraph 8 above) was potentially flawed in a number of respects including the prohibition on charges to a customer receiving calls while roaming in the UK, and in equating roaming charges (for calls made) with domestic tariffs.

22. The revised proposal, now the draft Regulation as outlined above, is more coherent and sensible. We do, however, have concerns; the two main ones being:

- (a) whether the proposed retail price cap for outgoing calls would have the desired effect, or whether it would impact upon the cost of other mobile communications services, which might disadvantage the less affluent sections of the community, for example, by raising the cost of hand-sets or reducing the range of services available to pre-pay customers. We therefore favour (as made clear to the Commission prior to adoption of the Regulation) the introduction of a “sunrise” clause, the effect of which would be to only “trigger” the introduction of the Article 4 (which sets the maximum retail cap) if—after a certain time period—the operators had not reduced their call charges to an average level agreed by member States. Clearly the “trigger” would need to be reviewed on an on-going basis to ensure operators maintained their reduced prices.
- (b) the proposed level of the various price caps (wholesale, retail and called party charges). There is a comparatively small “gap” between the wholesale price of a call and the maximum price that it is currently proposed that mobile network operators should charge consumers. Although 30% may represent a reasonable “mark-up”, the imposition of the retail cap as a “maximum” rather than as an “average”, would potentially have the negative affects with respect to arbitrage and pre-pay contracts as noted above. In the current form the retail cap would also potentially deter innovation by operators (for example the successful “Passport” scheme introduced by Vodafone) which would be prohibited under the proposal.

23. Subject to further inter-departmental and Ministerial discussions we would intend to negotiate in the Council along the above lines. The draft Regulation is unlikely to be agreed, and thus enacted, until the summer of 2007 (during the German Presidency), although it is likely to be discussed by Ministers at the Telecoms Council in December.

Consultation

24. As mentioned above, two consultation exercises (20 February to 22 March 2006, and 3 April to 12 May 2006) were carried out by the European Commission before the draft of the proposed regulation was produced. In the course of these DTI consulted all the UK operators as well as the main trade associations.

25. Links to the results of these two exercises are given below:

http://europa.eu.int/information_society/activities/roaming/roaming_regulation/first_phase/index_en.htm

http://europa.eu.int/information_society/activities/roaming/roaming_regulation/consultation/index_en.htm

26. The DTI is currently organising a consultation exercise that will allow UK individuals and organisations to comment upon the draft regulation. The consultation document will be distributed to consumer and industry representative organisations, as well as being placed upon the DTI website for more general access. The responses, which will be available before the Council discussions in December, will help determine the position taken in Council and in our lobbying in the European Parliament.

Regulatory Impact Assessment (RIA)

27. Included in the package of papers is the Regulatory Impact Assessment (SEC(2006)925) which the Commission has carried out in relation to the proposed Regulation.

28. A link to this is provided below:

http://europa.eu.int/information_society/activities/roaming/docs/assessment_en.pdf

29. The UK is not in complete agreement with some aspects of this RIA, and will seek clarification during the forthcoming negotiations at European level on the regulation.

30. One of our main concerns is of the Commission's view of a "sunrise" clause being highly complex and raising significant procedural and legal problems. In our own view, the sunrise clause offers an opportunity to provide the assurance that the Commission is seeking that cuts in wholesale prices will be passed on to consumers in the form of lower retail prices. The details will clearly need to be worked out with care, but there does seem to be broad support for this approach with the European Regulators Group already expressing a preference for this approach.

Timetable

31. The draft Regulation will be subject to discussion in the Telecoms Council Working Group from September and in the European Parliament towards the end of the Year (a timetable has not yet been established). The Finnish Presidency may seek to obtain a political consensus at their Ministerial Council in December, with a final approval likely in June 2007 under the German Presidency.

Margaret Hodge

Minister of State for Industry and the Regions

Department of Trade and Industry

Annex I

Communications from the European Commission on the subject of International Roaming Prices

a) **11 September 2001**

Speech by Mr. Mario Monti, European Commissioner for Competition Policy on “Defining the boundaries—competition policy in high tech sectors

“As we found in the Sector Inquiry into roaming last year, prices for roaming remain high, among other reasons because of the lack of incentives to reduce prices in the current system. Indeed, prices have in some cases increased since the conclusion of the Sector Inquiry. I remain concerned about roaming markets.”

b) **10 December 2004**

Commissioner Reding welcomes EU-wide investigation on cost of using a mobile phone abroad.

EU mobile phone operators were sent a questionnaire as part of an European Regulators Group (ERG) investigation into wholesale prices for “international roaming”.

c) **11 July 2005**

Press release from Commission warning consumers on cost of using mobile phones abroad and targeting lack of price transparency.

d) **8 February 2006**

Speech by Commissioner Reding to European Regulators Group—”Towards a true internal market for electronic communications”

In which she announced that a proposal for a new Regulation on International Mobile Regulation would appear in April 2006.

Annex II

The European Commission launched a first phase of public consultation on international roaming with a call for comments on the Commission’s website from 20 February to 22 March. Responses were received from:

- (a) trade associations and representative bodies—5
- (b) national/local/regional government—8
- (c) private sector organisations—17

(NB. A detailed list of respondents is provided in Annex III)

9. The European Commission launched the second phase of public consultation on international roaming with a call for comments from 3 April to 12 May. Responses were received from:

- (a) trade associations and representative bodies—9
- (b) national/local/regional government—17
- (c) private sector organisations—23

(NB. A detailed list of respondents is provided in Annex IV)

Annex III**List of respondents to First Consultation Paper**

Responses were received from:

- (a) **trade associations and representative bodies** (BEUC—the European Consumers Organisation, European Regulators Group (ERG), European Telecommunications Network Operators' Association (ETNO), GSM Association, International Telecommunication Users Group (INTUG))
- (b) **national/local/regional government** (Comision del Mercado de las Telecomunicaciones, Department of Communications, Marine and Natural Resources of Ireland, Department of Enterprise, Trade & Investment of Northern Ireland, Department of Trade and Industry of United Kingdom, Ministry of Science, Technology and Innovation of Denmark, Ministry of Transport and Communications of Norway, Ministry of Transport and Communications of Finland, Mr. Melchior Wathelet, Chambre des Représentants, Belgium)
- (c) **private sector organisations** (KPN Mobile The Netherlands B.V., Meteor Mobile Communications Ltd, Mobilkom Austria Group, Mobitel, One, Optimus, Orange Group—United Kingdom, T Mobile, TDC A/S, Telecom e.V., Telefonica, Telenor, TIM Hellas, Transatel, Travelling Connect B.V., Verband Alternativer Telekom-Netzbetreiber, Vodafone.

Annex IV**List of respondents to Second Consultation**

Responses were received from:

- (a) **trade associations and representative bodies** (Benelux Transport Concertation, BEUC—the European Consumers Organisation, European Regulators Group (ERG), European Telecommunications Network Operators' Association (ETNO), Federation of Austrian Industry, FiCom—Finnish Federation for Communications and Teleinformatics, GSM Association, International Telecommunication Users Group (INTUG), TS—Trading Standards Institute)
- (b) **national/local/regional government** (Autorités françaises, Bundesministeriums für Wirtschaft und Technologie, Comision del Mercado de las Telecomunicaciones, Conseil Général Région Réunion, Czech Ministry of Informatics, Czech Telecommunication Office, Denmark National IT and Telecom Agency, Department of Trade and Industry of United Kingdom, Ministerio de Industria, Turismo y Comercio—España, Ministry of Communications—Israel, Ministry of Economic Affairs—the Netherlands, Ministry of Economy—Slovenia, Ministry of Industry—Sweden, Ministry of Informatics and Communications—Hungary, Ministry of Transport and Communications of Norway, Ministry of Transport and Communications of Finland, P&T Luxembourg.
- (c) **private sector organisations** (Bitkom, Blueslice Networks, Breko, Colt Telecom Group, Cosmote Group, Expert Management Consulting—Hungary, KPN Mobile The Netherlands B.V., Meteor Mobile

Communications Ltd, Mobilkom Austria Group, OnAir, Optimus, Orange Group—United Kingdom, SFR—France, T Mobile International, TDC—Denmark, Telefonica, Telenor, Teliasonera, TIM Hellas, Transatel, Verband Alternativer Telekom-Netzbetreiber, Vodafone Group Services Ltd, Wind Telecomunicazioni.

Letter from Lord Grenfell, Chairman of the Select Committee on the European Union to the Rt Hon Margaret Hodge MBE MP, Minister of State for Industry and the Regions, Department of Trade and Industry

11724/06 COM(2006) 382 FINAL + ADD1 SEC(2006) 925 + ADD2 SEC(2006) 926—Proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community and amending Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services and Commission Staff Working Paper—Impact Assessment of policy options in relation to a Commission proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community plus a Commission Working Document—Executive Summary—Impact Assessment thereto

Sub-Committee B considered this document, and your Explanatory Memorandum, at its Meeting on 16 October 2006.

We share your concern that any action by the Commission in price capping does not have any unintended “spill-over” consequences for consumers using other mobile services. We recognise that this is an issue of great concern to the public, and will consider conducting an inquiry into the proposals in early 2007. In the mean time, we would be grateful if you kept us informed of any progress in negotiations, particularly regarding the Government’s favoured alternative of a “sunrise clause”.

We will maintain scrutiny on this document at this stage.

17 October 2006

Letter from Margaret Hodge MP to Lord Grenfell

11724/06 COM (2006) 382 final + ADD1 SEC (2006) 925 + ADD 2 SEC(2006) 926—Proposal for a Regulation on International Roaming

Thank you very much for your letter of 17th October on the EM 11724/06.

I am very grateful for your timely consideration of the Explanatory Memorandum on the Commission’s proposed Roaming Regulation and for your recognition of the importance of this dossier. I will certainly be happy to keep you informed of progress on the negotiations and on how our ideas (including the “sunrise” provision) are being received in Brussels.

At present the dossier is being considered in the Telecoms working group (under the Finnish Presidency) and has started its process through the European Parliament with initial “exchanges of views” in the ITRE and IMCO Committees planned for later in the month. At the Telecoms Council in December, at which I will represent the Government, we expect a further general discussion on the Commission text, with perhaps some questions posed by the Presidency. The EP timetable, with a first reading in plenary not expected until next May, has ruled out any form of political agreement this December. It also remains uncertain

whether sufficient progress on agreeing a text could be made for there to be an agreement at the June Council under the German Presidency.

On the substance, the discussion in Council has tended to concentrate on three main aspects of the proposal; wholesale regulation (namely the type and level of “cap” on prices paid between operators); retail regulation (whether there should be a retail cap and how it should be calculated) and transparency (information available on pricing to consumers). The UK, while supporting the need for a robust wholesale price cap and greater price transparency, has duly tabled its retail “sunrise proposal” (appended to this letter) in the working group where it received welcome support from a number of delegations. Basically we believe regulated wholesale prices should deliver reduced retail prices without the need for formal controls.

We are, of course, furthering the UK position by liaising with other member States and have already started lobbying MEPs. I will forward a briefing note to you when this is finalised. We have also recently launched a consultation of the proposed Regulation, which I also attach for your information.

I hope the above allows you and your Committee an oversight of the progress on this important dossier. I will, subject to your wishes, report further after the December Council when the intentions of the German Presidency on handling the Proposal may become clearer.

13 November 2006

Letter from Lord Grenfell to Margaret Hodge MP

11724/06 COM(2006) 382 final +ADD1 SEC(2006) 925 +ADD2 SEC(2006) 926: Proposal for a Regulation on International Roaming

Thank you for your letter of 13 November 2006. Sub-Committee B considered your letter at its meeting on 11 December.

We are grateful to you for keeping us informed on the progress of negotiations in the Council and discussions in the European parliament. We look forward to receiving further updates from you on the progress of the negotiations in the near future.

Have you any estimate of the number of EU consumers who avoid roaming charges by purchasing SIM cards locally in another Member State when they travel?

Sub-Committee B is considering holding an inquiry into the proposals in early 2007 and will maintain scrutiny on the document at this stage.

12 December 2006

Letter from Margaret Hodge MP to Lord Grenfell

11724/06 COM(2006) 382 final + ADD1 SEC(2006) 925 + ADD2 SEC(2006) 926—Proposal for a Regulation on International Roaming

Thank you very much for your letter of 12th December on this subject in response to mine of the 13th November.

In my earlier letter I agreed to update the Committee on developments on the dossier and, in particular, on the discussions that took place at the EU Telecoms Council on 11th December. I hope this brief note will suffice.

Essentially the Council was an opportunity for the Presidency to report on the deliberations that had taken place under their watch and to seek views of member States on the detail of the Commission proposal. It was also an opportunity to consider how a compromise could be found that would enable the Council and Parliament to agree the dossier by the end of the forthcoming German Presidency.

The debate was both constructive and informative. It gave me an opportunity to outline the UK view and to back France in setting out a number of high-level principles on which an agreement should be based. I attach the paper that I and my French counterpart (Francois Loos) sent to member States and the Commission just before the Council. Essentially our position is to agree with the Commission for a substantial and urgent reduction in roaming prices but to manage the process in such a way that neither undermines competition nor stifles innovation.

I am glad to report that the joint approach gained considerable support from other member States, and may well be taken up (at least to an extent) by Germany in a possible Presidency text for next year.

I am confident that there is sufficient agreement in the Council for an acceptable solution to be found, though this will to some extent be determined by the views of the Parliament which will probably not become clear until around Easter next year. I will, of course, keep you up to date with developments.

Finally, your letter raised an interesting question concerning SIM cards being purchased locally to avoid roaming charges; a practice that we know is relatively commonplace. We will endeavour to provide you with details on the extent of this practice as soon as possible.

19 December 2006

ANNEX

Principles on Roaming

France and United Kingdom believe that the following principles should form the basis of an efficient, balanced, consumer protective regulation on roaming:

- (1) Comprehensive information to the consumer on the retail tariffs. This is in line with the proposal of the Commission.
- (2) A single price cap of the wholesale average tariff between any two operators based on a multiple of the average European termination rate enforced by National Regulatory Authorities. The Commission proposed different price caps for the wholesale tariffs depending on the type of call (local call when roaming or international call). Our approach ensures a price reduction in the wholesale market, a protection for small operators and is easy for NRAs to enforce.
- (3) A single control on average retail charges, covering all intra-Europe roaming calls made and received, defined in order to cover the retail costs of the operators. This will be applied only to operators which have not voluntarily reduced their average prices below an agreed cap within 6 months and enforced by National Regulatory Authorities. The Commission proposed here different price caps based on the type of call and linked the different price caps for wholesale tariffs; we believe a single cap is simpler. It would be based on the average retail prices

allowing competition in the offers between operators and better offers for consumers.

- (4) A “Consumer protection tariff” for those customers who want, as a free option, to subscribe. This option will allow customers who do not want to choose from among the wide scope of commercial offers, that no minute will be charged to them, when roaming, above a certain price level.
- (5) A right for NRAs to exercise discretion and set the national retail price cap below the European price cap. In exercising such discretion, the NRA shall take into account the specific situation of the national market.

Further discussions in the Council and the Parliament will be necessary to define the adequate price cap levels and protection tariff.

Letter from Lord Grenfell to Margaret Hodge MP

11724/06 COM(2006) 382 final +ADD1 SEC(2006) 925 +ADD2 SEC(2006) 926: Proposal for a Regulation on International Roaming

Thank you for your letter of 19 December 2006, replying to my letter of 12 December. Sub-Committee B considered your letter at its meeting on 15 January 2007.

We were grateful to you for your update on this issue, which will now be the subject of a short inquiry by Sub-Committee B. We look forward to hearing your views in more detail in person at a convenient point in the coming months.

We note the joint UK and French compromise proposal, and agree that it is very important that any measures to reduce roaming charges do not have the effect of stifling competition or innovation in the market. We await with interest the possible German Presidency compromise text which you expect. We would be grateful to you if you could send us a copy of such a text as and when it became available, as well as for an update on developments in the European Parliament. We also look forward to receiving details of the Government’s estimate of the extent of the practice of the local purchasing of SIM cards to avoid the charges.

We will maintain scrutiny on the draft Regulation at this stage.

16 January 2007

Letter from Lord Grenfell to Margaret Hodge MP

Inquiry into the Commission’s proposed caps on mobile roaming charges: Emerging Conclusions

We understand that an informal Telecoms Council meeting will take place on 15 March, at which there will be an “exchange of views” on the draft Regulation (11724/06) to introduce price caps on mobile roaming charges in the EU.

As you are aware, the EU Internal Market Committee (Sub-Committee B) has just completed taking evidence for its inquiry into the Commission’s proposal. The Committee were grateful to you for the evidence which you provided on 26 February, and will produce a full report shortly. In the meantime, we felt that we should write to you, ahead of the informal Council meeting, with our emerging conclusions, based on the evidence we have received.

The first issue we have found it necessary to address is whether there is a problem with the current state of mobile roaming charges. Are these charges, in the words

of Commissioner Reding, “unjustifiably high”; and if so, is the market alone capable of remedying this, or is a Community-level intervention required?

In attempting to answer this question, we were struck by the lack of coherent data on the real cost of roaming. The evidence provided to us does show that Mobile Termination Rates quoted to us are considerably higher than roaming costs. Whilst this evidence is circumstantially compelling, it is by no means comprehensive proof of unjustifiably high charges as it does not capture the full costs of roaming. However further weight to the argument that roaming charges were higher than they needed to be is provided by an analysis of the actions of the telecoms industry since the threat of this Regulation. Some price falls have been observed but these changes are not uniform for all customers on all networks. The industry is a changing scene and there is a code of practice agreement in place, although it is unclear how effective this has been so far. It certainly appears from some of the larger price reductions that the operators’ margins of profit were much larger than originally understood.

Based on the evidence we have received, we conclude that there is a need for some degree of legislation in the market in order to achieve a reduction in the cost of roaming that would benefit consumers but not hurt the industry. The nature, spectrum and duration of the legislation are discussed below.

We recognise that roaming is fundamentally of a cross-border nature. By definition, it involves operators and consumers in more than one Member State. In this context National Regulators face inherent difficulties dealing individually with the cost of roaming and adopting and implementing measures, under their own remit, to reduce it. Furthermore, there seems to be agreement that the cost of roaming constitutes a barrier to the functioning of the Single Market both in terms of the operation of the mobile telephony market but also on the extra costs incurred on SMEs using mobile telephony services. A co-ordinated approach at Community level is thus required, albeit one that takes into consideration different geographical, demographic and technical characteristics in each Member State.

We are aware that the adequacy of Article 95 as a legal base for the proposed Regulation has been contested by Orange and Vodaphone². There are serious arguments which have to be addressed and we hope that these are matters to which the Government are giving the closest attention.

As matters currently stand, we have identified four key areas on which we would like to comment: wholesale regulation; retail regulation; the proposal for a sunset clause; and data regulation.

We strongly support the need for wholesale regulation. We believe that an approach based on average Mobile Termination Rates is the most straightforward option; and there appears to be a general consensus that the German Presidency’s suggested wholesale cap of 30 eurocents per minute is a sensible level, and one which will be workable for the industry.

We are less clear on the case for retail regulation. We have yet to receive convincing evidence that the combination of wholesale regulation with effective retail competition will not deliver the desired benefits to the consumer. We believe that, rather than introduce full retail regulation at present, it would be more appropriate to introduce a consumer protection tariff, set at an absolute level to protect the most vulnerable consumers, those who travel infrequently. We support

² We were sent two opinions on this issue, one from Sir Francis Jacobs QC and David Murray, dated 16 October 2006, the second from Claus-Dieter Ehlerman, dated 27 March 2006.

the German Presidency proposal that such a tariff be based on an opt-in model for existing customers, and an opt-out model for new customers.

We believe that it would only be wise to introduce wider retail regulation at a later period, if there had not been a sufficient reduction in general roaming charges as a result of the combination of wholesale regulation and the introduction of a consumer protection tariff. This would, in effect, be a return to the 'sunrise clause' advocated by the United Kingdom and France in the December Council.

We are of the view that the Regulation should be time limited in some way, and that it would be appropriate for the Regulation to expire through a 'sunset clause' in three years time unless a convincing case is made for it remaining in place. This case would have to be supported by the collection and analysis of comprehensive data on roaming costs and prices across the EU. This work would have to be carried out by National Regulatory Authorities, along the lines of consistent criteria set by the Commission.

We are aware that political support for both the sunrise and sunset clause appears to have waned in the most recent negotiations on the draft Regulation, but would endorse firmly their continued consideration.

Finally, the majority of our witnesses focussed on the issue of voice roaming. Anecdotal evidence appears to suggest that, if there are currently market abuses above costs, they exist to a greater degree in the data market. There is at present insufficient hard evidence on the costs of data roaming, and we believe that uncovering the costs should be a priority in the cost study mentioned above. Data is likely to become an ever more important sector of the market, and once the research has been carried out, the Commission must consider the extension of regulation to this class of products.

We would welcome a detailed report from you on the discussions in the informal Council on 15 March, and we will be writing in similar terms to Commissioner Reding.

8 March 2007

APPENDIX 6: RECENT REPORTS

Recent Reports from the Select Committee

Session 2006–07

Evidence from the Ambassador of the Federal Republic of Germany on the German Presidency (10th Report, HL Paper 56)

The Commission's 2007 Legislative and Work Programme (7th Report, HL Paper 42)

Government Responses: Session 2004–05 (6th Report, HL Paper 38)

Evidence from the Minister for Europe on the Outcome of the December European Council (4th Report, HL Paper 31)

Reports prepared by Sub-Committee B (Internal Market)

Session 2006–07

Television Without Frontiers? (3rd Report, HL Paper 27)

Session 2005–2006

Inquiry into the European Commission's Green Paper, "A European Strategy for Sustainable, Competitive and Secure Energy" (41st Report, HL Paper 224)

The Services Directive Revisited (38th Report, HL Paper 215)

Seventh Framework Programme for Research (33rd Report, HL Paper 182)

Including the Aviation Sector in the European Union Emissions Trading Scheme (21st Report, HL Paper 107)

Completing the Internal Market in Services (6th Report, HL Paper 23)

Session 2004–2005

Liberalising Rail Freight Movement in the EU (4th Report, HL Paper 52)

Session 2003–2004

Packaging and Packaging Waste: An Update Report (33rd Report, HL Paper 198)

Services of General Interest (29th Report, HL Paper 178)

Gas: Liberalised Markets and Security of Supply (17th Report, HL Paper 105)

Directors' and Auditors' Liability (15th Report, HL Paper 89)