

HOUSE OF LORDS

European Union Committee

17th Report of Session 2006–07

Mobile Phone Charges in the EU: Curbing the Excesses

Volume II: Evidence

Ordered to be printed 27 March 2007 and published 23 April 2007

Published by the Authority of the House of Lords

London : The Stationery Office Limited
£price

HL Paper 79-II

CONTENTS

Oral Evidence

O2 and 3

Oral Evidence, 5 February 2007	1
--------------------------------	---

Orange and Vodafone

Written Evidence, Orange	9
Written Evidence, Vodafone	14
Oral evidence, 19 February 2007	17
Supplementary Evidence, Vodafone	24

Ofcom

Written Evidence	25
Oral evidence, 19 February 2007	28
Supplementary Evidence	36

Department of Trade and Industry

Oral Evidence, 26 February 2007	37
Supplementary Evidence	45

European Commission

Written Evidence	47
Oral Evidence, 27 February 2007	48

Bureau Européen des Unions de Consommateurs (BEUC)

Written Evidence	56
Oral Evidence, 27 February 2007	59

German Presidency of the Council

Oral Evidence, 27 February 2007	66
---------------------------------	----

European Parliament

Oral Evidence, 27 February 2007	73
---------------------------------	----

Meteor Mobile Communications Ltd and T-Mobile

Written Evidence, Meteor Mobile Communications Ltd	79
Written Evidence, T-Mobile	83
Oral Evidence, 5 March 2007	86

Written Evidence

BT	95
Communications Management Association	97
EVUA Limited	101
Finnish Communications Regulatory Authority	103
GSM Association	106
Joseph Muscat MEP	110
OneCompare.com	112

Mr Keith Porteous Wood	113
Mr Ewan Sutherland	114
TeliaSonera	117
Mr Stephen Townsley	120

NOTE:

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)

Written and oral evidence

TAKEN BEFORE THE SELECT COMMITTEE ON THE EUROPEAN UNION
(SUB-COMMITTEE B)
MONDAY 5 FEBRUARY 2007

Present	Dykes, L Eccles of Moulton, B Freeman, L (Chairman) Fyfe of Fairfield, L	Geddes, L Mitchell, L St John of Bletso, L
---------	---	--

Examination of Witnesses

Witnesses: MR STEVE JORDAN, Head of European Regulatory Policy, and MR NICK BLADES, Head of Regulation, O2 UK; MR CHRISTIAN SALBAING, Managing Director, Hutchison Europe Telecommunications Ltd, and MR WILLIAM PEDDER, Director of Corporate Affairs, Hutchison Whampoa (Europe) Ltd, examined.

Q1 Chairman: Gentlemen, a very warm welcome. Thank you very much indeed for coming to Sub-Committee B. This is the first evidence session. We intend to report before Easter in order to make a contribution to the proceedings in the European Parliament and further deliberations by the Commission, and indeed for the European Council. We are taking evidence from the Minister, from consumer groups, and we are going to Brussels to talk to Commissioner Reding and others. Can I ask you to be brief and succinct in your responses, as I know you will? We are all lay men and lay ladies, and therefore if you could try and keep the complex descriptions—we have already discovered that termination and roaming mean different things—if you could speak in simple, plain English! Perhaps you would like to introduce yourselves for the shorthand writer's record.

Mr Salbaing: Christian Salbaing, Managing Director of Hutchison 3G (Europe).

Mr Pedder: William Pedder, Director of Corporate Affairs of Hutchison Whampoa (Europe) Ltd.

Mr Jordan: Steve Jordan, Head of European Regulatory Policy, O2 (Europe).

Mr Blades: Nicholas Blades, Head of Regulatory Affairs for O2 (UK).

Chairman: Is there anything that you would like to say at the outset, or should we press on with questions? As you know, the record is produced in draft for you to consider in case there are any inadequacies or you wish to correct anything.

Q2 Lord Dykes: The Commission, launching its investigation, has flatly stated, gentlemen, that competition has failed to reduce costs of roaming. Do you agree?

Mr Salbaing: I will start, as a new entrant and one of the operators that has been driving competition at various levels. The starting point for us has been the cost of roaming. You can present it in various ways,

but I think it is a fact that one of the real problems with roaming is that customers coming back from holidays are often horrified at some of the charges that have been made. When this came about, we stated that we were in agreement with the Commission and those who stated that roaming per se was expensive. What has happened since is that, looking at the causes of that, we came out very strongly with a diagnostic that the reason for that is that the wholesale cost of roaming, that is the cost that operators charge each other for roaming on to each other's network, is also very high. With the very high cost of roaming and with the mark-up that operators charge beyond that, you end up with a result that is a multiple of what domestic calls might be. I would agree that we have a problem here in the market.

Mr Jordan: We do not quite agree with that position. We think that insufficient analysis has been done to really state this case properly. Competition takes time to operate, and, as people can see, certainly over the last few years and increasingly now there are a number of products out there competing and offering certainly attractive prices to customers. In fact, retail roaming prices came down between the summer of 2005 and the summer of 2006 by over 20 per cent, in terms of price per minute; so that is a real reduction in retail prices. We think the market is operating. No market is perfect, but the market is operating.

Q3 Lord Mitchell: I must say that I am your nightmare personified because up until last summer I was employed by my company, which just picked up all the charges, and now I am picking them up myself, so I have suddenly, with horror, seen the bills come in. Can I ask you one thing about roaming that I just do not understand? I am not with any of your companies, so I am probably off the hook on that one! I have a house in Italy, and when I go there and I want to call the UK or receive calls, it is a matter of

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

chance which particular network I connect to when I am in Italy. In fact, I can stand still in the same place and I can see it changing from one to the other; but presumably the charges will be different whether I am on Vodafone, IT, or Telecom Italia or whatever, and I do not understand it. It does not make sense to me, so could somebody put me out of my misery?

Mr Salbaing: I think there is a technical issue, and then there is a pricing issue. The technical issue is that the mobile telephone is a radio receiver and must latch on to an operator. I do not know where you live in Italy, but it is likely that—

Q4 Lord Mitchell: It does not when I am in the UK.

Mr Salbaing: That is because you will have in the UK a local subscription locked on to your provider, whereas when you are in another country your telephone will look for the coverage, and unless there is a thing called traffic direction, which some operators apply, you have the option—

Q5 Lord Mitchell: How many people know how to switch on to traffic direction?

Mr Salbaing: Not very many, but it is not very difficult, I can assure you.

Q6 Lord Mitchell: Not very many and not very difficult—do you agree, not good enough?

Mr Salbaing: I would agree. The good news is that in our case we are present in Italy and we introduced a plan two weeks ago that says if you are in the UK on 3—and I would agree on this with Mr Jordan, that when the operators are left to introduce plans it is good value; but if you are a 3 UK customer and you are in Italy on 3 Italy, you will pay a UK local call rate if you call back home. That is what we call the 3 Like Home Tariff. So there is progress and competition between operators but that does not apply if, as a 3 UK customer, you happen to be roaming on Vodafone or on Telecom Italia, because then we have to charge our customer the wholesale price that is charged to us by Vodafone.

Q7 Lord Mitchell: But the members of the public with 3 who go to Italy do not know this, and they do not—

Mr Salbaing: Actually, in our case it is automatic. If you are in 3 coverage you will automatically have that tariff applied.

Q8 Lord Mitchell: How many other operators do the same?

Mr Salbaing: None that I know of.

Mr Jordan: We take a different commercial approach to this. We understand that problem and believe that customers want to pay the same price and know what they are going to pay, whatever network they are on,

so it will not make a difference; so we have a range of tariffs where it does not matter what network you are on; you will still pay the same. That is a different approach. Some people prefer the Hutchison approach, and some would want ours; it is customer choice; but there is not one way of responding to that issue. We recognise the issue that customers do not understand paying different prices on different networks.

Lord Mitchell: All I can say is that I feel I am pretty savvy on these things and I just have the distinct feeling that people are just ripped off left, right and centre.

Q9 Lord Dykes: On that last point, Mr Jordan, do you advertise that properly and clearly in simple form for the customers to realise that they can be charged the same tariffs everywhere?

Mr Jordan: It is one of our tariffs, yes, so that is our approach to providing our advice on roaming services.

Q10 Chairman: Telefónica, with its automatic tariff connection to 3: in how many different countries does that apply?

Mr Pedder: Telefónica is my colleague, Jordan.

Mr Salbaing: We are 3 Hutchison. It applies in all of our territories. If you are a 3 customer anywhere—and that applies to the UK, Ireland, Italy, Sweden, Denmark, Austria in Europe, but also it applies in Australia and Hong Kong—it automatically applies, so it is not an opt-in. If you are a customer, this is a tariff you will get automatically. Basically you pay your home tariff wherever you are.

Q11 Lord Geddes: There is a bit of a merger between this question and the one I was going to come on to. Firstly, to 3: you have recently explained to us that local calls in Italy, to go back to Lord Mitchell's example, now cost the same price as local or in the UK. How big a break is that in the way the industry worked in the past? Is it in itself economically viable and, if it is, why did it not happen earlier?

Mr Salbaing: The reason we were able to introduce that is because we decided amongst the 3 companies not to charge each other. This goes back to the point I made earlier: the root of the problem is the tariffs that operators charge each other. If you keep those high, automatically retail prices will be high. Just to give you an example, the average cost last year of wholesale prices across Europe was €0.9. If you add the VAT to that and the profit margin on retail, you will see that mechanically you will have an average retail price of over €1.2 or more for a roaming call. Our view is that if you reduce the wholesale charge, ie, the charge that we charge each other, very significantly, there will be a mechanical effect on

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

retail. That is why we do not agree with Mrs Reding's approach, which sought to regulate retail prices first. We believe she has it backwards. If the proposal were to regulate wholesale, there would be the ability for all operators to reduce their retail prices. We have done so where we are at both ends of the equation, so that we decide amongst our companies that we would not charge each other anything, and therefore we were able to pass on to our clients the savings. But if at one end I have, let us say, 3UK and Telefónica Spain, because Telefónica Spain sets the price at wholesale which I will charge my customer, I am not able to pass that on.

Q12 Baroness Eccles of Moulton: I am totally confused. Does that mean that O2 Telefónica and 3 are both wholesaler and retailer?

Mr Salbaing: Yes.

Q13 Baroness Eccles of Moulton: You are saying you set the wholesale price. I thought the wholesale price was the price that the retailer had to pay the wholesaler; so you are paying yourself the wholesale price

Mr Salbaing: No. When you are roaming—let us say I am 3 UK and you happen to be in Spain. In Spain we do not operate there, so you have Telefónica, you have Vodafone and France Telecom. If one of my customers in the UK goes to Spain, he will obligatorily have to use one of those three networks. I, being 3 UK, will be charged for my customer roaming on their network a wholesale charge, whatever I have to pay to the chosen network, on which I will seek to add a small profit and then VAT. That is the retail price. So the wholesale charge can be either something that the other operator on which my customer roams charges, or, if I happen to be present in both countries what my sister company charges me, which in our case is zero.

Q14 Baroness Eccles of Moulton: Is there a wholesale cost that the operators—

Mr Salbaing: Charge each other.

Q15 Baroness Eccles of Moulton: But is there a wholesale price that you have to pay in order to be on to the network in the first place?

Mr Salbaing: It is the same one. The wholesale price that you are charged—in this case Telefónica Spain will charge me at wholesale because my customer is on his network. That is the only wholesale price. In order to turn that to a retail charge to my customer, he will get a bill and I will say, “You were five minutes on the Telefónica network in Spain; your cost is X”—and their wholesale price plus my margin equals retail. There is only a single wholesale charge, which is what I get charged by Telefónica in Spain. If it is

Italy, because it is 3 Italy we have eliminated that charge.

Q16 Lord St John of Bletso: On the pricing, how transparent to the consumers are the wholesale prices?

Mr Salbaing: In the case of 3 Like home it is extremely transparent, because it is your UK charge. For other operators there is a number of means, including a website that is available through the association of operators.

Q17 Lord St John of Bletso: Wholesale.

Mr Salbaing: There is absolutely no transparency on wholesale. This is something which is an intra-operator tariff. If it becomes regulated, then it becomes perfectly transparent.

Q18 Lord Fyfe of Fairfield: What has the industry done since the Commission announced its proposals in the summer of last year, 2006?

Mr Jordan: It continues what it was doing, that is competing at the retail level. We have introduced, and other operators who have spoken about their tariffs—and continue to introduce—new tariffs which reduce prices. As I said earlier, between 2005 and 2006 prices went down 20 per cent and they are continuing to go down. We believe that competition is acting in the market and you are seeing new offers for people who want choice of different tariff packages—high users, low users. We would say things have happened in the market—our range of Europe tariffs.

Q19 Lord Fyfe of Fairfield: You indicated your prices had reduced around 20 per cent. Would you care to speculate how much further prices might reduce say over the next couple of years?

Mr Jordan: I would not like to speculate too much. I think they will probably go down equivalent to what they have. They are continuing to go down at the rate they were, so maybe another 20 per cent. Some operators have committed to those figures.

Q20 Lord Fyfe of Fairfield: Committed to the price reduction?

Mr Jordan: They have said that they are going to reduce their prices. Some operators have said they will reduce their prices.

Q21 Lord Fyfe of Fairfield: They are going to continue to reduce their prices. Would you care to comment on the likely impact upon their profit margins?

Mr Jordan: They will be squeezed. That is what is going to happen. Wholesale prices and retail prices are both going down. What is happening in the

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

market is that there is competition at the wholesale level, and there is negotiation. As we said, those are commercial decisions between operators and they are going down, and they have gone down in recent years at the wholesale level; and that is shown in the retail level of prices.

Q22 Lord Mitchell: Looking at technological developments in the future, do you anticipate that voice-over-Internet protocol, with the ability to sit there with your mobile phone and Skype—that that wide area network, as it were, is going to have an effect on your industry and its prices?

Mr Salbaing: Being the operator that has introduced Skype on our networks already, I can comment on that. In fact, the rosy picture that you have painted is not quite so rosy because for a market to be competitive it has to operate in the appropriate way. The reason I mention this is that Skype is basically a data service, the same way as text messages and searches, which are basically using our network to exchange data. At the moment I cannot say that the market for data roaming is working in any efficient way. The average price per megabyte of a wholesale deal between operators is €7.50 per megabyte. If you take your average video clip, you would pay let us say 90 pence in the UK and it would cost you £25 if you were downloading that same clip abroad. Skype we have introduced on our networks because, again, we do not charge each other between the three networks to roaming. That is a free charge. As soon as we enter the realm of data roaming, you cannot use Skype. You can do it technically, if both networks were technically able to do so, but the pricing structure of the wholesale market for data is such that it is simply not economical. To give a simple example, on the monthly flat fee that we charge our customers for all Internet, including Skype, which is £5 per month, there is a one gigabyte limit. At €7.50 per megabyte, it would cost you €7,500 for that one gigabyte, which we charge £5 for in the UK. The market is progressing and tariffs are coming down, but the reason why we are vocal in supporting wholesale regulation is to make sure these market impediments are removed.

Q23 Lord Geddes: I want to try and get on to your views on the Commission's proposals, particularly to what extent they are proportionate. To help myself with that question, I wonder if you could answer the one before? As in so many other industries, the competition in this one that you are involved in in the UK is fairly fierce; there are a lot of people in on the action. How does that compare with the rest of the EU?

Mr Jordan: I would say competition is strong in most countries. There are three or four operators in most countries in Europe; that means there is potentially strong competition. The UK market, because of history, is extremely competitive because operators have near equal market shares and you have a new entrant in terms of Hutchison. So you have almost a unique situation where the market share is between four larger operators. In other countries you have one or two bigger operators and smaller new entrants—but the dynamic is strong in all of those countries. Prices have been falling across Europe 5 per cent a year for the last four or five years in terms of retail prices—on average, across all markets.

Q24 Lord Geddes: Can I come to my more general question to both of you, O2 and 3: do you consider that the Commission's proposals are proportionate?

Mr Jordan: We do not consider they are proportionate. The more we have examined them, they appear to be more intrusive in getting close to market management. If the intent was to protect customers from high retail shop bills, then that could have been done quite simply by a protected retail tariff that customers opted for, and they guaranteed that they would not pay more than X amount, with some wholesale regulation as well. There are a lot of proposals floating around at the moment. The original Commission's proposals basically were too granular in the way they divided up the market into different types of calls, so calls in a country and calls to home, which were not entirely meaningful and would be complicated for customers, and they did that both at the wholesale and the retail level. We think they set those levels too low to enable competition to operate. Therefore, what you would get is a much more intrusive management of the market than would be necessary if it was intended to address this issue.

Q25 Lord Geddes: Before I ask you the same question, Mr Salbaing, I can well understand why you do not like any proposal that manages the market—or the Commission managing the market; but would that not however be beneficial to the customer?

Mr Jordan: We think that competition is the best way to deliver results to customers over time. Regulation, even with the best intentions, tends to be distortive of the markets, and this is quite distortive of the markets, what the Commission has intended. We think competition is best. This does not encourage a market; it potentially inhibits it, so we do not think it is proportionate in that sense.

Mr Salbaing: It is interesting to see how the proposal has evolved since it was first introduced in February of last year. The initial proposal was to regulate the

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

retail only, and we thought that was using a sledgehammer to fix a small problem, and we spent a lot of time with the Commission to explain that the market failure so to speak was at the wholesale level. It is interesting to see that the Commission has now agreed that, and they are now proposing regulating the wholesale first. It is also interesting that the internal market committee of the European Parliament commissioned a study by Copenhagen Economics—a well-known consultancy firm—that confirmed the wholesale problem was the issue. They confirmed that the level where it should be reasonably priced is the one we have pushed for 25 cents per minute. We have put a lot of time trying to convince the Commission. Long story short—we believe that if we fix this wholesale problem, ie, the cost of roaming to operators, the competition will operate to reduce retail prices, and should. We are a Hong Kong based company; and instinctively, regulated markets are not, something we are fond of. As a new entrant, in every market—Steve talked about prices going down in various markets—those are the markets where, unsurprisingly, there is a new entrant, and we will fulfil our natural role as a challenger to drive prices down.

Q26 Lord Dykes: That is in effect of course saying what was the perception of the Commission and elsewhere, and also laymen outside, who were trying to investigate quite a complex industry when you are a newcomer to it: the wholesale prices and the cartel operation system affect the size of those supernormal prices and profits, which meant it was quite easy and rapid for the companies to respond by reducing the price the minute the Commission threatened to investigate. It was noticeable that about six countries immediately said, “We are abolishing roaming charges or reducing our prices substantially”; so it must have been on the wholesale prices on which they were impinging. Does it still not mean literally that despite those quite significant price reductions—you mentioned 20 per cent last year—there are still significant supernormal profits being generated by these roaming charges?

Mr Salbaing: I think more can be done to reduce prices to consumer-friendly levels.

Q27 Lord Dykes: You agree with what I have said?

Mr Salbaing: Yes. I would not use all the words that you used, but, yes.

Mr Jordan: I would not use “supernormal profits” either! One of the issues—and it comes back to proportionality—is that costs do vary between operators across Europe significantly. Therefore, it is easy generally to say you do not like retail prices, and they have a relationship to wholesale prices that is true; but the wholesale prices also have relationships

to costs of operators, which differ. Therefore, the question is how you deal with that in a sensible way. We think competition, encouragement of competition, is the way to do that in the best possible way.

Q28 Chairman: Can you comment on the proposal, as I understand it, that it is a process of averaging over 27 states and then taking a multiple for both wholesale both within a country and from one country to another, and then a 30 per cent mark-up, as I recall, on the wholesale price for the retail price? Can you comment on the logic of that?

Mr Jordan: We think that mobile termination rates are not an appropriate model for roaming rates. They are a different cost. They relate to terminating calls on customers’ domestic networks. They exclude a lot of costs like retail costs, costs of supplying phones and marketing costs, which are significant to mobile operators. They deliberately do that. Roaming is a service which terminates with calls but originates a lot of calls, and therefore it should legitimately have some of those costs which are not included in that. Mobile termination rate also varies significantly across Europe. The whole problem of this regulation is that you are trying to have a single regulation for 27 Member States. You are either going to have a level of customisation for each country or operator in that; or you are going to set things at a level that enables competition to operate below that level in terms of capital. We do not think mobile termination multiples they have got are high enough to do that. Certainly I do not think that the costs are related to mobile termination in the way that it is implied. There are missing costs of retail costs in that model. There is a mark-up. It assumes a mark-up on all costs. It excludes retail costs, which should have been added in and were missed in the original analysis by the Commission.

Mr Salbaing: This regulation has been in the air for over a year, so, not surprisingly, a lot of people have looked at this question of wholesale costs and of roaming. We pegged it at 25 cents, and we stated it had a generous profit margin in there. Ofcom said that it should be under 30 cents. The European Regulatory Group, which is the congregation of all the national regulatory agencies, has set it between 30 and 35 cents. The Commission set it at a bit more, and Copenhagen at 25—lots of experts have come in, and somehow it finds the costs as anywhere between 25 and 35 cents, and this is what the best experts in the area have now said is the cost of roaming. So the debate as to whether everything has been included, in my view, is foreclosed. The real issue is how you turn that into a benefit for customers. We believe that by setting it at the cost everybody agrees appears to be the reasonable level, we will achieve that.

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

Q29 Lord St John of Bletso: In what ways will the Commission's proposals affect innovation? We had so much hype about 3G, and de facto we are operating more in 2G; and the analysis of use of the mobile telephone—essentially we are talking about voice traffic, SMS and e-mails. To what degree are the projections—what scope do you have as operators for e-mail browsing? This raises the issue Lord Mitchell raised about the effective use of Skype.

Mr Salbaing: We are a 3G operator only, so the 2G debate, for me, is a roaming debate. It is a voice debate, not a data debate. I highlighted the difficulty with the very high price of data roaming across Europe. If that is brought down to an economic level, logic would dictate that people will start using data services—at the moment, people who are business users will use it for the reasons that you mentioned. This is a company-paid account; but at the personal level, the retail level, people are hesitating to use those types of services, simply because they are priced out of the market. I think that if a bit of order and sense is brought into the data market, usage will increase and therefore availability of these services and all of the dividends that flow from that.

Q30 Lord St John of Bletso: I would also like to get the other side, as to what degree this will affect innovation of the Commission's proposals.

Mr Jordan: One of the things in terms of general innovation is that the proposals as they are from the Commission would actually prevent us from offering the tariffs that we have introduced now. They would not be permissible under that scheme. They could also mean that it would be difficult perhaps to offer services which are differentiated—customers that do not roam—bearing in mind only 50 per cent of customers in Europe travel and roam; so there is a kind of a mixed benefit question here on those. On the data side, we see those as growing services, but still at the innovative and uncertain stage as to how they are going to develop. The market is not that strong.

Q31 Chairman: Can you help the Committee in terms of why it appears the Commission has not been able to assemble significant data on costs? Their proposed approach is essentially capping prices, wholesale prices and retail prices. Is it because there has not been sufficient time to do the research, or is it, as was implied, that with 27 countries and many, many operators, it is an extraordinarily difficult statistical exercise or economic exercise?

Mr Salbaing: I think there is a lot available now on cost. I think the Commission has come out with a pretty deep analysis of that. The operators in the GSMA, which is the grouping, the association of GSM operators, has come out with the help of A.D. Kearney, I believe, with their own figures. There are

websites administered by the GSMA and the Commission where you can actually see the cost of roaming across Europe that each individual operator—in our case and I am sure O2—publishes. There is a large amount of information out there. I support averaging across Europe for simplicity's sake; and because if you average—the point Steve was saying—if everybody agrees to compete more seriously in the market using average prices, is probably a good idea, as opposed to using peak figures and those sorts of things. That is why, again, we do not insist on retail regulation because we think it is going too far and unnecessary. Let operators compete in the retail market, and let them offer their customers the tariffs, the way O2 offer and we offer; but let us set the cost of providing that service at a low enough level that the market will pick up.

Q32 Baroness Eccles of Moulton: How can you set a cost?

Mr Salbaing: By setting the wholesale charges.

Q33 Baroness Eccles of Moulton: The costs are going to vary.

Mr Salbaing: Sorry, the wholesale charge. I would say that an interesting thing is that this wholesale charge is regulated domestically. It is only when you cross a border that suddenly it is no longer regulated, so it is not inventing something that does not exist in the market already.

Mr Jordan: I do not know if that is correct. Roaming is not the same service as mobile termination, and mobile termination varies. In fact, it varies by 100 per cent in the UK termination rates, so that is quite significant. The cost issue—if you ask what happened with the Commission, we saw them on a number of occasions when they were doing their impact assessment, and basically they told us that they were doing this against a timeframe and therefore could only do what they could do within a short time frame; and therefore, if that meant they could not do a proper analysis of costs, then that was it. That is why they have taken mobile termination costs as a marker cost and picked that up to make an easy reference. It has some relationship. I will not say it has no relationship to cost—it does; but it is not an exact marker for international roaming. Basically, they started that and they did that over six weeks, where, if you are considering they were looking at costs which should have addressed the costs variation across 27 Member States and all of the operators within those, they did not do that. Now, as we get down to the detail, that is being exposed as an issue about cost variation.

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

Q34 Lord Dykes: Was that also because market termination costs was the easiest, simple entity to grasp to start with?

Mr Jordan: Yes, because it exists. It is regulated significantly in a number of countries, but not all countries. The UK is a good example where good cost analysis is done, so you have good evidence on what costs are, and in other countries as well—but some countries do not regulate it and do not do the analysis.

Q35 Lord Dykes: After the HW reference to 27 and averaging costs and being the simplest approach and easiest for the outside customer to grasp, would that automatically have a beneficial effect for the EU10 or maybe the EU8—the eight countries that have joined apart from the two Irelands, which are higher income level territories anyway? Would it help new countries in the sense of them being less developed initial starting markets in the last years? Maybe they are not but that might be our impression—both for corporate and for private customers?

Mr Salbaing: Correct me if I am wrong, but prices tend to be higher in newly-joined countries than existing ones. If you were to average, I guess it would benefit operators in the initial 10 countries.

Q36 Lord Dykes: In the eight?

Mr Salbaing: Yes, it will.

Q37 Lord Dykes: That would be my assumption.

Mr Jordan: I would add to that that we now have a particular insight into Spain, which we did not have before. For example, in Spain, capacity is required to serve customers for two months of the year where, in the holiday areas in Spain, 40 per cent of the traffic can be roaming traffic, and is only there for a peak period of two months. There has to be an investment justification to put that capacity and so that is a different cost structure to a nation that is uniform virtually throughout the year.

Lord Dykes: The Marbella axis!

Q38 Baroness Eccles of Moulton: I just wanted to have one more go at trying to differentiate between costs and charges and to understand the wholesaler and retailer relationship. I have probably got it wrong, but what I think I am beginning to grasp is that somewhere there are real costs—there must be because you have to start from a base—and they are absorbed, paid for, by the operators. The operators then trade between themselves as wholesalers. There are no other wholesalers in the business, unless you call some of the people who might buy your supplies from—so the wholesalers in the business are yourselves. We are talking about roaming only here. You are trading between each other. In the case of 3,

where you have companies in other European countries, there is no wholesale charge.

Mr Salbaing: There is a cost. We have decided to zero rate the cost between each other.

Q39 Baroness Eccles of Moulton: Yes, but that is the cost of producing the service, and you have decided to do it that way. However, in other cases, like with O2, where they are operating within a wholesale relationship, with the other providers in other countries, there is then a defined wholesale charge, which is then built into the cost.

Mr Salbaing: Yes.

Q40 Baroness Eccles of Moulton: But we are then getting rather far removed from real cost, are we not, because this in a way is a transaction cost, which is not related to the real cost of providing the service? This is where the customer gets really confused because in their heads they are thinking, “Why is it that this signal has to keep dashing backwards and forwards between one country and another, and I am having to pay for it twice?” Actually, it is because of the wholesale relationship between the operators.

Mr Salbaing: You are correct, and since not all operators charge at the same wholesale prices to other operators, the customer ends up—unless he has the means to find out the cost at the moment he makes the call, which is not always easy—he is a bit hostage to whatever operator he is on when he is roaming. You are entirely correct.

Q41 Baroness Eccles of Moulton: But different operators could be having to pay different real costs in the first instance, depending on whether they are Romania or Czechoslovakia or Italy or wherever.

Mr Salbaing: For example, 3 UK pays more wholesale in Spain than some of our competitors in Spain who also happen to be our competitors in the UK charge retail to their own customers.

Mr Pedder: My Lord Chairman, we have a short note on this that we can leave with the Committee, on the operation of the market.

Q42 Lord St John of Bletso: What is your view of the British and French proposals made at the December Council?

Mr Jordan: Helpful in part! I think we support attempts to simplify. We would support single caps rather than multiple caps. We support averages in preference to fixed caps. However, that does depend upon the level at which they are set because our whole concern here is that there is sufficient headroom in all of these arrangements that competition can work. Therefore, there were some helpful parts in there. We strongly believe that the consumer protection tariff is the main element that should be pursued, and we do

5 February 2007

Mr Steve Jordan, Mr Nick Blades, Mr Christian Salbaing and
Mr William Pedder

not think that that averages for retail should be in place; it should be wholesale and a protection tariff for customers so they know what they would pay at the retail level. Always the issue is what exactly are the numbers that will be dropped in to the caps that are applied.

Mr Salbaing: Without getting into the details, I believe that that proposal indicates a reluctance to go too far on retail regulation, to keep things as flexible as possible. We would agree with that, simply because we are not in favour of retail regulation per se, and we believe that there should be enough flexibility in the market for operators to compete. The interesting thing in that proposal is the way the UK is proposing a wholesale cap of 25 cents per minute, which, again, we agree with as a benchmark for wholesale costs. We are generally in favour of that proposal.

Q43 Lord St John of Bletso: So what would your views be on the proposal for a sunrise clause?

Mr Salbaing: I am not quite sure. The sunrise clause is a bit of a nebulous proposal at this point; it is not quite clear what the triggers would be. It seems to be a process towards a result as opposed to a concrete proposal. I believe that if we fix the fundamental problem of the wholesale cap, a sunrise clause will be unnecessary because operators that wish to compete in the market will immediately react and reduce retail prices. From our perspective, I am not quite sure if the sunrise clause achieves anything concrete. On the contrary, it can introduce complexity to clauses.

Mr Jordan: The original concept of the sunrise was something that was a test outside of the regulation which would say whether the regulation was applied. Having it brought into the regulation means it is not a sunrise; it is a two-stage regulation, a test and then a subsequent test. So calling it a sunrise is not accurate any more. You might say it is an incentive regulatory target. Again, it depends what the level is. It is complicated.

Q44 Lord Dykes: Obviously, I have not seen your own documentation so I am probably way off the mark here, but would your concept of the consumer protection tariff be a transparent measurement of all the inputs and the costs and so on and the final price to the consumer—or how would it look?

Mr Jordan: It would be a tariff that would be open for any customer for free to select. It would be set at something—at the upper end of the retail regulation because it needs to have headroom, and below it there will be competitive tariffs that they can choose. It

says, “you will not pay more than 60 to 65 cents maximum” and that is it.

Q45 Lord Dykes: Would the various cost inputs in that be visible and measurable?

Mr Jordan: No. This is where you have to be very careful. I think there is a slight error here—not error but it is the terminology with costs and price and charges. At the wholesale level there is a market, and operators negotiate prices and they will depend not just on their costs, but costs on which vary. Take the case of Spain: if somebody is willing to commit traffic and through technology now they can do that, and say “we will guarantee you X amount of traffic”—it does not necessarily have to be volume—it is about commitment of that volume—then you get a better price. It is like anything else in the world. If you commit to something you can negotiate a better price, because we then know more confidently what investment we have to put into infrastructure. It is not just saying the cost is X and therefore there is a market in operation there, where the costs vary, depending on geography coverage. For example, if you take UK to Spain, Vodafone and O2 both have networks in those countries. Should Vodafone therefore pay the same to overflow their traffic when they have not built their network out, on to the Telefónica’s network in Spain, or should they pay an opportunity cost? There are different reasons. They have a network so they should be using that network.

Q46 Lord Dykes: But then the temptation would be obviously to have a CPT that was set somewhat too high in comparison, and it might have been with real, full competition and perfect information in the market.

Mr Jordan: We think the consumer protection tariff is exactly what it is; a very clear guarantee to customers, very clear and very simple: “You will pay no more than this; sign up to that.” It is not the only tariff; we have competing tariffs now where you can choose to have alternative tariffs, so it gives flexibility to protection to customers if they are concerned about paying very high bills, or they want to consider about paying very high bills.

Chairman: We are coming up to a division, so this might be a convenient moment to ask if colleagues have any other pertinent points to make. If not, thank you very much. I think our knowledge has doubled in terms of understanding a very complicated set of economic statistics and facts. Do look at the record, and if there are points of clarification perhaps the Clerk would be in touch with you and vice versa. The hearing is closed.

MONDAY 19 FEBRUARY 2007

Present	Dykes, L Eccles of Moulton, B Freeman, L (Chairman) Fyfe of Fairfield, L Geddes, L	Haskel, L Lee of Trafford, L Mitchell, L St John of Bletso, L
---------	--	--

Memorandum by Orange

INTRODUCTION

1. Orange is part of the France Telecom Group, which is one of the world's leading telecommunications operators with more than 153 million customers on five continents, including controlled operations in eight EU Member States. In the UK, Orange has over 17 million customers (15 million mobile and 2 million Internet), making it one of the principal mobile phone network operators and broadband providers.
2. Throughout the EU Orange has more than 60 million mobile customers of which around one quarter use roaming services. Orange's international roaming revenues in the EU represent around 5 per cent of its total mobile revenues. More than 50 per cent of Orange's roaming revenues are generated by business users.
3. As the Committee's Call for Evidence is very broad, we have only picked on certain areas and questions of greatest interest to us rather than attempting to provide a comprehensive response to all points raised. In addition, as this is a live and constantly changing area of policy, there are some other issues that have arisen which we would wish to raise that are not included in the Call for Evidence.

SUMMARY

4. Orange does not believe that the international roaming market requires regulation at either wholesale or retail level, as competition rather than regulation is the best way to deliver long-term benefits to consumers. Wholesale rates have declined significantly as a result of traffic steering tools which allow the home operator to determine which foreign network its customers use when they are in a particular foreign country. This means that foreign operators will compete to offer the lowest rates. Retail charges are also falling dramatically (by 12 per cent in Q1 2006 alone) and roaming charges have fallen by 22 per cent since 2005 with further reductions expected.
5. However, if political imperatives mean that regulation must be imposed, there are some broad principles which should be applied. Average mobile termination rates are not the best means of calculating a wholesale price cap, but if they are to be used, there should be a one-off cap based on 2005 figures, rather than an ever decreasing rate. There should be a single wholesale cap for outgoing calls made both within the foreign country or to another country. The resulting cap should be imposed as an average cap between pairs of operators, rather than an absolute cap.
6. From a retail perspective, if a cap must be imposed, it should again be a single blended average price target for calls within the foreign country or to another country, as well as for incoming and outgoing calls. The level of the price target should include an allowance for genuine retail costs as well a profit mark-up. This target should be applied as an average rather than an absolute in order to maintain operators' ability to differentiate their tariffs and in order to provide the greatest choice to consumers with very different needs. The use of this price target as part of a retail sunrise clause mechanism would be preferable and there should be an adequate period for implementation and assessing compliance.
7. If a separate consumer protection tariff is to be imposed, it should not be set at such a low level that it simply becomes the default position and that any other average cap is irrelevant. Urgent clarification is needed as to what level the cap may be set, together with detail as to the basis of that calculation. Any consumer protection tariff must be opt-in, rather than opt-out, not only because of major operational issues, but also because many customers would lose the discounts, bundles and options which they have adopted to suit their needs.
8. Pricing transparency is an important consideration in order to allow consumers to make informed choices and to benefit from competition. But operators must be granted flexibility in how they inform consumers of prices (whether by SMS or voice, push or pull) as micro-regulation in this area is both unhelpful and unnecessary, as well as costly.

19 February 2007

9. The Commission's consultation and impact assessment process has been inadequate and failed even to meet its own stated minimum standards. It conducted two short consultations which did not provide adequate substance for substantive responses to be provided. Its much delayed impact assessment was also wholly inadequate by not containing a rigorous assessment of the proposals and any possible alternatives, especially the possibility of imposing wholesale regulation only, which would be Orange's preferred approach.

10. Article 95 is an inappropriate and potentially unlawful instrument by which to impose this form of regulation. As a result, we would urge the Committee to consider how far the EU risks departing from its founding principle of establishing a competitive market for goods and services freely traded throughout Europe. The New Regulatory Framework contains a process to review the wholesale international roaming market which was underway in early 2006, but which was superseded for political reasons. Use of Article 95 is unlawful because it only allows for measures aimed at harmonising law, regulation or administrative action aimed at the establishment and functioning of the internal market. However, in this case: the objective is reducing charges rather than harmonising laws; there are no existing laws to harmonise; and any obstacles to the internal market which exist are as a result of pricing conduct of private undertakings, not disparities between laws.

11. There is also a question whether the regulatory proposal would be compatible with the EU's obligations under the GATS. Members are required to offer to suppliers of other Members, treatment which is no less favourable than it offers its own suppliers, which could include modifying the conditions of competition. This may be breached if a non-EU operator has to pay a higher unregulated wholesale charge to an EU operator, than the regulated rate that would be paid by another EU operator. Separately, Members are also obliged to ensure that a service supplier of any other Member is given access to telecoms networks on reasonable and non-discriminatory terms.

Is there a need for regulation?

12. As a matter of general principle, Orange does not believe that the international roaming market requires regulation at either wholesale or retail level. Rates in both parts of the market are witnessing significant declines which are set to continue indefinitely. None of the European Commission, European Parliament or European Regulators Group have demonstrated market failure or significant market power in the hands of any EU operator in respect of international roaming tariffs.

13. Wholesale rates have declined significantly as a result of the availability of traffic steering tools. Traffic steering allows the home operator to determine which foreign network its customers will use when they are in a particular foreign country, rather than this being determined solely by the strength of signal wherever the customer happens to be making/receiving a call.

14. It means that the home operator can therefore direct a certain number of calls onto a particular network allowing it to negotiate a lower wholesale rate for the use of that foreign network. The existence of traffic steering has over the past two or three years introduced greater competition into the wholesale international roaming market because operators in a particular country compete to offer the lowest wholesale rate/best quality for use of their network, in return for the increased volumes of traffic/revenue that they will receive as a result.

15. Furthermore, in August 2006, Orange was one of several major European mobile operators voluntarily to sign the "International Roaming Code of Conduct" requiring that wholesale international roaming rates be reduced to €0.45 per min on 1 October 2006 and then to €0.36 per min on 1 October 2007.

16. Meanwhile, all elements of the mobile retail market (particularly in the UK) are characterised by high levels of competition and falling prices. Across Europe, the average cost of voice calls fell by over 12 per cent in Q1 2006 alone, compared with 1.3 per cent in Q1 2004, with increasing reductions in every intervening quarter. This is clear evidence that competition and reduction in prices are accelerating at an ever increasing rate.

17. Since 2005, the average price for making and receiving calls when roaming in the EU has fallen dramatically by 25 per cent (according to an AT Kearney study comparing average prices in Q4 2006 with those in 2005). Although there have been reductions in headline prices, roaming tariffs in particular are characterised by bundles, discounts and frequent traveller options, all of which do much to reduce the overall average price which consumers actually pay. In the UK, Orange introduced a range of discounted travel bundles in summer 2006 providing savings on standard rates of up to about 30 per cent. Further tariff changes and reductions are expected during 2007 as a result of the competitive market in which we operate.

19 February 2007

18. Furthermore, by signing the Code of Conduct referred to above, Orange and the other European operators also agreed to pass on the reductions in wholesale costs to consumers by way of reductions in retail prices, although standard economic theory suggests that the normal competitive forces in the mobile market will do this in any case.

19. Even where roaming profits might be generated, the intensity of competition in the UK market means that those profits will simply be re-invested/competed away elsewhere to the benefit of consumers. It is critical to understand that mobile operators do not sell “roaming” as a distinct service, separate from anything else. Rather it is part of a package of services (with domestic calls, text messages, international calls etc). It is therefore artificial to look solely at the profits or return on capital for roaming services in isolation from other less profitable parts of the mix.

20. It is worth noting that the UK mobile market is one of the most competitive in Europe with five network operators as well as number of mobile virtual network operators. This has led to a wide range of extremely attractive offers for consumers and relatively low levels of profitability in the UK mobile industry. In particular, CSFB has estimated that the pre-tax return on capital for UK mobile operators as a whole is only 6 per cent compared to its pre-tax cost of capital of around 12 per cent.

21. Orange accepts that some (although by no means all) of the reductions in wholesale and retail roaming charges have been as a result of the threat of regulation by the Commission. But Orange does not believe that they should be dismissed or ignored on that basis. Orange (and other European mobile operators) has introduced significant price reductions which have brought about real reductions in the charges paid by consumers. This is exactly what was demanded by the Commission and so we feel it must be taken into account when considering the need (or otherwise) for regulation.

What form of regulation?

22. In spite of all the points raised above, Orange recognises that there may well be a political imperative to impose regulation, which will be hard to avoid. We therefore set out below some issues which we believe the Commission should take into account in framing any regulation. Principally, however, we believe that if regulation is deemed necessary, wholesale regulation only should be imposed.

Mobile Termination Rates (MTRs) as a basis for calculating a price cap

23. In general, we do not believe that there is any particular logic in linking regulation of wholesale international roaming rates to MTRs, principally because no allowance is made for roaming specific costs in the rates. We believe the use of simple numbers is clearer for all concerned. However, these numbers must still be set according to a clear and justified methodology. Removing the MTR link should not be an excuse for the Commission to impose arbitrary figures, which have not been based on any proper analysis of cost and acceptable levels of profit.

24. If MTRs are to be used, we believe (i) the benchmark should be the average of all EU MTRs (not only regulated MTRs) (ii) it should be a one-off reduction and should not decrease in line with decreasing MTRs (iii) it should be set according to the average MTR of 2005, about €0.12 per min.

The level and type of wholesale price cap

25. Orange does not agree with the Commission that it makes sense to have separate sub price caps for making “national” calls within a visited country and “international” calls outside a visited country. We believe a better approach would be to adopt a single blended average cap for both types of call, but it must be set on the basis that 85 per cent of calls made whilst roaming are “international” (usually a call back home).

26. The Commission is proposing that an absolute price cap be imposed such that no EU operator can ever charge another EU operator more than the price cap for any call at any time of day. However, Orange believes that this is a somewhat artificial approach and that it would be more sensible to impose an average cap which would be calculated by dividing total wholesale revenue by total corresponding call minutes on a bi-lateral basis between operators. This would guarantee that no operator would be penalised in favour of another, as the cap would apply between every “pair” of operators, but it would allow some flexibility in terms of billing.

19 February 2007

The level and type of retail price cap

27. Orange believes strongly that throughout this process, the Commission has totally failed to demonstrate why it believes retail regulation should automatically be imposed from the outset, rather than imposing only wholesale regulation. It could then assess whether the effects of competition were sufficient to ensure that lower wholesale costs are passed through into reduced retail charges, as would be expected according to standard economic theory. The Commission's own impact assessment does not address this point, which we regard as a significant failing.

28. Furthermore, it is worth noting that the initial submission by the European Regulators Group to the Commission's first consultation in March 2006 suggested wholesale regulation only, with the introduction of retail regulation suggested only as a last resort in the event that wholesale regulation failed to work. The ERG position was supported by all EU regulators except the CMT in Spain.

29. We have argued above that there should be a single wholesale price cap for both in-country "national" and out of country "international" roaming calls and so naturally this approach should be continued within the retail market. In addition, Orange believes that it would be preferable to have a single blended price target covering the cost of both making and receiving calls. This is because there is a direct substitution effect between incoming and outgoing calls. A blended price target will also give operators greater flexibility to provide a wider variety of tariffs to meet individual customer needs, as there may be significant differences between whether they make or receive more calls.

30. In setting the level of any price cap, it is critical to take account of retail costs (as opposed to retail profit) as operators must be able to recover their genuinely incurred costs. Unfortunately, the Commission has made no allowance for these costs.

31. As with wholesale, Orange does not support the Commission's proposal for an absolute retail price cap, whereby no call on any tariff, at any time, in any country could ever exceed a set limit. We would strongly advocate an average retail target (total revenue divided by total minutes) which is critical in maintaining an operator's ability to differentiate its own tariffs and offers from each other, as well as from those of its competitors, in order to be able to provide the greatest choice to consumers.

32. Mobile consumers and particularly their use of roaming services, vary enormously, as a result of which tariffs/discounts/bundles are specifically designed to cater for these varying requirements and provide as personalised a package as possible for each consumer. The imposition of an absolute cap requiring every operator to charge exactly the same would, at a stroke, remove all of this and some of our current tariffs would be banned despite their suitability for a particular sector of our customers.

33. Although the issue of a sunrise clause has moved slightly from the political agenda, Orange would on balance, support such an initiative, although the end result is largely the same. In any case, we would wish to ensure that sufficient time is allowed for implementation before the regulation comes into force. We believe that 3 months is required from the passing of the regulation before the wholesale regulation comes into force and before the period (which we believe should be 6 months) for assessing compliance with the average retail target begins.

34. It is important that Government/regulators understand the time required not only to implement and operationalise any tariff changes which could affect 15 million customers, but also to develop and design them. Assuming that operators will be given the flexibility of average and blended, rather than absolute caps, we will need time to assess how best to comply with the target and what tariffs and discounts are most likely to be attractive to consumers in a highly competitive market.

35. The possibility of a "consumer protection tariff" has been developed by the German Government. Effectively a consumer protection tariff is simply an absolute price cap by another name and so the critical question is at what level the cap would be set. Orange is naturally concerned that if the cap were too low, it would simply become the default position and therefore any other average cap would be irrelevant. Orange would therefore welcome urgent clarification as to what level of cap the Government proposes and what is the basis of the calculation. Orange strongly believes that the tariff should be opt-in, rather than opt-out, as we believe many of our customers will not want to be forcibly moved onto less flexible tariffs, which might actually cost them more for certain calls. Forced migration would also be a massive operational issue, which would take considerable time and resources to implement.

19 February 2007

36. Finally, Orange acknowledges the importance of pricing transparency, which is critical in allowing customers to make informed choices. Orange believes operators should have flexibility in how they inform customers of prices and that such information is “pulled” by customers that want such information rather than simply “pushed” to all customers irrespective of their specific needs.

CONSULTATION AND IMPACT ASSESSMENT

37. Aside from the obviously substantive issues outlined above in relation to the regulation itself, Orange is very concerned about the consultation process and particularly the impact assessment, which the Commission has undertaken. To a large extent this is inextricably tied up with the Commission’s decision to follow the Article 95 procedure, which is discussed further below.

38. The Commission recognises that it has a duty to undertake pre-legislative consultation when proposing legislation and it has committed to certain minimum standards in that regard. The consultation process (such as it was) began with a speech by Commissioner Reding on 8 February 2006 in which she announced her intention to propose a new regulation. There followed a first phase consultation from 20 February to 22 March in which comments were invited on three open questions, followed by a second phase consultation from 3 April to 12 May in which the Commission summarised the objectives, scope and broad concepts of the proposed regulation.

39. This consultation clearly failed to adhere to the Commission’s own minimum standards (i) by not providing clear content/proposals upon which it was consulting (ii) by not properly publishing the consultations with adequate awareness raising publicity (iii) by not allowing sufficient (eight weeks) time to respond.

40. The Commission also has a duty to conduct an impact assessment when considering major policy initiatives. This should follow a number of methodical steps in defining objectives, developing policy options, analysing and comparing their impacts.

41. The impact assessment was much promised and delayed and finally published after the “consultations”. Orange believes it was totally inadequate and did not contain any rigorous assessment of the proposals or possible alternatives. In particular, it did not properly consider the possibility of imposing only wholesale regulation. It therefore failed to perform its fundamental role.

THE USE OF ARTICLE 95

42. Orange has received a legal opinion¹ that Article 95 of the Treaty of Rome is an inappropriate and potentially unlawful instrument by which to impose this form of regulation. Its use appears to have been prompted by political imperatives.

43. The New Regulatory Framework was introduced by the Commission itself to regulate electronic communications in their entirety. It lists various markets, which national regulators are required to review in order to assess their competitiveness and determine whether any players in the market have “significant market power”. It is a basic principle that regulation should not be imposed in the absence of a finding of SMP in the relevant market.

44. Market 17 is the market for international roaming services. In early 2006, a review of market 17 was being commenced and various data was being requested and collated. This was being co-ordinated between various national regulators because of the particular international nature of the roaming market. Matters were proceeding correctly in accordance with the New Regulatory Framework process, but this was effectively suspended and overtaken by the Article 95 process adopted by the Commission, which itself was prompted merely by a political speech made by Commissioner Reding.

45. Orange believes that the use of Article 95 in this situation and is illegitimate and unlawful for three principal reasons, all of which are based on the fact that Article 95 only allows the Council and the European Parliament to adopt measures aimed at harmonising law, regulation or administrative action in Member States aimed at the establishment and functioning of the internal market.

46. Firstly, the objective of the regulation proposed by the Commission is clearly a consumer protection measure designed to reduce roaming charges, rather than being directed at the establishment and functioning of the internal market, which is not sufficient for Article 95.

¹ Please refer to http://www.parliament.uk/parliamentary_committees/lords_s_comm_b/eubwrevid.cfm

19 February 2007

47. Secondly, the regulation is not a harmonisation measure, as is required by Article 95. Logically, in order for it to be so there must already be “national laws, regulations or administrative provisions” that establish the level of international roaming rates in place in at least one Member State. But there are none and the Commission has not identified any. International roaming rates are currently set by private undertakings. The conditions required for preventive harmonisation are also not met, because the existence of the New Regulatory Framework makes future disparities of law extremely unlikely.

48. Thirdly, any obstacles to the internal market which do exist are not caused by disparities between national laws, regulations or administrative actions, as is required by Article 95 (but rather by the pricing conduct of private undertakings). It cannot be used to deal with obstacles resulting from the conduct of private undertakings, which requires the use of general competition law. The alternative would be that Article 95 creates a general power to regulate the internal market which is clearly not the intention.

49. Irrespective of whether or not the UK considers roaming tariffs to be too high, we urge it to challenge the use of Article 95 to implement price caps on (particularly retail) roaming services. Orange considers the precedent set by the proposed use of Article 95 to introduce price controls over goods and services supplied throughout the EU to be a dangerous and antiquated one. Accordingly, we would urge the Select Committee to examine this question and to consider how far the EU risks departing from its founding principle of establishing a competitive market for goods and services freely traded throughout Europe.

WORLD TRADE ORGANISATION (WTO) GATS RULES

50. Even if the proposed regulation has a proper legal basis under EC law, the question arises as to whether the proposal would be compatible with the EU’s obligations under the General Agreement on Trade in Services (GATS).

51. Once a WTO Member has offered specific commitments in a services sector, by virtue of Article XVII GATS it “shall accord to services and service suppliers of any other member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers”.

52. Naturally the regulation will create a distinction between the lower wholesale rate which a regulated EU operator will have to offer to another EU operator versus the higher unregulated rate which it will offer to a non EU operator. In turn, this will modify the conditions of competition of non-EU operators in the EU and create the possibility of complaints that the EU is discriminating between EU and non-EU operators in violation of Article XVII GATS. If, as a result, regulated EU operators were forced to offer lower regulated rates to non-EU operators on a non-reciprocal basis, it would be a net cost to them of approximately €500 million.

53. The annex on Telecommunications also contains another non-discrimination obligation, whereby each Member must ensure that a service supplier of any other Member is given access to telecoms networks on reasonable and non-discriminatory terms. It may well be the case that benchmarked roaming tariffs established only for EU-operators constitute discriminatory terms and conditions in respect of foreign operators.

23 February 2007

Memorandum by Vodafone

SUMMARY

In 2003, Europe adopted a coherent framework for the regulation of telecommunications prices under Article 95 of the Treaty. This framework requires independent telecoms regulatory bodies to demonstrate market failure in accordance with well-established EU competition law principles before they can intervene in markets. All 10 of the specialist European telecoms regulators who have examined roaming carefully under this framework have found no market failure. Prices fell by 25 per cent last year² and the mobile industry is generally regarded as one of the most dynamic and successful in Europe over the past two decades.

² GSMA Response to the House of Lords Select Committee’s Inquiry into the European Commission’s Proposed Caps on Mobile Telephone Roaming Charges, February 2007.

19 February 2007

The Commission now proposes to adopt a new regulation outside the ambit of the 2003 framework and to rely upon Article 95 of the Treaty to do so. Vodafone believes that this is both unlawful and unnecessary. Further, Vodafone believes that if the Commission's proposals were to be adopted in their current form they would be positively damaging to the industry and its customers.

The Commission's proposals are unlawful for the reasons provided by former Advocate General Sir Francis Jacobs appended to this submission. Article 95 cannot be used to regulate prices in the Community simply because the Commission believes them to be "too high". A more robust legal base is required, which the Commission does not have here.

The Commission's proposals are unnecessary because the same competitive disciplines which have benefited many millions of European mobile customers over the past two decades are already evident in the international roaming market. Vodafone has led the industry in providing lower, simpler to use, tariffs such as Vodafone Passport. Over 12 million Vodafone customers have chosen this tariff and have seen their costs fall by 50 per cent as a result. Over 30 million Vodafone customers in Europe will see their average cost of roaming fall by 40 per cent by April this year. Price regulation is normally needed when dealing with monopoly suppliers, but in this case it is clear that competition is already delivering a better solution.

The Commission's proposals are not simply superfluous but positively damaging. They would render existing tariffs such as Vodafone Passport illegal and would force customers with different needs across 27 different Member States to instead adopt a "one size fits all" tariff. This is not what Vodafone's customers want or expect. The proposals would also confiscate much of the competitive advantage which Vodafone has built up in recent years and which we have been able to apply to the benefit of our customers and our shareholders. We consider this unjust and unfair.

If regulation is to be applied, albeit unlawfully, then it must be applied in such a way as to facilitate competition and choice rather than subverting them. The principles of good regulatory design are well known and there is emerging consensus around more workable solutions. These involve the use of average caps to ensure that retail prices fall overall whilst operators retain flexibility to offer different tariffs to different customers, combined with a "safeguard" Consumer Protection Tariff to ensure that no individual customer need pay more than regulated levels if they cannot find a better competitive option.

INQUIRY QUESTIONS:

(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?*

Vodafone has 30 million customers who roam in Europe. Since the summer of 2005 these customers have seen their cost of roaming fall by more than 20 per cent on average. Vodafone has committed that prices will have fallen by 40 per cent by April 2007. This means that Vodafone's customers will pay an average of less than €0.45, or 30 pence, per minute by April 2007. This is not excessive and is in fact close to or lower than the sorts of prices now being proposed by regulators.

We have also simplified our tariffs so that customers can be more confident about how much roaming will cost. 12 million of our 30 million roaming customers have chosen to take our "Passport" tariff which allows them to pay a one-off additional fee but otherwise to pay their normal domestic rates when roaming. Our competitors have responded with similar tariffs.

Some individuals can and do pay high roaming prices in Europe even if most do not. This is true in most markets. Yet if we consider the market as a whole rather than anecdotes then the evidence is that it is performing well. This is not surprising since the European mobile sector has been vigorously competitive for many years and roaming is an important part of that competitive mix.

(ii) *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

No. Vodafone believes that the Commission's proposals are unlawful and unnecessary. Further, if the Commission's proposals were to be adopted in their current form they would be positively damaging to the industry and its customers.

19 February 2007

The Commission's proposals are unlawful for the reasons provided by former Advocate General Sir Francis Jacobs appended to this submission. Article 95 cannot be used to regulate prices in the Community simply because the Commission believes them to be "too high". A more robust legal base is required, which the Commission does not have.

The Commission's proposals are unnecessary because competition is already achieving the lower prices that the Commission intends to achieve through regulation. The Commission's proposals are not simply superfluous but damaging. They would force us to withdraw tariffs like Vodafone Passport which millions of customers have chosen and force them instead to accept the same "one size fits all" tariff across Europe. This is not what customers want or expect. Vodafone would also be forced to forego strategic advantages built up and paid for by private shareholders over many years. We consider this unjust and wrong.

(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?*

The mobile industry has taken some important initiatives to improve transparency in the roaming market in 2006, notably through the launch of a website to allow customers to compare the roaming tariffs available from individual operators. However, Vodafone believes that competition, not self-regulation, will address the Commission's fundamental concerns. Our answer to question i above explains how and why it is doing so.

The industry does need to communicate more effectively. That is why in May 2006 Vodafone took the unusual step of saying publicly that we expected our prices to be 40 per cent lower by April 2007. We also announced wholesale prices which would allow both us and our competitors to offer lower retail prices in future.

(iv) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

Yes, for the reasons described in our answer to question ii. Vodafone would be forced to write off major investments in precisely the kind of innovative tariffs which the Commission says it wishes to see (but which the Commission's proposed regulation would force us to withdraw). Good regulation should encourage innovation not punish it.

(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?*

Regulation is not without consequences, particularly in markets which are vigorously competitive. Most experts accept that "rebalancing" (ie adjustments in other tariffs) or service limitations (ie limitations on the availability of roaming services) are likely if prices are regulated to levels which did not allow operators to recover their costs. Previous attempts to regulate other mobile tariffs—so called mobile termination rates—resulted in similar "rebalancing" which is well documented by national regulators.

(vi) *Do you think 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?*

Yes. Vodafone believes that competition in the European market and the availability of technologies would allow non-EU operators to access lower wholesale rates without needing to rely upon international trade agreements or to offer lower prices to EU operators in return. This would mean non-EU operators have lower roaming costs than EU operators with whom they then compete in the global market for multi-national customers.

(vii) *Is the Commission's estimate that 147 million citizens are affected by excessively high international mobile roaming charges accurate? Do you have any other figures to offer?*

The Commission's estimate in its Regulatory Impact Assessment that 147 million citizens roam is one of the few plausible figures in that Assessment. However, Vodafone does not accept that all, or even many, of these citizens pay charges which are "excessive"—see our answer to question I above.

19 February 2007

The same Regulatory Impact Assessment assumes that in the absence of regulation roaming prices will fall by up to 18 per cent, notwithstanding the fact that Vodafone had already publicly committed to reducing its prices for 30 million customers by at least 40 per cent. We do not believe that the Commission should be entitled to ignore evidence of this kind when undertaking an RIA.

(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?*

Vodafone believes that regulation of both wholesale or retail fees is unnecessary. However, regulation of retail fees is more likely to damage competition (because most of the innovation occurs in retail rather than wholesale prices and the ability to differentiate between different types of customers is more important for retail than wholesale customers).

Vodafone sees considerable difficulties with the “sunrise clause” approach since this still requires the imposition of a regulatory target to trigger the “sunrise” and is, therefore, retail regulation in a different guise.

(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?*

Vodafone has proposed extensive amendments to the Commission proposals. Our view is that the retail cap should be simplified into a single average cap to deliver lower roaming prices to customers in general whilst allowing operators flexibility to offer different tariffs to meet different individual customer needs. The concern that some individual customers might still end up paying very high prices can be addressed by the addition of a simple “safeguard” Consumer Protection Tariff which customers can choose if they wish.

The use of Mobile Termination Rates to establish reasonable benchmarks for the cost of providing wholesale roaming services is sensible, but Vodafone believes that, if it is to be applied, the regulation should include straightforward target prices rather than formulae. This avoids legal ambiguity and allows easier communication of the consequences of regulation to consumers by both policymakers and mobile operators.

Attachment 1:

Sir Francis Jacobs QC, Opinion, Proposal of the European Commission to Regulate International Roaming Charges under Article 95 of the EC Treaty³.

³ Please refer to http://www.parliament.uk/parliamentary_committees/lords_s_comm_b/eubwrevid.cfm

Examination of Witnesses

Witnesses: MR DAMIAN REID, Executive Vice-President, Strategy and Performance, and MR SIMON GROSSMAN, Head of Government Policy and Mobile Regulation, Orange, and MR RICHARD FEASEY, Director of Public Policy, Vodafone; examined.

Q47 Chairman: Gentlemen, thank you very much indeed for coming. For the benefit of the shorthand-writer and those in the public gallery, I am going to ask you, in a minute, to introduce yourselves, for the record. We think there will be divisions, votes, in the House of Lords, and if there is a vote called I will declare a break of 10 minutes, if you do not mind; it will delay us but we will come back and start where we left off. Mr Feasey, would you like to start, and identify yourself, for the record, please?

Mr Feasey: Thank you. My name is Richard Feasey. I am the Public Policy Director for Vodafone Group, so I am responsible for our company’s relationship with the European institutions, amongst other things.

Mr Reid: I am Damian Reid. I work for Orange. I am responsible for Strategy, but that included regulatory and public policy matters throughout last year.

Mr Grossman: I am Simon Grossman. I am Head of Government Policy and Mobile Regulation for Orange in the UK.

Q48 Chairman: Because we have got Ofcom, the regulator, in theory coming at 5.15, if we are not delayed, can I ask my colleagues to be succinct and brief; and if you feel, when you read the draft evidence, that anything you have said needs to be supplemented, we would welcome further evidence. Let us proceed. Perhaps I could start by dealing with question number one, which we have outlined in

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

general terms. The Commission has indicated, in the past certainly, that the industry has failed to reduce the cost of roaming. Is that a fair charge?

Mr Feasey: No, it is not. We have seen competition in roaming as we see across the range of services that we provide to our customers. Roaming is not sold to our customers as a discrete or a separable service, it is part of the overall relationship that we have with customers when they come into a shop or 'phone us up to buy mobile services from us. At least in my company's case, we have already announced that, over the past year, so comparing 2005 with 2006, prices for Vodafone's 30 million roamers in Europe fell by 20 per cent. That is rather faster than the general rate of deflation in mobile prices during that period; so the charge that prices have not fallen we think is unfounded. We have also said that by April of this year, so two months from now, we expect prices to have fallen by 40 per cent relative to the prices that our customers were paying in 2005.

Q49 Chairman: Thank you. Incidentally, thank you very much for your memorandum, which was remarkably clear and very helpful to us. Mr Reid?

Mr Reid: I would agree with much of what Mr Feasey has said. I would emphasise the fact that roaming is part of a bundle of services that we sell, which usually includes a handset and a domestic tariff plan. The prices of all of those services have been declining, or, in the case of handsets, the subsidy has been increasing, so the consumer has been in a progressively better position across the full range of mobile services over the past few years. For its part, Orange has taken action in the retail market by offering bundles of roaming minutes to its customers at discounts of more than 25 per cent; we launched that initiative in May last year. It is a different form of offer from Vodafone, showing innovation and diversity in the market, which is also important. We note that the GSMA, who are not here today, have announced that roaming prices have fallen by 25 per cent in the most recent quarter, i.e. the quarter ending December 2006, compared with the average price in 2005. On the wholesale side, which is also an important element of this, we have entered into agreements with a number of major operators throughout the European Union to reduce wholesale prices by more than 50 per cent. We have taken the first step, in October of last year, reducing wholesale prices from around 75 cents, on average, to around 45 cents, and we are committed to reduce them further, to 36 cents, in October of this year. We believe strongly that the reduction of wholesale prices, as a natural economic consequence, will lead to lower retail prices, so we have put in place the framework for lower retail prices. Again we believe that roaming prices are coming down and will

continue to come down, which should be seen in the light of the complete consumer bundle.

Q50 Lord Dykes: As you know, one of the UK operators has scrapped its roaming charges for UK users in those countries where there is an affiliate network. Do you expect other companies to follow suit in doing that as well?

Mr Feasey: We have a large footprint in Europe, where we have a large number of affiliate companies, and that has enabled us, two years ago, so some time ago now, to launch a service called Vodafone Passport, where our customers pay the same price as they would pay were they in the UK. The strapline is to take your home tariff when you are abroad with a single, one-off fee of 75 pence for each call. The reason why we have that 75 pence fee is there are real differences in the costs of providing service to customers when they are on overseas networks; there are costs, for example, of conveying the calls back to the home network which are not faced in the context of providing a service to the customer within the UK. An important aspect of this, from our point of view, which I think we share with the Commission, is a need to have a pricing regime which is clear and simple and understandable by customers. I do not think that means the total elimination, and the research we have from our customers is that they do not expect or anticipate the total elimination of any differential between the cost of making calls when you are roaming and the cost when you are at home.

Q51 Lord Geddes: Does not that mean, effectively, that for a majority of your customers you have cancelled? I declare an interest in that I happen to be a Vodafone customer and I am a Passport holder, in that context, so I pay 75p plus local calls?

Mr Feasey: You do.

Q52 Lord Geddes: Is not that cancellation, effectively?

Mr Feasey: It is cancellation with the addition of a 75 pence charge; that is the fundamental difference between when you are at home and when you are abroad. We think that is a pretty attractive offer to our customers, and thus far about 12 million of our 30 million roaming customers in Europe agree with you and have taken that service.

Q53 Lord Mitchell: I use Passport also and I have a vested interest in it. I spend a lot of my time in Italy and, as you may know, you can turn to the right and turn to the left in Italy and you get a different service provider on your 'phone; sometimes it is Vodafone IT, sometimes it is TIM, or sometimes it is Wind, you do not know which it is going to be. When I signed up to Passport, nobody told me, and I reckon I am smarter than the average, that actually it applies only

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

if I am using Vodafone IT, and I have never seen that put anywhere. Here am I, using somebody else's network, thinking, "Fantastic; 75p a shot and the rest is domestic rate," but actually that is not true.

Mr Feasey: I am happy to have a look at the sales materials, but I think generally we have tried, first of all, to encourage our customers to remain on the Vodafone network, clearly that has attractions to us as well as attractions to customers, and we have, I think, consistently, certainly since—

Q54 Lord Mitchell: But I am a little old lady, of 63, or something like that; how do I know, when I have my 'phone, I have to go onto Vodafone IT, how do I know how to set my 'phone and prioritise it so it goes onto Vodafone IT?

Mr Feasey: We are very happy to explain that to you, but you can see very clearly, on all the handsets, which network you are roaming on at any particular point in time.

Q55 Lord Mitchell: How would I know how to prioritise it on my 'phone? What I am trying to get to is that, for the average person out there, they have no way of taking advantage of Passport, for example, because it requires a technical expertise and a knowledge which is not made available to them?

Mr Feasey: We make available, in all of our contacts with our customers, and we are very happy to explain to customers, how they can override manually the network to return to Vodafone. In fact, for the overwhelming and vast majority of the traffic, our customers that travel around Europe stay on the Vodafone network; we have only a very small percentage of the total calling which is undertaken by Vodafone customers these days which occurs off the Vodafone network. We are very keen, and our first response to your concern is, to continue to try to do that ourselves. One option would be simply not to make it possible for customers to make telephone calls in the event of no Vodafone coverage overseas. Our experience has been that there are a number of customers who wish to have the benefit of access to a number of networks when they are roaming because that maximises the probability that they would have coverage when they were travelling abroad.

Q56 Baroness Eccles of Moulton: Mr Feasey, in your introduction you referred to the cost of connecting a call that was an internal domestic call and connecting a call that was made overseas. Could you say a bit more about that, because it is quite confusing to us to understand what the difference in actual cost would be? I do not mean price, I mean cost.

Mr Feasey: One important consideration is that the vast majority of calls which are made when our customers are roaming are calls which are made back to their home country. For example, Vodafone UK

customers, predominantly, when they make a call when they are roaming, will call back to the UK rather than, for example, calling a local number in Spain. The first head of cost involves the conveyance of that call internationally from Spain, for example, back to the UK and then the completion of that call to whichever network the customer happens to be on. The second head of cost is that there is quite a complex set of billing arrangements between all the operators internationally, to ensure that, for example, when a customer is roaming and they are a pre-paid customer, so somebody who buys a set number of minutes in advance, we have real-time billing of that customer between the networks such that the customer uses only the amount of credit that they have purchased from their home operator, and there is a very significant and complex set of billing arrangements. Which meant, when mobile services were first launched in the 1980s, it was not possible for customers to roam if they had bought a pre-pay account, and we have only subsequently, as an industry, made arrangements between all the operators within Europe, and in fact locally, to allow the exchange of information in real time to do that. You do not do that in relation to domestic calling within the UK; there is no relationship with another operator which requires you to have billing arrangements. Those would be two examples of the sorts of heads of costs which we would have, to provide roaming, that we do not have in the case of calls in the UK.

Mr Reid: I will make just three comments which go to some of the questions which have been answered. In relation to the question regarding all operators going to domestic tariff for international roaming, Mr Feasey explained the Vodafone approach. The Orange approach is a little bit different. We do not have the same footprint that Vodafone has. We have operations in eight EU countries, so it is not as extensive, and, as such, sometimes we have to take a different approach. Our approach is one which might lend itself to Lord Mitchell, which is that we have a network-independent approach and charge the same price, irrespective of which network you are roaming on. However, that does increase our costs, because if you are roaming on a network which is not one of ours then obviously we have to pay the wholesale charge and therefore that raises the average price you are paying. The question is, is it better to have a simple approach which people understand, in terms of knowing the price that they pay, irrespective of which network they are on, or the cheapest price, if they are able to switch between networks? I do not say one is right and one is wrong. I say simply that there is innovation in the market. We have different approaches. Some will appeal to some customers and some will appeal to other customers. I think one of the risks of regulation at the retail level is that

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

potentially you will put at risk some of that innovation and some of that differentiation which we seek to achieve, in part because of what our customers want and in part because of the way we are configured and what we can do. The second point was in relation to staying on the right network. The tools are better now to steer customers onto networks which suit them better. They are not perfect though. I think we can steer about 70 to 80 per cent of the traffic onto a network which we select. I suspect Vodafone can do much the same and therefore they can protect their customers to some extent. The other advantage of traffic-steering is that it allows us to select a network where we have a lower wholesale cost, so it increases competition in the wholesale market, which is perhaps the more important part of traffic-steering. The third point is in relation to cost. I think cost is always very interesting, however you need to bear in mind that we operate in a competitive market where supply and demand should dictate the price at which we operate. I do not wish to sit here and say we do not make money on roaming and I do not wish to sit here and say we make less money on roaming than on other services. We make more money on roaming than on other services and there is a very good reason for that, which is that it is a less elastic service. As a less elastic service, it makes sense economically to charge a bigger premium for it, because that is the most efficient use of resources, and I am sure you can find text which proves that, and that is the reason we do it. You see it precisely in the way we operate, which is we subsidise a handset, which is perhaps the thing which the customer is focused on most, we offer incredibly competitive domestic tariffs, which is the thing which probably is second on their list; roaming is third, or possibly fourth, or fifth, on their list and, as such, they are paying more of a premium for that service. Therefore, it is not a strict cost/pricing relationship, nor do I think it should be.

Baroness Eccles of Moulton: That was very interesting. Thank you.

Q57 Lord Dykes: Members of Parliament—both Houses really—quite a few are following this and it is very complicated for outsiders, as you appreciate. I do get the impression that a lot of the reductions in recent weeks, and a bit before Christmas but afterwards as well, really were in response to the Commission launching its inquiry, which was back in the summer, I admit, and it took a while to get going. There were some changes fairly soon after that, but before Christmas, maybe there was a pre-Christmas collection of quite sharp reductions, and so on, and was not this inevitably the pressure of the Commission's inquiry rather than genuine decisions made by the companies?

Mr Feasey: We started innovating in terms of roaming tariffs, at least in my memory, in 2001 when we launched a service called Vodafone Eurocall, which was intended to simplify, it was a flat-rate tariff which meant that you paid the same irrespective of which European country you were roaming in. As a company, we launched, as I said, the Passport tariff, with which some of your Lordships are familiar, which now has 12 million customers, in 2005, so nearly two years ago now. We have been doing that, as a company, partly because roaming has become more important to our customers over time and more people are travelling, and as other prices which customers pay for mobile service continue to fall, as my colleague Mr Reid suggested, change their focus over time, and in competitive markets firms have to respond to the changing signals and wishes of our customers. We think we have been pretty focused on roaming as something we want to address with our customers and improve the value that we provide. Secondly, throughout the 1990s Vodafone went around building a European footprint, a collection of European companies, and frankly we are under pressure from our shareholders and others to demonstrate the benefits of this in a very tangible way for customers, so we are under competitive pressure to find competitive advantage for our company in the roaming arena. If you own a large number of companies, as Mr Reid suggested, around Europe then one of the very tangible ways you can deliver benefit to customers of Vodafone is by offering more attractive, we hope more attractive, propositions in that area than some of our competitors. We have been doing that certainly throughout the last five years. What we have not done as well as we might is communicate, in very headline terms, precisely where our business stands at any given point in time in terms of lowering prices and, even further, what our expectations are about price movements into the future. It is not generally a very comfortable thing for a company to do to make predictions publicly, which all our competitors can see, about where we think our pricing will be in the future. We did take the unusual step of doing that last May, when we said that we expected our prices for roaming to be 40 per cent lower than the previous year by this April. That was an unusual thing to do as a company; we are not in the habit of giving forecasts to our competitors about where we see pricing in the competitive process to be going. I think the industry has been slow to communicate what has been going on privately in an effective way in the public and political areas.

Mr Reid: I would make the point that prior to February of last year we did not have a big consumer issue on roaming. We were not receiving lots of complaints from customers who felt that the cost of roaming was that high, therefore we did not perceive

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

we had a big issue. The world changed for us in February when the Commission made this a big issue, and as such it became a consumer issue. I do not wish to sit here and say that we have not responded to the Commission because we have. We have taken action as a result of the situation we find ourselves in. We do not expect to go back to the situation where this is an issue which is not on the consumers' minds, but I do not wish to sit here and say that we have not responded or that the Commission has not changed the rules for us. They have changed the rules and some of the things we did respond directly to the situation we now find ourselves in. Prior to that, as I said before, we treated this as a competitive market. By and large, roaming was something that business people did far more than individuals; they roam a lot and rather more than two weeks a year. We respond to the businesses by having special tariffs, but they are able to negotiate with us directly on tariffs which obviously individuals do not get to do because they do not provide us with the volumes. We manage the business very much on a corporate basis, we make the tariffs available to retail as part of the overall bundle, and, as I say, we were not experiencing huge complaints from our domestic customers in this context.

Q58 Chairman: Does Mr Grossman want to add anything to that?

Mr Grossman: I do not think that we feel, from Orange's perspective, the fact that some of these price reductions have been in response to the European Commission proposals somehow undermines their legitimacy and validity. They are still price reductions. They have delivered real benefits to customers. In the UK, Orange made price reductions last summer, we introduced a range of bundles; further reductions are due shortly, this year. We think that the Commission should take that on board. By all means congratulate itself for having prompted them but not thereby to dismiss them as being irrelevant simply because they came partly as a result of pressure; they are still reductions and it is still what the Commission and others have been calling for.

Q59 Lord Fyfe of Fairfield: Presumably, prior to the Commission's intervention, the companies were quite happy about the tariffs they were charging, and could it be suggested by an amateur, like myself, that perhaps it was a cosy little cartel between the operators prior to the Commission becoming involved?

Mr Reid: No, I do not believe so. The corporate market is very aggressive, for those of you who know what it is to deal with a large corporate or multinational; they expect tight pricing and if they put something like roaming at the top of their agenda

then it is clear that is where they want us to be price-competitive, and that is where we would choose to compete.

Mr Grossman: Prices have moved; do not get me wrong. Obviously prices have reduced significantly since the Commission came out with the proposals. As Mr Feasey said, prices did move before then. Orange has made tariff changes before then. The mobile market, probably like no other, is characterised by constantly-changing tariff plans and prices and things never stay the same. Perhaps roaming did not move as fast as some other areas but undoubtedly roaming prices had moved before the Commission made its announcements.

Q60 Lord St John of Bletso: We appreciate that roaming is a less elastic service and also that Vodafone have reduced their prices over the last year, but there have been calls for more transparency on the pricing amongst operators. How would you respond to calls for more transparency amongst the operators, on the pricing?

Mr Feasey: In general, I have no difficulty whatsoever with greater transparency. It is wholly desirable, from our point of view, that customers feel confident and comfortable about what it costs them when they are roaming. Indeed, as I tried to indicate earlier, the whole concept behind the Passport tariff, which says it is whatever you pay at home already plus 75p, that is all you need to remember, is designed precisely to make our customers feel that they understand pricing, that it is transparent and easy and simple to use. What I would have more concern about is the design of our tariffs by the European Commission, sitting in one country, generally. We have 30 million roaming customers across 14 different markets and the one thing we know is that the needs of those customers and their interests are quite profoundly different in different countries. Therefore, I have no difficulty, in general, with measures to improve transparency; the industry itself has taken measures in terms of making information available. I have no particular difficulty with proposals that we send SMS information to customers when they roam, providing it is done in a sensible and cost-efficient manner. Transparency simply will increase usage and encourage activity, which is all to the benefit of us and our customers.

Q61 Lord St John of Bletso: Does the cost of providing roaming services vary significantly between the operators; really that is what I am trying to get at?

Mr Feasey: In our experience, it varies to some degree. We operate across a number of European markets, with different scale in different markets, so sometimes we are the biggest operator and sometimes we are not. It varies to some degree but it does not

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

vary by the order of magnitude of double or half, things of that kind. Inevitably, there is a difference in providing roaming services in small countries with different landscape and geography. It varies to some degree.

Q62 Lord Geddes: My Lord Chairman, I wonder if we could switch the batting order and get Orange to reply first on this one. If we were having this discussion in Latin 2000 years ago, they were clever chaps, those Romans, and they had three words when asking a question, *nonne*, *num* and *ne*, of which *num* was expecting the answer “No.” My question is a *num* question. Do you think that the Commission’s proposals are proportionate?

Mr Reid: Clearly not. I believe that the segment of the market that we have not served well is the small business segment, which is businessmen from small organisations who travel internationally a lot. They are the problem because they are not like large or medium-size corporates who can come to us and ask for a special tariff. They tend to take a tariff which looks like a residential tariff, and probably they have the worst deal because they are quite high users but they find it difficult to make themselves felt against a bigish operator. It seems to me that because that segment is not well served, and it is quite a noisy segment, we find ourselves in a lot of difficulty now with this particular issue and we find ourselves facing regulation, and the form of regulation is, of itself, quite imposing. It is not simply wholesale regulation, which is the sort of regulation our fixed-line brethren are quite used to dealing with, but it is also retail regulation, which in my view is very unusual in any competitive industry in non-state-planned economies. I think what we are facing is disproportionate, but you may feel that perhaps we deserve some disproportionate regulation, but I do not believe that is a good reason for its introduction.

Q63 Lord Geddes: Would you feel as strongly on the German proposal?

Mr Reid: The German proposal includes retail regulation. Personally, I am not a big believer in retail regulation. Orange’s position is that we are against regulation; if you must have regulation, wholesale regulation is preferable to retail. If you want us to comment on retail regulation, of course we will comment on it but really we do not think it is a very good idea and it depends a little bit what the detail of the retail regulation is that the Germans have in mind. It is not 100 per cent clear to me, but it does include some burdensome retail regulation.

Q64 Lord Geddes: You made some reference earlier, Mr Reid, to innovation. The Commission’s proposals, maybe as amended by the German proposals, what are they going to do to innovation?

Mr Reid: The Commission’s proposals envisage absolute price caps, which really puts us in the position where we will offer “per minute” pricing. We will withdraw all our bundles, we will withdraw our monthly subscriptions, because all of those will be too risky in the event of a single, “per minute” price cap. This is because in the event that people do not use up all their bundles, and that does happen from time to time, then our average price would exceed the retail cap. That is an example of a problem we may have. Mr Feasey will give you examples of problems he may have with his tariffs. It shows you what we may have to withdraw. Like tax experts, I suspect we will look at the legislation and see what innovation we can introduce in the context of the rules that are there; but the introduction of rules will mean that we do not have as much flexibility as we would have without them.

Mr Grossman: I think, from our perspective, one of the key concerns is, throughout, the Commission has not justified why it has felt a need to impose retail regulation immediately, rather than waiting to see whether wholesale regulation works. If you simply imposed wholesale regulation, ie the amount which the foreign network can charge to the home network when the customer is using it, then you could wait a period of time, be it six months, 12 months, to see whether and how those reductions in wholesale rates were passed on into reductions and through retail rates. It would allow for the maximum total innovation. However, the Commission took the stance, right at the outset, that they would impose both wholesale and retail regulation. Retail regulation would be delayed for six months but, subject to nothing, certainly it would be imposed after six months. Therefore, by definition, no innovation would be allowed. They simply have not justified any point at all why they could not allow for that period to see whether or not the wholesale regulation was transferred through into low retail rates. If it was not, then by all means they could come back, revisit and impose retail regulation subsequently.

Mr Feasey: Perhaps just to answer both of those questions, briefly, I think this is extraordinary, the proposals, in the sense that price control of retail prices is something which generally you would associate with a former privatised state monopoly. I do not think it is disputed that the mobile industry in general, in terms of the structure of this industry, is probably one of the most competitive and dynamic and innovative that we have seen in Europe over the last 20 years or so. Nor do I think it is disputed that those very competitive forces and incentives to which we are subject day in and day out, in providing services to our customers, also extend to the way in which we provide roaming services to our customers. These are the same companies and the same

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

customers that we provide handsets and other tariffs to. I think, to go straight to retail price regulation, in an industry where there is plenty of evidence of competitive dynamism, there may well be measures that can be taken to improve customer understanding and transparency and things of that kind, is a pretty fast step, and, in our experience, pretty unusual. Particularly in the context, as we have here, where only a few years ago the European institutions debated the overall regulatory framework for our industry and concluded, very clearly and rightly in our view, that the basis for regulating our industry would be if you could find market failure, along the lines that we find under European Competition Law, and at least 10 regulators in Europe have looked at precisely this market of roaming and found none, thus far. I think, to depart from and to cast out that framework, which was well thought out and ought to serve Europe quite well in its telecommunications industries generally over the next decade, on the basis that some roaming prices appear rather high, politically, I think is a very serious step which would need to be thought about rather more carefully, frankly, than the Commission has done in its impact assessment thus far.

Q65 Lord St John of Bletso: On that point, the Commission's proposals rely on Article 95 of the Treaty, and in your submission you said that you thought that was illegal, or unlawful, I think. Perhaps you could elaborate on that?

Mr Feasey: This is a very important point, in our view. As I am sure your Lordships know, really there are two conditions which have to be met in order to legislate under Article 95 of the Treaty. The first is there would have to be a risk of divergent, national legislation, producing a distortion within the overall European market. There are no proposals, in any country, that we are aware of, to legislate in relation to roaming, precisely because this market, as with every other telecommunications market, already falls within the ambit of the existing telecommunications legislation which was adopted in the UK in 2003. We already have a set of instruments which allows the regulation and addressing of this market, but it contains an important condition, which is that you have to find market failure, in a rigorous Competition Law sense, not simply that prices are high but that there is actual failure of the operation of the market, and no-one has done so. The second condition is that then the proposals have to further the operation of the internal market, and we remain at some loss to understand, and the Commission have failed fully to explain, how the proposals that they have put forward in a meaningful sense further the operation of the internal market. There is no question that they would protect some consumers from high roaming prices. It seems to us, that is not the requisite

test in order for the Commission and the European institutions to adopt what is essentially to remove the freedom of a set of private companies to set the prices, companies which have not been found to be, in any sense, abusing a market position, a set of companies which compete freely in the market-place, to remove our ability to establish our prices to our customers. Rightly, the Treaty has a strict test, and does not allow the Commission to displace us and set whatever prices it feels are appropriate for our customers and for the services.

Mr Reid: I am glad you raised the point. I came here a little idealistically, hoping that we might get a chance to talk about Article 95. It seems to us that basically we lost the PR war on this issue very early in the game and that is why, at Orange, we are resigned somewhat to regulation of some form. However, notwithstanding that, we would like somebody, although to date we have gained very little traction, to look at whether they think Article 95 is the correct legal tool. I think there is a constitutional issue. We agree fully with Mr Feasey's analysis; like Vodafone, we have had legal opinions on the issue and we find it a rather unsatisfactory outcome. It is a point where we have got very little traction, perhaps because we do not have what you might call a good public relations stance on this, but it does not mean to say that it should be ignored.

Q66 Chairman: If we end up with a situation of absolute caps, specific caps, for wholesale and retail, does that leave you any room to compete? The second question is, as a fallback, would the industry be able to calculate its own average so that you would average out the different tariffs you charged to come up with a target price? Would you like to comment on both those issues?

Mr Reid: Clearly, the degree of competition depends on where you set the cap, and if you set a very high cap there is some room, even with an absolute cap, to compete under it. However, it does limit perhaps the flexibility of the tariff plan, as I mentioned earlier, bundles and things become more difficult, but that does not mean to say you cannot get strict price-for-price comparison beneath that cap level.

Q67 Chairman: Let us take the European Commission's proposal, 35 euro cents per minute for calls made from abroad to the country of origin or another Member State; do you think that would give you room to compete below that?

Mr Reid: Obviously it depends on where the wholesale level is set, because we do not have networks in all countries, but if the wholesale level is sufficiently beneath that level then there is the opportunity for some competition. The question then will be is the wholesale level set at beneath cost; something on which you would have to form a view.

19 February 2007

Mr Damian Reid, Mr Simon Grossman and Mr Richard Feasey

I think it depends, as I say, where those two levels are set and where the wholesale level is set in relation to cost. Turning to the “average” question, clearly if we are allowed to achieve an average retail price then it does allow us more tariff flexibility. As I said earlier, I am not terribly keen on retail regulation but if retail regulation is what we must have then an average cap is infinitely preferable to an absolute cap. However, it will not assure a customer of a particular price level, because we may still choose to charge one customer twice what we charge another customer, and that is what you will find in terms of range of prices in the domestic market. It is not unusual to have a range of 100 per cent between the lowest domestic price and the highest domestic price.

Mr Feasey: I think the Commission’s proposals, in terms of absolute caps, are about the most damaging to competition it is possible to conceive, in two respects: one, because it puts a straightjacket on the structure of prices, as Mr Reid indicated. Just to crystallise this, we would have to withdraw our Passport tariff to all our customers under the Commission’s proposals, so we would write to 12 million customers explaining to them that the tariff they chose, which we suggested was very attractive and they have found so in many cases, was illegal under the proposals. The reason for that is that some very short-duration calls, occasionally which customers make, would break the cap. I think it is much more desirable, although I share the caution about any form of retail regulation, to provide an average; it is the way that price caps generally in industries are operated. Regulators generally in other sectors and in the telecom sector set an average target and allow the industry to structure their prices within that, and to their customers, in a way that meets the average. It has been suggested it is very hard to measure averages in our industry; that is not the case. We report already, both as an industry and as Vodafone. I mentioned earlier our commitment that

the average price would have fallen by 40 per cent; that is a public commitment. We are a company that is required to produce robust, auditable figures and it is perfectly straightforward for regulators in our industry to do that, and that would be a less damaging way forward, if we were to have any form of retail regulation.

Q68 Lord St John of Bletso: The Commission, in its Regulatory Impact Assessment, estimated that 147 million EU citizens would be affected by excessive roaming charges. Do you have any other statistics which can counter this Impact Assessment study?

Mr Feasey: The 147 million number, as I understand it, is the Commission’s view of the number of Europeans who roam in a year, and that feels, to us, like a reasonable number, but clearly I would take issue with a number of aspects of the Impact Assessment, and perhaps just one point to illustrate this. The Commission says, in its Impact Assessment “We assume that, in the absence of regulation, prices would fall by perhaps 18 per cent.” They said that in the face of a public commitment by Vodafone, by our Chief Executive, that our prices alone, and we are the biggest operator, we represent perhaps a quarter of the entire market, would have fallen by 40 per cent during the period that the Impact Assessment was looking at. Notwithstanding questions about how much of that is driven by Commission pressure and how much is driven by competitive forces, we do not think the Commission is entitled simply to set that commitment by a public company, a very serious commitment that we have made to our customers, to one side in then looking at the impact of its regulation. It is not entitled to downplay competition to that extent in the face of clear evidence to the contrary.

Chairman: Thank you very much. We are at the end now. May I compliment you on no waffle, very clear evidence and you have educated us greatly. Thank you very much indeed.

Supplementary letter from Vodafone

I am very grateful to the Committee for providing an opportunity to present oral evidence on 19 February. We discussed most of the important issues in relation to the European Commission’s proposals for a regulation on international roaming, but I thought it might assist the Committee if I were to provide this short supplementary note summarizing the main points of my evidence.

I emphasised that retail price regulation, in whatever form, is normally associated with regulation to protect consumers from the exercise of monopoly power, often in utility industries. There is, I think, general agreement that the European mobile industry cannot be characterized as such and that there is ample evidence of vigorous and robust competition in our industry.

The question then arises as to why the Commission nonetheless wishes to apply such prescriptive proposals to such a competitive industry? Our response is that the Commission misunderstands the nature of competition and the way in which competition sets prices. We discussed the fact that the mobile industry is characterized by a complex set of cross subsidies between different services (including subsidies which mean

19 February 2007

that handsets are often sold below cost). These services earn different levels of return and contribute to an overall return for the mobile operators which, as we heard during OFCOMs evidence, cannot be regarded as excessive. It is true that prices for international roaming services can be relatively “high”, but this is so because the “low” price of other services is of greater importance for customers.

I believe this is a critical point for the Committee because it goes to both the implications and legal basis of the Commission’s position. As I explained in my oral evidence, the European Union has already adopted and implemented a legislative framework for the regulation of telecommunications markets including roaming. This framework requires that “significant market power” (which equates to the conventional EU competition law test of “dominance”) be found before sanctions of the kind now being proposed by the Commission can be applied to firms. For the reasons described above, no such significant market power has been found in any wholesale or retail market for roaming (despite a seven year enquiry on the part of the EU competition authorities and recent reviews of the markets by at least ten national telecoms regulators). The prices that we observe in this market are the consequence of the overall competitive process.

In the absence of any demonstrated “market failure”, the Commission must seek an alternative legal rationale for imposing regulation. It seeks to appeal to “consumer protection” and internal market considerations, but in a manner which is wholly unconvincing in the view of Vodafone and our adviser, Sir Francis Jacobs, the former Advocate General at the European Court of Justice.

The Committee might wish to consider whether, even if such a legal basis could be established (which we submit it cannot), it is desirable that the European authorities can intervene directly to set prices in markets which are competitive, but for which the outcome of the competitive process is nonetheless deemed to be politically undesirable. If so, it is possible to conceive of a wide range of goods for which such arguments might apply in the broader European economy.

One issue which the Committee might also consider in this context is the question of legal and regulatory certainty, and its implications for investment in Europe. Firms invest in competitive markets in the belief that they will then be free to set prices for their services in a way which, they hope, will maximize their prospects of commercial success. It is widely understood and a core principle of European law that if a firm enjoys a dominant market position and the ability to price independently of its competitors or customers then this freedom will be constrained—but only in these circumstances. Yet the Commission proposes to challenge this assumption with its proposals to regulate international roaming. Investors in mobile operators might reasonably wonder which services will next be regulated. Investors in other European firms might also wonder which high profile sector is to be next.

21 February 2007

Memorandum by Ofcom

SUMMARY

Ofcom is the regulator for the communications sector, with responsibility for regulating telecoms, broadcasting and the radio spectrum. As well as promoting competition and innovation as an economic regulator, Ofcom is a competition authority with powers to prevent and deter anti-competitive behaviour.

The mobile market has a great deal to be complemented on. It has delivered competition, choice, investment and innovation to EU citizens. The UK has a particularly strongly competitive mobile sector. Nevertheless, Ofcom believes that market failure has been a persistent and long-term problem in one specific part of the mobile market—international roaming prices. Given the cross-border dimension of the problem no single national regulator is well-placed to address the problem and we therefore welcome the Commission’s initiative to tackle the high prices being levied on consumers. We agree that legislation, in the form of a directly-effective EU Regulation, is an appropriate way to address the problem.

To ensure the Regulation’s success however, we are working to amend elements covering the precise mechanisms proposed. We believe that certain measures in the initial proposal may lead to unintended, negative consequences for consumers. For example, in suggesting a single maximum cap on retail prices to be applied across the EU, the Commission risks an overly prescriptive approach, leading to inflexibility and areas of weakness which will cause problems with implementation.

Working with other national telecoms regulators and with the Government, we have sought to engage with the Commission, the Council and the European Parliament to find a practical and effective solution, which will benefit all consumers and enable operators to satisfy a diverse range of consumer needs.

19 February 2007

Ofcom's position on the Commission proposal can be summed up in three key points:

1. The core of the "roaming" problem is high wholesale charges and there is therefore a need for regulation at wholesale level, to limit charges set between operators buying and selling international roaming. Addressing competition problems at the wholesale level should more effectively deal with concerns about high retail prices ultimately paid by end-users.
2. We support an obligation to offer a consumer protection tariff, which will provide adequate consumer protection particularly for infrequent roamers. This would require operators to offer all consumers a standard tariff. Maximum permissible charges for making and receiving calls will be specified with no hidden extra charges or strings attached. This could be applied in combination with a cap on average retail prices, which would ensure prices for all consumers are reduced appropriately.
3. Enhance transparency to address previous concerns over the general lack of consumer awareness of retail roaming prices, and ensure consumers are well informed as to retail prices and availability of tariffs.

UK RETAIL ROAMING PRICES

Typical rates for making calls whilst abroad have always been significantly above typical rates for domestic calls. While there are some additional costs involved in the provision of roaming calls, these are insufficient to justify the wide price differentials.

There appear to be a number of factors that have contributed to higher retail prices for international roaming. In the case of calls made whilst abroad, very high wholesale charges (set by operators in the visited country) are passed on to the consumer making the call in the form of a high retail price.

A lack of effective competition in the wholesale international roaming market, perhaps in part because of the significant traffic imbalances between countries providing different commercial incentives to operators in those countries, has led to high retail prices being maintained.

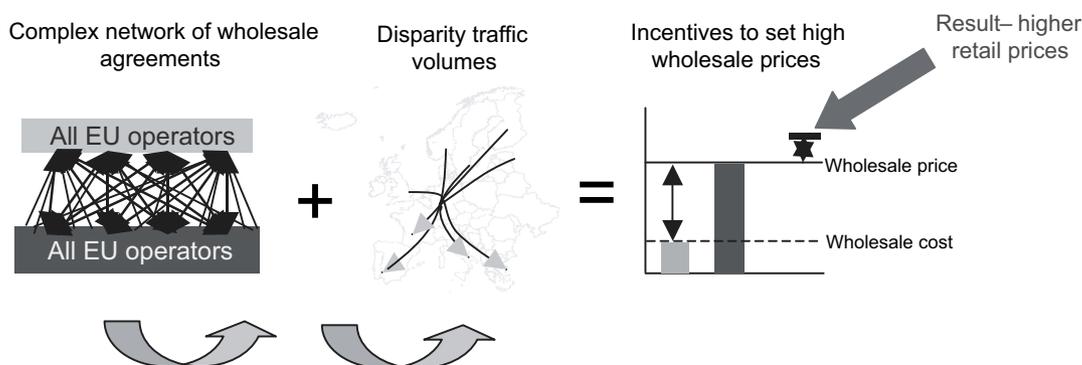
Even where wholesale prices have reduced over-time (notably more recently with the threat of regulation), there appears to be a time-lag in consequent reductions in retail prices. In part this might be explained by a lack of awareness of roaming prices amongst consumers.

Research commissioned by Ofcom at the end of 2005 suggested that 37 per cent of mobile users in the UK used their mobile whilst abroad. Of these almost half (44 per cent) were unaware of the cost of using their mobile whilst abroad.

PROPOSED REGULATION

The case for Regulation

As stated above, Ofcom consider that the primary cause for high retail roaming prices are high wholesale prices, maintained because of a general lack of competition at the wholesale level. The precise reason for the lack of wholesale competition is unclear, although the complexity of the wholesale market in combination with differing incentives of operators across the EU is likely to contribute to the maintenance of high retail prices.



Ofcom consider therefore that regulation, in the form of a cap on wholesale charges between mobile operators is appropriate and necessary. In formulating the regulatory cap care must be taken to ensure that competition is still able to develop: the cap must be set at a level that ensures wholesale charges will fall substantially, but

19 February 2007

also to allow operators sufficient flexibility to compete and innovate. Ofcom favours, application of an average, rather than the maximum cap.

Ofcom believes that the case for immediate retail regulation is less clear. There have been a number of examples where operators have shown the willingness and ability to reduce retail prices where no wholesale obstacle to doing so exists, where an operator has a network in a foreign country for example. However, whilst industry has made progress in this area, we believe more could be done.

If retail controls are to be applied, care must be taken to ensure that the right balance between protecting consumers against excessive prices, whilst protecting the development of competition is maintained. 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.

A consumer protection tariff (also called Euro-Tariff) designed to protect more vulnerable consumers, with a simple pence per minute charge structure and no hidden extra charges might strike the right balance between the need to protect consumers whilst allowing providers scope to offer other innovate tariff structures appealing to a range of users with differing requirements.

Structure of the proposed regulation

The Commission propose two separate wholesale caps and two separate retail caps in its current draft. The Commission also include a detailed set of formulae for calculating the levels of these various caps.

It is possible to significantly simplify the Commission's proposals, without losing any associated benefit. Ofcom believe that a single wholesale cap set as an average (rather than a maximum) for the reasons set out above, and in our supplementary note on averaging, would be preferable to two separate wholesale caps. There is no underlying cost justification for two separate caps, and the Commission's approach risks over-estimating the level of wholesale costs, thereby setting the wholesale cap too high.

Further, for reasons of simplicity, clarity and legal certainty, specifying charge controls in terms of numbers, rather than detailed formulae, should be used in the Regulation. A "deflator" could be applied year on year to mimic reductions in MTRs if desired.

POTENTIAL IMPACT ON NATIONAL MARKETS

There is a genuine risk of the proposed regulation having a negative impact of national domestic markets, if it is enforced without amendment.

The Commission's proposed wholesale regulation would cap the maximum rate any operator could charge another for the provision of wholesale roaming. This would limit an operator's flexibility to differentiate charges (for example by time of day) and dampen incentives for operators to compete, as all operators would be incentivised to set charges at the regulated maximum level. The Commission approach also provides an overgenerous mark-up over cost, thus limiting scope for retail regulation.

Perhaps of greater consequence would be the effect of the proposed retail caps, which the Commission has set too low, underestimating the relevant retail costs. The impact of this could spread to domestic markets as operators may be unable to recover their efficiently incurred roaming costs.

This could lead to operators seeking to recover these costs from elsewhere or risk exiting the market altogether. If operators seek to recover roaming costs from other services there is the possibility that domestic prices will increase. Alternatively some operators may choose to stop offering roaming services altogether, or more likely to certain consumer types or to some (higher cost) destinations.

Given the omission of genuine retail costs in the Commission's calculation, Ofcom believe there is a real possibility that if applied without amendment the Commission proposal could well lead to distortions in domestic retail markets, potentially harming incentives to innovate and invest in these markets.

LATEST ANGLO-FRENCH PROPOSALS

The latest Anglo-French proposal discussed at Council, which has been built upon by the current German Presidency recommends the following:

- A single average wholesale cap set around 30 Euro cents.

19 February 2007

- On retail: a standard consumer protection tariff, available to all consumers regardless of their domestic retail tariff, offering preset pence-per-minute charges for making and receiving calls and no additional hidden charges. This would be operated under an opt-in/opt-out mechanism still under discussion. Ofcom favours an opt-in approach to 1) ensure compatibility with existing contractual obligations and 2) that no overly excessive burdens are placed on operators.
- On retail: an average price control to ensure that on average retail prices of individual operators fall below a pre-determined cap; and
- Concept of “sunrise” or “incentive” clause to incentivise operators to reduce average prices quickly, whilst maintaining a degree of flexibility in designing their tariffs.

As highlighted above, Ofcom believe that wholesale controls are warranted, but the case for immediate retail regulation is, certainly in the UK market, less clear. Retail price setting is intrusive and should only be applied where other controls have failed. Furthermore retail regulation often has unexpected consequences—for example, operators might choose to increase domestic tariffs or reduce handset subsidies to compensate. However to ensure that benefits of reduced wholesale costs trickle down to the consumer, a flexible and pragmatic approach to retail regulation should be considered. We believe this has been developed in the Anglo-French proposal.

RECENT MARKET DEVELOPMENTS

Industry has taken steps to reduce both wholesale and retail prices since the announcement for regulatory intervention in February last year. Vodafone has reduced its wholesale rate to 45 cents per minute (cpm); T-Mobile/Orange also announced significant reductions as part of moves by a number of European operators. All UK operators also have reduced inter-group rates for wholesale roaming.

Retail prices have also reduced over this period: O2 recently announced its “My Europe tariff offering calls for 35ppm; many operators also offer special discounted rates. The structure of retail roaming tariffs have also changed; T-Mobile offers roaming “bundles”—reduced rates (of around 45ppm) for an up-front payment and Vodafone offer the Passport tariff, offering access to domestic rates (inc free minutes) + a per call charge of 75p charge. Typically access to reduced rates requires the consumer to roam on the UK operator’s partner network (Vodafone Italy or O2 Ireland for example).

Prior to this announcement wholesale and retail prices had remained largely static over time. It is also unlikely that in the absence of the threat of regulation prices would have fallen as they have.

It is also unlikely that reductions to date are significant enough to render some form of intervention at the wholesale level, unnecessary. Prevailing wholesale rates are still significantly above what we estimate the underlying wholesale costs to be. We consider that a wholesale rate of around 25cpm would allow operators throughout Europe to recover their efficiently incurred costs, whilst still providing sufficient flexibility for operators to compete and innovate.

23 February 2007

Examination of Witnesses

Witnesses: MR ALEX BLOWERS, International Director, MR JIM NIBLETT, International Policy Director, and DR YIH-CHOUNG TEH, Project Director on International Roaming, Ofcom, examined.

Q69 Chairman: Gentlemen, thank you very much indeed for coming. In theory, we have until six o’clock but we may have divisions, in which case we will suspend the Committee for 10 minutes, so if that is not going to inconvenience you perhaps you would bear with us; it will give you time to draw breath, I am sure. For the benefit of the shorthand-writer, could you introduce yourselves, just briefly?

Mr Blowers: Thank you very much, My Lord Chairman. My name is Alex Blowers. I am the International Director at Ofcom and my responsibilities include the overall co-ordination of our EU and international activities.

Dr Teh: My name is Yih-Choung Teh. I am Project Director for Ofcom’s work on international roaming.

Mr Niblett: I am Jim Niblett. I am International Policy Director at Ofcom.

Q70 Chairman: Thank you. Could you comment on whether you think charges to the consumer, those who are roaming with their mobile ‘phones, have moved significantly over the last few years?

Mr Blowers: I think we would say that the general pattern has been one of consistently above-cost prices, and that problem of above-cost prices has persisted for a number of years, so this has not been a

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

temporary phenomenon, it has not been a short-term phenomenon, there has been a long-term problem of consistently above-cost prices.

Q71 Lord Mitchell: I am sorry. I do not understand what that means, “above-cost prices.” It looks great. I thought all prices were above cost?

Mr Blowers: Prices which are significantly above cost, I am choosing my words with care, prices which certainly do not reflect what you would expect to see happen in conditions of effective competition in the market; that is our general starting-point on this.

Q72 Lord Geddes: I am sorry; on the same point. To stay in business, operators have got to make a profit?

Mr Blowers: Absolutely.

Q73 Lord Geddes: When you say “above cost,” their charges have got to be above cost. Your complaint, if I can use that word, is that they are excessively above cost; is that right?

Mr Blowers: Yes. I am trying to avoid using the words “excessively above cost”, but when we take into account a reasonable return and the costs of the service, so building in a fair element of profit, what we have seen is prices that are consistently above cost, above a reasonable return on profit and which have stayed remarkably the same and remarkably high over a number of years. For that reason, our starting-point is that we agree with the need for some form of regulatory intervention. If you want us to comment specifically on the recent evolution of tariffs in the market, certainly we can cover that point. I know that you will have heard from the operators, first-hand, about their various changes.

Q74 Lord Mitchell: They say, and they were here just before, that it is a highly competitive business, that they are out there in the forefront, in the high street, all the time competing, and you are saying that there is—you have not used the words, but—an excessive amount of profit that is being made on roaming. Why is not the natural market mechanism working? That is my first question. Secondly, we heard Vodafone say that roaming charges have reduced by 40 per cent over a period of time, and the question I did not ask and should have done perhaps is actually how many people are taking advantage of those 40 per cent reductions? I think an awful lot of people do not know about them or cannot get to them and I wonder if you could comment on that?

Mr Blowers: Let me make a headline point and then I will ask Yih-Choung to comment specifically on the evolution of the prices. The mobile market in general, across the board, is highly competitive so, when you hear people say that the mobile market in general is not competitive, as the regulator in the UK we would disagree with that proposition. What we are talking

about here is a highly specific market failure within the mobile market which relates to one part of that market, so our commentary that we believe there is a case for regulation should not be seen as a general commentary to the effect that we think that the mobile market is uncompetitive. We are talking about one specific problem, one market failure, which arises, effectively, as a consequence of the discontinuity between the operator that is levying the retail charges and the operator that is setting the actual cost, the cost base, by setting the wholesale rate for roaming in the destination country. It is that discontinuity, along with a vast amount of complexity around this market, which will be, I am sure, one of the things which the Committee is already seized of, which leads to the market failure which requires to be addressed. This is not a question of a generic market failure in the mobile market. On the specifics, Yih-Choung, I do not know whether you want to take that point.

Dr Teh: Certainly. I can respond to the question about evolution of tariffs more recently. I think we would agree that we have seen some progress more recently in terms of the tariffs on offer to consumers; for example, Vodafone’s Passport tariff or the bundles offered by Orange and T-Mobile, or O2’s My Europe tariff, are significantly better than what has been available to consumers, especially some pre-paid consumers. However, those are some specific tariffs which are moving in the right direction and we note that those have been made available under the threat of a European Regulation, and we do not think it has gone far enough, in terms of some very much higher tariffs still being available. I think essentially that is where we see the tariffs at the moment.

Q75 Lord Dykes: Do you think the market, in its recent development, in the companies in Britain, particularly, and elsewhere as well, has relied really too much on pretty good deals, sometimes individualised deals, with particularly large corporations but perhaps less than large as well? Also on making sure that the corporate customer is satisfied and the tariffs are not too high, and they have not bothered really about the individual customer because of the inevitable high price and elasticity of demand for the service, the lack of knowledge of that customer of how it works, the complexities of it, trying to work out the charges, and anyway being in a hurry when you are going abroad, which may be less often than the corporate customer? Has not there been a lot of that, those disutilities and rigidities, which are part of the market failure you were referring to?

Mr Blowers: I think undoubtedly it is the case that some groups of consumers are much more sensitive to the issue of roaming charges, as part of the array

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

of choices and decisions that they make at the point of purchase. We know that the market which has evolved for mobile services in the UK is driven very largely by choices around handsets, and probably there are some eye-catching elements in the tariff which, for the average residential consumer—somebody like me—are much more important to them at the point of purchase than the roaming charge. It is a rational business decision under those circumstances, given those price elasticities, to set the charges so that perhaps you recover more of the costs from the roaming element than from the other elements of the package. Some groups of consumers undoubtedly will benefit more from existing competition and existing offers because they are more sensitised to these kinds of considerations. Where rational decision-making ends and market failure begins is quite an interesting question and it is a question that Ofcom wrestled with over a number of years around these issues. Is it the case that it would be rational to set charges in this way, necessarily a reason not to intervene, and I think the conclusion that we have reached is that the size of the consumer detriment was growing because actually the market was becoming more sensitised to these issues, and that discontinuity which I described between retail and wholesale makes it difficult for the market to react in a timely fashion to those changes. That is why I think proportionate regulation, but I emphasise the word ‘proportionate’ regulation, could be justified in this case, and then the debate turns on what would be proportionate regulation in these circumstances.

Q76 Lord Dykes: Some of the national regulators, like yourself, and in other countries as well, were arguing that the Commission should take collective action on behalf of everybody, because it is very difficult to do it for a national regulator, for obvious reasons, with roaming charges, although there could be some interface. Nonetheless, should not the Commission have waited maybe just a bit longer for those initial, developmental market rigidities to go out because of the competition, in wholesale prices but mainly in retail, and then maybe take more regulatory action later on; or was it right that the Commission decided to take action in the summer of last year?

Mr Blowers: I think, on balance, we would say that probably it was right. Certainly we were amongst the doves, if I may put it in those terms, who were arguing for the industry to be given time to respond to the political lead that Commissioner Reding had made, but I do think that, looking at the system in aggregate and looking at the behaviour of the operators in aggregate, probably last summer was the right time to act. Of course, the debate has been then whether the form of the proposal, the form of intervention, was actually the right form of

intervention, and that is a separate issue, which no doubt we will come on to.

Q77 Baroness Eccles of Moulton: Mr Blowers, it is very nice to be taking evidence from you again. You were very helpful to us on a previous subject. I think we are aware that Ofcom is not keen on regulation for the sake of it. You were homing in on a particular market failure. Would you consider that to be really the major one, to be the heart of the matter?

Mr Blowers: That is an interesting question, an interesting philosophical question. I think when we look at our overall responsibilities in telecoms, it is clear that the market failures which we confront in the fixed telecom market are significantly greater than those which we encounter in the mobile market. As I said at the outset, when we look at the mobile market in aggregate we think actually it performs pretty well and we are reluctant to get dragged into large-scale regulation in the mobile market. I think the problem here is that there is a significant detriment for a significant and growing group of consumers around the roaming issue, and I think it is incumbent on us therefore to act to fix that particular problem. How we would weight that in the mix with other interventions I think is a difficult question to answer, but certainly it seems to us that a proportionate regulatory response could be justified in this case.

Q78 Baroness Eccles of Moulton: Would you say then that the industry itself could not deal with the discontinuity between the wholesale and retail, really that is beyond anything you could expect an industry to do for itself therefore it needs intervention; or could they do it?

Mr Blowers: Given the current market structure. I will explain what I mean by that it seems to me that if you had a market where it was more frequently the case that the purchaser of wholesale was also the seller of the retail services, so that they were at both ends of the transaction, if you like, actually that market structure might mean that the problem was self-correcting, but we are a long way away from that market structure today, there are companies who are in that position, but overall the market structure is highly fragmented. There are many different actors, there are 27 Member States, each with a minimum of two mobile companies, so that is a lot of transactions, a lot of individual negotiations to get through. It seems to me that even if you took the view that the market would be self-correcting it would take a long time to get there. Whereas an early and decisive regulatory intervention (whilst you are absolutely right that we try to be the non-interventionist regulator, we have this famous expression of our bias against intervention), it does seem to me that if you believe that the consumer detriment exists and you

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

want to fix that consumer detriment, in short time rather than geological time, then actually this is probably the best way to do it.

Q79 Baroness Eccles of Moulton: Every operator is both wholesaler and retailer but there are just too many of them for it to sort itself out?

Mr Blowers: Exactly.

Q80 Lord Geddes: Mr Blowers, you have said twice that you think the time is ripe for proportionate intervention: you used “proportionate”; I am using “intervention”. Do you think the Commission’s proposals are proportionate?

Mr Blowers: I think it is well-known that we have major, severe reservations about the proposal that the Commission issued. It seemed to us, if I can comment on the process, that the intention was good but the proposals themselves were rushed. There was consultation; as part of the European Regulators Group, we contributed to that consultation. We pointed out some of the deficiencies of the proposals; some were removed but actually others were not removed. I am very happy to comment on the detail; actually I shall ask one of my colleagues to comment on the detail. In outline, I would say that the proposals from the Commission managed to combine both being too imprecise in some areas and too detailed in others, which is an interesting kind of combination: highly micro-regulatory in some dimensions and yet actually quite vague and unclear in others. Sorting out that problem and moving to regulation which would be more effective has been the challenge, since last year, with which we and others have been engaged in the course of the negotiation in the Council Working Group and in the European Parliament.

Q81 Lord Geddes: Where are we now?

Mr Niblett: First can I say we took the view that the fundamental problem was at the wholesale level, concerning the prices which operators pay to one another to allow their customers to roam. That is where the thrust of the regulation should begin. In that area, we think the Commission really were a bit too lax and their proposals were a little bit too generous perhaps to the industry and they should have been a little bit tougher. At the retail level, on the other hand, the Commission’s proposals undoubtedly were too tight. They would lead to the risk of forcing the smaller providers out of the market, to a severe risk that there would be tariff uniformity and there would not be the scope for the innovative types of tariff which we have seen emerging in the market over the last year or so. For example, the tariffs which have appeared fairly recently, where a consumer pays a fixed price in return for a bundle of minutes—it would be very

difficult for providers to offer those under the Commission’s proposals. Where I think the Council is moving to is definitely in the direction of much more flexibility at the retail level, so to remove the constraints slightly at the retail level, but not too much. There is also the very interesting idea, which was proposed originally by the German Government, of a consumer protection tariff which would protect the infrequent roamers, who could not expect the best deals but nevertheless deserve to be protected. There seems to be a consensus developing around those ideas, certainly at the Council; we see that being reflected also to some extent in the European Parliament, although they are not so far ahead in their discussions.

Q82 Lord Geddes: Evidence we heard just now said very clearly there should not be any regulation at this stage on the retail side. Would you agree with that?

Mr Blowers: No. I think we believe the debate has moved on slightly. Again, in fairness, the position the UK Government took, and with which Ofcom agreed, was that there should be a significant gap, a period of time should elapse between wholesale regulation and retail regulation, and that should allow the industry to get its act in order. Our bias against intervention, which I have mentioned already, strongly favours intervention at the wholesale level over intervention at the retail level. All other things being equal, if the wholesale regulation works, at least that should remove the need for very heavy-handed regulation at the retail level. I think what Mrs Reding has said is, and I think where the consensus on the debate is now, given the length of time which has elapsed, given the length of time that these problems have existed in the market, it is necessary to be able to demonstrate conclusively to the consumer and the European citizen that the benefits will feed through to consumers on a reasonable timescale.

Chairman: We will suspend for 10 minutes. When we come back perhaps you might expand just a bit further on your approach on averaging of prices, allowing the operators to average rather than have a maximum cap.

Lord Geddes: I wonder if Mr Blowers could define, in his opinion, what gap he had in mind: six months, 12 months, 18 months, whatever.

Chairman: There is a division in the House, we will be back in 10 minutes.

The Committee suspended from 5.38 pm to 5.48 pm for a division in the House

Q83 Lord Geddes: The question I asked was, with the cacophony of bells going on, in your opinion, how long should be the interval between the regulations on wholesale and retail?

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

Mr Blowers: I think, in a way, the debate has moved beyond the idea of there being a stay of execution on any retail provisions, which was the position which a number of Member States were taking at the outset and a number of experts were taking. Now the question is “What provisions on the retail side”? Remember we are talking about potentially the Consumer Protection Tariff to which I referred, which is the guaranteed tariff or benchmark to which everybody is entitled. That is one element of the proposal on the table in the Council on retail, then possibly an average retail price cap as well in addition, and there are some other complexities, but basically those are the two key component parts. Our expectation at the moment, Jim, if I have this correct, is that we expect the consumer protection tariff to come in with almost immediate effect, so the regulation goes into force and two months, three months, after the regulations come into force that Consumer Protection Tariff is available.

Q84 Lord Geddes: Sorry; as a layman, could I describe that as a ceiling, beyond which he cannot go: is that what you mean by consumer protection tariff?

Mr Blowers: Yes. The idea is that this would be a tariff set at some reasonable level to which anybody, even the most infrequent user of roaming, would be entitled. To go back to the point which Lord Dykes was making earlier, about the different interests that different groups of consumers have in roaming, this would be the tariff which would be ideal for the person who roams infrequently. It would guarantee that everybody would benefit from a significant reduction, over and above where roaming prices are today, so all of us would benefit from that. But some people, who are particularly heavy users of roaming, ought to be able to benefit more; that is the idea. We are not setting a single price for all users. I am saying all users should be entitled to a price that looks like this, and then of course operators can bundle, can be creative, can package, so as to produce even more attractive pricing for those who are really heavy users of roaming. This addresses a political concern that if we move purely to average retail price caps some consumers might lose out because all of the benefits would flow to the heavy users. From our point of view, that is a significant consideration; it means that with this particular part of the proposal, to use the horrible expression, all boats will rise, as a consequence of introducing the regulation. What we are saying is that Consumer Protection Tariff could be introduced very quickly; it could be introduced within a matter of two or three months from the regulation coming into force. It does not involve major changes in systems; it does not involve major changes in the underlying economics. However, there is a very important caveat to that, which I would like

to get on the record, which is, that has to be an opt-in tariff, not an opt-out tariff. Were you to move to an opt-out tariff, which means that everybody, without asking for it, is moved automatically on to that tariff, that is a massive issue for the industry to accommodate. It means a mail-out to, however many, let us say, 100 million customers and a contract change for 100 million customers, some of whom, of course, will not want to make that contract change; they have to opt back in then to the package which they wanted. That debate about opt-in or opt-out, which sounds relatively trivial in the overall scheme of things, in our view, is one of the things which turn this regulation from being a reasonably sensible and proportionate piece of work to something which would introduce massive cost for not much additional benefit. That is one point which I was keen to emphasise, that difference between opt-in and opt-out.

Q85 Lord Geddes: You favour the opt-in?

Mr Blowers: Indeed. Does that answer your question on timing?

Lord Geddes: Yes. Thank you.

Q86 Lord Haskel: From the evidence which we received before and from what you have been saying, you have been talking about innovative tariffs and have just explained to us how you are going to try to reduce the prices, one gets the impression that there are a lot of reasonable prices already in existence. Then are you saying to us, it is because of the lack of knowledge of people, they do not know about these reasonable prices, that you are concerned about it, and is it part of your responsibility, as regulators, to make sure that this lack of knowledge is compensated for, that people know about this? If this is so, is not this one way of dealing with it?

Mr Blowers: This is a very interesting question and I am going to answer it by pointing out that—when was it?—a year ago, Ofcom published quite a lot of information with the specific intention of guiding people through the complexities in this area and trying to encourage people to see that there were choices available, there were options available to them. We would say still that any regulatory system which does not reflect and recognise that complexity, that difficulty of exercising choice, in what actually is a fairly non-transparent market, is likely to be defective. Transparency is a very important component of this but it is not enough just to have transparency. Going back to what I said right at the beginning, there is a fundamental market failure problem because of this discontinuity between the person setting the wholesale charge and the person who is setting the retail charge, for you, the customer. We could have as much transparency as we wanted but I think still we would have a core problem which

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

would need regulatory intervention, over and above simply making choices more transparent.

Q87 Lord Haskel: Does not that imply that what you have to regulate is the wholesale market?

Mr Blowers: Certainly it implies that wholesale is the core of the challenge here, and this has been Ofcom's position throughout this exercise: above all else, get wholesale right. If we can get wholesale right, we can put in place price caps—wholesale charge controls is a better way of putting it—which reflect a keen and competitive cost so that they do not allow over-recovery of costs at the wholesale level. That is the core of the problem; it is the nub of the issue here. As I have said, the politics of the situation demand immediate results, demand a rapid feed-through of those benefits to consumers; that is why the retail component also has come in for close scrutiny, and there has been a strong push for a retail element as well, but wholesale is the core of what needs to be regulated in this situation.

Q88 Lord Dykes: Coming back to that—and again we apologise because, as outsiders, it is very complicated for us, I am sure you understand—was the reason why you said that attacking the wholesalers is the key to it not just because of the excessive prices that were being operated anyway but because, inevitably, there is a degree of at least quasi-cartelisation, the way in which the companies operate together, there is bound to be at that level and at that incipient stage of price-fixing, in a way?

Mr Blowers: As a competition authority, we are very, very careful about the use of the word 'cartel' and I would certainly not describe the situation as a cartel.

Q89 Lord Dykes: I said quasi-cartelisation?

Mr Blowers: Thank you for that clarification. It is always something regulators find very difficult to admit, that they do not know the answer to something. We do not know what the answer is to the exam question of why is this wholesale stickier than it should be; we know that there is an issue around incentives, because everybody who is a seller of wholesale has an incentive, obviously, to raise those prices, and to some extent they are insulated from the retail customer, so there is an obvious issue there. Why is there not more competition between providers on the wholesale rates themselves; why is it that in some markets clearly wholesale rates are significantly lower than in other markets? I have to say, after a lot of examination, there is no very clear understanding of why we are in that situation, and you can see, I think, why that encourages the view that regulation, quick, effective regulation at the wholesale level, is the best way to crack this problem.

Q90 Lord Dykes: Presumably you cannot do it, other than suggesting a price cap; that was what you were referring to?

Mr Blowers: Yes.

Q91 Lord Dykes: You are still in favour of a single cap, I think, are you not?

Mr Blowers: We are.

Q92 Lord Dykes: Would there be any other mechanisms one could have to make sure that there is not even minimalist quasi-semi-cartelisation operating?

Mr Blowers: Do you have any thoughts on that?

Dr Teh: I think our view is that a single, average, wholesale cap which would apply between operators is the best way.

Q93 Lord Dykes: Leaning on the tougher side?

Dr Teh: Yes, indeed: on the basis that we have seen a problem in terms of wholesale rates which appear to be very high over the course of quite a number of years.

Q94 Chairman: Just for the sake of the record, are you defining, I think you said, a single average cap as a maximum price, or is it the average of the operators' prices meeting a single cap?

Dr Teh: What we mean is a maximum on the average price which can be charged from one operator to another. Just to explain why we think that is important, in a lot of the charge controls that we apply, we do that as an average over the charges which are made for different elements. The reason for that is a concern might be one of over cost-recovery, that is cost plus a normal profit margin, and by setting an average control over that, you allow operators to have flexibility in charges for different times of day. For example, they can charge more at peak times, which would be more efficient, so that they can encourage usage of their networks at off-peak times, or there may be certain destinations which are lower-cost than others, so you allow the industry to have that flexibility, at the same time as sorting out the objective: that you do not want them to charge excessively. We believe a single cap of that nature, which would apply between every pair of operators, is what would be most appropriate in this instance.

Q95 Chairman: It is more flexible than what is proposed by the Commission and the Parliament?

Dr Teh: Yes, it is.

Mr Blowers: I am not sure the Parliament has got to the point where they have a clear view on this.

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

Q96 Chairman: That is the Commission?

Mr Blowers: The Commission, certainly, I think, we have major concerns about the inflexibility of their proposal.

Chairman: That is helpful.

Q97 Lord Dykes: Can I ask a question particularly of Jim Niblett on international policy, as that is your title. Are the companies being a bit unfair saying that the Commission has been abrupt? Although you said yourselves that they rushed at this slightly, and it is a massive exercise anyway and maybe they did not leave themselves enough time, it is understandable, in a way. The companies, particularly in this country and elsewhere, may be being a bit harsh about the Commission, because the Commission, and dealing with the creation of the single market was a huge task, in so many different sectors, is trying to transfer from international policy, or transnational, across frontiers, to one single European policy area, in all these fields? Take bank cards and credit cards, two lots of rigidities and disutilities there as well, as we know. Do you feel, therefore, that the Commission, maybe having started somewhat hastily at the beginning, is right, as you have inferred before, to have done this now, that everything is correct to proceed with it; it should be a tough regime but a fair regime, where the public know exactly what is happening, and you would be satisfied, in terms of international policy development, in that context?

Mr Niblett: Yes, I think so. Clearly, there is a transnational issue at the wholesale level, where you have got companies which are buying in one country and they are buying from companies which are based in another country; that is an obvious transnational element which justifies the European approach to this regulation. I think it is rather less clear that there is a transnational element at the retail level, where I am buying a service from my retail provider in my country; it is less clear that there should be a rigid European approach at that level. That is one reason why originally the UK Government advocated the idea of national discretion at the retail level; generally that has not found favour, it is thought to be much too complicated. Clearly, there is a much greater case for strong harmonisation, as you say, reasonably tough harmonisation, at the wholesale level; less so at the retail level, I think.

Mr Blowers: Mrs Reding has said, and we would say that she is correct, that this is one of the areas where you can take internal market policy, which is highly arcane, generally speaking, and present a very obvious consumer upside as a consequence of having taken decisions at European level. All of us can see the benefits of a lower-cost, more seamless regime for roaming. At least, all of us who ever travel in Europe can see those benefits, and that I think is one of the reasons why, as well as having a strong underlying

rationale, this has political resonance, which a number of people have grasped as being a real example of the internal market in action, delivering real benefits to consumers.

Q98 Baroness Eccles of Moulton: We have been concentrating very much on the effects on the consumer but is it possible that the regulations, when they come in, are not paying sufficient attention to the small provider and that there could be unintended consequences, either making it easy for the big boys to squeeze out the little boys or, on the other hand, giving the little boys too much advantage over the big boys?

Mr Blowers: I think one of the areas—we have alluded to this already—where it is very, very important to get the calculation correct is over the setting of the retail charges, because if that regime is too tight the big boys, some of whom probably are still in this room, could absorb that, but the smaller operators may struggle to absorb a retail regime which is too tight. The nightmare scenario is a high wholesale charge which the small retailers have to absorb and a very, very tight retail control. So that is one of the areas. I think the other area we would say goes back to this point about the opt-in/opt-out nature of the tariff, there is a lot of hidden costs if you go for the opt-out approach. There are a couple of areas like that where it is very important to get the calculation right, and I think that is a legitimate concern.

Q99 Baroness Eccles of Moulton: Is the Commission aware of it, are they taking that into their calculations?

Mr Blowers: I think the way we would answer that is that the Council Working Group absolutely has that issue in mind and we hope that it will improve the Commission's proposal significantly in that regard.

Q100 Lord Dykes: Do you feel the need for a mechanism, in all of this process, which the Commission needs to develop, therefore, to prevent the companies now seeing their super-normal prices and super-normal profits receding in the wholesale and retail areas, as already established in the major markets, transferring to the smaller markets of the more recent Member States, the ten, and then the two, from Bulgaria and Romania? Although they are very small in comparison with the existing 15 markets, nonetheless there might be an attempt by the companies to move in there to get some super-normal profits?

Mr Blowers: I think that is why it is important that this regime is sufficiently consistent and sufficiently rigorous in its application that it applies in all countries. One way of thinking about the question that you have raised would be if there was a much

19 February 2007

Mr Alex Blowers, Mr Jim Niblett and Dr Yih-Choung Teh

laxer regime inside the countries then an obvious way for operators to ameliorate the impact would be to move into those countries and benefit from a laxer regime. Clearly, this regime will apply and will apply on the same terms throughout the EU 27.

Q101 Lord Dykes: That can be constructed satisfactorily, do you think?

Mr Blowers: I am absolutely sure that the proposal which we have been helping to construct, which has the features we have been describing today, offers the best likelihood of all regulators, in all countries, some of which certainly do not have the resources of Ofcom and the expertise of my colleagues, creating a regime which it is possible for everybody to operate relatively simply. Although some elements of it sound a bit complicated, actually the calculations on which we are relying are pretty straightforward; at least, that is what Yih-Choung tells me.

Q102 Chairman: I think it would be helpful, subsequent to this hearing, Mr Blowers, if someone on your staff could produce just a short note on averaging?

Mr Blowers: Absolutely.

Chairman: We are now getting down to the detail and it is very important in contrasting the Commission's proposal, which is a specific cap based on averages, and the averaging of the operators' tariffs producing a cap or a maximum rate which can be charged.

Q103 Baroness Eccles of Moulton: Would the averaging be applying only to retail? It applies to both, does it?

Dr Teh: What we believe is appropriate is, firstly at wholesale, the key area, as my colleague has been saying, that would be an average cap in the way I described. At retail, as we have said, we think a Consumer Protection Tariff, one particular tariff, would be appropriate. It may be necessary to have an average control as well at retail. I think what we believe is probably the worst thing is to have a maximum control at retail which is too low, which then would prohibit a number of the tariffs that we see already in the market-place which are rather useful.

Q104 Lord Fyfe of Fairfield: We have talked about above-cost pricing, and so on and so forth. In this document here, produced by GSMA, it talks about mobile 'phone operators' average return on capital being now round about 8.1 per cent, compared with 9.2 per cent in the same period in 2005. On the face of it, at least, that does not seem an excessive return on capital?

Mr Blowers: I think what we would find is that the returns specifically in this area are much higher than that, for this particular product.

Q105 Lord Fyfe of Fairfield: This is the puzzling point, you see, because this document refers to roaming but it does not specify roaming in this little paragraph. Have you any idea then, on roaming, what would be the return on capital?

Dr Teh: I think that is a very difficult calculation to perform, not only for us but for the operators, because obviously you need very specific and detailed accounting information or other information to get at that disaggregated level. As we have said, we think some of the prices are an awfully long way above what would be a reasonable cost and return on that, which makes us concerned about the roaming prices, whereas those figures would seem appropriate in aggregate.

Q106 Lord Geddes: If that is so, if 8.1, just to use that as the illustration, is fair but roaming is too expensive, the implication is that the cost of roaming must reduce, and therefore the cost of something else has got to go up. There is no such thing as a free lunch. What is going to go up if roaming comes down?

Mr Blowers: There is a dreaded expression used in the industry, called the water-bed effect, which describes exactly this putative phenomenon, that if you push down on one side it goes up on the other side. All we can say is, on that, the analysis suggests, because the rest of the market, what we said at the beginning, a mobile market in aggregate actually is very competitive but the scope for raising prices in other areas to compensate for reductions in prices in roaming is quite restricted. I think there is a wider industrial policy debate about this, which is if you drive down roaming prices and then the next time some other price that you do not like the look of, you are driving down everything to cost, is that an effective regulatory regime in aggregate? Does it drive profit out of the system in a way which, long term, discourages investment and innovation? I think that is a reasonable concern and it is why it is very, very important to set these prices into regulation in a way which is realistic, not too low. It goes back to what we said at the beginning, that in this case we see a particular group of consumers who have encountered consumer detriment over a number of years and it is not unreasonable to be intervening to correct that, provided that intervention is proportionate, but we do have in mind that wider concern about not regulating innovation and investment out of the system.

Chairman: That was a very appropriate question for Lord Fyfe to end on. Thank you very much indeed for your evidence; very clear. We look forward to that extra note. Indeed, when you read the evidence, if there is anything you want to correct or supplement please do so.

19 February 2007

Supplementary memorandum by Ofcom

Q. What does an average cap on roaming charges mean?

An average cap is a ceiling or target level which must not be exceeded by the prices charged on average over a specified time period.

For example, suppose a train operator runs services at different times of day, but is subject to an average cap of £10 per passenger for a journey, in every month. The operator may choose to charge higher ticket prices than £10 at peak times, but less than £10 in the middle of the day when it is quieter, or indeed charge frequent travellers a discounted season ticket for the month. The average cap would allow the operator to set any price for each individual ticket, provided that at the end of the month the average price charged per journey (for example, the total monthly revenue divided by the number of passenger journeys) is below the average cap level of £10.

Q. Why cap the average charge, rather than the maximum charge?

Setting an average charge cap allows greater flexibility and encourages operators to be more efficient and innovative, since it does not specify a limit on the price that must be set for every individual charge. At the wholesale level operators are able to vary their charges to reflect cost differences, setting higher prices at peak times and lower prices when their networks are less congested, therefore enabling them to encourage use of their networks when they are less busy.

At the retail level, allowing operators flexibility to set different rates promotes innovation by allowing operators to design and set tariffs according to differing consumer requirements—for example, allowing some consumers the choice to, pay in advance for a bundle of roaming minutes so that they do not have to worry about further charges while on holiday, while allowing others to pay according to a simple per minute tariff.

Setting a maximum cap, while apparently simpler, removes this flexibility with the possible result that operators are motivated to set all their rates at or very close to the regulated level. Furthermore, under the Commission's proposal for a maximum cap, several tariffs that are available to the consumer at present, such as Vodafone's Passport and Orange and T-Mobile's bundles would be prohibited.

Q. How should this average cap be calculated?

Average charge caps are used in many types of regulation, and there are different ways in which these can be calculated. In respect of the roaming Regulation, we have suggested that an average cap is applied to both wholesale and retail services, and is calculated on a very simple basis.

Wholesale level

The wholesale average roaming charge for each operator would be calculated by dividing wholesale roaming revenues received (from providing wholesale roaming to other mobile operators) by the number of wholesale minutes sold. The UK has proposed setting the wholesale average cap at €0.25 per-minute, to be measured over a period of 12 months. We believe this will allow operators to recover efficiency incurred costs together with a reasonable level of profit. By way of comparison, typical wholesale charges have until fairly recently been at levels around €0.70 per minute.

$$\frac{\text{Total roaming revenue in period}}{\text{Total roaming minutes in period}} \leq \text{€0.25}$$

Retail level

The average retail roaming charge for each operator would be calculated in the same way, taking account of revenues and minutes from both making and receiving calls. Therefore, 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 the target average cap level. As for wholesale, the UK has proposed a 12 month period over which to measure the average, recognising the seasonality of roaming services.

23 February 2007

 MONDAY 26 FEBRUARY 2007

Present	Dykes, L Eccles of Moulton, B Freeman, L (Chairman) Fyfe of Fairfield, L	Haskel, L Lee of Trafford, L Mitchell, L St John of Bletso, L
---------	---	--

Examination of Witnesses

Witnesses: RT HON MARGARET HODGE MBE, a Member of the House of Commons, Minister of State for Industry and the Regions and MR NIGEL HICKSON, Deputy Director of EU ICT Policy, Business Relations Directorate, Department of Trade and Industry, examined.

Q107 Chairman: Mrs Hodge, thank you very much indeed for coming. We are almost half way through evidence taking in this particular inquiry. We are going to Brussels tonight and tomorrow morning we are going to be taking evidence from Commissioner Reding and others. We are hoping to produce our report for publication on 27 March, just before the Easter recess in an attempt to be constructive and helpful, obviously to ministers here but also the Commission and the Parliament. We understand that you have up to an hour. We shall see how we get on. I am going to ask Lord Dykes, if I may, to put the first question, but before I ask Lord Dykes to do so, is there anything that you would like to help us with to begin with?

Margaret Hodge: I usually do not make a statement at the beginning. I can if you like, but it is probably a better use of the time if you ask me questions. I am delighted that you are undertaking this particular inquiry; it is a really important issue. It matters a lot to individuals who travel, to people who travel on behalf of their businesses and it is a very timely inquiry in that I know the German Presidency are anxious to try to get a conclusion to the negotiations during this Presidency which means that I am over to Hanover, before you report actually, for an informal meeting of ministers in the middle of March sometime. We would hope by the June Council to try to come to a resolution, but given that it is a decision that is taken both by the Parliament and us and the Council and the Commission, and we are not all entirely in the same place, it will take a lot of goodwill on behalf of everybody to find compromises.

Q108 Lord Dykes: On the assumption that the calculations the Commission have made in making their suggestions are correct, on that assumption and on other assumptions connected with that, do you think there is a strong case for legislation in this area?

Margaret Hodge: If I may divide that question up, there is a strong case for legislation in this area. It is quite interesting, if you look at domestic tariffs, that there is enormous competition in the market and that has been to the benefit of consumers and has led to a lot of innovation; those are the benefits we see out of

competition. If you look at roaming charges, there has been very little movement. I am sure you will have looked through the history of this issue and the Commission's attempts to persuade the industry to reduce what are seen as excessive charges and when I looked back on it, it went back to when Mario Monti was Commissioner for Competition in 2001 and he first made a speech arising out of a study that had been made on roaming charges where he said they were too high. We then had a series of summer pronouncements just before the summer holidays by commissioners urging the industry to reduce rates and they failed to do so. It was only once Commissioner Reding put forward her proposition from the Commission that rates started to come down. So the market has not worked; there is a market failure and there is a purpose for intervention. Our concern is that that intervention should be appropriate and should not have unintended consequences. We are particularly anxious that if there is regulation around roaming charges, it should not inhibit innovation or inhibit competition and our view is that the tariff set by the Commissioner in her original proposition was too low, it would not have covered the costs, it would have then had unintended consequences probably on other charges by the companies and it was a bit of a stunted instrument which in our view would have inhibited both innovation and competition. So we should regulate but we have to look at how we regulate so that we get the best out of regulation and do not get a bad outcome out of regulation.

Q109 Lord St John of Bletso: Ofcom commissioned some research at the end of 2005 which showed that 37 per cent of mobile users in the UK use their mobiles whilst abroad and of those, almost 44 per cent were unaware of the cost of using their mobiles whilst abroad. My question really goes down to transparency because we have heard a lot about the various charges, but how realistic is it that the wholesale operators are going to be more transparent with all these proposals going forward?

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

Margaret Hodge: There will be complete transparency on prices. We are now probably in agreement. Nigel Hickson leads for us in the negotiations at official level in the working party and it is fair to say that there is now agreement on having a uniform wholesale price which would be the same for both receiving calls and outgoing calls. That has been agreed by the Commission and so far not challenged by Parliament. Is that right?

Mr Hickson: Just to clarify, yes, there is a transparency article in the regulation and transparency in terms of push to the consumer, informing them of the charges that they will have to pay when they enter another Member State, or they can request a pull. They can have a freephone number or they can go to a website. As the minister said, transparency is very important both in terms of the cost for receiving and the cost for making the call when one roams.

Margaret Hodge: The distinction I was trying to make was that the wholesale price will be set and known and then we would come to the charges to consumers; we will have the system that Nigel Hickson has outlined. There is still a conversation to be had, an agreement to be reached, as to quite how that will work; whether you will automatically, as I now do on my phone if I go abroad, be told the charge rates by the operator. Will that happen automatically? That is the push system. Or will I be able to say that I do not want these spam calls coming at me unwanted and therefore I choose to have a pull system whereby either I receive a text message or I can ring somebody and ask what the charges are. If I may just say one other thing on transparency which I as a consumer feel would be important, it is that when you roam you find yourself with a particular operator so you are more frequently nowadays given that operators' charges, but having the information on whether there is another operator who might have a different charge regime is still difficult to access. I hope that in the discussions we have—that will have to be through the so-called pull system—we shall make it easy for consumers to make their own personal judgment as to which charge regime and therefore which operator they wish to use when they roam.

Q110 Chairman: May I just ask a question on the wholesale charge and how it is calculated? Is this to be an average across all countries and across all operators? Does it give a specific operator the ability in making the charges to have different tariffs which, when averaged out over the course of six months or 12 months, come to a specific figure?

Margaret Hodge: I am going to ask Nigel to answer that because it is pretty technical.

Mr Hickson: The answer to that is basically yes. The current thinking within the Council and indeed within some parts of the European Parliament is that

you would have a single average wholesale target that had to be met by each operator for all their dealings with another operator. So it is an inter-operator target that has to be met that would be averaged out throughout the year, so it would take into account busy and slow periods and also, within that 24-hour period as well, then sometimes charges will go up and down because of the markets.

Q111 Baroness Eccles of Moulton: I want to talk about targets or caps, because if you have to stay within a cap, you can obviously have lower charges, but if you have a target, then you are expected to meet it.

Margaret Hodge: It is an average cap, so that means some charges may be slightly higher, some will be lower, as long as overall you are within the average or below the average.

Q112 Baroness Eccles of Moulton: So long as you are below the average.

Margaret Hodge: Yes, but individual charges could still be higher.

Q113 Baroness Eccles of Moulton: You must end up within the average but if you end up lower than the average that is okay. Obviously you do not have to hit it.

Margaret Hodge: Yes. Indeed our view is that having an average, both wholesale and retail, cap is absolutely crucial to ensuring that competition and therefore differences in prices emerge because if you had had only what Viviane Reding was originally proposing, which was a ceiling on price, that maximum would become a minimum. In that way, you will probably inhibit competition and then innovation.

Q114 Lord Haskel: We have heard from Vodafone that they are questioning the whole legal basis of this. If I may just quote from a letter which we received from them, they say it is “. . . a core principle of European law that if a firm enjoys a dominant market position and the ability to price independently of its competitors or customers then this freedom will be constrained—but only in these circumstances” and they claim that those circumstances do not arise and so there is no legal basis. We wondered whether you had any view on that.

Margaret Hodge: My view is that there are quite a lot of legal opinions floating around at the moment across Europe and in the Commission on this issue. The Commission believes that Article 95 gives them the basis on which they can put forward this regulation. No doubt they have been well advised and we just have to leave it at this point to the lawyers and work on the assumption that there is a legal basis. I have to say that I have had discussions with

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

Vodafone and we are attempting in our negotiations in Europe to ensure that we protect consumer interest but we equally do protect the operators as well. We do not want to end up in a situation where it just becomes uneconomic; where the rates are so low that it becomes uneconomic for them to provide the service. To some extent they had this coming to them, because if they had listened rather more carefully to what the Commission had been saying from 2001 onwards, we might have been in a happier position over the need to regulate. I am expanding on your question a little bit, but it is worth it. When we originally saw the Commissioner's proposition, we put down a set of alternative principles which we worked up with my counterparts in France. One of our thoughts at that time was whether we could bring in a regulation but have what we here would term a sunrise clause, so that you would not implement until six months in, in the hope that industry would self-regulate and therefore there would be no need for European Commission regulation. I instinctively would have preferred to go down that route. Actually the will in Europe is such that they feel they want to give some certainty to consumers and therefore want to go for immediate implementation of the regulations, so we shall not achieve that objective, but in a deregulatory mode, what we are hoping for is that the regulation will have its three-year life and if in that period the industry has shown that it will reduce roaming charges, then there may be no need to continue that regulation. That is called a sunset clause in the jargon and that is still within the proposed regulations.

Q115 Lord Haskel: The point that they made to us was that this kind of rather heavy-handed regulation and unfair regulation in their terms will discourage investment in the mobile telephone business. Are you satisfied that, in fact, that will not happen?

Margaret Hodge: It is precisely for that reason that, having once accepted regulation was needed, we are trying to get the regulation framed in such a way that it does not disincentivise investment. There are three or four elements: one is making sure that the calculation around the wholesale average price is appropriate, so that it covers the real costs of both setting up and running the scheme. The second is this proposition that we have that there should be an average retail tariff which would allow the packages which are around at the moment, for example the Vodafone Passport package and the other packages, to feel that they can differentiate themselves within the market and therefore compete for a bigger share of the market and that would enhance their productivity. With those, having the right level, the right calculation around wholesale caps, the right calculations and the flexibility of an average retail tariff will ensure that we provide sufficient comfort to

the industry that there will be incentive for them to invest and compete in that market.

Q116 Lord Haskel: It is a fine balance.

Margaret Hodge: It is very difficult. There are still issues that we need to resolve over the coming very few weeks in the negotiation. We have the average wholesale price and we so far feel content that we have the basis for the negotiation in a way that ensures a sensible average wholesale price is set. There is an argument over the consumer protection tariff as to whether that should be opt-in or opt-out and we very, very strongly feel it has to be opt-in, otherwise there is a massive, massive cost to the operators, up to £2 billion. I am just converting everybody to that. We need that average retail tariff and we need to convince everybody that that is a good idea and that the basis for the calculations, both on consumer protection tariff and the average retail tariff, is right. We do need two other: one is the sunset clause, where we think nobody has raised anything so we hope that is okay; then the final thing we want, and we are raising at the working parties which are meeting weekly, is the concept of a punitive tariff which we think is quite a powerful lever which would help us keep that regulation in place for about three years so that, if an operator fails to meet either the wholesale tariff, the average wholesale tariff or the average retail tariff or the consumer protection tariff, they are punished by then in the ensuing year having to lower their tariff even more than others have to.

Q117 Lord Lee of Trafford: Minister, on the debate over wholesale and retail regulations, do I get the impression from what you said that the Government's focus is very much on the wholesale aspect rather than the retail or is it just one first and then the other?

Margaret Hodge: It is both. The only thing is that we are further forward in arriving at a consensus which meets consumers' needs and industry's needs on the wholesale price. We have yet to reach that consensus which we would be happy with around retail prices.

Q118 Lord Lee of Trafford: Has it been deliberately tackled in that way, wholesale first and then retail? Is that the way you tend to approach it?

Mr Hickson: Yes, you are right. There is a logical process, that you cannot really decide on exactly what you are doing at the retail level until you have the wholesale level sorted out, so the wholesale charge is very important because that ensures that no operator can charge another operator above a certain amount for the capacity they buy and then above that, you build in your retail controls, as the minister has outlined. Yes, wholesale is the first block you have to get right.

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

Q119 Chairman: It would be helpful if you could describe what support you think there would still have been for the UK approach, which was that after six months regulation at a retail level should be introduced, whereas now we seem to have reached the stage where you said that pressure amongst other ministers was such that they want immediate action at the retail level as well with a review perhaps after 18 months to see whether a three-year period was still justified before the regulations might be modified or removed. Are we a lone voice saying “Let’s just try wholesale regulation first and then consider retail later”?

Margaret Hodge: Can I just give you a little bit of context and then, as Nigel has been leading for us on the negotiation, he can probably speak about the detail. I have been discussing these issues with the Commissioner and one of my very first meetings as Minister for Industry was with her around these issues; so I have been talking to her for some time. She was pretty fixed in her view as to how that regulation should be framed, although we discussed a number of these items with her right the way through the informal negotiations around these issues. When she put her proposition to the Council of Ministers last October/November and we put forward this concept of sunrise clauses, she was rather quickly able to say that our proposition would delay the lowering of prices to consumers and that view that she put forward gained quite a lot of popular credibility. Where we now are with the sunset clause, so that the regulation falls in three years unless there is a good justification for it continuing, is that we have been able actually in a way to demonstrate that we could bring in the regulation more quickly so that from the day the regulation is agreed there will be two months until a wholesale average price comes in and then three months before the average retail tariff comes in. We are actually able to demonstrate that we can do it more quickly. We wanted to be in the position where we were both seen to be promoting the interests of consumers, which of course we wish to do, but at the same time protecting the interests of the industry so that we did not harm either competition or innovation. That is where we have ended. It might have been more sensible to have a six-month sunrise clause but Nigel can perhaps talk a little bit about how that debate actually went in the group.

Mr Hickson: Yes, it has been a process. Essentially, and I debate this with the minister, we still have what I would call a weak sunrise clause. Essentially what we have now in the presidency text—and of course we appreciate there are several different texts that are being brought to your attention but the text in the Council we call the presidency text, because that is what the German Presidency have brought forward—is this concept of the consumer protection

tariff, and we favour the opt-out version. This is a tariff that everyone will be offered. It is a particular tariff that perhaps you would recommend to someone who does not travel much, someone who is unsure about what rates they will pay when they go abroad, perhaps a daughter or a son or somebody and you do not want them to pay too much or whatever and that is a purely optional tariff, a tariff that has to be offered but is purely optional. The second element is this average target that has to be met by an operator, but across all the different packages that they offer. To an extent that has some elements of a sunrise clause because they have the freedom to innovate around that average figure and it is only if they do not meet that average figure measured over a period of a year that they will then face the penalties that the Minister has outlined; so it is a significantly better place to be in than the 30 per cent absolute Commission proposal. To fully answer your question, it has been a process of negotiation. Perhaps we would at one point have favoured a more definitive sunrise where we would not have had any retail controls at all unless a certain trigger had been met, but we are faced with what we are faced with which we think will balance consumer protection with innovation.

Q120 Chairman: We have had evidence from some of the operators that they would favour an opt-in rather than an opt-out.

Margaret Hodge: Opt-in is what we want; you meant opt-in.

Mr Hickson: Yes; sorry.

Q121 Chairman: So opt-in is the proposal?

Margaret Hodge: Yes.

Q122 Baroness Eccles of Moulton: Presumably, when the operators have to produce the evidence at the end of the year that they have hit the target or remained below it, is it on wholesale and retail? It is going to affect both, is it not? Does that mean that that information will be in the public domain so that anybody who wants to will then have a much clearer idea of how the operators have arrived at the pricing conclusions that they have asked their customers to pay. At the moment, reading through all the stuff we have had, it is completely impossible to understand how on earth they differentiate between costs, charges and prices. Is this going to help?

Mr Hickson: Yes, it will help. I do not know whether you asked Ofcom the same question and I am not exactly sure what information Ofcom will publish but, for instance, you are quite right, to be able to calculate the wholesale average and the retail average, the national regulatory authorities, Ofcom in our case, will have to demand information from the operators. If the information suggests that that

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

average tariff has been breached in any one year, then that would be information that would have to be brought into the public domain.

Q123 Baroness Eccles of Moulton: Only if they had broken the rule would we be able to know how they arrived at their various calculations.

Mr Hickson: Ofcom would be very willing to tell you the methodology for arriving at the figure. It is not simple because there are lots of tariffs, but essentially, if there are just two people on a tariff, you know the revenue you are getting in from the number of people and as the operator you know how many minutes those subscribers have been roaming, so that is the ratio you need to feed back to the regulator.

Margaret Hodge: The regulator will have the responsibility for monitoring to ensure compliance, so the regulator will need all the complicated calculations both in relation to wholesale and retail. We, the consumers, will only be interested really in how much we pay for a call from Brussels to London or whatever it is and that information will be easily accessible. What I am anxious that we should do, is that you do not just get it from the operator that is fielded to you when you arrive somewhere in Europe, but you do get that choice. So the push-pull system, as it is called, for getting transparent information to consumers is important and that will be plain. How it is calculated at the end of the day, we do not necessarily need to know.

Q124 Baroness Eccles of Moulton: But that is information that the regulator does not have at the moment.

Margaret Hodge: I do not know.

Q125 Baroness Eccles of Moulton: There seems to be a lot of cross-subsidisation, like the issue of nearly free mobiles and maybe cross-subsidy is working within an operator that we simply do not know about.

Margaret Hodge: Do we need to know? From the consumers' point of view, whether you are a domestic consumer or a business consumer, you just want to know your price. How they arrive at the price is down to them.

Q126 Baroness Eccles of Moulton: I suppose one thing which has made consumers feel a bit unhappy is that the exorbitant roaming costs, charges, prices have contributed considerably to what appear to be very large profits.

Margaret Hodge: Yes, but I am not sure it would be appropriate, which is why we are now regulated. Once the prices start coming down, I am not sure it is appropriate for us as consumers to have the information as to how we end up at the price. You do not know when you go into Marks and Spencer's or

John Lewis why they have reached the price they have.

Q127 Lord Fyfe of Fairfield: There is a remarkable difference, if I may say so. One can quite easily compare the retail price in one shop just by walking along the street and seeing it in another; it is not transparent at all as far as roaming is concerned, certainly not in the present framework.

Margaret Hodge: I agree that we need transparency about the tariffs that we are charged as consumers. We do not have that now and that is part of the regulatory framework. I am with you on that, you can go into Marks and Spencer's, you can tell the price, you can go into John Lewis and you can tell the price. You ought to be able to tell the price if you go onto O₂, Vodafone or whatever and we need to do that, but how O₂ and Vodafone arrive at their tariff is not really an issue for us. As a consumer, you will compare the tariffs depending on whether you are a frequent user making long calls or an occasional user making short calls for example.

Q128 Lord St John of Bletso: Do you think that the pressure for lowering roaming charges could potentially lead operators to charge higher prices for other mobile telephony services?

Margaret Hodge: Yes, if we get it wrong. This is why the way in which we calculate the wholesale average price and the way in which we calculate both the consumer protection tariff and the average retail tariff matter. That has always been one of our great concerns from the start that if we get that wrong, the people who would suffer most are those who do not actually roam, do not travel and they are probably the least able to pay more.

Q129 Lord Mitchell: This is really an observation. I am a sort of business-type capitalist to the core and when we have been taking evidence, the thing that has really struck me in this whole industry is that where there is competition, which is on the domestic tariffs, it is dog eat dog; it is really amazing and very, very competitive. On this particular area of roaming we have had everybody here and it just strikes me it is a nice little earner for these people and actually they profit from the fact that nobody really understands it and I am still not sure that any of these changes is going to make a difference. May I just give you one example that I have mentioned before to this Committee but it is just something that really gets me? I am on Vodafone and they have Passport, which you mentioned. Under Passport you pay 75p a call if you are abroad and thereafter it is just the domestic rate. What they never tell you is that actually it is only if you are on their network, it is only if you use their network that it happens. I was never told that and I spend a lot of my time in Italy where you can jump

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

two feet this direction and two feet the other direction and the network provider changes; it is one or the other. So you never know which one you are going to be on, it is never certain what you are going to have and actually to set your mobile phone so that it automatically selects Vodafone IT is not something that most people know. The whole essence of what I have got out of this investigation is that the complexity of it just makes more and more for them, making huge profit in this area, and it still does not seem to me that it is ever going to become very competitive.

Margaret Hodge: I agree with you, that is the current regime. This is why the transparency provisions are going to be crucially important and I hope that our own regulator, Ofcom, will make absolutely certain that there is far, far better information to consumers so that we can make informed choices. At the moment that is not in place, it needs to be in place and it needs to be simple in a way that we can understand. The second thing I should like to say is that actually the alternative to what we are proposing—which is not the simplest because we have sacrificed simplicity to other principles; we have gone for competition, innovation, flexibility, those sorts of things at the price of simplicity—the negatives of simplicity, which would be to let us have one charge, which is probably where Viviane Reding will tell you she would like to be at, something that is clear and nobody can muck around with and is absolutely clear to all of us, is that you can get the figure wrong and then you start getting all the unintended consequences you have about other people having to pay for that simplicity. If we get this right, and it is on the margins, I hope that we will start introducing that dog-eat-dog competition into the roaming market which is not there at present. If we get it right, there is a big prize for both consumers and operators whereas just sticking to the simple one would stifle that competition and that innovation. If we get the price wrong—and governments, whether national governments or the European Commission, are never brilliantly good at setting the right prices around these sorts of areas—the danger of doing what looks superficially attractive at this point because we are all feeling so frustrated, outweighs the difficulties that we might enter into in this rather more complicated negotiation and instrument that we are trying to develop.

Q130 Lord Mitchell: A general background probing question. In the lobbying that presumably the industry has been undertaking in dialogue with the Government, has the industry been talking in broad terms with one voice to you or have they all been adopting their own individual positions?

Margaret Hodge: Probably one voice. There has not been much difference of view. On the whole it has been one voice to my recall. It is now a few months since I saw them all, because I really spent a lot of time with them in the early months. Can you think of any difference?

Mr Hickson: Some of the operators have different characteristics and you have heard evidence from some of the operators. Some of the operators are larger than others and have more cross-European networks, so they will have slightly different interests in terms of the level of wholesale and retail charges. On the whole, as the Minister says, we have been talking to the operators on the building blocks that we have been outlining and they are broadly content with those building blocks.

Q131 Lord Mitchell: And is that as true of wholesale as it is of retail?

Mr Hickson: Yes. As you no doubt heard, initially the operators would have obviously preferred not to have any regulation and then, if they had to have a regulation, they would have preferred to have had it just on the wholesale level rather than on the retail level. The building blocks we have in front of us now are broadly acceptable.

Margaret Hodge: There has been an argument over ensuring there is a level playing field between large and small operators and we have achieved that by the average wholesale price tariff.

Q132 Lord Fyfe of Fairfield: We talked to Ofcom last week and I felt slightly uneasy when we talked to Ofcom. I wonder whether the Minister would like to comment on how she sees the relationship between Ofcom and the operators.

Margaret Hodge: I have seen a summary of the evidence last week; I have not seen a transcript. I have a huge regard for Ofcom. I have to say to you that in my nine years as a minister I have dealt with a whole range of regulators and it is among the very best that we have got. They are extremely professional, their analytical processes and policies are always very, very sound and they are jolly fair. I do really rate them so I do not know quite how they gave that impression. I do not think they do sit on the side of industry more than the consumer. I find them a really high calibre regulator.

Q133 Lord Mitchell: It is not a cosy relationship by any means.

Margaret Hodge: No. I can tell you on other issues like, for example, spectrum allocation that the operators come to see me a lot of the time to talk about the mobile operators who are desperate to get hold of some of the spectrum which is likely to become available through digital switchover. They

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

are pretty vocal about how unfair Ofcom is being to them.

Q134 Lord Dykes: Further to that, we have seen in the press commentaries, both the leading articles and the factual information and so on, quite an amount of cynicism amongst the more brutal of our journalistic friends and colleagues, likening some of the wholesale pricing and nexus arrangement, which are very, very complicated anyway, to a kind of cartel; there are many differences so we must be careful where we make comparisons but a bit like the bank card and credit card cartel system which the Cruickshank report referred to many years ago as a splendid piece of cooperative, capitalist working together. Ofcom have themselves admitted that some of the internal data and information are very complex to get hold of, to grasp and really understand. Do you feel that you have confidence that Ofcom can get the industry to support a more rigorous and democratic regime for consumers that will be transparent with our European colleagues?

Margaret Hodge: I do actually feel confident. One of the reasons, if you look at what has happened in mobiles since Ofcom has been in place, is that what has happened around costs and choice for consumers and charges has been pretty impressive in the UK actually, it has been pretty good. I know that this inquiry is not looking at that, but Ofcom has responsibility for regulation across the whole of the telecommunication sector and I look, for example, at access to broadband. We are about the only place in Europe that now has nearly 100 per cent access to broadband. They have managed to create a competitive environment and yet meet what could have become a digital divide in that particular instance, very, very effectively. I do have huge confidence in them. There are issues where we have vigorous conversations and discourse and we do not always agree, but I have a great deal of respect for them.

Q135 Lord Dykes: I was thinking mainly of wholesale.

Margaret Hodge: Nigel may be able to add to that, but they have done their own research. The operators do their own research and the operators have been a very effective lobby, a coherent lobby on this issue around Europe. When I started on this seven or eight months ago, we were in a very different place to where we are today. We felt much more isolated then than we do now, partly because we like to think we have put forward a pretty rational argument, but I am sure also they have had a pretty effective lobby across all the 25 European countries to build with that much better consensus than we thought. I do not know whether you want to add to the calculation of wholesale.

Mr Hickson: Just two very brief points. One of the whole problems of this issue, as you rightly say, is the transparency of the wholesale market and the competition in the wholesale market and Ofcom as a national regulator did put their hands up some years ago now and said it was a very difficult market to regulate. The wholesale roaming market is one of the 18 markets within the European framework but it is the only one that regulators have not been able to regulate effectively. So you are right, Ofcom recognised the problem. Having a wholesale cap, a wholesale levy in the wholesale market, which it looks like this regulation will introduce, will give Ofcom the lever to be able to get the data we were talking about earlier and make sure that every operator does indeed abide by that cap. I am sure they will, because they have done it effectively in other areas.

Q136 Baroness Eccles of Moulton: May we return for a minute to sunrise and sunset because it looks as though sunrise is probably not going to happen? From what you tell us, there is enough pressure in the system for the regulation, however it is calculated, to be put into place as soon as possible. The thing about sunset is that presumably the confidence, with which a sunset clause can first of all be put into the regulation and secondly be used, will depend very much obviously on how the industry responds to the regulation. Is there any flexibility in whether or not the sunset clause is actually triggered, or is it an inevitability once it is written into the regulation that this will cease to be a regulation on such and such a date, or will it only cease to be a regulation on such and such a date if the regulators inform the Commission that all the operators have been existing within the targets?

Margaret Hodge: It does depend on the behaviour of the operators and their compliance. I think I am right in saying that what will happen is that after 18 months we, the Council, can take a decision, together with the Parliament, because it is a shared decision, to re-implement it, to keep the regulation going, to go beyond the three years. So it will not fall away after three years. We can determine, but we would have to do so positively, that there is a need for the regulation to continue to operate. I want to draw something to your attention which is quite interesting. I shall pick out two sets of figures. Even from the time before any regulation became a reality—people in the Commission were making noises about regulation but had not actually done anything—post Viviane Reding placing her words before us, there had been quite a substantial cut in tariffs. If you look at Vodafone on wholesale costs, before regulation it was 46p per minute; it is now 30p. Orange was 45p and they went down to 30p in 2006 and are going to go down to 24p in 2007. On retail, if you take the O2

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

My Europe tariff just as an example, before we actually started discussing the nuts and bolts of regulation it was at 85p and now it is at 35p a minute. On My Europe Extra it was 94p and it has come down to 25p. So there has already been pretty substantial movement and my own view is that the operators will be very, very anxious to get rid of this bit of regulatory intervention and will comply and more than comply. My hope is really that it will encourage competition in an area where we have not had it.

Q137 Chairman: I am sure it would be sensible if your officials could just check the record for those figures, because we should like to quote them in our report.

Margaret Hodge: Yes.

Q138 Chairman: May I ask a question now, a crucial question, because ultimately there will have to be negotiations to set the wholesale rate, the retail rate and the consumer protection tariff rate? We understand that on the table from the Presidency it is 30 cents per minute for wholesale, 40 cents for the average retail per minute and 50 cents per minute is the absolute cap that individuals can opt into to protect themselves against excessive charges. That is what we understand. We shall discover more tomorrow. We have heard evidence from a number of operators quoting figures lower than that, which is very healthy. However, my question is this. We learned from advice given to the Committee before the session started that the consultation period was relatively short, so in the absence of comprehensive cost data, as the amount of data coming forward to the Commission was perhaps not as comprehensive as in other fields, I just wonder how you are going to agree to set rates, other than by haggling, without any rational basis on which to set them.

Margaret Hodge: I am going to leave Nigel to answer that. There is technical data around, but it is a technical negotiation.

Mr Hickson: You have quoted the latest rates in the Presidency paper. The consumer protection tariff had 50 cents for calls made back home and 25 cents for calls being received when you are roaming. That is what is in the Presidency paper at the moment and, as you might be aware, one of the European Parliament committees have commissioned some independent research from a consultancy organisation and on the basis of that they are proposing slightly different figures. The Commission also came out with a regulatory impact assessment and on the basis of that have produced some figures and just last week the European Consumers' Organisation produced some other figures on a study they have taken forward. So several economic assessments have been made in this area. Ofcom, as I think they would have told you last

week, have also obviously done their research and have come to a view of what they believe are the costs involved in this. I appreciate that there is always a difficulty when we talk about costs and prices and all the rest but Ofcom, on the basis of their analysis, have said that the operators should be able to live with a charge of around 25 cents as a basis. Then, as we discussed earlier, you build the retail tariffs onto that and Ofcom believe that the retail tariff should be slightly higher than 40 cents, which is in the Presidency text. The average would be 40 cents but the consumer protection tariff would be 60 cents for outgoing and 25 cents for incoming.

Q139 Chairman: I am grateful for that, because that has cleared it up.

Margaret Hodge: It just shows the difficulty in Government trying to set tariffs.

Q140 Lord St John of Bletso: We have heard several proposals today but, in wrapping up, of the proposals tabled by the Commission, the European Parliament and the Council Presidency, which do you consider would be the most effective?

Margaret Hodge: It is really difficult to say one alone. I want to see the package. I think transparency is key and we have to get that right. I am very happy with the wholesale average retail tariff and agreement round that. We will haggle about the level of the consumer protection tariff, but that is fine as long as it is opt-in; opt-out would be a disaster for us. We do want an average retail tariff as well because we want the competition and I do want the sunset clause, in particular because I did not get the sunrise clause. I think a bit of a punitive tariff is not a bad stick to try to ensure that this regulation only has to remain in place for three years.

Q141 Lord Haskel: Most of this conversation has been about talking on the telephone. For business people sending data back is terribly important. Are there going to be the same sorts of problems about data roaming as there are for voice roaming?

Margaret Hodge: I do not know.

Mr Hickson: It is an issue which has been talked about briefly within the Council and the Parliament indeed brought up the issue. The current text we are considering in the Council would impose a monitoring obligation on the national regulatory authorities so that, in addition to collecting this data and looking at the cost of voice calls they would also have to look at the cost of SMS, text messages and data as well. Then the Commission in a few years time might perhaps ask for this data and on the basis of that might or might not decide that steps need to be taken in this area as well. It is an issue which is being considered.

26 February 2007

Rt Hon Margaret Hodge MBE and Mr Nigel Hickson

Q142 Lord Dykes: Do you feel for practical purposes that it will be okay and in order for HMG to liaise with Ofcom and Ofcom to supervise the advertising content of the announcements to ensure transparency and so on of these changes of tariffs, the maximum tariffs and all the rest of it, to make sure that the companies do comply with what Ofcom wants without it being an onerous and rigid structure. Of course these are private companies being regulated by public sector official regulators so one has to be careful not to overdo it, but would it be a good idea for Ofcom to make sure that there is a proper textual framework for the advertising content of these announcements for consumers who will remain somewhat confused and bemused I am sure. Without them in any way being criticised, it is a very complex field and there will be variations on what the companies offer within the new limits once this legislation is in place and for HMG to liaise with Ofcom to make sure it does look satisfactory.

Margaret Hodge: Part of the regulatory duty will be around transparency arrangements, so it has to be for Ofcom to ensure that the operators do provide the information in a consumer friendly way and as fully as we need to make informed decisions. Yes, we will liaise with them.

Q143 Lord Dykes: The Government will be liaising.

Margaret Hodge: Yes. I have very, very regular meetings with Ofcom.

Q144 Lord Dykes: These would not be within the ambit of public service announcements by definition but at least there would be considerable information.

Margaret Hodge: Yes. They have that responsibility in a range of telecommunications areas now.

Q145 Lord Mitchell: I know that data roaming caused a degree of consternation. Let me widen it. How about music and movies on a roaming basis? That is going to be an increased amount of activity for mobile phones and I just wondered where that fits in. Does it fit into data or is it in a different category?

Margaret Hodge: The interesting thing is that all this stuff is converging: we are going to be able to get it on our phone; we will get it on our television; we will get it on our computer, our laptop; wherever you want to get it you will be able to access all the media. A discussion has just started in the last two Councils and we have had discussions on the impact of convergence, which is what you are really talking about, on regulation. We are at very, very early days on that discourse and probably if you want the UK position on that it is that we are trying to ensure that the heavy hand of European regulation does not again play too great a role on stifling innovation and competition. We have to talk about it a lot.

Q146 Lord Mitchell: When you just look at i-tunes and other types of music which people are buying on their computers you can certainly see that being cross-border if the pricing were right. A massive amount of activity is taking place; it is not in its early days and it is going to happen very quickly.

Margaret Hodge: We will all be able to receive television on our mobiles. Some of you will have travelled to Korea and Japan which are probably the most advanced. In fact we have about five pilots in the UK around that. Let me give you an instance of the sort of issue that we are discussing. We have pretty rigorous regulation of content for our public service broadcasters. Are you going to start having that sort of regulation of content on images you receive through your mobile? I can tell you that it is a can of worms, but we are just beginning to think about it and try to think how we can get something which gives proper protection to the consumers. There is always that balance. We want the proper protection for the consumer whilst promoting innovation and competition. That is probably the principle which underpins our approach to all these issues.

Chairman: Minister, thank you very much indeed. We are just on the hour. You have guided us through a field of great complexity. Let us hope we confound the old adage that the quality of political debate is in inverse proportion to the technical complexity of the subject. The hearing is closed.

Supplementary letter from the Department of Trade and Industry

I offered to provide a note to the Select Committee, following the meeting on 26 February 2007, which would confirm the international mobile phone roaming prices which I quoted in response to Baroness Eccles' question about the sunset clause, which has been proposed for inclusion in the International Mobile Roaming Regulation (Q136).

The prices which I quoted relating to Vodafone and Orange are as stated in the transcript, however, a little additional information is necessary to clarify the O2 prices.

26 February 2007

Prior to the introduction of the “My Europe” scheme by O2 in summer 2006, the cost of using a post pay mobile in an EU member state such as Germany or France was 85p a minute to call in country or back to the UK, and 94p per minute to receive a call. If customers opted into O2’s International Traveller Service, the cost fell to 58p a minute to call in country or back to the UK, and 28p a minute to receive a call.

“My Europe” is aimed primarily at holiday-makers. It is a free opt-in service for all O2 UK customers, which offers both outbound and inbound voice calls for 35p per minute across all EU territories.

“My Europe Extra” is for frequent traveller business customers and was introduced in February 2007. O2 UK business customers who opt for “My Europe Extra” are charged a flat rate of 25p per minute for calls made within the European Union or back to the UK and do not pay the additional charge to receive a call (ie 94p per minute).

It is available as a twelve month subscription option of £5 per month, or on a month by month basis for £10 per month.

So, it is true that the cost of using an O2 mobile in Europe has decreased significantly since the announcement of the Roaming Regulation. However, I regret that my assertion that the cost of the My Europe and My Europe Extra schemes had fallen was technically incorrect.

21 March 2007

TUESDAY 27 FEBRUARY 2007

Present	Eccles of Moulton, B Freeman, L (Chairman)	Geddes, L Lee of Trafford, L
---------	---	---------------------------------

Memorandum by the European Commission

ANSWERS

1. The European Commission regards the charges for making and receiving calls on mobile phones when in a different EU Member State as unjustifiably high. There is no meaningful relationship between the costs an operator incurs in providing these services and the prices charged to retail customers. The Commission takes the view that competitive forces alone have failed to bring about benefits to the consumer in the past.
2. In December 2005, the European Regulators' Group (ERG) alerted the Commission to its concern that measures being taken by national regulatory authorities would not resolve the problem of high roaming prices. It also made clear that it was committed to working with the Commission to develop an appropriate and more complete solution. It further noted that roaming created an exceptional instance in which mere application of the existing regulatory framework for electronic communications services on its own would not suffice.
3. The mobile phone industry claims—for example through the GSMA, a trade association representing mobile operators' commercial interests—that prices for roaming services have fallen by up to 25 per cent in 2006. However, the Commission notes, first, that prices for roaming services are still very significantly above the prices for domestic services, although the differences in underlying cost structures are not very significant. Second, the Commission further notes that these price decreases have only taken place against the background of a credible threat of impending regulatory intervention, and that in the absence of such threat the industry might simply revert to its old pricing habits. National regulators have already told the Commission in December 2005 that they cannot resolve this issue on their own.
4. The Commission has proposed a wholesale price cap of 23 pence per minute for calls made to another EU country and a wholesale price cap of 15.3 pence per minute for calls made within a visited EU country. The Commission has further proposed a retail price cap of 30 pence for calls made to another EU country and a retail price cap of 19.9 pence for calls made within a visited EU country. Finally, the Commission has proposed a retail price cap of 10 pence per minute for incoming roaming calls⁴. The resulting overall price level for roaming services is deemed by the Commission to offer sufficient incentives for operators to invest into, and develop new, competitive offerings over time.
5. Some submissions to the public consultation phase conducted by the Commission in the first half of 2006 have suggested that in response to a reduction in roaming revenues operators could be expected to raise prices for other services. The Commission takes the view that while at the margin some rebalancing of tariffs might occur in response to regulation, a general increase in the price level for other services, given intense competition in major markets, is highly unlikely. The Commission further believes that whilst any regulation may have unanticipated consequences, the positive effects on consumer and social welfare flowing from the proposed regulation of roaming charges will be so large as to outweigh any unforeseen negative impacts.
6. Some observers have voiced concerns that European mobile operators could be forced under existing obligations of the WTO/GATS agreements to grant regulated lower wholesale prices to non-EU operators on a non-reciprocal basis and thus suffer competitive disadvantages. The Commission takes the view that the risk of a possible WTO tribunal or the appellate body finding in favour of non-EU operators in this context is minimal.
7. The Commission has consulted widely on the data underlying its impact assessment and the proposed regulation. It has consulted *inter alia* the ERG, national regulatory authorities, national administrations, mobile operators, industry associations, consumer groups, economic consultancies, academic researchers and financial analysts. The Commission believes that all figures provided in its impact assessment are correct—including the figure of approximately 147 million EU citizens being directly concerned by the problem of high roaming charges.

⁴ These figures are based on the average mobile termination rate prevailing in the EU in 2006 (exchange rate as on 15 February 2007, 1 EUR = 0.6711 GBP).

27 February 2007

8. The UK and France in the current Council deliberations no longer propose a sunrise clause. Instead, they support the German Presidency's proposal for an unconditional consumer protection tariff to be applied at retail level as soon as practicable after the entry into force of the regulation. There is wide support in the Council (and in the European Parliament) for the Commission's proposal to combine wholesale regulation with retail regulation, rather than to opt for one or the other in isolation.

9. The Commission has proposed different price caps for different types of calls (see above point 4), because this reflects current commercial practice of the mobile industry. However, single caps would have the advantage of simplicity and be in line with the principles of better regulation.

10. The Commission's proposal is based on the average mobile termination rate prevailing in the EU in a given year, as this figure can usefully serve as an approximation for underlying costs of service provision. It cannot be excluded that an alternative, perhaps simpler, methodology could be found to yield similarly appropriate results.

19 February 2007

Examination of Witnesses

Witnesses: MRS VIVIANE REDING, Commissioner for Information Society and Media, MR KEN DUCATEL, Member of Mrs Reding's Cabinet, and MR PETER RODFORD, Head of Unit, Directorate B/2, DG Information Society, examined.

Q147 Chairman: Good morning.

Mrs Reding: I do not think that I have to go into the matter in depth, because I am sure that you know what we are speaking about. I will just tell you how it came to be on the table, because, in a political sense, that may be very interesting. You know that Commissioners go through a hearing at the European Parliament. At my hearing, the Parliament was very explicit that, "You have to do something about roaming". I did not know what I had to do, and so I promised the Parliament at that hearing that I would have a look at it. You may know that the national regulators who work together in the European Regulators Group are advisers to the Commission, and so I asked the guys who would best know what was going on in their national territory what this was. They were very explicit in their written statements to me. They said, "The prices are extremely high. Prices no longer have any relation to the cost. Secondly, we cannot do anything. Why? Because we are responsible for our national markets. We are in a cross-border logic here, and so we cannot move. Thirdly, we have also seen wholesale prices go down over the course of the years, but these reductions have not been passed on to the consumers. It is not enough therefore to work only on the wholesale; you also have to work on the retail in order to have a result". We also have had dozens of meetings with the operators—big and small and from all countries—and I have asked them several times to have transparency, to explain to the consumers what the prices are. Normally, consumers go away, come back, have a bill and have a shock. When they go away, they are not conscious of what is happening to them. Although, as the GSM Association, the operators pledged in 2001 to have transparency, we still do not have it, as they have not put that into

practice. I therefore made a website in October 2005. We put the prices of the different operators in the different countries on the website, so that people could see the factual situation. The website became a real hit, because it was the first time that consumers could be informed. At that time I said to the operators, "These shamefully high prices of many operators in many countries have to come down to normal. You have six months in order to bring them down and, in six months, I will reactivate the website to see what the movement has been". After six months, in 11 countries the prices had increased. That led me to have a serious impact assessment. You will know that the Commission can no longer make any proposals without having an impact assessment. The impact assessment—elaborated with the help of the operators, big and small and all countries, and with some research carried out—was accepted by both the Council of Ministers and Parliament as the sound basis for the regulation. On that basis, I made a proposal for a regulation in the summer of 2006 and it is now in the hands of the Parliament and the Council. In a nutshell, what do I want in this regulation? A consumer protection tariff for all, so that all consumers—big travellers, small travellers, informed, less informed—get the advantage of the normal consumer protection tariffs. I have been listening widely to the operators and to politicians who say, "You cannot prevent people who want to have a package having a package". We say, "Why not?". If there are consumers who would like to go outside the consumer protection tariff in order to accept another tariff, an alternative tariff—fine. They must have the right to opt out of the consumer protection tariff. Whatever solution is selected, I would like the solution to be simple, non-bureaucratic and easy to apply. In order to solve one

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

problem, I do not want to have five supplementary problems on my back and to have to set up its own administration in order to control things—if things are happening as they should. It should be simple for the consumers to understand what is going on and for the operators to have legal certainty. Why do I insist on that? Because there are some ideas floating around, which at first sight are very good but which would have very bad consequences. I will give you one. The idea of the average ceiling at wholesale level. What would that mean? It would mean that, in the case of a dispute, you would complain to the national regulator in the visited country. Then you rely on the timely provision of accurate volume and revenue information. Is this timely? Is this accurate? Who will control that? Imagine in this context UK regulators trying to get satisfaction from regulators in some European countries—which I will not name. That would be quite an experience! Bear in mind also that there are around 80 mobile network operators in the EU. That means 6,400 theoretical bilateral relationships for the provision of wholesale roaming services; and the number of bilateral relationships between national regulator authorities is more than 700. Imagine the scope for disputes and difficulties for regulators sorting them out. That is exactly the kind of thing I do not want to happen. It would mean legal uncertainty, fights, hundreds of issues, looking at figures and, in the end, it would create jobs for lawyers. That is exactly what we do not want and that is why I am pleading for a very simple-to-apply, foolproof regulation. It is very rare to see citizens agreeing with what we are doing. We carried out a Eurobarometer survey in November 2006, asking people in different Member States what they think about this whole roaming affair. The figures were astonishing. We saw that many more citizens travel abroad with their mobile than we thought. For instance, in the UK 46 per cent of the citizens travel with their mobile—private people. Eight per cent are business travellers. Of those travellers, 56 per cent say that they use their mobile less often when they go abroad, because they are afraid of the high prices. This figure is even higher in my country, Luxembourg, because people are travelling all the time and they even close their mobile when they are travelling abroad. Imagine the growth of traffic there could be if people were not afraid to use their mobile while they were abroad. In the UK, 64 per cent of people say that they would indeed utilise their mobile more, or frequently, if the prices went down to normal. Something which might be astonishing in terms of the mentality of the British citizen is that 72 per cent of them say that the EU should make sure that prices are not a great deal higher when they travel than when they are at home. It may be the first time in the history of Great Britain that its citizens want “Brussels” to act! That is therefore the basis of

what we are doing and why we are doing it. I would add one sentence to that. In the spring of last year the European Council of our Heads of State asked the Commission to act, on the grounds of distortion of competition for small and medium businesses which do business abroad, where the expenses they incur in comparison to their business income is simply a distortion of competition. We all know that big firms can agree special prices, whereas smaller companies cannot. So the Heads of State and of Government specifically asked us to take it in hand, in order to get rid of this distortion of competition.

Q148 Lord Lee of Trafford: Just going back in terms of the history, when you were charged by Parliament with investigating roaming, what was the basis for that? Had there been some report or was it just a series of individual hunches that mobile roaming charges were too excessive? What was the basis of the original charge from Parliament?

Mrs Reding: It was on the basis of two elements. First, parliamentarians, as you know, are continuously in their constituencies and people were complaining to their parliamentarian. Secondly, a hearing was organised in the Committee for Industrial Relations and it came to the conclusion that things were very wrong indeed, and that we needed European action on this because national actions were not possible. In that hearing, the national regulators confirmed what they had written to me. Because of cross-border action, national regulators who are responsible for their national market cannot solve the problem.

Q149 Chairman: Thank you very much, Commissioner, for that very clear introduction. Could I ask you about the methodology of fixing the wholesale cap? I can understand the argument not to go down the averaging route but to have an absolute cap, because that avoids the problem of disputes, argument, calculations. Leaving that on one side, on what cost basis or what industrial basis have you based your calculations? Indeed, what is the formula for fixing the wholesale cap?

Mrs Reding: The Commission always avoids having calculations for their own sake, because that can be questioned everywhere. So we took the calculations of the national regulators. They analyse the evolution of the prices on their national market regularly. We took all these MTRs—mobile termination rates—together, made an average, and multiplied it by two or by three. So we had these objective figures of the national markets, analysed by the national regulators, as our basis cost. Why multiply this by two or by three? My basic idea at the beginning was that, because I thought it was so shocking, I said “Let’s get rid of the whole thing. A call you make at home or a call you make abroad will be exactly the same”. In the meantime, after many discussions, I

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

found out that it was not exactly the same, because the operators have to rent the infrastructure of the operator in the next country. We did not want to close down the businesses; we wanted to have a clear margin for business models to operate, under a ceiling. So we fixed a rather generous ceiling, under which it is possible for the market to have its own business models and pricing. We did not fix a price; we fixed a ceiling and, under this ceiling, all kinds of business models are possible. That is the way we went for it.

Q150 Chairman: We understand the Presidency's latest papers indicate their belief that a wholesale cap of the order of 30¢ per minute may be appropriate. If you use your formula—this is for international roaming—of three times the domestic mobile termination rates, what will we be talking about in terms of a maximum at the wholesale level, in terms of cents per minute? You have come up with a formula, but when that is translated into a specific figure?

Mrs Reding: The figures differ. I have so many models on the table now. I have models of the Parliament; I have models of the French; of the Brits and of the Germans. At the beginning I had two ceilings. I am thinking about going in the direction where we can accept one single cap. It will make things easier. The discussion now is about what should be the level of this cap. Our level is roughly 33 per cent. Some parliamentarians are trying to go under this; some members of the Council are trying to go higher than this. In the end, I believe that this is a question of negotiation between the European Parliament and the Council of Ministers, because in the end it will come to that. For me, the numbers are not so essential. What is essential is the system and the clarity of the system, so that our normal consumers—who have not studied mathematics at university—clearly understand what is going on. I would not have problems with any figure proposed, if this figure is clearly in the interest of the consumers and if this figure allows operators to have the margin of manoeuvre in order to offer their business models.

Q151 Chairman: To be clear, would this be 33¢ per minute?

Mrs Reding: Thirty-three is what we have on the table. Parliamentarian Muscat, who has made a proposal, has 25, and the Council has 30.

Q152 Lord Geddes: For the record, Commissioner, are we talking now wholesale or retail, or are we confusing the two?

Mrs Reding: No, that is wholesale.

Q153 Lord Geddes: That is all wholesale?

Mrs Reding: That is all wholesale, yes.

Chairman: Could we come on to retail in just a minute, and could I now turn to Lady Eccles?

Q154 Baroness Eccles of Moulton: It is very interesting to understand the position that the Commission is in, Commissioner. There are a couple of questions regarding the absolute fixed price cap. An average cap does mean that the pricing over a period of time can fluctuate above what an absolute price cap would be, so long as, at the end of whatever the period is, it is not above the average that has been established. Does that not allow for more flexibility within the industry, which in the end would benefit the consumer? Because, if there is a clamp that affects everybody the same, then at the end of the day the industry could suffer. What is your view on that?

Mrs Reding: My first view is that the average cap, which we call the consumer protection cap, is generous enough in order to allow the industry to have its benefits and to allow the industry, under this cap, to offer different business models. If that works well, in full transparency, then it is fine. If you give to those informed parts of your constituents the possibility of opting out of this general tariff and have a special tariff—like, for instance, the Vodafone Passport—then it is fine and you have a clear system. However, if you add to this a wholesale averaging, that is very complex, confused and has to be calculated anew all the time. It might lead, according to the expertise we have, to price squeezes on smaller players. One of the problems which we have in Europe is that the big players with market power can impose high prices on smaller players. If you look at the whole picture, you have to protect the smaller players. That is very important. We have those smaller players not only in small countries, but we also have them in bigger countries. We think it is not necessary and it will create confusion and add an administrative burden. I would therefore argue for the simple solution which will be understood by everybody and—what is very important for all operators—it will give legal certainty for all operators.

Q155 Baroness Eccles of Moulton: If you set the single cap high enough, I can completely understand that that would allow a lot of flexibility, provided there was also a consumer protection tariff, or limit. But surely if the single cap is set high enough to allow that, it would still allow the big companies to make, probably, excessive profits. How do you then, within that generous cap, apply pressure on the big companies so that there is room for the little ones to thrive but the big ones are no longer making excessive

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

profits? I do not quite see how you could have both of those benefits without one of the parts of the sector running away with it.

Mrs Reding: That is why the European parliamentarians in the consumer protection field have proposed 25 per cent as a consumer protection cap, so that all the business offers have to be under this 25 per cent.

Q156 Chairman: Twenty-five cents per minute?

Mrs Reding: Yes, I am very sorry—25¢. That would be very simple and easy to do, and it will then go to everybody and it will allow for business models. When I speak about business models, I mean that in a competitive market—and the national markets are competitive—somebody will offer a very interesting price to travellers. I have read in the papers that *National Geographic* has recently come out with an offer of a special phone, with interesting roaming prices all over the world. That is a specific business model. We want to have a ceiling which will allow for all kinds of business models to compete on the national market.

Q157 Baroness Eccles of Moulton: So what is the relationship between the 25¢ per minute and the 33¢ per minute?

Mrs Reding: One is higher than the other!

Q158 Baroness Eccles of Moulton: Yes, but one applies to one type of consumer and the other applies to another?

Mrs Reding: No. It is a proposal of the Parliament to have the ceiling at 25¢. My proposal was to have the ceiling at 33¢. The proposal of the German Government is to have the ceiling at 30¢. This is what I am saying will be the negotiation between the two lawmakers: the Parliament and the Council of Ministers. They will have to find an agreement on what is their proposal in the end.

Q159 Chairman: Before we turn to Lord Geddes who has a question on retail, could I ask one specific point about opting in or opting out? The operators and the Minister of State for Trade and Industry, Mrs Margaret Hodge, from whom we heard evidence yesterday, are not in favour of . . . Let me get this right! The operators and she did not want all consumers to have the right to be automatically in the tariff and opt out, on the grounds, I suspect, of cost. Could you help us on whether the Commission favours, and the reasons for favouring, opting in?

Mrs Reding: Yes, that is very clear. It is as I said in my introductory statement. We want a simple, easy-to-understand consumer protection tariff for all, so that the benefits go to all citizens; and then those citizens who wish to opt out of this consumer system—because, for instance, they prefer to have the

Vodafone Passport—can do so. If you have this, you do not need to have other measures of protection, because you already have the consumer protection system. If you do it the other way round—that only those who want the protection get the protection—then you need supplementary measures of protection, because most consumers will not know. It will be so complicated for them to opt for the consumer protection. Do you know how much time a new system offered by an operator needs in order to be accepted by the market? A very long time. You know perfectly well, with regard to your electors, how difficult these kinds of things are. That is why, in a very consumer protection-oriented way, let us have it for all and let us give the opt-out, the freedom not to have it, for those who do not want to have it. I can imagine that frequent business travellers would prefer another option. Let them do it. However, the normal holidaymaker, the British citizen who is going to spend a week in the south of France or wherever, will not be informed about all this. It will be extraordinarily complicated. It is also why those governments who go for the second solution propose a third solution, with the average protection prices, because they feel that it is not enough. It makes things complicated. In the end, it will not be available for everybody. People will complain, “We thought that prices had gone down”. Why have prices not gone down? Because they have forgotten to get the new system. So let us make it simple; let us make it politically sound. You cannot imagine the sort of lobbying that has been going on for a year or more, and how many millions have been invested in lobbying. Every month that the operators do not have the new system in place, it is that much of a gain for them. If they had a system in place that did not work, all the better for them. But who will explain to the normal citizen that the regulation did not bite and, because it did not bite, we have to have a second element? For instance, the British Government is proposing a penalty cap as a safety net, because the British Government has understood that its system will not work and so it needs a penalty cap as a safety net. I say that we do not need that, if we put a system in place which works for all citizens. Let us make it simple, foolproof, understandable. Let us make it bite for the average citizen in our society, and not only the well-informed citizens who can take measures in order to go into the generally applied system.

Chairman: That is a very clear explanation and I am grateful for that. You have explained why you favour an opt-out. Perhaps I could ask the Clerk to check the record with the Minister. She may have been as confused as I was in expressing myself. I think that we need to double-check whether Her Majesty’s Government is in favour of the opt-in or opt-out. We know that you are in favour of the opt-out, for the reasons you have just said.

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

Q160 Lord Geddes: To an extent you have already answered this question, Commissioner, but, for the record, let me ask it in full. Why did the Commission go for both retail regulation as well as wholesale? The evidence we have heard from the operators so far—but they would say that, wouldn't they?—is that if you left the regulation just at wholesale level, retail would sort itself out because of competition. You, however, have gone for both. Can you explain why, please?

Mrs Reding: Because of the sheer evidence that, in the past, it has not worked. Who knows? It might work in the future. However, we have the evidence that the reductions on wholesale—which have happened over the last two years and there were reductions in wholesale, in the business links between the operators—in nearly all the cases, at any rate in most cases, those reductions have not come down to the retail level. These were more of an advantage in business-to-business relations but not an advantage in business-to-customer relations. The European Regulators Group, the ERG, has written in black and white that this did not work. That was the first evidence I had. The second was when I asked the operators, in October 2005 with the website, to bring down their prices—and they did not do it. I clearly saw that giving the freedom to the market to solve the problem was leading us nowhere. I do not like regulation. I am a Luxemburger. Luxemburgers are rather non-regulatory people. We do not like that. However, if it is necessary, then you have to go for it. That is a political responsibility. Here we are clearly in one of those exceptional cases where you have to have exceptional means in order to solve a problem. Believe me, I would have preferred, having started the transparency move with the website, that the market solved the problem. We saw that the contrary was taking place.

Q161 Lord Geddes: When you gave us in your introductory remarks the very interesting results of the survey, you said—and the percentages themselves do not matter—that a lot of, let me call them individuals, more than 50 per cent, replied that if prices went down to normal they would use the phone overseas.

Mrs Reding: Yes.

Q162 Lord Geddes: To an extent I am leading you, Commissioner, but I am doing it deliberately. Is that one of the reasons why you wanted retail regulation as well? Because the “normal” in the context of the example you gave is me. It is not the big business; this is the individual. What I am interested in is the normal retail price. Is that one of the many reasons why you have gone for regulation on retail as well?

Mrs Reding: I have gone to regulation on retail because I have seen that wholesale reductions were not passed on to the citizens. We are in a double logic here. First, we are in an internal market logic. The internal market does not function, because you are punished when you cross a border. For instance, I say to our students, “Go abroad for six months or one year of Erasmus studies, because it will open your mind”. At the same time, we are punishing them when they want to communicate while they are abroad. The same thing is happening to small and medium businesses, where our Heads of State and of Government say, “Get rid of this distortion of competition”. It is first a question of internal market, therefore, and then it is the question of consumer rights and citizens. Citizens can do nothing to avoid these high costs. Citizens also know that there are many promises around, but very few operators have turned these promises into fact. Let me take one or two business models. There is the one which you probably know best, Vodafone. Vodafone prices have gone down, and they are sure to achieve their targets by next year. When I look at Telefónica O₂, there has been an announcement but no price reduction yet. FreeMove Alliance, there has been an announcement but little action on retail prices. In the end, what does that say? That only a very small margin of consumers—the normal consumers, our voters—see the difference. I would like them to see the difference, without having the operators going out of business; because we need this business to thrive. That is why the ceiling which I proposed was rather generous, so that business can work under this ceiling. You can indeed make this ceiling at different levels but what is important in the end is that the consumer, the normal consumer, who travels to Spain, to the university, or who goes on business to France, will see the difference and will utilise mobiles more. I had probably my biggest discussion as a politician in Luxembourg, because the income of the Luxembourg operators on roaming is 30 per cent. Normally it is five per cent of the total income of an operator; in Luxembourg it is 30 per cent. Of course, they were shouting against me and saying that I was going to bury them all; but our calculations have shown very clearly that this will be an equilibrium, because the volume of mobile use abroad will be much higher. In our Europe-wide inquiry, 15 per cent of people do not even take their mobile with them when they go abroad—because they are afraid of the cost. If, because they know what the costs are, they utilised their mobile in a normal way while they were abroad—and it does not come as a surprise once they get home—this will change the situation dramatically.

Lord Geddes: I wonder if I can move on to my second question, My Lord Chairman, because the Commissioner has moved very close to that, namely the convergence of rates and competition.

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

Chairman: Please do.

Q163 Lord Geddes: There is an argument that your approach will lead to a convergence of pricing and therefore a reduction in competition. Would you comment on that?

Mrs Reding: I hear that continuously. In Luxembourg they have even threatened to increase the national mobile phone prices dramatically. That is something I do not see; because, again, the ceiling is high enough in order to allow competition and, secondly, because competition is functioning at the national level. It is not functioning in cross-border activities, and that is why we need to do that. You know perfectly well what the price offers are at the national level, and the price competition is very fierce. Imagine for one moment that one of those operators starts to raise prices. It would simply go out of business. Secondly, imagine that they all start to increase prices. Now we will have fun in competition law!

Q164 Chairman: I have two points before turning to Lord Lee, if I may. Has any research been done, or what are the conclusions of the Commission's studies, into the coefficient of the price elasticity of demand at the consumer level? Perhaps we could have some information on that. Commissioner, I think you argued that, with a reduction in price, there would be a significant increase in demand. I am using the word "significant". It would be interesting to know what assumptions economists have made about the coefficient. More importantly, perhaps I may follow on the point made by Lord Geddes on the retail level. We do understand your arguments about the difficulty of having an operators' average at the wholesale level—because of the difficulty of obtaining information, perhaps the variance of degree of thoroughness of some of the national regulators—but at the retail level it is much easier to calculate an average. In the United Kingdom, we know what the retail volume is in terms of the number of minutes and we know what the prices charged are; therefore, our national regulator can calculate whether someone has been above, in a six-month period, an average retail price cap. Are you at all influenced by that argument or do you still stick to the absolute cap?

Mrs Reding: Regarding the first question on where we get our evidence from, you know that before we could move—and it is a general rule for the work of the Commission—we had to make this impact assessment. We did this on the basis of the figures of the national regulatory authorities, on independent financial research and academic studies. This was accepted by both the Parliament and the Council. It has subsequently been confirmed by at least three studies that I know of. The first is the Copenhagen

Economics Study. This was asked for by the European Parliament. It was a recent study for Gordon Brown on the internal market, and so it is very serious. They confirm our figures. Then the Ofcom data has been used by A.T. Kerney for a Strasbourg seminar on 17 January. They come to a similar result. The latest one is Morgan Stanley last week, and it comes to similar results. So the evidence seems to be the same. That is the more economic part of our business. The consumer organisations issued a study last week, 20 February. All the consumer organisations are in BEUC, *Bureau Européen des Unions de Consommateurs*. They assume that volumes will increase as prices come down. You have this kind of evidence. However, in terms of an answer to the main question, which is the economic evidence, I think that our impact assessment was subsequently confirmed by these three bodies, and all this is in January/February. Regarding the elasticity question, the fact that when prices fall volumes go up, the Vodafone Europe analysis shows that earnings from roaming before tax and depreciation would decline by 0.5 per cent. So that is very insignificant indeed. As you see, therefore, we have not based ourselves on one single evidence, but we are collecting the evidence from the different players, always acknowledging that the origin of the analysis shows a lot about the results of the analysis. That is why you need analysis from different points of view. However, I am confident that the basic evidence which is on the table is that which is sound.

Q165 Chairman: And the question about your willingness to consider averaging at the retail level as opposed to the wholesale level?

Mrs Reding: I prefer the very simple, non-administrative, non-complicated, and not-leading-to-legal-uncertainty solution. Have I mentioned the figures? The possible combination—the 6,400 possible relations. Who will (a) calculate that, (b) control it and (c) be sure that the outcome of this calculation is not contested in court? I want to have a solution which is applicable and which is not creating work for law firms.

Mr Ducatel: We have 80 telecom mobile service providers providing infrastructures in Europe, which creates a matrix of 80 by 80 and hence 6,400 relationships which would have to be mapped, if you take an averaging-type approach. This is what the Commissioner talks about—which, in bureaucratic terms, is marvellous. It is lots of jobs.

Q166 Chairman: I understand that, but I am obviously failing to understand something. I am now talking at the retail level, where you only have 80 operators, who can measure the average retail price. You do not have to go back to the network operators, because there is an absolute cap, as proposed.

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

Mrs Reding: But this is linked.

Q167 Chairman: It is linked; it is part of the price—but it comes out in the retail price.

Mrs Reding: Yes, but if we have to calculate the average, we have to calculate all these possible combinations. Setting up the very simplistic website was already a nightmare, because you have innumerable possible combinations when you are roaming in Country B, with Operator X or Y. It is extraordinarily complicated and there are extraordinarily big calculations. I do not want—because I hate it—a regulation which will, from the administrative point of view, make it even worse than what we have today. I want to simplify it, so that it is crystal clear to everybody. That is the reason why we have chosen the ceiling based on the numbers of the national regulators: to make it simple and not to have those calculations which would be necessary. If you have a model where consumers get their ceiling and those who want to opt out can get something else, you do not need supplementary safety nets. Then it is clear. If you have another model, in order to protect the consumer you need a safety net, and that is where the complication starts. Retail averaging would still have to calculate averages on the basis of volumes and revenues for all operators, in all markets. Who will do that? Who will control it?

Q168 Chairman: Just to answer the question by Lord Geddes, at the retail level I think that your proposal would be equivalent to 43¢ per minute. Am I correct? 130 per cent of the wholesale cap?

Mrs Reding: Around that.

Q169 Chairman: 42.9¢ per minute.

Mr Rodford: Depending on the weighting but, yes, and which year's data you take.

Q170 Lord Lee of Trafford: Commissioner, some operators have voiced concerns over the legal basis for this regulation. Probably Vodafone would be singled out as the lead in this regard. What is your position in relation to the use of Article 95 and the whole possibility of a legal challenge?

Mrs Reding: You can imagine that, having the responsibility of this domain and knowing what will be the storm in the business, I made sure that the legal basis was sound. I therefore asked both the legal service of the Commission and the legal service of the Council and they both agreed that Article 95 was sound regulation, because action by Member States alone in a cross-border problem is not enough. So it is a question of internal market. Internal market objectives ask for internal market regulation, and this is Article 95.

Q171 Lord Lee of Trafford: So you feel that you are on pretty safe ground, as it were, with the regulation?

Mrs Reding: Yes. By the way, nobody is discussing it any more. That was at the beginning, when everything was tried in order to block me from going ahead with this. That was one of the things, but I have not heard it lately. Have you?

Mr Rodford: It came up in the Council working group last autumn.

Mrs Reding: Last autumn. So it has not come up since then.

Q172 Baroness Eccles of Moulton: Commissioner, you said to us at some stage that, on the whole, you would prefer less rather than more regulation. On that basis, could you tell us what your view is about the possibility of a sunset clause? I am not asking you too much about the sunrise clause, because I rather gather that that would not be entirely thought to be a good idea. However, a sunset clause which would limit the time that these regulations would be in place—what would be your view on the possibility of using it, and how it could be applied and calculated?

Mrs Reding: There was a lot of discussion at the beginning about a sunrise clause and a sunset clause. A sunrise clause has been left by everybody, because everybody understood that it would mean having the whole regulation much later *and* with a lot of calculations. It is again what I said about the average. That would also have happened with a sunrise clause, and that would have been a nightmare. So no one speaks about that any longer. A sunset clause? As I told you at the beginning, I am not a friend of regulation and I believe that you need regulation only if you have a problem. You do not need regulation if you do not have a problem. I could very well imagine that, after some years, there is no more problem and so you no longer need the regulation. That could be a possible way out, but I will leave that to the lawmakers, to the Council and to the European Parliament, to decide upon. However, it is in the logic. By the way, I did exactly the same in my proposal for the reform of the electronic communications package, where I have also proposed taking six out of the 18 relevant markets for analysis. Regulation is there only as long as competition does not work. When competition works, you can get rid of regulation. Therefore, this kind of regulation, in its logic, is bound to fade out or to be eliminated.

Q173 Baroness Eccles of Moulton: Is it important from the outset to establish in the lawmakers' minds that these are regulations that in a sense should not be there anyway? They are only there because market forces have not worked; and therefore to get it into their thinking early on that this is so important that those who quite like regulation continuing—because,

27 February 2007

Mrs Viviane Reding, Mr Ken Ducatel and Mr Peter Rodford

as we think, they prefer regulation to non-regulation—are not given a chance to make sure that these regulations run for as long as possible, because it has been part of the thinking, right from the word go, that these are temporary measures.

Mrs Reding: I do not have it in front of me now, but I think that in my basic text there was a *clause de rendezvous*—a review after two years. So this is already included in my basic text. It was not that, “Okay, we put that there and it is going to last”. My basic text had the review clause. I have it here now. Article 12, “Review procedure”. This could be made even stronger, and then lead to what you have in mind: to some kind of sunset clause. As you have understood, it is something that I would be willing to think about, together with the Parliament and the Council.

Q174 Chairman: I have a final question. It may be improper but, because we know you have the competence within your directorate for these matters and we are not speaking to the Competition Commissioner or the Internal Market Commissioner, it would be helpful to know. Can you shed any light on the convergence of views or can you

draw our attention to any public statements made by either of those two Commissioners on this specific subject?

Mrs Reding: The proposal of the Commission was a consensus proposal, as are all the proposals of the Commission. So it is in complete accordance with, mostly, the Commissioner for Competition, because she and I were working very closely indeed. For instance, we share responsibility of the Article 7 analysis, where ex-ante regulation and ex-post regulation have to work together. She knows that the moment the ex-ante regulation gives its results—that is, of opening the market—she will have more work, because then it goes to the normal competition law. She also knows that we are not there yet. This is an old story. I have read a speech by my former colleague, Commissioner Mario Monti, who in 2001 banged his fist on the table and said, “Enough is enough. We have to do something about it”. Sometimes it takes time. Now we are in 2007 and I hope that we get it done.

Chairman: Thank you very much indeed. It is an appropriate point to end our meeting. We are extremely grateful to you. You have been very clear. Our Clerk will send a transcript to your office for correction if necessary. Thank you, and good luck!

TUESDAY 27 FEBRUARY 2007

Present	Eccles of Moulton, B Freeman, L (Chairman) Geddes, L	Lee of Trafford, L Mitchell, L
---------	--	-----------------------------------

Memorandum by Bureau Européen des Unions de Consommateurs (BEUC)

BEUC represents 40 independent consumer organisations from 37 countries. We have a long standing interest in the roaming debate, given its importance for consumers.

In general, BEUC supports competition. Nevertheless, the international roaming market is characterised by a lack of information in the retail market and by access problems related to the cross-border nature of roaming at the wholesale level. First of all, consumers need to be informed correctly and be protected automatically (a so-called opt out system) to stimulate operators to highlight the benefits of their own offers. Secondly, BEUC considers both wholesale and retail regulation necessary. Prices on retail level should be no more than 33 eurocents (22p) for making international roamed calls, 25 eurocents (17p) for making local roamed calls and 16 eurocents (11p) to receive calls while roaming.

(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?*

We think charges are excessive because of the lack of competition in the international roaming market. BEUC has provided evidence as early as 2003⁵. Compared to both domestic tariffs and the cost of providing roaming services, roaming charges are excessive.

A. COMPARING ROAMING CHARGES WITH DOMESTIC TARIFFS

In general, comparing tariffs in the telecom market is a difficult endeavour because of the lack of transparency at retail level. FICORA, the Finish telecom regulator compared the domestic prices with the roaming prices. On average, the price of a domestic mobile call is ca. 7 eurocents a minute, for a roamed from the UK to Finland the price is between 98 and 141 cents, more than 20 times the domestic tariff⁶.

The tariff plan of the UK operator 3 shows that the lack of regulated wholesale prices is at the root of the problem. 3, present in Austria, Australia, Denmark, Italy, Ireland, Hong Kong and Sweden, charges 20p to call back to the UK if its own network is used, equal to its domestic tariff. Receiving calls is free. When using another network to call to the UK or countries within the same close zone, 3 charges between 80 and 180p. To receive calls, charges range from 30 to 100p.

In the UK, it seems that roaming tariffs to call home are four to nine times higher than domestic charges. Receiving calls represents the most striking example of divergence: for domestic call, it is free, for roamed calls it can cost up to £1 a minute.

B. THE COST FOR OPERATORS TO PROVIDE THE ROAMING SERVICE

A recent technical analysis from the European Parliament⁷ estimated that international roaming costs are between 10 per cent and 30 per cent higher than a national-only system. From a pure cost perspective, roaming tariffs should not be more than 10 per cent to 30 per cent higher than domestic prices. A proxy of the costs to provide domestic telecom services is the Mobile Termination Rate (MTR)⁸. On average, the MTR in the EU is 13 eurocents (8.6p). Adding 30 per cent for providing the service and an extravagant 50 per cent margin for overhead, roaming charges above 16.9p a minute can be considered as excessive from a cost perspective.

⁵ Mobile phone survey, BEUC/X/005/2003.

⁶ FICORAs view on the regulation of international roaming charges, PSEs public debate on mobile roaming, 11 January 2007.

⁷ Technical issues on roaming, Briefing note, IP/A/ITRE/NT/2006-17, DG Internal Policies of the Union.

⁸ A regulated price that operators from the same country are allowed to charge each other when connecting an incoming call from a client of one of the domestic operators to their network. If eg a Vodafone Germany client calls an E+ client, E+ will charge Vodafone the German MTR. The MTR is based on costs and regulated by the National Regulatory Authorities. It varies within the European Union, ranging from 3 cents in Cyprus to more than 20 cents in Belgium and Slovenia.

27 February 2007

Taking a European wide perspective, roaming charges are surprisingly similar for different operators and the situation is similar across Member States. Roaming tariffs' structure is often too complex to understand. Ex-post detailed billing is therefore difficult to check, while little information is provided before making a call. Retailers/shops are often unable to deliver the necessary information.

(ii) *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

When market failures prevent competition from arising, NRAs should normally intervene. The cross-border nature of roaming nevertheless limits the power of the NRAs. As such, it is indeed the Commission which is best placed to correct these market failures.

(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?*

In spite of previous initiatives from the Commission (for example the 2000 DG Competition sector inquiry and the opening of formal investigations against certain operators), retail roaming charges have remained persistently high. Since the opening of the Commission's website on the roaming prices in 2005, most operators have been stating that they have taken the threat of regulation seriously and that they have suggested new tariff plans.

An independent study by ALTEX, a French consultancy⁹, analysed in detail the recent offers by Orange, T-Mobile and Vodafone to see if roaming prices have actually decreased. No evidence of this claim could be found—competition is still not working. The offers are limited to specific subscriptions, limited to specific time periods and are not suitable for ordinary consumers. An analysis of the Vodafone Passport in France, in the UK and in Germany shows that the offer is only valid when the Vodafone and "Vodafone-friends" networks are being used (Eg Proximus in Belgium or SFR in France). In the case of SFR/Vodafone Passport France, this condition applies to incoming calls equally, an element beyond the consumer's influence. Secondly, the tariff structure renders short calls even more expensive than under a "normal" tariff.

In relation to self- and co-regulation, we refer here to the impact analysis of the Commission. The Commission has not received any general industry proposals for self-regulation. Co-regulation cannot properly address the issue, because of the cross-border nature of roaming.

(iv) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

Overall, the regulation will bring the mark-up on roaming in line with the revenues from other telecom services. The overcharging of consumers will come to an end, but the impact on investment and EBITDA (Earnings before income tax depreciation and amortisation) will be limited. For Vodafone, the impact of the Commission's proposal will be a 0,5 per cent decrease in EBITDA¹⁰. The GSM Association stated that investments would decrease by €500 million as a result of the regulation. For the five biggest European telecom markets (UK, Italy, France, Germany and Spain) this would mean a decrease between €5 and €30 million yearly. For an operator like Orange France, who invests about €2 billion a year in its mobile phone network, the percentage reduction is between 0.25 per cent and 1.5 per cent yearly.

As far as innovation is concerned, BEUC denounces any clear a priori influence of the regulation on innovation. First of all, there is a strong argument of increasing demand with lower prices. As a Eurobarometer¹¹ on roaming shows, almost 60 per cent of people owning a mobile phone would make more use of roaming services with lower prices. But, consumers should be sure that they won't be overcharged. The advice of our Irish Member, the Consumer Association of Ireland¹² was: "Unless you have to [phone], turn off your mobile, or better still, leave it at home".

With a low and automatically applicable consumer protection tariff (CPT) consumers can be sure that using their mobile phones abroad will not result in high bills. Furthermore, if the CPT applies to all consumers, it could serve as a benchmark for roaming prices. Without going into the technical details of the level of the CPT,

⁹ Roaming: the potential impact of a regulation Study by Altex for UFC Que Choisir and BEUC, February 2007.

¹⁰ Roaming: the potential impact of a regulation Study by Altex for UFC Que Choisir and BEUC, February 2007.

¹¹ Special Eurobarometer 269/Wave 66.1—TNS Opinion & Social November 2006.

¹² Consumers Choice, April 2006 International roaming.

27 February 2007

operators will have to show that their new offers are more beneficial than the CPT. More information would be available, stimulating competition. With more competition, operators will come up with new innovative packages. As the 3 “like home” package referred to under (i) shows, innovation in line with the low capped prices is possible. With the 3 “like home” package, international roamed calls cost 20p, below the 22p BEUC suggests as the maximum price. Nevertheless, only when prices are regulated, all consumers will be able to benefit from such tariffs.

(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?*

First of all, consumers will still pay between 16 and 33 cents a minute to make use of their mobile phones abroad. These prices cover the costs of providing the roaming service plus a substantial margin.

Secondly, if operators collectively decide to increase domestic prices even though consumers pay for the full cost of roaming, we would have a clear example of collusive behaviour.

An assessment of the proposal by Copenhagen Economics¹³, estimated the wholesale costs to make calls around 25 eurocents. Although we think costs are actually lower, adding a 30 per cent margin, one arrives at 32.5 eurocents at retail level.

Operators could decide to attract customer by offering them a hand-set or low domestic prices. We consider that competition on the domestic market would even increase with regulated prices, because it creates a level playing field. Smaller operators will pay the same beneficial wholesale tariffs as the big operators. For instance, E+ already applies a SIM-only business model and could do this not only domestically, but also in the roaming market.

(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?*

Only if access is granted on a non-reciprocal basis, non-EU operators could take advantage of the lower wholesale tariffs. Most trade agreements nevertheless include the principle of reciprocity. Furthermore, there should be no fear that the tariffs in the EU would be significant lower than in the rest of the world. In the USA, roaming was abolished almost six years ago. Furthermore, a comparison of the average MTRs per continent shows that only Oceania has higher average MTRs. Asia, America and even Africa has lower MTRs.

(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?*

We don't dispose of other figures, but judging from the Eurobarometer survey on roaming mentioned earlier, we consider this figure a minimum estimate. 79 per cent of Europeans have a mobile phone. Furthermore, of those having a mobile phone, 53 per cent use it when being abroad. As such, almost 64 per cent of Europeans were indeed confronted with these high roaming charges. As such, we think the figure of 147 million EU citizens is fairly low especially since price decreases will increase demand and therefore the number of consumers positively affected by the regulation could be even higher.

(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?*

A sunrise clause complicates the discussions introducing national discretion and confusing consumers. Firstly, how can one measure a “sufficient” effort to decrease prices? Is it the average decrease for businesses, post-paid and pre-paid subscribers or should the price in every sub-market go down? Should the number of subscribers or the volumes be used as weightings? And, should we define the same decrease in every part of the market or should we have different levels? What about the differences between each national market? Shouldn't they be addressed separately? These questions show that the introduction of a sunrise clause complicates the regulation without any benefits for consumers.

¹³ Copenhagen Economics Study on roaming An assessment of the Commission proposal on roaming 1 February 2007.

27 February 2007

Secondly, a sunrise clause would introduce national discretion. Ultimately, the NRAs would have to decide to enforce retail regulation with possible delays and legal uncertainty as a consequence.

Thirdly, consumers would be confused about whether or not they are protected. They would probably still fear high roaming costs and abstain from using their mobile phones. Operators will face reduced prices but at constant volumes.

Retail regulation is needed to be sure the decreases in the wholesale tariffs are passed on to consumers. Because of a lack of competition together with the absence of clear information, consumers are unable to reduce retail tariffs. Wholesale regulation on its own doesn't increase competition, nor does it provide with clear information. Consumers will still pay too much for their roaming services, while some operators will benefit from reduced wholesale tariffs and increase their margins.

(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?*

Overall, BEUC supports the logic of the Commission's proposal with separate sub caps, a linkage between MTR and wholesale prices and mark-ups to determine the retail prices. Nevertheless, BEUC thinks the multipliers in the Commission's proposal are too generous, leading to high wholesale prices. For international roamed calls, a multiplier of two is sufficient, resulting in 25 eurocents for an international wholesale roamed call. To determine the retail price, we agree with the Commission's 30 per cent mark-up. No one should pay more than 33 cents for an international roamed call at retail level. For local roamed calls, a multiplier of 1.5 is enough, implying a price of 18 eurocents at wholesale level, and 25 at retail level. Receiving calls while roaming should not cost more than 16 eurocents.

The link with the MTR must be kept because it represents the relation between costs for the operators to provide the roaming service and the prices paid at wholesale level. Currently, the MTR decreases between 10 per cent and 15 per cent yearly, partly because of technological progress, partially because NRA's are better informed about the true costs of terminating calls. To allow consumers to benefit from these evolutions in the telecom market, the link should be kept.

February 2007

Examination of Witness

Witness: MR LEVI NIETVELT, Economic Assistant, *Bureau Européen des Unions de Consommateurs*, examined.

Q175 Chairman: Thank you for coming. You have, sitting around the table, five members of the House of Lords' Select Committee on the Internal Market. We are in the middle of an inquiry into mobile phone roaming charges. We have received your written evidence, for which we thank you very much. This morning we have been with the Commissioner and we will be meeting later with Mr Frank Krüger of the Telecom Working Group of the Germany Presidency of the Council. With your agreement, may we put one or two questions, to seek your advice and help?
Mr Nietvelt: Yes.

Q176 Lord Mitchell: Could I kick off, please? I wanted to know whether you think that the Commission was justified in taking legislative action in this area. Do you think their proposals are proportionate?

Mr Nietvelt: First of all, thank you for asking for our input. We do think that it was time for the Commission to put out legislation. In 2003, BEUC had already questioned its members on telecoms in

general and roaming in particular. It turned out that consumers did not know what they were paying; it turned out that prices throughout Europe were very comparable. So we think it is time that the Commission took action. Also, because of the fact that roaming is between two countries and the national regulators have no authority to interfere, as such it was for the Commission to legislate.

Q177 Chairman: We have a timetable which means that ministers hope that, by the June Telecoms Council, they will have reached agreement, with co-decision by the Parliament and by the Council to proceed with implementation. Do you think that timetable is sufficient? Too tight? There is still a lot of discussion and concern. Perhaps it is at the margin, but in some cases it goes right to the root of whether you should have regulation at all.

Mr Nietvelt: My feeling is that there is general agreement that legislation is needed, especially at the wholesale level. Because you have problems of access; you have the difference between the big

27 February 2007

Mr Levi Nietvelt

operators and the small ones. So I think that there is agreement there. At the retail level, at the beginning there were big discussions as to whether or not it was needed, but there is now the proposal in the Council to have retail legislation and caps, and also in the European Parliament. The IMCO Committee and ITRE are co-deciding. Both IMCO and ITRE are in favour of this legislation. It is true that the timetable is tight. It should be done in First Reading. However, there is a tremendous political will to put this legislation through and, as such, we think that the chances are there to have this legislation. It is true that it is very tight; but our feeling is that all parties agree that, if possible, they should be able to have legislation before the summer.

Q178 Baroness Eccles of Moulton: You have said that the political will is very strong for this legislation to go through as quickly as possible.

Mr Nietvelt: Yes.

Q179 Baroness Eccles of Moulton: Do you think that the political will is partly driven by the fact that this is a subject which affects the vast majority of the electorate in every country; it is a proposal that is understood by virtually everybody, and therefore it has a much higher political profile than many other matters that go through the EU process—which are perhaps not quite so immediate and well understood by the electorate itself?

Mr Nietvelt: What you say is absolutely right. It is something that goes directly to people's wallets. They feel it. Every month there is a bill. On the other hand, it is an issue which has been on the Commission's table for a very long time already. The previous Commissioner, Commissioner Mario Monti, had already started an investigation on co-operative price back in 1999. In that sense, it has been there for a very long time. Of course, now that the legislation is out, it is picked up by the press and it is true that there is great interest. However, it is not that the Commission has all of a sudden thought, "Let's polish up our image and let's try to make something fancy"; it is something that has been there for a very long time. As such, the operators are saying that they are reducing prices right now. It is something you see only when the legislation was tabled. In our view, they have understood that it is probably going to be there and they have reacted; but they have not adapted their prices, as such. In that sense, the legislation is still very much needed.

Q180 Lord Geddes: We have taken evidence, as you might expect, from a number of representatives of the mobile phone industry. To various degrees they all claim that the Commission's proposal will stifle innovation. From BEUC's viewpoint, do you agree with that?

Mr Nietvelt: We denounce any clear *a priori* link between the legislation or the regulation and innovation. There is one very interesting example, which is a UK example. It is not a UK company but it is Hutchison 3G; it is a new 3G operator. They have come out with a "like home" package, which means that when you are abroad and you phone home to the UK you pay only 20p, which is the same price as making the call back home. It is only when you use their network, but such an example shows that, if operators are able to use their own network, innovation is possible. We are discussing prices here and operators saying, "Prices are too low; therefore, our margins are too small. We have the risk of these innovation offers. We need a certain margin that is bigger than normal". However, the offer of 3 is even lower than what BEUC is proposing. We therefore see developments happening in the market, which are even below our prices. In that sense, therefore, we do not think that innovation will be limited in any case. Elaborating a little on this, if you had a fixed, obligatory or opt-out clause, where every consumer is protected, operators will have to advertise and say why they are more advantageous than the tariffs that are already capped. In that sense, what might happen because of this regulation is that operators are forced to advertise and to come out with better offers, and it may actually stimulate innovation.

Q181 Lord Geddes: The only problem, if I may say so, with the example you gave is that it is dependent on the customers using the same system, as it were, and that particular one does not have that wide a spread of its own system. So it sounds good, but maybe it is not quite so practical.

Mr Nietvelt: They are present in Ireland, the UK, Italy, Denmark and Sweden.

Q182 Lord Geddes: Throughout all those countries?

Mr Nietvelt: Yes. Hong Kong as well, and Australia.

Q183 Lord Geddes: I thought that they were in regional pockets.

Mr Nietvelt: For example, if you take Vodafone, Vodafone has a network which is even vaster. They are present from their own network in 15 countries and now, through alliances, I would say in all 27. In that sense, therefore, they could offer their customers the same things as—

Q184 Lord Geddes: I think what you are saying is that the Vodafone Passport, which they broadcast like mad, is not quite as good a deal as it might be. Is that what you are saying?

Mr Nietvelt: Yes, absolutely. We have asked a French consultancy, Altex, which is specialised in telecom issues, to look at the various offers. They have analysed the Orange offer, the T-Mobile offer,

27 February 2007

Mr Levi Nietvelt

and the Passport. What Vodafone also does in the UK is they add a fixed connection fee of 75p, which makes short calls more expensive than on their normal tariff. So it really depends on your profile. If you are abroad and you make long calls, depending on the various specifications, it ranges from one minute up to three minutes before it is more advantageous. The other thing is that you have to use the same network and it applies to incoming calls as well. So if I am a Vodafone user and I am called from Orange or from the O₂ network, I pay the same price as before. I do not benefit from the Vodafone Passport. All these offers are reactions, but they do not really go to the root of the problem. Operators are adapting and they are reacting to the legislation, but they have had more than six years to do so. It is only now, in 2007, that we see this. In that sense, we think that it is time to react, to have something in place.

Q185 Baroness Eccles of Moulton: That perhaps brings us neatly to discussing in a little more detail how BEUC regards applying the regulations. There are a number of variables. There is the wholesale and the retail; there is the fixed cap; there is the averaging cap on both; then there is the consumer protection tariff, which can be seen as a separate thing again. What does your organisation think is the best solution to all these various options? You do not have to have them all; you can attack just one part of the industry and not all. Do you have a thought-out solution?

Mr Nietvelt: We have a very clear position on this question. What is important for BEUC is to have very simple and clear legislation, which is easily applicable. We are talking here about legislation which will be in force two to three years, which is not very long. So if you have a very complicated legislation which needs almost one or two years to be implemented, it is of no use. Furthermore, what is important for consumers is to have a clear signal that they will benefit from this legislation, and that they can make calls and not be overcharged. We think that the logic of the Commission's proposal was very good. It would have a clear wholesale cap and then, above that, a 30 per cent margin and a clear retail cap. We did not agree with the Commission on the levels of the wholesale cap, because we thought that, from a cost base perspective, it was more reasonable to have—I would say—MTR x 2 and 1.5, instead of two and three.

Q186 Baroness Eccles of Moulton: So you would make it lower?

Mr Nietvelt: Indeed, we would make it lower. There is a Copenhagen-IMCO-Commission study which looked at the prices of wholesale prices as well and,

surprisingly, they arrived at 25 eurocents, which is the same as what we are suggesting.

Q187 Baroness Eccles of Moulton: What is that, times MTR?

Mr Nietvelt: They did not look at times MTR, but it would be 2.1 x MTR; even a little less—2.08.

Q188 Lord Geddes: Call it 2.

Mr Nietvelt: Yes.

Chairman: About 11.6.

Q189 Baroness Eccles of Moulton: So that is what you do on wholesale. What about retail?

Mr Nietvelt: I talked about the 25 eurocents on wholesale cap. If you added a 30 per cent margin, which we think is very reasonable, you would arrive at 33 eurocents for retail. That would apply to international roamed calls. So I would call as a Belgian, call the UK and call back home. If I am in the UK, calling a restaurant or a friend in London, we suggest we would even pay less. The wholesale rate would be 18 eurocents and, again, a 30 per cent margin would bring us to 25 eurocents. For receiving calls, from my home operator or just a connection between my home operator and me—and my correspondent is already paying for the call—we say that it should be the MTR which, as was rightly said, on the wholesale level is 11.41. Again, the 30 per cent margin would bring us to 16 eurocents. So we are saying 33, 25 and 16.

Q190 Baroness Eccles of Moulton: So you would stick to the fact that if you are roaming with your mobile, it is correct that you pay for receiving a call that you might not even want?

Mr Nietvelt: It is a very good question. The logic of the first proposal of the Commission followed this. However, I talked to a journalist on the *Wall Street Journal* and, for him, the root of the problem is the non-existence of the EU telecom market. He said, "What you actually need is EU-wide networks". But then you would need EU-wide licences instead of having national licences, and Member States are simply not ready to give up this sovereignty. In that sense, you can only apply this home pricing principle if you have this EU-wide licensing, and that is not the case. I think that we should be realistic, look at how the market is structured, and try to have legislation which is tailor-made for that situation. In that sense, ideally you should not pay for a call but, in practice, because the EU market is not the American market—

Q191 Baroness Eccles of Moulton: what about the consumer protection tariff and the opt-in/opt-out options?

27 February 2007

Mr Levi Nietvelt

Mr Nietvelt: As I said, we are in favour of clear legislation—made to create a level playing field for the operators and made to protect consumers. In that sense, first of all we think it is logical that, if there is legislation, consumers should automatically benefit. So we are in favour of the opt-out. As I mentioned before, if you have legislation that applies to all operators automatically, it is their task to show that the offers they are giving are better than the ones the consumers are already benefiting from. Having said that, it does not mean that people who choose to have another offer—for example, the Vodafone Passport, the first minute is more expensive than the legislation will allow—if consumers opt in to such an offer, that is perfectly okay, but they should be automatically protected. So we are in favour of having this opt-out.

Q192 Baroness Eccles of Moulton: We have been told that, by introducing opt-out, every single mobile owner who has a contract with their operator will have to have a new contract, and that the burden on the industry would be colossal.

Mr Nietvelt: We have also been looking into this question, because we realise that, from a contractual point of view, this legislation is important. It changes all prices on roaming. From what we have been told by our UK member *Which?*, it should not be a very big problem if prices decrease. Consumers have to be informed but they do not have to consent. They can also be informed by SMS, apparently. So in that sense I do not think that it is a very big problem. The contracts do not have to be completely rewritten, because it concerns a tariff decrease.

Q193 Baroness Eccles of Moulton: You talked about the simplicity of the proposals that the Commission has made and you support as creating a level playing field. Is that absolutely right? If you have something that is as inflexible as these fixed tariffs, both at wholesale and retail level, surely it will benefit one part of the industry more than another: either the very big operators or the very small operators. It cannot benefit everybody equally, because it is not the sort of industry where a level playing field really makes sense, is it?

Mr Nietvelt: It does, because it concerns network industries where access to that network is crucial. It is very clear when you compare national markets with the EU market. What happened on the national markets is that the connection between the networks are regulated everywhere in Europe. That is the MTR—the mobile termination rate. It ranges from 3¢ in Cyprus up to 22¢ in Slovenia. So there are big differences there. The main point is that it is regulated and there is a reason for it. If you are a dominant operator and you charge an incredible amount of money to have calls connected to your network, your competitors simply cannot offer that service or, if

they do, they go bankrupt. On an EU-wide level, however, there is no regulating thing between the two networks, and that is exactly what the legislation would do. It would regulate the connection between the networks in Europe and, as such, it does create a level playing field. Of course, right now the bigger operators have market power and they divide the market between them. The smaller ones in Europe—E+ in the UK, for example, BASE here in Belgium, KPN as well—when they do their cost-based model, if they were to offer roaming charges around even 55 eurocents, the costs on the wholesale level that they have to pay to the Vodafones, the Teléfonicas, the O2s, would be higher than this 55 eurocents. They would simply lose money. Therefore, if you have a lower wholesale level, which takes into account costs, you would enable the smaller operators to pay not that much for the connection and, as such, stimulate competition in the market.

Q194 Baroness Eccles of Moulton: You have made a very good argument for just having a wholesale cap and letting market forces—as all these little players will come on to the scene—control retail price, and therefore you do not need a retail cap. That is very good!

Mr Nietvelt: Yes, but there is one thing you have to add to this, namely that wholesale legislation does not provide information on its own.

Q195 Baroness Eccles of Moulton: It could be made to.

Mr Nietvelt: Yes, it could be made to, but on its own it does not, and so as such it does not completely solve the problem we have right now in the market.

Q196 Chairman: Could I ask a supplementary to the point made by Lady Eccles? Looking at page 2 of your written evidence, if you receive a call you have suggested a price cap of 16 eurocents.

Mr Nietvelt: Indeed.

Q197 Chairman: Is that therefore in addition or part of the 33¢? If I make an international roaming call, I face a cap of 33¢ that I would be asked to pay. Do the operators receive a total of 49 eurocents or just 33?

Mr Nietvelt: The 33 would be if I am calling from the UK back to Belgium. If I am in the UK and my Belgian friend calls me, I would pay 16 eurocents or 11p. What my friend is paying depends completely on his domestic rate. You have to add up in total for the two operators, their total benefit from the call, the total cost; but it does not mean that you can simply add up the 33 and the 16¢, but they would receive money from my friend who calls me. That is indeed true.

27 February 2007

Mr Levi Nietvelt

Q198 Lord Geddes: The person calling, let us say his or her tariff was 20p, in that instance the total revenue to the operator would be 36. Is that right?

Mr Nietvelt: Yes.

Q199 Lord Geddes: It would be 20 plus 16. I see that it is not necessarily 33 plus 16, because that depends where you are as the owner, so to speak, of the phone.

Mr Nietvelt: Indeed, yes.

Q200 Lord Lee of Trafford: In a report commissioned by BEUC, the offers made by operators after the Commission announced its legislative proposals have been significantly criticised, quoting Mr Murray's words, as "very complex, difficult to use and with no appreciable effect on charges". What is the evidence base for those claims of Mr Murray?

Mr Nietvelt: I am not familiar with what he said. He said . . . ?

Q201 Lord Lee of Trafford: Just to quote again, he said that the proposals made by the operators were "very complex, difficult to use and with no appreciable effect on charges". Those were the three fairly heavy points he made.

Mr Nietvelt: It has to be put in perspective. Operators have, as I said, reacted to the Commission proposal and they have come up with new offers, the Vodafone Passport being one of them. It has been said that these offers significantly reduce roaming costs. Our consultant has looked at the offers and, just to give you a few very clear examples, there is an Orange offer—the French operator. What happens there is that, first of all, it basically applies only between June and October. At the same time, if you start to use the offer you have to finish it within four weeks. Otherwise, you cannot benefit from the credit. It is these kinds of things: the small print in the contract. There is this thing with Vodafone where you have to use a Vodafone or Vodafone Friends network, which is something that is very crucial. As I said, in France it is only SFR France. When you are called, which is something which as a consumer you do not have any influence over, you still pay the high tariff. Whereas you think, if you do not go into all the details of the contract—or you might think—that you do not pay that much, and you use your phone more. It is this lack of information that is not resolved by the offers of the operators. I think that is what Mr Murray was referring to.

Q202 Lord Lee of Trafford: Perhaps I could ask a more general, and perhaps a fairer question from your point of view. How would you assess BEUC's broad attitude to the operators? Do you consider them to be pretty ruthless capitalists, as it were, ripping consumers off, or do you think they are being

reasonably fair, or is it a state of war that you are in with them? What is the overall assessment of the relationship?

Mr Nietvelt: Overall, BEUC supports competition. We think that we are not the ones having to decide on prices; the market should do that. It is the best instrument. It has proved to be valuable on many occasions.

Q203 Lord Lee of Trafford: And that is why you come down heavily on wholesale price and would prefer to leave the retail?

Mr Nietvelt: We definitely come down heavily on wholesale prices. If that were enough, we would leave it there; but it does not solve the problem of supply information. It is not in the paper, but personally I think that, for example, if you have a very low wholesale cap and retail caps around 50¢ or 55¢, there is room for competition. The problem now is that the Council is suggesting 60¢ or 70¢, which is almost no change to what we have now. I think that if everyone were to agree with 50¢, we would go for that—25¢ as the wholesale and 50¢ as the retail, and this 25¢ would allow for competition. Our fear is that we might end up with very high retail caps and the legislation would have no effect at all. We are definitely in favour of competition; however, there is a problem of access here and a problem of information. These two market failures have to be solved. Otherwise the market cannot do its work.

Q204 Lord Geddes: Could I ask for a clarification? You said the Commission was going for a retail price of 60-something . . . ?

Mr Nietvelt: The Council. The prices that the Council is discussing vary. The official proposal is around 50. The French proposal, and I think the UK proposal as well, is around 66. The Irish, for example, or the Dutch proposal is around 40.

Q205 Lord Geddes: And the Commission is 43?

Mr Nietvelt: The Commission have their three prices, as we have as well. It is 49, 36 I think, and 16.

Chairman: I think that the Commissioner this morning seemed to have moved off that, off the double wholesale caps. She is now in favour of a single wholesale cap. So the figures are as Lord Geddes has said.

Lord Geddes: I have it, I hope correctly, in my mind that it is 33 and 43—wholesale/retail.

Q206 Chairman: Those are the implied prices at present, based upon the MTR rates.

Mr Nietvelt: We would agree with that, with the Commission.

Q207 Lord Geddes: You would even agree with as high as 50 for retail?

27 February 2007

Mr Levi Nietvelt

Mr Nietvelt: If the wholesale is low enough and if the transparency issue is tackled correctly—under all these conditions—we think we might be reasonable as well. The thing is that currently we fear that we might have a very, very high retail cap, which does not change anything.

Q208 Baroness Eccles of Moulton: Would you not be more comfortable with averaging on retail?

Mr Nietvelt: No. We have looked into this as well. From the outside it is a very reasonable and good thing but, if you try to think about how it would be in practice, the first question is an average between what? Between the business segment of the market, post-paid, and pre-paid? I think those are the three markets. How would you do the weightings? Would you do it in terms of volumes? In terms of number of subscriptions? Who would calculate it? What about differences in a national market—which are important? Should they be taken into account? How much should the prices decrease? Business—should they decrease by a fixed number? Should you have a percentage decrease? How much should it be? Should you have these three segments the same—in the pre-paid, post-paid, business? Business uses more roaming; post-paid people as well, usually; pre-paid, less. Again, the division between pre-paid and post-paid depends very much on the country and the domestic tariff structure. You run into a very complicated issue by pleading for averages. From the outside, it is a very good proposal but, in practice, we fear that it may not work. Furthermore, it may be challenged by operators. The calculations might not be done correctly; the figures may not be interpreted correctly. In that sense, we think that it is very important to have simple, clear legislation. An average very much complicates the whole discussion.

Q209 Baroness Eccles of Moulton: But if you have three distinct segments that you have just described, how can one fixed retail cap be appropriate to all three? You have just described them as having rather different needs, so it would seem that they would need to have different caps anyway.

Mr Nietvelt: From an operator point of view, the costs of supplying the service through their network are the same. It is the marketing costs which are different. To make a call on the network, whether or not it is a mobile phone of a business user or a mobile phone of an ordinary consumer, it is still a mobile phone. It uses the same frequencies; it uses the same technical connections.

Q210 Chairman: That is not strictly true for pre- and post-paid though.

Mr Nietvelt: I agree with pre- and post-paid, but I think the difference should not be exaggerated in any case. The marketing is different, but it is not completely different.

Q211 Chairman: May I ask you to put yourself in a hypothetical position? All of a sudden, you have been elected to the House of Lords and have immediately become a member of this Select Committee. We have quite a short time period between now and perhaps the end of June or July, when the Presidency hopes to see regulations agreed by the Parliament and by the Council. So we have at best four months. If you were in our position, which areas would you be looking at to reflect further on and to offer advice, conclusions or recommendations? Obviously, in our case, directly to our Parliament and to our ministers.

Mr Nietvelt: First of all, I have to try and imagine myself being elected!

Q212 Lord Mitchell: The elected bit is quite difficult!

Mr Nietvelt: Indeed. What I think would be important is the effect of reduced prices on volumes. We think that if you have a clear signal, users will make more calls and use the roaming services more. That would mitigate the effect of the lost revenue. In economic terms, it is the elasticities that are important here. There is a Eurobarometer, where it turned out that, logically, young people, almost everyone below the age of 35 has a mobile phone now; so you have a very high penetration rate. Secondly, young people travel almost as much as the rest of the population. Thirdly, 60 per cent of Europeans clearly state that they would use their mobile phone more if prices came down. That is important to consider in that sense. If you have lower prices and if people then use mobile phones more, furthermore they would automatically use Internet surfing and they would also use new services. If you want to have a healthy EU telecom market, you should stimulate demand. Therefore, this legislation is important because it will lower prices, stimulate demand, and basically make sure that the EU telecom sector stays healthy.

Q213 Chairman: Is there adequate research, in your judgment? We asked the Commissioner and she gave us four sources this morning, looking at elasticity of demand. Do you think more could be done to persuade the industry, the public, Parliament, in the coming months?

Mr Nietvelt: The question of elasticities is indeed an important one, but a difficult one as well. Research should be done in any case, but it will take more than four months. We know what operators say about the elasticities, and that is what our consultant looked at. They are higher than what the operators are saying. We are sure about that. In the long term research is

27 February 2007

Mr Levi Nietvelt

needed, but it will take more than four months in any case.

Q214 Chairman: Do you think that there will be convergence between the Commission, Parliament and the Council, and that we will get regulations?

Mr Nietvelt: From my point of view, as I said at the beginning, I think that there is a tremendous political will to have legislation. The issue has been on the table for many years. If you take both, then I think we have a chance finally of having legislation.

Q215 Chairman: Is there any hope that we can get anything other than what we call in English a “haggle” at the Council meeting over, for example—and specifically—a wholesale cap, whether it is averaged or not? At the moment, it is plucked out of the air. There is some broad relationship to mobile termination rates, but that is just a proxy for the actual costs.

Mr Nietvelt: I think that everyone would be very interested in seeing the data of the operators, to know what their exact costs are; but these data are simply not available, and therefore the data we have are the mobile termination rates. As such, I think that it is up

to the operators to come up with clear data on what it costs to them—data that can be controlled by national regulators.

Q216 Chairman: Do you think that the operators, the GSM, could produce data in time for there to be a sensible discussion, based on total apportioned costs?

Mr Nietvelt: To be honest, I do not know how the GSM association works in practice. I do not know if they dispose of the data. I am pretty sure that operators in Europe could provide data from their country. I think they dispose of it. It is important for price-setting to know what it costs.

Q217 Chairman: It appears that there are no further questions from around the table. Thank you very much indeed for coming—at short notice, obviously—but answering questions very clearly, if I may say so, in excellent English, and it is very helpful for the record. We will send you the transcript and, if there are any corrections to make, please do so. We will print it in due course, and send you a copy of our report.

Mr Nietvelt: Thank you very much for inviting us and asking our opinion.

TUESDAY 27 FEBRUARY 2007

Present	Eccles of Moulton, B Freeman, L (Chairman) Geddes, L	Lee of Trafford, L Mitchell, L
---------	--	-----------------------------------

Examination of Witness

Witness: MR FRANK KRÜGER, Chairman, Telecom Working Group, German Presidency of the Council, examined.

Q218 Chairman: Mr Krüger, it would be helpful if you could start off by briefly summarising where the German Presidency is at the moment.

Mr Krüger: As you know, we have already had seven or eight meetings within the Council working party. As I see it, we have made a lot of progress; we agree on a lot of principles and are discussing more and more details. We already agree that there is the need for wholesale regulation in all institutions. I think that is quite clear. We are following very strictly the principle of better regulation. We are trying to make it as easy as possible but, on the other hand, as effective as possible. We have therefore proposed at the wholesale level to reduce the complication of the Commission's proposal. We have said that it is sufficient to fix the MTR once at the very beginning and to use this as a basis for the retail price, for receiving calls. On the other hand, we would like to have only one instead of two levels for a maximum wholesale charge for making calls. We think it must be an absolute figure, because we think that everybody—whether it is multiple, whether it is MTR, or whatever—is thinking about an absolute figure at the end, and to fix the multiple that way, so that it comes to the desired absolute figure. Therefore we think that it might be more useful to use this absolute figure, which can be well explained. We therefore will provide an explanation at the next group on Thursday. We already have agreement on the wholesale level, therefore. We think this absolute figure of 30€ which we have proposed and which we are still discussing could be the figure agreed upon at the very end, and we think that it must be possible between two operators to differentiate between off-peak and peak, because we think that has been and is still a methodology to use networks efficiently—differentiating between peak and off-peak. This is briefly where we are on wholesale.

Q219 Chairman: That implies that the operators can average, in order to meet the target.

Mr Krüger: Yes. The highest possible target is 30€ and you can differentiate between off-peak and peak, let us say 25 or 35, but only between two operators. You cannot make an average on all operators of all 27 Member States and say, "Okay, for this one we charge only an average of 10€, and for this one we

charge 40€ or 50€". We think that that must not be possible but, between two operators, it must be possible to have an average.

Q220 Lord Lee of Trafford: But never above 30?

Mr Krüger: Yes, the average never above 30. You could have a differentiation between peak and off-peak.

Q221 Lord Lee of Trafford: It could be 20/40 between two operators.

Mr Krüger: Between two operators at different times but, at the very end, after the stipulated period, it must be 30€.

Q222 Chairman: Are there any other variations, for example between volumes or between different times of the year?

Mr Krüger: Yes, maybe different times of the year. I was told by operators and by Member States that it is not that important to differentiate between several different seasons, but it might be possible of course, yes.

Q223 Chairman: I understand.

Mr Krüger: We think that it should not be the case that the Commission is collecting data year by year and calculating a new MTR. We think that they should calculate it at the very beginning, on the basis of data that is already provided. We should have this maximum average figure already fixed at the very beginning, and then it should decrease by a certain rate. We propose five per cent.

Q224 Chairman: Over two years? After 12 months and 24 months?

Mr Krüger: Yes, 12 months and 24 months. We proposed that the regulation should only last three years, because we think a sunset clause is a good, proportionate proposal. A lot of Member States at the very beginning were against retail regulation at all. We therefore think that it might be proportionate to reduce it to a certain amount of time, because we think that the prices will come down very quickly and that it will not be possible to increase them a lot afterwards. Everyone is aware that they have to pay for roaming and have to pay a certain figure. If they

27 February 2007

Mr Frank Krüger

use it more often, then they are aware of what they have to pay and I do not think it will be possible for operators to increase it a lot. That is the main problem. We have seen that there is a lack of transparency in the market.

Q225 Chairman: The sunset is only on the retail and not on the wholesale?

Mr Krüger: The sunset is on the whole regulation, yes.

Q226 Lord Geddes: Do you envisage that the regulation could be renewed, if there were the will?

Mr Krüger: Yes, it could be renewed if appropriate. It could also be extended to data regulation.

Q227 Lord Geddes: To . . . ?

Mr Krüger: Data regulation—SMS and MMS.

Q228 Baroness Eccles of Moulton: Only after two years?

Mr Krüger: After 18 months the Commission should provide us with a report on the developments within the market, whether there was an increase of prices in national markets, and the development in the data market for SMS and MMS and then, on the basis of this, they can make a new proposal. I think that there is a broad agreement within the Commission, within the Parliament—I have just followed the ITRE debate—not to start with regulation on the data market. There are real concerns about regulation at the retail level at all. So we think that it might be the best approach to start with voice regulation and then have a report after 18 months. If appropriate, the Commission can propose an extension of regulation in time and in content. So that is extended to new markets. The reason why we do not do it from the very beginning is because we do not have any impact assessment on the data market. It is a different market; it is different to voice calls. If we asked the Commission to carry out a report and an impact assessment, it would delay the whole regulation. I think that everybody is in favour of having a First Reading agreement under our Presidency, so in the first half of the year.

Q229 Lord Mitchell: But the data is going to grow very rapidly, is it not, in the next year or two?

Mr Krüger: Yes.

Q230 Chairman: That is wholesale. Can you also talk about retail?

Mr Krüger: Retail was a little more difficult, to be honest. We have had the last Council on 11 December and half of the Member States were completely against retail regulation and were in favour of the sunrise clause.

Q231 Lord Mitchell: Are you able to say which states they were?

Mr Krüger: A lot! Fifteen, including UK. It was across Europe.

Q232 Lord Mitchell: Was it predictable? Could you predict who it would be?

Mr Krüger: No, it was not predictable in that way. I do not have any doubts now that all the Member States are at least in favour of what we proposed as a Presidency, of a consumer protection tariff. The reason why we proposed this is because we considered the figures proposed by the Commission to be too low. The 30 per cent was too low. No innovation would be possible under the Commission figures; no competition; no alternative tariff packages. Therefore, we proposed retail regulation on the basis of a consumer protection tariff, where you can opt out as a new customer and you can opt in as an existing customer. We proposed the level 50/25 without VAT, for making calls and receiving calls. We think that there must be a lot of freedom for innovative tariff schemes and for competition. So currently we are in the middle of the position of the ITRE Committee, which is the leading one, and of the Commission, which is favouring opt-out only.

Q233 Chairman: Just to be clear on the retail, is the current thinking not to have a specific retail average cap? I can understand the consumer protection tariff.

Mr Krüger: Yes, this is the minimum, and you are right.

Q234 Chairman: A consumer protection tariff of, say, 50¢ per minute.

Mr Krüger: Yes.

Q235 Chairman: With an opt-out for existing and an opt-in for new customers, but what about for an immediate regulation, as the Commission wants, for retail? The current thinking, I think, is the equivalent of about 42¢ or 43¢ per minute, based on 130 per cent of the wholesale rate.

Mr Krüger: You mean an average regulation?

Chairman: Yes.

Baroness Eccles of Moulton: The Commissioner was not for average, though, was she?

Q236 Chairman: No, the Commissioner was not for average.

Mr Krüger: We are still proposing additional to the consumer protection tariff, that there might be an average of—we are currently discussing—40¢, because it may be that, if not enough people opt in or if too many opt out, consumers may not be well protected at all. To be clear, currently half of the Member States are in favour of that and half of the Member States are against, and more are shifting

27 February 2007

Mr Frank Krüger

away from the average. One reason could be that we are not quite clear what is the percentage of business minutes and what is the percentage of private minutes. We had several figures. Vodafone told us 20 per cent business minutes, 80 per cent the rest. Another company told me that it was 50:50, and the impact assessment says 70 per cent business and 30 per cent private. The more business minutes you have, the higher the private customer can be charged at the end. So there is not a lot of safety with an average, and it may also be too much red tape. We are still discussing, however, and we do not have any result on this.

Q237 Chairman: But it is perfectly conceivable that you might end up in the informal working party meeting of ministers, and indeed in the Council, without a retail cap. You may have a consumer protection tariff figure at a much higher level as a kind of fallback. Do you think it conceivable that it would be just a wholesale and a protection tariff?

Mr Krüger: What are you actually proposing? That we have a higher figure for the consumer protection tariff?

Chairman: No, I am asking is it possible that a majority of the ministers will decide not to proceed at this stage with a retail cap, other than, as it were, the safety net of the consumer protection tariff?

Q238 Lord Lee of Trafford: Stick at the wholesale?

Mr Krüger: No. We think that there is broad agreement now on having at least a consumer protection tariff at retail level. That is the reason why I mentioned the Council. I think that there has been a sort of shift during the last month. We will see at the informal meeting on 15 March in Hanover, but I think that most of the Member States in the group are quite supportive—all Member States are quite supportive—and we are *just* discussing—and it may be difficult enough—whether it must be an opt-in or an opt-out, an additional average, or not. However, we are already at this level and we are discussing further whether we should have retail regulation at all. At the end, it will be a question of opt-in, opt-out, and of the figures, to be honest.

Q239 Chairman: Do you include what you call an average retail cap, of say 40¢, as part of the tariff, or is that a separate issue?

Mr Krüger: Yes, it is a separate issue. It is an additional issue. You have the consumer protection tariff, opt-in, opt-out and additionally, as a safety net, to say, “Okay, there aren’t enough people opting in” or “Too many are opting out, and we don’t want to lose them”, so they are protected by the average. However, you never know whether or not one is protected by the average, and it is a lot of work for the national regulatory authorities.

Q240 Baroness Eccles of Moulton: Is that quite a substantial reason against going for an average retail cap? The burden that it puts on to the national regulators?

Mr Krüger: I do not know whether it is a substantial reason for all Member States who are not currently in favour of an additional average regulation, but we have to take into account the fact that the Commission is against, Mr Rübzig is against, Mr Muscat told me that he has to take the average on board because he feels committed to the Copenhagen Economics Institute, and half of the Member States are against an average as well. I do not know the reason why they are all against an average, but I think that some of them are against an average because of the regulatory burden.

Q241 Baroness Eccles of Moulton: Copenhagen is against the average? It is for the fixed—

Mr Krüger: No, they are in favour but, as Muscat takes it on board, it does not make sense; because he has an opt-out and an average, so the average is below the consumer protection tariff. If everybody sticks to the consumer protection tariff, you breach the average. He knows that very well, and so my impression is that he will not stick to the average at the very end.

Q242 Lord Geddes: He will or will not?

Mr Krüger: He will not.

Q243 Lord Geddes: I am just trying to get my head round this. I keep getting to a position where I think I understand it and then I move away because it gets confusing. If there is a move away from average, does that mean there is a move towards fixed?

Mr Krüger: No, you do not go back to the Commission’s approach.

Q244 Lord Geddes: That is very important.

Mr Krüger: The question is only for the consumer protection tariff, whether it is an opt-in or opt-out.

Q245 Lord Geddes: Only for the consumer protection. Thank you.

Mr Krüger: But as regards opt-in, one may consider whether it must be a strong opt-in or a weak opt-in. So you can look at this consumer protection tariff and say that you can take several steps to take it on board. Are you clearly and transparently informed by, let us say, TV commercials or by your invoice or by a special letter sent out, or whatever? It is very easy to take it on board: you make three clicks on the Internet, you send an SMS, or whatever. So you can have a very weak opt-in and you can have a very strong opt-in, and more and more people are taking advantage of using the consumer protection tariff. There, we need some further discussion, when we

27 February 2007

Mr Frank Krüger

stick to CPT only. Currently, I cannot tell you what it will be at the very end. I can only tell you that some Member States are in favour and some are not in favour. In recent weeks, some Member States who had been in favour of an additional average have indicated that they will not support it in future. So I cannot tell you. It is always closely linked to the figures and to the opt-in/opt-out question, and so it is very difficult to predict what we will have at the very end.

Q246 Baroness Eccles of Moulton: If we assume that at the moment the Commission's position is a fixed-cap wholesale, a fixed-cap retail, and opt-out—that is the Commission's position—what I gather you are saying is that those three, quite clear points would not all be sufficiently supported by enough Member States for it to be the final solution; or is it still possible that enough Member States would support the Commission's position?

Mr Krüger: No.

Q247 Baroness Eccles of Moulton: No?

Mr Krüger: No.

Q248 Baroness Eccles of Moulton: We are pretty sure about that, are we?

Mr Krüger: Yes, because they have a mark-up of only 30¢. Maybe some small Member States from the very north of Europe are in favour of lower figures, but they are also in favour of much lower wholesale figures. However, I can tell you that it will not work in the end to have only 20¢ at wholesale level and—whatever—45¢ at retail level. That would not work because Spain and all the other holiday countries would not agree—from Austria, Greece, Slovenia, Spain, France and whatever. There are a lot of countries which would like to have higher wholesale charges, and that means that we need a sufficient mark-up for the retail levels. We think that what we are currently discussing—the 37 on the wholesale and the 50/25 on the retail—is somewhere in the middle of the proposals. In the end, I do not know whether we will have 55 or so. We are not discussing it now because if you ask the Member States “What is your proposal?” you get 27 Member States answering. That is not possible. We need external influence, from the Parliament or whatever. Otherwise, we will not get a solution by the Member States.

Q249 Lord Mitchell: It seems to me that the development that will be taking place in the very near future is the transfer of data which, to me, includes music, movies, and a whole series of media, which we do not seem to talk about much in this process, but you will know how fast this is growing. It will be going cross-border, with people sending pictures cross-border from their holidays, or whatever. Does

this come into deliberations at all, or is it an annex—as I suspect?

Mr Krüger: You know that Mr Rübzig has made this proposal of an all-inclusive flat rate which covers national voice calls as well as roaming voice calls, SMS national and abroad, and MMS, and that every undertaking shall supply such an all-inclusive flat rate. We have discussed this proposal within the Member States and I think that this idea would not get any support from the Member States, because it means that you oblige an undertaking to supply a flat rate of—whatever—€500 or so, or maybe higher. We think that may not be feasible. It is a concern, and I think that there is a concern in all three institutions—the Commission, the Parliament and the Council—but, for the time being everybody says, “Let's stick to voice calls. Let's start with voice calls, and maybe that will have an impact on SMS”. In the Parliament there are a lot of voices against retail regulation at all, as I said before. If you now start to discuss regulating data, I do not think that we would get any First Reading agreement and I do not know whether we would get agreement until the end of this year. It would complicate the whole thing.

Q250 Lord Mitchell: But it is clearly going to happen, is it not?

Mr Krüger: Yes, I fully agree.

Q251 Lord Mitchell: It is so fast-growing.

Mr Krüger: It is fast-growing, yes. That is one reason why the Commission is not in favour of regulating. I do not know if Mrs Reding indicated otherwise, because they think, “It's a growing market and let's wait for the development within this market”. I think that is also the reason why we are currently a little cautious about regulating SMS and MMS, because we think that not only do you need an additional impact assessment and that it would take further time to discuss it, but also let us see how it develops and let innovation develop.

Q252 Lord Mitchell: There is no doubt, is there—certainly from our investigations—the operators are fantastically adept at finding their niches which are not regulated at all, and getting super profits from those areas. It certainly seems to me that this is going to be one particular area in the next five years where there will be tremendous traffic, and they will be making a lot of super profits.

Mr Krüger: Yes, but we think that regulation interest the retail market must be well founded and must be only an exception, because normally it is not possible to regulate the retail market. Maybe the regulation of voice calls raises the awareness of customers that they have to pay a lot for making voice calls abroad or sending an SMS from abroad, so they are much more cautious and much more aware of it and it would

27 February 2007

Mr Frank Krüger

mean that operators would have to decrease prices there. However, we think, “Okay, let’s wait a little bit and maybe afterwards we can bring prices down”. I agree with you that they are always looking for their niche, and that is the reason why we have started regulating termination fees in the last two years, because they have made a lot of turnover there.

Lord Mitchell: Has there been polling data of awareness of consumers on roaming charges, voice charges, SMS charges? Are people aware of it?

Lord Geddes: The Commissioner mentioned quite a bit of polling that had been done, but that did not include data; that was purely voice. She came out with some quite detailed figures.

Q253 Baroness Eccles of Moulton: The Commissioner seemed very sure that there would not be much customer satisfaction by only applying constraints to wholesale; that it had to be retail as well. Otherwise, it simply would not impact on the consumer, which was her main concern; but that would not necessarily be the case, would it?

Mr Krüger: We think that they would not pass on the advantages, the benefits, of reduced wholesale charges to the customer. Perhaps over a certain period of time; not as quickly as we think should be the case. Otherwise, they would collect the additional benefits.

Lord Geddes: That was certainly her argument.

Q254 Baroness Eccles of Moulton: The reason why she was so certain about it was because the industry had not responded sufficiently to the threat that there would be regulation. The threat of regulation and actual regulation are two rather different things, and if they see the wholesale regulation effect on them and know there is the threat of retail if they did not co-operate, you would think that that would have a far greater influence on the industry than what has happened up until now; that they would be much more likely to make sure that the message was getting through to the consumer; that there was a serious reduction in the cost of roaming to the user. That is what one would hope.

Mr Krüger: So, wholesale only?

Q255 Lord Geddes: Yes. We have had several witnesses, admittedly from the industry, who have stressed that it would be better to have regulation on wholesale for a period of time—six months, 12 months, variable—to see whether retail did come down proportionately. The Commissioner this morning was very firm—I am paraphrasing her words—that that effectively had been tried, because of the threat of regulation; that the wholesale prices had come down but the retail prices had not, and therefore she was going to insist on retail regulation

as well. I think what you are saying is that Member States are going along that same line of thought.

Mr Krüger: I think that the UK, for instance, has been in favour of this approach, saying, “Let’s wait and see”. Now they are changing their view and saying, “Okay, we need some sort of retail regulation”, because it is possible that prices will not come down by decreasing wholesale.

Q256 Baroness Eccles of Moulton: The UK has not gone as far as the Commissioner in saying the retail regulation needs to be a fixed cap. The UK’s position is an average on both wholesale and retail.

Mr Krüger: Yes. “They have been successful at the wholesale level and let’s see what happens at the retail level.”

Q257 Lord Geddes: Could I go back to Lady Eccles’ question going back to the Commissioner’s stance and the current view of the Council? The Commissioner was very clear that she wanted fixed-cap wholesale, fixed-cap retail, opt-out. I think what I have heard you say is that the feeling in Council at the moment is no to all three of those.

Mr Krüger: No.

Q258 Lord Geddes: Not so?

Mr Krüger: No.

Q259 Lord Geddes: I thought you were saying average, wholesale—

Mr Krüger: Average on wholesale and a mixed approach on retail of opt-out and opt-in. We propose opt-out for new customers, if you are buying a new pre-paid card or if you are signing a new contract. You must be provided with that tariff and you can opt out to whatever tariff package which may be more advantageous for you, and you can switch. For existing customers, however, we do not want to have a lot of red tape. That is the reason why we think that there must be an opt-in; but then you can differ between several opt-in approaches—whether it is just laying out a leaflet, or stronger.

Q260 Baroness Eccles of Moulton: That does not include an averaging retail cap as well.

Mr Krüger: That can be additional.

Q261 Baroness Eccles of Moulton: That would be additional.

Mr Krüger: Yes. As I said, some further debate is needed. Perhaps also on this we need some external pressure or influence by Parliament and the Commissioner. The Commission is not in favour at all and Mr Rübig is not in favour. My impression is that Muscat is not in favour and half of the Member States are not in favour of an additional average.

27 February 2007

Mr Frank Krüger

Q262 Baroness Eccles of Moulton: Just leave it to the consumer protection, and opt-in/opt-out.

Mr Krüger: Yes.

Q263 Baroness Eccles of Moulton: That is a long way from the Commissioner.

Mr Krüger: Okay, but they have to go for compromise as well. She wants to finish it on the First Reading and she has to accept that there is no broad support for her original approach. My personal impression is that the Commission guys were quite lucky when we came up with this consumer protection tariff, because they thought it might be too harmful to the whole industry to have a 30 per cent cap. We have already had tariff schemes for bundles, for roaming, national or roaming only, and this does not work at all within the cap. This works only with tariffs for each minute, and that is absolutely not the case. So it would be very harmful to any innovative tariff schemes. My personal impression is that the staff members are quite happy with the proposal, though they would not say so publicly; because, after a very short period of time, they said, "Oh, yes, that's a very good proposal. You should have the proposal as a compromise", and so on.

Q264 Baroness Eccles of Moulton: So why is the Commissioner still promoting the hard line?

Mr Krüger: Because maybe the ITRE Committee is not on the right track.

Q265 Baroness Eccles of Moulton: The ITRE Committee?

Mr Krüger: Yes, and EPP Group. There are a lot of members currently not in favour of retail regulation. My impression, and what I am told, is that at the very end they will accept a minimum level of retail regulation.

Q266 Baroness Eccles of Moulton: Which would be the consumer protection tariff?

Mr Krüger: Which might be the consumer protection tariff.

Q267 Baroness Eccles of Moulton: When you are all together in the Council and there are 27 Member States represented, do you have proportional voting or, on something like this, does each Member State have the same: just one vote?

Mr Krüger: No, it is not the UN system. I do not have the list with me, but Germany has four and then you have UK, Poland, Italy, France, and so on, which have four—

Q268 Baroness Eccles of Moulton: Is it done on population?

Mr Krüger: Yes.

Q269 Chairman: Could we change the subject and talk about sunrises and sunsets? Do you think the sunrise proposal—the original proposal coming out, in part, from the United Kingdom—is not a runner? However, the sunset proposal after three years, when regulation stops, may attract support. Does that mean a proper sunset, and therefore new regulations to be discussed, or is the proposal to give the Commission the power to review the situation after 18 months and make recommendations about whether it should simply continue, without having to revisit the regulations?

Mr Krüger: I think that it is more the latter one. They have to make a report, provide us with a report on the developments and propose, if appropriate, an extension in time or an extension with regard to content, to say, "Okay, let's regulate in addition the SMS and MMS charges". They may do an additional impact assessment on this as well. It could be the case that they say, "Let's maintain it"; but then we have to decide again, as Parliament and as Council, whether we support that approach or not.

Q270 Chairman: I think that there is a difference between the Commission saying, "We think that the regulation should continue" and it automatically continues, and the Commission saying, "We think that there should be an extension" and you have to go through the whole procedure *de novo* to issue new regulations.

Mr Krüger: Yes. We clearly noted down, "Expiry after three years". If there is no further proposal, it expires. So we have to discuss a new proposal for maintaining regulation. But that could be the proposal and it would perhaps be only one paragraph. I do not know. I am not an expert in this.

Q271 Lord Lee of Trafford: Do you see any prospect of any legal challenge by the mobile phone companies to the regulations? Is that something you take into account in your deliberations?

Mr Krüger: Article 95?

Q272 Lord Lee of Trafford: Article 95.

Mr Krüger: Let us wait and see. We cannot discuss—

Q273 Lord Lee of Trafford: It is hypothetical?

Mr Krüger: It would be a challenge, but we fully support the approach of having a regulation. We know that some enterprises think that it is not in line with Article 95, but it is not a concern in the Member States.

Q274 Baroness Eccles of Moulton: Presumably the Commission has gone into it quite thoroughly as to whether it is legal or not.

27 February 2007

Mr Frank Krüger

Mr Krüger: Yes.

Baroness Eccles of Moulton: It would be a waste of time if it is not.

Chairman: We will now go into informal session. Perhaps I may now record my thanks for the formal session, and we will send you a copy of the transcript.

TUESDAY 27 FEBRUARY 2007

Present	Eccles of Moulton, B Freeman, L (Chairman) Geddes, L	Lee of Trafford, L Mitchell, L
---------	--	-----------------------------------

Examination of Witness

Witness: DR PAUL RÜBIG, a Member of the European Parliament, European Parliament Rapporteur, examined.

Q275 Chairman: We are very grateful to you, Dr Rübig, for helping us. We are planning to produce our report by 27 March, before any formal and final decisions are taken by Council and Parliament. We have taken evidence from our own Minister and from the Commissioner, and we would much appreciate your guidance and advice. Could you help us to begin with, with some kind of opening statement as to where you are in the Parliament?

Dr Rübig: First of all, many thanks for the invitation. I am very proud and glad to be with you. As parliamentarians, we know that it is necessary to see problems and to develop solutions. I apologise not only for being a little late, but the weather conditions are not the best! I am from Austria. There could be heavy snow! I have to apologise also that my mother tongue is not English but German, and I am Austrian—so it is a little complicated! Overall, however, I think that the principle of the internal market and transparency are two main issues where we have to look to see how we can improve the existing situation. I always use an example to explain why a framework is necessary in this area. We have seen that within the Europe of the 27, on the national markets in most of the countries, there is very good competition going on. In my country, Austria, we have brought down prices to 4.9¢ per minute; if you stay in your own network it is zero cents. So you pay nothing for having a nice, long call, 1,000 kilometres from one end of the country to the other. However, if you go across the border, if you go to Germany and phone Austria—which is only two kilometres—you pay a minimum of €2. How do we explain to our citizens that for a distance of 1,000 kilometres you pay 4.9¢, so let us say 5¢, and if you cross the border you pay more than €2? There are costs which arise, of course, and there is the infrastructure; but, if you look at the geographical border, it is such a tremendous difference that something must be wrong. If you look at the European situation, we have a problem in the telecom area. We have a north-south conflict. If British people fly to Greece, Austria or Italy and if they take phone calls there, it is very good for the Greek and Austrian authorities. They make a wonderful margin with the tourists who fly in, and therefore they are not interested in changing the roaming only in favour of tourists. I have come from a small business. Of course, there are a lot of small

businesses around and the costs which arise from roaming can be dramatic. A German journalist covered the Tour de France. He was there for one month—to me, that is too long, but journalists have special requirements!—and at the end of that month he received a bill for €9,000. Not everyone can afford these dramatic bills, and we have a lot of problems with young people being bankrupted. They spend three nights looking for the best flight from London to Athens; they book it for £67; and, having made their first phone call from Athens to their boyfriend or girlfriend, they find that it is much more than the cost of the flight. That is not the way that we should accept that the market develops. So the Commission, over a long period of time, has asked for self-regulation. We have seen that it works quite well in national markets, but in roaming it has not developed to an acceptable standard. Commissioner Reding therefore came up with a very tight proposal. First, it is only for telephony. Secondly, it is only for roaming. So it is not for our British or Austrian market; it is only if you roam from one country to another country. Roaming means that if you are going on holiday or on business to another country and, if you phone, you pay and the other person pays. Receiving phone calls and making phone calls, both sides pay. If I asked you how much you would be charged if you were to phone London from Belgium, would you be able to tell me? I think that no one can in real time. Big companies have a special rebate system and exchange of invoicing, but also the big guys cannot tell you exactly how much it is at the time. It is like going into a restaurant and being told, “I will find you the best wine, but I will tell you the price afterwards”. No one can accept that, if you order a service, you are only told afterwards or you see in your invoice what the charge is. This was the principal, very crucial understanding. The Commission therefore concentrated on telephony, only in the 27 Member States, only for cross-border calls. The calculation is done by the termination rate. The old monopolists had their own regulation in this field and, over many years, we know exactly what fee was charged or calculated. With this fee, we can build an average through Europe. With this average and with this multiplier, we can reach a good solution in the wholesale business. I am out of business. In economic terms, I am a liberal. So I thought that we

27 February 2007

Dr Paul Rübzig

should also give the opportunity for self-regulation. Industry always blames politicians for doing something that they could do better. I agree. I want to open the door for the industry to develop a stock exchange model. I have had talks with some people in this area and they have told me that it is possible. The stock exchange has certain rules and conditions which have to be met, but I am not a specialist. Telecoms are much more knowledgeable, and the specialists on the stock exchange should tell us what they think could happen. This opening of the door is at least a sunset clause: that if the industry is not satisfied with the regulation at the political level, we have an open door through which they can escape into the stock exchange model; then it is purely market price. I always tell them, "Don't ask me how this model should work. It is just what you have told us: that self-regulation is the best thing that can happen. If you are doing better, it is okay by us". Another very important point at the wholesale level is the multiplier. What would be the real cap on the wholesale level? What is the maximum which should be paid? That is a purely political decision. There is not a real model behind it. If you judge on a very low area—let us say the multiplier is two—it will of course have a big impact on competition at the wholesale level. The question is what are you doing at the retail level and which multiplier you take there. That is a political decision. I am the Rapporteur of the European Parliament. I have not made the decision, because I have to represent the people of Europe and therefore I have to find a good compromise. I think that we should look for a compromise in how it can be achieved between the Council and the European Parliament. We are therefore very eager that the regulatory authorities stay on board. They should maintain transparency; they should see that it is going in the right way in the different countries. At the retail level my idea—opposing the Commission's opinion—was that we should keep all existing tariff models and all existing contracts. Many people do not need to roam. We have approximately 500 million people in Europe; 150 million people are in roaming procedures. It should therefore be the free choice of the customer to opt out of the existing tariff. More than 300 million people do not need it, and we should not force the telecoms to change old contracts. Also, we are frightening people that their national tariffs could be changed. My idea, therefore, is to keep the customer tariffs and if someone is not satisfied with the roaming regulation he can opt in to the regulated Euro tariff. In addition, I also wanted a sunset clause at the retail level. Thinking of the future, data transfer will be more and more important—SMS, MMS, data transfer, mobile, TV, Internet use. From our TV and also from Internet use, we are used to getting flat rates where you pay per month for using

the infrastructure. My advice to the Parliament would be to ask for an all-inclusive flat rate, so that you know that if you use your mobile phone, either by voice or data or whatever, the maximum fee is, for the German journalist, €9,000 and for normal people hopefully only €19—like Vodafone now has this Passport tariff. I think that it is therefore possible to create a future-orientated situation, where we can compare the different prices in a transparent way. We therefore have both. On one hand, we have the Commission model for voice telephony; on the other hand, we have a free market, where the industry can develop and the customers can decide. Finally, one of the main points is transparency. For me, it would be perfect if we could have price information in real time, so that if you crossed a border you would automatically receive a push SMS, where the prices quoted are what you have to pay. That would also be a very good instrument to educate people to be sensible on pricing. I think that those are the main points. You have the European Commission with a price cap model, and you have my idea with open doors to the customers, so that they can keep their existing tariffs. If they have no problems, why should we trigger them with new models and new ideas? Those who are not satisfied can change to the Euro tariff; those who really want to use the future and use all these "bits and bytes" can change to the all-inclusive flat rate. We therefore have a balanced system, where I think that we could have a good solution for the future.

Q276 Chairman: Thank you very much indeed. That is very helpful. Perhaps we ought to start by asking you to develop a little further how you see the regulated European tariff which individuals would have the right to opt in to, in alternatives to the whole range of different tariffs and different operators. Where would you set that? How would you set it?

Dr Rübzig: At present we have the Commission proposal and we have the idea from the Council. The Council told us that the multiplier should be two, up to three; the Commission is more at the level of three. The European Parliament is more at the level of two. Of course, customer-orientated is more at the level of two. If you go to industry, it is more at the level of three. The Council came up with the proposal that we should deduct five per cent every year. I think that it is not the most important thing, because the termination rate by the regulator is deducted every year. The old monopolists of course have to have some time to get rid of stuff they do not need any more, to get a better infrastructure. There are normally good relations between the regulation authority and the companies, and so over many years we have seen the price deduction slowly coming down. That is also possible with the MTR rate, which is calculated on a legal basis from the regulatory

27 February 2007

Dr Paul Rübzig

authority. My idea was that we should give a chance to the regulatory authority to debate the multiplier, because the multiplier is very easy to handle. If you see that the market still does not work—after two years, after six months, after three years—you can deduct the multiplier. Maybe the best idea—I do not know what the Parliament will decide—will be to start at a higher level and make a breakdown in a certain time period and, of course, to have a sunset clause that, if industry comes up with a stock exchange model, they are free to charge whatever they like. I am satisfied with the Commission's agreement that it should be only a one-cap model. In the first instance, they came up with two caps. I think one is sufficient, because it does not make a lot of difference if you are phoning somewhere or if you are receiving a call. We had a nice debate in my office. I wanted also to have the principle of only the calling party pays, as we had with fixed-line telephony. If you phone, you pay; if you receive, you do not pay. A lot of people came to me and said, "That's too dangerous. It's too far-reaching". I will now ask the Commission to see if a further regulation is necessary. I think it is a small step, but an important step in going forward.

Q277 Chairman: In order to get to the retail, all-inclusive flat rate tariff, you would have to add a percentage to what would effectively be what the Commission calls the wholesale rate. If it is a multiple of two times the mobile termination rate, you would come to about 25¢ a minute. You would probably have to have a bit more for a retail cap.

Dr Rübzig: That is only for the voice telephony in the Commission model. The Commission came up with an idea of a multiplier of 130 plus 30 per cent. It depends—and that was the reason why I did not quote figures in my report—how much the multiplier is at the wholesale level. If you have a very small multiplier at the wholesale level, you have to have a higher multiplier at the retail level. Let us see what the parliamentarians will decide, and then we are flexible in negotiating what the real figures might be. The all-inclusive flat rate, where you can use your mobile, TV, Internet, any kind of data transfer, and voice telephony, is a free tariff. It is not a regulated tariff; it is all free. Companies can charge whatever they think in order to stay competitive. Competition between a lot of companies will show in which area—just as you go in a shop and you see milk for this or that price, it is the same with telephones. You will have an exact pricing and then you can choose whichever company you wish. It is a model where the whole industry can escape price regulation from the European Commission. If they follow my model they can, within a short time, organise this stock exchange; they can quote the flat rate; and they are totally free and independent from European regulation.

Q278 Chairman: It is a sunset model that you favour? In other words, after three years or whatever, this freedom from regulation?

Dr Rübzig: Yes, it is also in a negotiation. The stock exchange could be much quicker, if they develop it and it is well made. The all-inclusive flat rate could be done within a very short time. We are negotiating with the Council, as you have said, a three-year, two-year or five-year sunset clause. That is still in negotiation. I am open to this debate. I do not think that is the real question for me.

Q279 Chairman: By the "stock exchange" we mean a wholesale stock exchange, similar to oil trading?

Dr Rübzig: Yes, only wholesale, qualified telecoms, certificated. A stock exchange is a very professional business. Everybody knows the rules. We have the authorities checking what is going on; it is transparent. Of course, the industry has to develop a model which fits the individual needs of this part of the administration. However, I think that, as politicians, we should not present a model of how we think that it should be done. The London Stock Exchange has enough qualified people who can present a model which works. So it is a new business model which could also have influence on the global stage, because this trading is not simply a European question. If we do it for our 500 million people, you will see the New York Stock Exchange, with half that number of people—Europe now having the biggest buying power in the world. We are therefore in the lead in creating this industry and to get them at the right level. I think that our people in the stock exchange are clever enough to see that there is a chance. Regulation is not always a matter of putting pressure on the industry; it is also to set them free, to give them the chance to develop in a new direction and to gain world market. I think that we should give them the opportunity to gain world market.

Q280 Lord Mitchell: Could we take another look at some of the basic arguments behind the proposal for wholesale regulation based on MTR, multiplied by the factor X, leading to a single European cap? Could we have a little more of the rationale behind it?

Dr Rübzig: On the wholesale market you have to find a base for the price cap. So the question is what could be the right base. If we do not take the right base, they are ready to ask the European Court to make a decision on this. We therefore thought that it should be a well-known principle. The telecoms and the regulators have had this MTR rate for many years and it is calculated on the bigger groups, the groups who formerly owned the market. The cost basis is therefore very nice; no one wants it to be squeezed. I think that the MTR basis is non-negotiable. It is there; it is legislation; it is transparent; you can rely on it. It is a very good base for a fair cost-base

27 February 2007

Dr Paul Rübzig

calculation, which the smaller companies can also live with. My personal opinion, therefore, is that the Commission was very generous in setting the targets.

Q281 Chairman: Can we be quite clear as to this regulated European tariff which customers could opt to? Is that regulation at both wholesale and retail, or just at the retail level?

Dr Rübzig: No, on both sides.

Q282 Chairman: Similar to what has been proposed?

Dr Rübzig: Yes.

Q283 Baroness Eccles of Moulton: The next question follows on quite neatly from the MTR plus factor X. This is very much at variance with the Commission's proposals, which are for very rigid caps for wholesale and retail. It would therefore be very interesting if you would tell us what you think the main weaknesses of the Commission's proposals are, seeing as they are so different to yours.

Dr Rübzig: The main problem is that I do not like regulated prices. I think that politicians should do their business, and business should do its business itself. First of all, it is not a real price model; it is a price cap model. You give the top price which could be asked. Beneath that level, of course, competition can work. The lower we go at wholesale level, the more competition we will get at retail level. So the question is in which area we could regulate this tariff. We have therefore had a study from a Danish think-tank, which wants to go down from a multiplier of three to two because they think that it will create much better competition. If we go down to two, however, we have to have a much higher possibility at the retail level. That is what is negotiated. I did not like to fix it, because I wanted to speak with national parliamentarians all over Europe, with the press, with people who are involved, and with a lot of universities who now have produced studies and ideas. At least it will be a compromise, which is necessary to get the regulation.

Q284 Baroness Eccles of Moulton: Say these regulations come into effect; it all works very well, and the consumer is much more satisfied with not being charged €9,000, et cetera. When the sunset clause therefore operates after three years, there is a possibility that the industry would then adopt your stock exchange method of dealing internally within the industry. Would that have some sort of affinity with commodity broking, where they would be buying futures and generally getting into that whole commodity trading mode, to the same extent as operating against a stock exchange model? In a way, thinking about it, it seems to me that maybe commodity broking is closer to the sorts of

negotiations they might be entering into than a stock exchange model—but maybe I have got it wrong.

Dr Rübzig: No, I am grateful for this advice because that is exactly what we want to have. We want to involve industry with a model which fits the needs of their market. That is the reason why we did not come up with a certain model and say, "Okay, you have to do so-and-so". I think a sunset clause is very important, but why do we have the regulation? Because up until now the market has not worked as it should. It is therefore necessary to do something. The Commission came with a very simple model of price caps, which everyone understands but, in the long term, it does not work—because if the politicians are setting the price, you know what it means. It could be good, but it may not be. Therefore I think that showing that we are willing to do something, but giving them the opportunity to do better than we are doing, it does not blame us in supporting the Commission; it is a short-term impact that they see and they say, "Okay, it's serious. We have to do something". If they do, they are free to do so. If not, the regulatory authority has to consider what to do, and of course a flexible multiplier could be further reduced or increased. It could also be the other way round. If we see that they are going into the red, are having losses, and cannot invest in infrastructure or have new innovations, then the regulatory authority has to come and say, "We're sorry. We have to increase. We have to give them more space. Otherwise we are no longer competitive". We do not know what the future will be, but the European market is the most attractive market in the world. We have the highest buying power. It is not only European telecoms that look closely at our market; it is worldwide business. We have to see that our industry survives, and that the Lisbon Agenda is in place here also.

Q285 Lord Geddes: Dr Rübzig, in reply to Lady Eccles just now you referred to the Danish think-tank. I assume that is the same as the Copenhagen Economics?

Dr Rübzig: Yes.

Q286 Lord Geddes: As we understand it, that study was commissioned by the European Parliament.

Dr Rübzig: Yes.

Q287 Lord Geddes: You have mentioned that they came up with a factor of two, in broad figures. What else did that study come up with? What other figures that could be important to us did the study show?

Dr Rübzig: I think the study has shown us the different calculations of the termination rates. There is a lot of debate about the average, if it should be an average MTR, and there is a certain study that only 75 per cent, with a certain formula, should be the base of

27 February 2007

Dr Paul Rübzig

MTR. What we learned from this study was that the calculation of the MTR is no problem at all. However you calculate—on an average, on a peak, or whatever size—it is a minimum of the base which is changed. From these studies we learnt that the multiplier, which is a political decision, is the most important decision, and however we fix the multiplier the market will react. That is the debate we have had in the Parliament, because some of our friends say, “We don’t need a regulation at the retail level”; others say, “We don’t need a regulation at the wholesale level, because wholesale is working pretty well”. I think that the Commission did it in the right way: that they concentrated on voice telephony; that it is only for cross-border phone calls; that we have a clear system, where the industry—if we decide in early summer—knows exactly what the issue will be next time.

Q288 Lord Geddes: Did that study give any clear indicators of peak and off-peak MTRs?

Dr Rübzig: Yes, the studies went through all possibilities of calculation of the MTR.

Q289 Lord Geddes: What was the differential between peak and off-peak, or the factor?

Dr Rübzig: It was very close. It was a one per cent margin, not a one-digit per cent margin, where the MTR figure goes up or down. It is not the real question, therefore. The original basis, if you take 2 x MRT, is 23¢; going from peak or off-peak is 1.30. So you can forget it, because it is not a real issue.

Q290 Lord Geddes: Since I have asked that question, perhaps I can go slightly at a tangent to my original one. In the regulations which are now in discussion—the Commission has proposed, the Council and Parliament are looking at it—do you favour a form of average cap which could be lower in off-peak and therefore higher in peak times, so you strike an average, or are you looking at just one figure?

Dr Rübzig: My personal opinion is that I want to have one figure. It is the only way to lead the industry into the stock exchange. If you start with a stock exchange, you need one price at which to start trading. If you have different pricing, there is not a smooth bridge to the new situation.

Q291 Lord Geddes: We have heard tell that perhaps the Council is moving towards a two-tariff one for off-peak and peak.

Dr Rübzig: Yes, we are still in this debate. The conclusions have not yet been reached. Also, in the Parliament we are having a big debate on this. I personally think that the calculation of the MTR is not a real problem. So whatever formula we find, we can agree. The real political decision is the multiplier. I think that is the decision which has to be made at the top level in the Council. That will be the crucial

question, on where we start and where we end. We know the spread. We know that it is between two and three. The Commission has said 2.9; Parliament is at two. Let us see where the real figure will be, therefore—but we are all politicians enough to know where it will be.

Q292 Lord Geddes: Within the European Parliament, are you absolutely satisfied of the legality of these proposals? In particular, we have all been looking at Article 95 and whether that does or does not allow this sort of proposal, whatever its detail may be. Has Parliament taken a legal opinion on this?

Dr Rübzig: Yes. We had a long debate with our legal service, which is very specialised on this. We have clearly said that we do not regulate national roaming tariffs. So whatever we do in Austria or whatever you do in Great Britain, it is your choice and your decision; but everything which is cross-border is clearly a European issue. This roaming is a cross-border issue, and therefore the legal basis is very clear. I do not think that we will have a problem with the legal basis. On the other hand, if the decision is made between Parliament and Council, it is very clear that there is an existing problem. When both sides agree that this should be legislation which could solve the problem, I think it is okay.

Q293 Lord Geddes: You do not think that there will be a challenge from the operators? A legal challenge?

Dr Rübzig: If I had a legal firm, I would come up with a dossier and say, “We should try it”. Why not? It is a billion-pound decision. If you get the case, it is a very nice case and there is always a chance before the court. The questions are how long will it take, how much will it cost, and where is the market in the meantime? If you are a responsible telecom CEO—yes, it is their decision.

Q294 Lord Geddes: You are quite comfortable with the legal base?

Dr Rübzig: Yes, of course. It is no problem at all.

Q295 Chairman: It would be helpful if you could give us a flavour of the other different opinions within the Parliament. For example, how has the Information Technology Research and Enterprise Committee reacted? The other committees of Parliament. Are you a lone voice or do you represent a significant majority in the Parliament?

Dr Rübzig: Within the Parliament, like in any parliament, it is a very complex procedure. It is between political groups; it is between different national Member States; between large and small; between north and south, east and west. Of course not everybody is at the same information level. First of all, you have to explain what the Commission

*27 February 2007*Dr Paul Rübiger

proposal is, what the change is, what is the chance, where do we see the different possibilities; but the rapporteurs and the shadow rapporteurs in the committees—and altogether there are four committees—meet regularly in Strasbourg for two hours every month. We have a lot of other meetings at different levels. We have a lot of hearings and so we get a lot of experts in. I am together, day and night, with the lobbyists from the different areas. It is a customer protection area. There are smaller telecoms and bigger ones; there are international groups. So it is a lot of information. I always say that the European Parliament provides the best postgraduate study, because at university I never had a professor who checked me in such detail as do the lobbyists here! On

the other hand, we learn a lot from them. If you listen and obtain the knowledge they have, it makes you more certain to make the right decision. The more you hear, the more clearly you see the picture. It also helps the different committees to see where the train is travelling to. I am very optimistic that we will get a good solution.

Chairman: We are all extremely grateful to you for giving up your time, Dr Rübiger. We will send you a copy of our report. We hope it is a contribution to your deliberations. We have no say in this; you do. However, we have learnt a great deal. We have more work to do, and we shall return to our parliamentary colleagues in the House of Lords now. Thank you very much indeed.

MONDAY 5 MARCH 2007

Present	Eccles of Moulton, B Freeman, L (Chairman) Geddes, L	Haskel, L St John of Bletso, L
---------	--	-----------------------------------

Memorandum by Meteor Mobile Communications Ltd

INTRODUCTION

Meteor Mobile Communications Ltd (Meteor) broadly welcomes the European Commission's initiative to drive down wholesale charges in the European international roaming market through the application of a European Regulation.

For too long the pricing policy and wholesale charges levied by the large pan-European operators and members of roaming alliances have been allowed to dictate both wholesale access, wholesale tariffs and retail pricing. It is time that action is taken to ensure that this market functions effectively at both wholesale and retail level. It is also time to ensure that small, independent operators are in the position to provide a real competitive challenge to the larger, more established operator.

Whilst welcoming the Regulation, Meteor would maintain that changes are required to the current proposals to ensure that a more effective Regulation is implemented.

Meteor would argue that, as currently worded, the Regulation does not fully address all of the current anti-competitive aspects of the market for international roaming services. Therefore, if not amended to take into account access and non discrimination requirements of smaller independent operators, the Regulation will adversely impact the market position of such operators and ultimately the provision of effective national competition.

To guarantee that the activities of trans-national groups do not hinder competition at a national level, Meteor would advocate the inclusion of a National Non-discrimination Clause. Such a clause would ensure that the wholesale international roaming rates agreed between group companies, should also be offered on the same terms to independent national competitors.

We request that the following provision is added to Article 3:

“The visited network shall not discriminate on the wholesale charges it levies from home networks operating in the same Member State if an entity which is part of the same Group as the visited network is active in that Member State.”

Meteor would very much welcome the opportunity to address the Select Committee directly in order to ensure that the concerns of smaller operators are fully debated.

1. *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?*

Meteor acknowledges concern both at national and European level regarding the generally high level wholesale roaming charges, which have led to high retail prices, for international roaming services.

In the face of continued high international roaming tariffs, at both the wholesale and retail level, Meteor would agree with the European Commission that action of a regulatory nature is required. Such action should significantly reduce excessive wholesale charges levied from one operator onto another for access to a visited mobile network.

Meteor would argue, however, that the nature and scope of such a regulation is key to realising the Commission's goals of competitive retail offerings and subsequent lower prices for all consumers.

5 March 2007

2. *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

Meteor supports the move by the European Commission to cap wholesale voice termination charges.

As a small, independent operator, Meteor would argue that the most significant contributor to high retail prices are wholesale charges levied by visited networks. Access to economically viable wholesale prices is, therefore, the driver for the development of a healthy retail market and the ability of smaller operators to continue to compete.

Meteor would argue that the Regulation should:

- (a) Create an even playing-field at the wholesale level through regulation.
- (b) Allow sufficient flexibility for operators to drive aggressive retail price competition.

To realise the above, it is key that the Regulation includes a National Non-Discrimination Clause. Such a clause will ensure that, through the application of the restrictions in pricing envisaged through the Regulation, trans-national groups cannot hinder competition at a national level and operators such as Meteor are guaranteed access, on the same terms and conditions, as other operators active within the national market.

3. *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?*

Meteor accepts that, over the last number of years, certain steps have been taken by operators to introduce and offer consumers more competitive international roaming packages where it has been advantageous for operators to do so. Meteor would point out, however, that the vast majority of reduced retail roaming packages are confined to inter-group traffic or within European alliances.

In 2006 Meteor introduced a special roaming agreement with T-Mobile UK. Through this agreement, Meteor is able to offer special roaming prices to Meteor customers roaming on the T-Mobile network throughout Northern Ireland and in the rest of the United Kingdom. Along with highly competitive roaming rates the deal saw Meteor, as the only operator in the Republic of Ireland, to abolish all charges for receipt of calls when roaming.

Meteor customers now enjoy very low retail rates when travelling in the UK, with maximum charges for pre-pay customers at 20 Euro cent per minute for voice calls, 20 Euro cent per SMS and the abolition of the charge for receipt of a call.

Within the context of this inquiry, it is important to note why Meteor is able to offer lower roaming prices on a specific network, as opposed to across all networks. The important element in the above mentioned retail offering is access to economically viable wholesale prices. As wholesale prices offered by T-Mobile and reciprocated by Meteor are significantly lower than those offered by competitors in the UK market, retail price reductions have followed. It is access to this pricing that is key. It should be noted that O2 Ireland and Vodafone Ireland were able to implement discounted retail roaming rates (albeit at a higher level) before Meteor. This is because they agreed discounted wholesale rates with their respective sister companies in the UK but would not offer the same or similar wholesale charges to Meteor thereby constraining our ability to effectively compete at the retail level. This erosion of the smaller challenger operator's ability to compete at the retail level is not unique to Ireland/UK and is something that must be addressed on a pan European basis through the forthcoming Regulation.

Currently, wholesale roaming access is not guaranteed and preferential access agreements are concluded between members of pan-European groups and alliances.

Meteor, as a small and independent operator, currently struggles to access pricing on the same terms as large operators or pricing negotiated through European alliances.

5 March 2007

4. *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

Meteor is supportive of the move to introduce maximum wholesale prices above which an operator cannot be charged.

However, Meteor would argue that the introduction of a wholesale cap will act as a further incentive for larger operators to internalise wholesale international roaming traffic and discriminate against smaller operators. Such actions, as highlighted in practical detail above, prevent smaller operators from acting as an effective competitive constraint, and stymie their ability to offer competitive retail offerings to their customers.

It is crucial, therefore, that if customers of smaller, independent operators are also to benefit from the motivation of this Regulation—lower prices for international roaming—that a further safeguard should be applied to counter the potential market displacement effects of the application of a wholesale price cap.

A National Non-discrimination Clause will provide a safeguard to ensure that independent operators can compete on a level playing field vis à vis other operators in their national markets. This safeguard provision will counter the potential for margin squeeze arising from the implementation of a wholesale cap.

A level playing field is required at the wholesale level to promote the provision of competitive international roaming retail services and national mobile services more generally.

5. *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?*

Yes.

Meteor would argue that without the introduction of a national non-discrimination clause the application of the regulation could result in margin squeeze for smaller, independent operators.

Currently high international wholesale tariffs are determined by large operators with power to control access and pricing. This control is currently determined through “group” access and alliances that control membership and traffic steering.

Meteor would argue that the Regulation as currently drafted will result in large operators moving to recoup lost revenues by unfair competition at the wholesale level and ultimately eroding the ability of independent operators to exert competitive pressure on national retail prices.

The current high retail margins of large operators allow competitors to pay higher wholesale rates and remain competitive at the retail level by accepting lower margins. The envisaged Regulation reduces dramatically the wholesale margins thereby providing an incentive to pan European operators to internalise traffic, charging one wholesale price to group members and another to independent operators.

As outlined above, the Regulation can only be wholly effective if it also tackles this current anti-competitive practice. To ensure that the market for international roaming services develops post regulation, a level playing-field is required to ensure healthy competition at the national level.

In many ways what Meteor is proposing is no different to the national frameworks for mobile regulation whereby the provision of mobile termination services are subject to price controls and non-discrimination obligations. It should be noted, however, that the national non-discrimination proposal is not a blanket ban on discrimination requiring all operators to offer the same wholesale charges to all other operators. It is a targeted measure that will safeguard competition within a given national market.

As mobile termination services are an important input for the provision of competing retail services, larger operators should not be able to discriminate in the charges they apply to this service to the detriment of national competition.

6. *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?*

Regulating wholesale roaming rates will impact the bargaining power of operators when negotiating wholesale access agreements with operators from outside the European Union.

Meteor’s main focus, however, is to offer tariff packages to our customers that not only match but compete with larger operators. We cannot do this unless action is taken to ensure access and, most importantly, economically viable access at the wholesale level.

5 March 2007

To ensure that Meteor continues to offer a service and can develop a product that competitively competes against other national operators, the Regulation is welcome albeit with the national non-discrimination caveat.

7. 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?

Meteor is not in a position to comment on the accuracy of European wide figures cited by the European Commission.

8. 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?

Meteor would argue that the proposed Regulation should be restricted to wholesale level and strongly believes that competition at the national level will ensure appropriate pass-through to the consumer of cost savings.

Meteor would maintain, however that if there is objective justification to regulate retail roaming prices then more flexibility should be introduced in the retail regulation proposals. Any Regulation imposed should ensure that innovative pricing packages, such as the roaming package developed with T-Mobile UK, should not be threatened. In addition, operators should be given the space to continue to develop bespoke packages that address specific roaming markets.

Meteor does not, however, support the proposal for a sunrise clause as this would be an extremely complex regulatory test to define, implement and assess.

9. 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?

Meteor would advocate the application of a single absolute price cap for the making and receipt of a wholesale international roaming call.

Without prejudice to Meteor's view that retail regulatory measures are unnecessary as the smaller challenger operators will drive reductions in retail roaming prices. As previously noted Meteor would support measures that allow for a more flexible approach to be adopted in respect of the retail regulatory measures. This will allow smaller challenger operators to compete more effectively with the incumbent mobile operators through innovative tariffing, such as our UK roaming initiative. Consequently we would be supportive of a single average retail cap.

We believe it would be appropriate for the regulation to establish target charges on price per minute basis. The level of the target retail prices may be established by reference to the regulated wholesale prices, an appropriate absolute allowance for retail costs and a reasonable return. We do not, however, feel that it is appropriate to link the regulation of retail roaming prices to mobile termination rates on a forward looking basis as the cost drivers of wholesale termination and retail costs are very different.

ABOUT METEOR

Meteor Mobile Communications is the 3rd operator in the Irish mobile market. Meteor currently enjoys over 17 per cent market share, 90 per cent of which is in the pre-pay segment. Meteor has over 820,000 customers, 250,000 of which joined the Meteor network in over the last year.

In the national market, Meteor competes against major multi-national operators well established in the market: Vodafone and 02 Telefonica, as well as a forth entrant, 3.

Meteor currently acts as a challenger brand successfully driving competition across all market sectors. Meteor has succeeded in creating a competitive market where a duopoly once held 95 per cent market share. Meteor acts, therefore, as a constraint on the "big two", driving competition with innovative price plans and products.

February 2007

5 March 2007

Memorandum by T-Mobile

1. *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?*

In any commercial market, strong competition is a major benefit for the consumer and it is widely accepted by regulatory authorities across the EU that the characteristics of the mobile telecommunication sector in the EU, and especially in the UK, is strong and highly competitive. This has also been demonstrated in the roaming market with innovative roaming offers.

T-Mobile believes that the market for mobile phone roaming services—which includes the ability to make and receive call while abroad—is highly competitive. The market for cross EU roaming services continues to evolve and so prices to the consumer have fallen over the last few years. This pattern will continue as the user demographics and the nature of services demanded by consumers, increases the competitive position in the market. For example, with the increasing demands of corporate and small business users to remain in communication and to maximise business efficient when travelling internationally, T-Mobile UK has announced a cost reduction on data roaming in all T-Mobile footprint countries from £7.50/MB to just £3/MB for all registered business customers. A similar initiative is expected for the consumer market by the summer 2007. This initiative is a good example of competition in the market where what may have been perceived as high prices initially are being reduced as the market develops. Last summer T-Mobile UK announced flat tariffs of 55p for making and receiving calls within Europe and also the UK and Canada for all customers, including pre-pay customers. One of the key drivers for competition in the roaming services is the tendency for traffic imbalance between operators. Some operators (usually in the north of Europe) send more traffic to their roaming partners than they receive in return. This traffic imbalance in the bilateral roaming relationship creates an economic incentive for the “net out boulder” to agree on reduced wholesale roaming rates. T-Mobile is such a net out boulder and has been at the forefront of negotiating discounts with its roaming partners.

In analysing the competitiveness of the international roaming market, the approach taken by the European Regulators Group has delivered a suitable analysis. If there are bottlenecks that demand regulatory action to improve effective competition, then they must be developed to truly benefit all mobile users in the long term (including non roaming customers) without significantly distorting the business operations and models of the many network operators that provide these services within the EU footprint. In other words, any regulatory intervention must not revert to being simplistic, unclear or unduly burdensome actions. While such a concept of “excessive pricing” is known in European legal systems it is rarely applied in cases of market failures. It should be noted that the US legal system does not even know such a concept and rejects the pursuit of excessive pricing cases as creating inefficiencies.

2. *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

We believe that the legislative conditions for a regulation under Art. 95 EC-Treaty are not met. This provision is the legal basis for the approximation of national laws. It follows both from the wording and proper construction of that article that this does not empower the Community to legislate whenever it deems uniform rules desirable. On the contrary, Article 95 clearly limits the power of the Community to legislate to areas of the law where Member States have taken, or are about to take, divergent legislative measures with respect to a product or service which bring about different levels of protection and thereby prevent the product or service from moving freely within the Community. Differences between national laws are a necessary precondition for any legislative action at Community level. However, there are no such differences between the Member States regarding the law that applies to international roaming charges. The regulation of international roaming charges falls in the ambit of the harmonised Community framework for electronic communication. Decisions which Member States’ regulatory authorities may take in accordance with the pertinent EU directives are individual measures, not legislative action in the sense of Article 95.

Leaving aside the legislative basis of the Commission’s proposal we do not believe that a Regulation is necessary. Prices are coming down already and there are clear commitments for this to continue. Many major operators, including T-Mobile and Orange, are parties to a code of conduct which reduced wholesale roaming tariffs in October 2006 and will reduce them further in October 2007. The Commission’s proposal, particularly at the retail level is likely to perversely lead to consumers having less choice.

5 March 2007

3. *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?*

In order to accelerate the downward trend of roaming wholesale prices, a majority of operators in Europe (including T-Mobile) signed a Code of Conduct referred to above which resulted in the wholesale price among the parties being capped at 45 euro cents (c31p) in October 2006 and 36 euro cents (c25p) in October 2007. These price levels have been chosen to allow competition below the cap. T-Mobile therefore believes that—nonwithstanding our position regarding the applicability of Art 95 EC-Treaty—legislation should be limited to a cap at wholesale level to be set at 36 euro cents (c25p). This would result in a significant reduction of wholesale prices compared to 2006 levels while maintaining the competitive structure of the market.

It is disappointing that this commercially negotiated initiative, aimed at genuine reductions in roaming prices, has been ignored by the Commission in their attempt to mandate a set of centrally-determined rules.

T-Mobile also believes that a cap on retail prices would constitute a disproportionate market intervention. There is sufficient evidence to expect mobile operators to pass on wholesale savings to their customers. The UK is a good example of this with all operators bringing into force new roaming initiatives over the last year. Our position is publicly shared by the European Regulators Group who stated that the Commission's retail regulation proposal was impractical and that cost-savings would be passed onto the customer through wholesale price regulation. The above initiative is witness to the views of the European Regulators Group. Independent studies show that T-Mobile is currently offering the most attractive prices in Europe for a two minute call.

4. *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

T-Mobile is concerned that the key thrust of the Commission's proposals, namely harmonising the maximum price cap on the retail charges levied to consumers, would apply a rigid and inflexible centralised solution affecting the international competitiveness and investment strategies of the sector. This would impact on operator's flexibility to create a range of pricing structures that adapt to changes in the demand for roaming services. T-Mobile argues that it is vital that we continue to offer a range of bespoke packages for large corporate customers and, as we have already indicated, develop more tailored offerings for small business and consumer users through a framework that allows the freedom to set general retail pricing levels. This approach rewards the operators who are innovative and competitive in their approach to encouraging and providing roaming packages. The Commission's proposal may have the unintended consequence for some operators across Europe who will not be able to recover costs. Both on the wholesale side as well as on the retail side operators incur costs which are not reflected in the proposal of the Commission.

Regulation is associated with a serious risk of error and large costs, in particular the cost of developing cost models, which will not be outweighed by any benefits, given that the wholesale markets for international roaming are competitive. These models will carry a significant potential for error because of the many factors that have an impact on mobile costs. It will be extremely difficult to agree on adequate returns to the considerable commercial and technological risks that mobile operators have incurred. Cost models, which estimate artificially low costs based on hypothetical efficient networks disregard the actual cost level and will deter investment. Another negative consequence of regulating wholesale roaming services below cost may be that operators will cease to supply wholesale roaming services altogether or to limit the availability of such services. There could also be limits on the customers to whom roaming is made available leading to consumer detriment. Cost-based regulation typically requires operators to recoup fixed and common costs to the same extent across all services. This will make it impossible for operators to choose different mark-ups that reflect customer demand and respective differences in demand elasticities for different services. As a result operators will not have sufficient incentives to invest in new, innovative technology.

5. *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?*

T-Mobile believes that to lose the flexibility for creating a range of pricing structures, there could be a possible knock-on effect for general mobile users including for consumers who are not active roamers. Roaming services are not offered individually but along with other mobile services. Operators that are only marginally

5 March 2007

profitable will, in particular, have no other choice but to recover their fixed and common costs for international roaming services from other services. Even profitable operators will see a need to raise prices for other services because their current prices are set at a level that is low enough to attract additional customers as long as the extra revenue from these customers exceeds the costs. Operators will have to raise their prices because otherwise they could incur losses on customers that are only marginally profitable. This so-called “waterbed effect” is demonstrated from the consequence of the regulation of cross-border banking payments that tied charges for this service to the charges of domestic bank transfers. The level of domestic bank transfer charges rose in a number of cases in the wake of the regulation.

The UK mobile market, despite being highly competitive, will be subject to a disproportionate degree of regulation. Mobile call termination rates have been capped for a number of years and Ofcom is satisfied that they are, or will be in April, when the new cap comes into force, at near to cost. The retail market is highly competitive and operators have to find new ways of cutting costs.

6. *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?*

Article XVII GATS and Article 5(a) of the Annex on Telecommunications provide non-discrimination obligations. This forces EU mobile network operators to offer operators outside the EU wholesale international roaming services for regulated prices without any obligation of reciprocity. European customers roaming in other countries of the world already pay significantly higher roaming charges than vice versa. Operators around the world often charge between € 2 and € 3, eg Megafon (Russia) charges € 2.50, and Indosat (Indonesia) charges € 2.85. Even Cingular (USA) charges € 1.37, as compared to € 0.80 charged by T-Mobile USA. This is not a selection of especially expensive networks, but a summary of big operators across the continents. Given these substantial differences in international roaming prices, EU mobile network operators would be put at a disadvantage if they were forced to offer regulated roaming prices to operators outside the EU.

7. *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?*

We do not have any figure that show how many customers use roaming services across the EU. Assuming they have made a higher contribution to the overall revenues of mobile operators it has allowed these operators to compete more vigorously on their national market to the benefit of all their customers.

A recent study conducted by the consumer organization BEUC shows that MEP’s are paying € 1.15 per minute. This indicates that MEP’s are particular “inelastic” as far as the price for international roaming services are concerned since T-Mobile customers pay significantly less on average. A website launched by the GSME-Association shows that the best prices available on the market are as low as € 0.33 Cents/min and easily available for the consumer. We believe that it should not be the goal of regulation to make a decision for them.

8. *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?*

As outlined in our answer to question 3 T-Mobile believe that regulation should apply solely to wholesale rates rather than wishing to implement a “catch-all” scheme that will dramatically alter the current market and investment conditions of operators by regulating retail charges. If there are doubts as to the willingness of all operators to pass on wholesale savings to their customers a provision could be introduced obliging operators to report data illustrating the decline in retail prices to their national regulators. We understand that the option of a sunrise clause is no longer being discussed.

5 March 2007

9. 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?

T-Mobile does not support retail regulation. If retail regulation is unavoidable it should be set at a level which prohibits abusively high prices. Separate sub caps or percentage mark-ups would not achieve this goal since they would most likely set a de-facto price level and eliminate competition among operators.

February 2007

Examination of Witnesses

Witnesses: MR WILLIAM MCCOUBREY, Head of Regulatory Affairs, Meteor; DR VOLKER STAPPER, Head of Competition Law and Policy, Public & Regulatory Affairs; and MR RICHARD RUMBELOW, Head of Public Affairs, T-Mobile UK, examined.

Q296 Chairman: Thank you very much indeed for coming. We are coming to the end of taking evidence for our report into mobile phone roaming charges. We are hoping to produce a report by 27 March. We are well aware that the informal Meeting of Ministers is due to take place on 15 March when presumably more haggling and an attempt to reach agreement between the various component parts of the European Union will occur. For the record, it would be very helpful if you, Dr Stapper, would open the proceedings and briefly describe your role and that of the company.

Dr Stapper: My name is Volker Stapper and I am with T-Mobile International in Bonn in Germany, which is the holding company of T-Mobile. T-Mobile is present in a number of countries in Europe, ie the UK, Germany, Austria, the Netherlands, the Czech Republic, Slovakia and Hungary.

Mr Rumbelow: I am Richard Rumbelow and I am Head of Public Affairs for T-Mobile UK.

Mr McCoubrey: My name is William McCoubrey and I am Head of Regulatory & Public Policy at Meteor. Meteor is a mobile operator in Ireland. We are not part of a mobile group; we are a stand-alone mobile provider. We are third in the marketplace in terms of market share; we currently have 17 per cent of the market. Our nearest competitors are Vodafone and Telephonica O2 and the fourth entrant in the market is Hutchison. Up until around three to four years ago, the market was quite stagnant on a national basis in terms of competition with Vodafone and O2 effectively being the monopoly. Meteor entered the market and acquired access to national roaming rights which allowed us then to compete on a more even footing with the operators, so we had an even footing on the wholesale market which allowed us then to make inroads into the retail market and we have started to deliver competition in the Irish marketplace and competition is now starting to thrive.

Q297 Chairman: I think you have had notice of some of the questions in which we are particularly interested and may I begin with the first question

which is that the Commission has argued that there has been market failure in terms of true competition in the supply of roaming charges over the last few years and hence the need for the introduction of regulation. Do you agree with that?

Dr Stapper: I do not. I think that there have been movements in the market for a number of years now. If I go back, I think the first movements that you saw were mainly focused on price transparency. We understand that customers were very concerned about the price they were paying when abroad and so our initial focus was on introducing roaming rates that were transparent. Back in 1999, we introduced a tariff which allowed customers to roam in any network in Europe for the same price and customers did not have to worry if they suddenly switched from Vodafone to Wind Italy because they always paid the same price. Furthermore, our focus was to pass wholesale savings which were achieved by discount agreements with operators to consumers. What we initially did was to offer promotions, particularly in the holiday season. This then developed into reduced standard rates which we have been offering since 2004.

Mr McCoubrey: From our perspective, the Commission is correct to say that the industry has failed to reduce roaming charges and there I mean that the retail prices that consumers pay are simply too high and they have remained at shockingly high levels for a number of years now. Where I would disagree with the Commission is what we then go on to try and do to remedy the situation. The Commission's focus has been very much on retail prices but, when you step back and take an analysis of what is actually happening in the marketplace, the issues lie at the wholesale level. It is the charges that the wholesale operators, or the visited network if that is a familiar term to you, charge when our customers are roaming overseas. We have found that the larger operators are not willing to negotiate to any significant extent with a few notable exceptions which we will come on to later I am sure because they are sitting beside me. For too long, the larger players and

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

the alliances that have formed between large operators have dictated to the marketplace what the wholesale prices must be. We are faced with these high wholesale prices which are then reflected in our retail prices; hence we have to charge quite high retail prices. If the Commission wish to address this, which they will do to give the consumer a better deal, they should be looking squarely at resolving all the issues in the wholesale market by establishing price caps and also by establishing what we call a national non-discrimination clause that will ensure that smaller operators are able to continue to compete in the national mobile markets.

Q298 Lord Haskel: This is a fast moving situation. Things seem to be changing quite frequently. Would you tell us what the industry has done since the Commission announced its proposal in the summer of 2006.

Dr Stapper: We made a first draft proposal shortly before the Commission came out with its proposal, which means that we signed a code of conduct—30 operators across Europe participated—and announced wholesale reductions in the area of 50 per cent. We thought that this move would pre-empt regulation but, as you can see, it did not. We are also measuring as to how these wholesale reductions translate into lower rate tariffs and, since we have already taken the first step on the wholesale side back in October when we introduced a cap of 45 cents, we have also measured the corresponding retail reductions and, if you compare it on a year-by-year basis, it resulted in a 25 per cent reduction. What is interesting to note is that, when we introduced this cap, our goal was to truly have a cap which allows competition below the cap and, if you analyse today's discount agreements which we have signed on the basis of this cap, you will see that the actual rates offered are below the cap because operators know that they will not get our traffic for the capped amount but only for an amount that is below the cap.

Mr McCoubrey: From Meteor's perspective, we try to do what we can given the constraints that we are under as a smaller operator. We have 800,000 customers and, as such, in terms of a roaming base or the number of roaming minutes that we can offer for sale in another country, we are not a large player, we are not a large purchaser, so we do not very often see discounts. However, there has been a considerable interest in trying to resolve what we call inadvertent roaming along the border between Northern Ireland and the Republic of Ireland. Our customers would like to see an all-Ireland tariff. We worked with T-Mobile—and we are very grateful to T-Mobile for this—to agree special wholesale roaming rates that then allowed us to pass on significant savings to our customers. So, it is now possible for Meteor customers roaming in the UK to effectively pay what

they would when they are at home. So, for a pre-pay customer, if you roam in the UK and call home, it will cost you 20 euro cents, which is the same charge it would cost you if you call when in Ireland to another Irish mobile operator. We were able to achieve that against a background where there was mutual interest for T-Mobile and Meteor to work together on this. Our competitors, Vodafone and O₂, had previously introduced their own all-Ireland tariffs to address consumer concerns, but they did it on their own networks. So, O₂ Ireland require its customers to roam on the O₂ UK network to avail themselves of the special discounts. Meteor approached both Vodafone and O₂ UK entities and asked them if they would reciprocate with us similar sorts of wholesale charges that would allow us to introduce a competing retail tariff and they said “no”. T-Mobile was in a similar circumstance where they needed to have something to offer their customers because Vodafone UK and O₂ UK were also offering these discounts. So, there was a commercial arrangement reached due to the unique circumstances that existed. However, we have found that typically the larger players are unwilling to negotiate discounts that would allow us to replicate the retail tariffs that they have introduced. So, if you consider Vodafone that has an extensive footprint across Europe, they have the Vodafone Passport Initiative where, when you roam on in other Vodafone network, you will get discounted rates. We simply cannot compete with that unless we have access to fair wholesale rates on a non-discriminatory basis.

Q299 Chairman: What are those, in your judgment, fair rates?

Mr McCoubrey: In terms of the actual level?

Q300 Chairman: Yes.

Mr McCoubrey: As low as the market can sustain in a competitive sort of way. From our perspective, we are aware of the various proposals that range from, say, 25 cents to 36-ish cents. All those figures are arrived at using different methods of analysis. There is no finite science to calculating what the costs are but, from our own experience and from what we are willing to offer on our network, they are all in the right ballpark. It is not really for Meteor to say what the final figure should be. There are a number of experts out there in the Commission, Copenhagen Economics, the individual operators etc that we all have seen. I think it is fair to say that the rates being discussed should not disadvantage any particular operator.

Chairman: I think that Lord St. John is next and he will probably be following my line of questioning, so that Dr Stapper will have a chance to reply.

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

Q301 Lord St John of Bletso: In fact, I am concentrating on the previous question and I want to know from Mr McCoubrey's point of view how transparent you find the wholesale rates across the European Union.

Mr McCoubrey: We have roaming arrangements with the majority of GSM operators in Europe and, as a result of that, we know what each of the visited networks will be charging. We ourselves as purchasers have transparency of what is available in the marketplace. What we are not aware of are the various discount agreements that are in place, particularly on an inter-group basis. So, as a purchaser, there is a degree of transparency but not enough for us to really appreciate and get access to appropriate rates.

Q302 Lord St John of Bletso: Dr Stapper, perhaps I could ask you for your view of transparency.

Dr Stapper: There is no transparency in the wholesale market and I think there should not be transparency in the wholesale market because transparency and the concept of secret competition is the basis upon which competition in this market occurs. If prices were transparent, there would be no competition. Therefore, the fact that we have discount agreements with other operators makes these prices completely non-transparent.

Q303 Lord St John of Bletso: That leads on to my next question. Clearly, you do not consider the Commission's proposals proportionate. What do you think their effect will be on the market and do you feel that the pressure on lowering roaming charges could potentially spill over into higher prices for other mobile telephony services?

Dr Stapper: It is true that we do not consider the Commission's proposals to be proportionate because it is based on the concept of absolute price caps which, in my view, is the most intrusive regulation and that is why the current discussion has tried to find a more flexible approach which is based on average price caps. The other problem we have with this proposal and why we consider it to be disproportionate is because it tries to introduce a system which applies across Europe, meaning that the same price caps will be valid for operators across the entire European Union despite the fact that the regulatory and the commercial cost situation is quite different in these countries. Therefore, if regulation is adopted that is based on absolute price caps that are close to cost, there will be no margin for us and therefore we conclude that this will have an effect on the services.

Q304 Lord St John of Bletso: I have been reading the submission you gave to us in which you mentioned that harmonising the maximum price cap on retail

charges levied to consumers would apply a rigid and inflexible centralised solution affecting the international competitiveness and investment strategies of the sector. My question following on from that is, how do you think this will affect the bundle services, the cost-all type services, the innovation which wholesale operators can offer for the consumers?

Dr Stapper: By introducing price caps, we would have to abandon all of these price models and would only be allowed to introduce a regulated retail tariff which we normally would not introduce as such, therefore reducing competition.

Mr McCoubrey: The question was, do we think there will be raising costs for customers? The argument is that there is certainly that potential arising from the regulation as it currently stands, the reason being that international roaming traditionally has not necessarily been of significant interest to the vast majority of customers, but things are now changing. If you look at the Irish example, over the last few years there has been a great deal of immigration into the country, also combined with cheap low-budget airlines there is a great deal of travel. International roaming is becoming an increasingly important part of the retail proposition and we sell that to the Irish customers in the Irish market. It is part of the overall national product that we deliver. If the Vodafones of this world are able to offer rock bottom retail international roaming deals that we are not able to replicate because we do not have access to the appropriate costs on a wholesale basis, then our position on the national market will start to suffer and it is the Meteors of this world and the Hutchisons in the UK and the Bouygues in France, the smaller challenger operators that are driving the competitive force in the national markets which results in cost reductions to consumers. If the actions of the larger groups such as Vodafone are allowed to disadvantage us to compete on a national basis, then the costs to customers will rise in the long run.

Q305 Baroness Eccles of Moulton: I am going to jump back a little. Dr Stapper, you mentioned that you had entered into agreements in order to try and contain the wholesale charges between the various companies at a certain level which would perhaps prevent the EU thinking it was going to be necessary to do something about roaming costs to the consumer. How broadly were those agreements entered into across the operators throughout the EU? Was it just between two or three or was it actually quite broad?

Dr Stapper: It was actually quite broad. This agreement was signed by 35 operators coming from almost all of the 25 EU countries and covering, if you look at their customer base, approximately 200

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

million customers which represents certainly more than half of the customer base in Europe.

Q306 Baroness Eccles of Moulton: It must be quite disappointing to the operators that it has not actually worked sufficiently at the final price that the customer is finding that they are paying. Presumably you all hoped that it was going to do the trick. Why is it that it has not produced the retail result that would have meant that everybody would have heaved a sigh of relief and said, "That's fine, the market has sorted itself out"?

Dr Stapper: I guess that this whole process has a political dimension. There has been significant pressure from different stakeholders to introduce regulation. We have spoken to a number of people in Parliament who have complained quite a bit about the level of roaming prices. We believe that the industry has moved and there are prices out there which are much more attractive than the Commission publishes on its website. This indicates that some of the demand (including from Members of the European Parliament) is inelastic. The industry has moved and therefore we see a lot of support for a solution which tries to focus itself on wholesale regulation.

Q307 Baroness Eccles of Moulton: We are going to move on to the question of a sunset clause and maybe we are talking about something fairly temporary, but I think it would obviously be very helpful to know how things might look in four or five years' time. I wonder whether one of the problems is that the offer to the consumer was actually broadly enough known, that the consumer was not well enough aware of the various offers that they could take up and that there was much too much emphasis on the individual consumer finding out what the offers were rather than the industry making it absolutely clear that actually they were going to be charged a great deal less for roaming. Do you think that there could be something in that?

Dr Stapper: Certainly, and that is why the industry has come up with another website that tries to give the consumer an overview of what the most attractive prices are in each country and what we have found is that this website is used quite heavily by consumers because it shows that, for example, you can today make a roaming call for 33 cents a minute.

Q308 Baroness Eccles of Moulton: No matter whom you are automatically linked into when you are roaming because your roaming operator can change every ten minutes?

Dr Stapper: And that is why I tried to explain that what we have done is introduce a single price independent of the network they are using. So, the price I have just described, 33 cents, applies

independently of whether you are using Orange France or Vodafone Greece. The customer is not worried about suddenly being switched to a different network.

Q309 Baroness Eccles of Moulton: How successful EU wide has that been?

Dr Stapper: This tariff applies in all 25 EU Member States in each of those networks. So, it does not get any more transparent than that.

Q310 Baroness Eccles of Moulton: If it is that high, certainly charges that some of us have recently experienced are still very high.

Mr Rumbelow: I would like to add that the one thing T-Mobile has done in comparison with the others. As a T-Mobile customer, you get an SMS message when you arrive in your country of destination and that message will tell you the price per minute that phone calls will be charged at when you are roaming in that country. As Dr Stapper has said, that is irrespective of the network you may be roaming on in that country at any particular moment in time because we know that there can be coverage variances in the countries to which you are a visitor. The other point to mention on that is that that is the retail price that you are charged. The wholesale charge, in other words the cost that the operator will charge us for that call, may well vary in that country depending on the operator you are with and of course we take that charge ourselves but the consumer will only ever see one charge and that is that particular charge they will get SMS'd on when they arrive in that country.

Q311 Lord Haskel: Dr Stapper mentioned a code of conduct. Does this code of conduct that you mentioned cover this sort of thing? For instance, does it cover the problems that the virtual operators have, the kind of problem that Mr McCoubrey mentioned?

Dr Stapper: This is open to any operator who wants to join in. There is no limitation and any operator who is willing to cap its wholesale charges to 45 cents and then individually negotiate discount agreements below this cap is obviously welcome.

Q312 Lord Haskel: Is that a voluntary code?

Dr Stapper: Of course.

Q313 Lord Haskel: How many operators have subscribed to that?

Dr Stapper: Thirty-five.

Q314 Lord Haskel: So, quite a lot has happened.

Dr Stapper: Indeed.

Q315 Chairman: Perhaps I may add a supplementary to the mobile network virtual operators. Do you think that the regulation will alter

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

the playing field for them considering that they operate under different business models?

Dr Stapper: This allows me to also reply to what my colleague, Mr McCoubrey, mentioned earlier. First of all, the regulation is looking at trying to lower roaming prices. I think that its goal should not be to alter the dynamics of the market. As I can assure you, this market is competitive and I think that we are concluding competitive discount agreements. If you look at the position of smaller operators, we believe that a wholesale cap which would be regulated close to cost would not allow other operators to undercut this price level. Whereas a wholesale cap, which leaves room for competition, would allow smaller operators, like in the case of Meteor, to offer us a price which is significantly below the price that O₂ or Vodafone are offering in this market. If you look at our operator alliance which comprises of a number of operators in Europe which has also established preferential roaming agreements, what you see there is that these roaming agreements are not exclusive, meaning that if one of the partners in these operator lines is not willing to reduce its wholesale charges to a level which we find appropriate, a smaller operator can and has come in and offered prices below our own alliance partner, which means that despite us having an alliance with another operator, we have to give all our traffic to this competing smaller operator in order to take advantage of the lower wholesale charges.

Q316 Lord Geddes: What do your partners think of that?

Dr Stapper: They do not like it all but it has happened to them.

Q317 Lord Geddes: And that does not break any agreement you have in your alliance?

Dr Stapper: No because it is not exclusive and our agreement says that we are benchmarking our price levels against the offers from third non alliance operators, so they also have a chance to jump in and undercut the price level within the alliance.

Mr McCoubrey: I commend T-Mobile's positive approach to all this and indeed it is reflected in what we have managed to agree on an UK-Ireland basis. Our own experience has been, not dealing with T-Mobile but dealing with some of the other larger operators, that, when we do offer what they tell us are the cheapest rates that could be offered for roaming in Ireland, but we still do not get the business because they have deals going on at a group level between the large players with which we cannot compete from a group perspective. We can only offer you cheap termination in Ireland and hence cheaper roaming rates for your customers while in Ireland. So, it is not a rosy place for the small operators in the marketplace at the moment. My colleague referred to whether we could regulate down closer to cost. We

would not be averse to that because at least it would then help to diminish the margin for discriminatory pricing. It is the discriminatory pricing at the wholesale level that causes us the great concern as to the impact that could have on the retail market. From our perspective, we believe that the Commission needs to be harder on the wholesale market than it currently is, but, when it has done that, it can also rely on the fact that there are smaller challenger operators at play in the marketplace and therefore it does not need to be quite so prescriptive in what it does at the retail level.

Q318 Baroness Eccles of Moulton: The issue that is of some concern is that you talk about wholesale cost and I hear what you say about wholesale transparency wrecking any form of proper market competition but, even so, it has been really quite difficult for us to get any sort of idea as to how the operators calculate the actual cost of giving the other operators access on to their networks when roaming is taking place. There obviously is a cost but it seems to be a really, really difficult idea to get any sort of grip on.

Dr Stapper: That is correct. I think that assessing cost, especially in a market or for a service which is sold as a bundle together with domestic services, is very hard and many other authorities have tried to look at this and have failed and may I add that, under the US legal system, you would not even pursue a case of alleged excessive prices because they are aware of how difficult it is to determine what the price is. The other issue is that cost can vary quite a bit in Europe and this may depend on the topography of the country. For instance, in Austria it is certainly more difficult to build a network than in Belgium but it is also difficult due to different regulatory licence conditions. For instance, some countries pay quite a significant price for what we call their 3G licences, whereas in other countries those licences were almost given away for free. That obviously has an impact on the cost structure of these operators.

Q319 Baroness Eccles of Moulton: So, the reason why we have large national variation which is caused both by the topography—for example, if you have mountains, it is more difficult than if you are completely flat—and also the national regulator or government or whoever it is who actually sets the licence fee for access to the network.

Dr Stapper: That is correct and that is why we think that trying to create a single market for international roaming in a situation where the mobile markets are not one single market due to these differences and also due to the regulatory differences is not possible.

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

Q320 Baroness Eccles of Moulton: Are the charges that you charge each other conditioned by the national conditions that exist? Can you get access on to networks in Belgium for a lot less than you can get access in Austria for your subscribers?

Dr Stapper: The access is also determined by the reciprocity of the traffic. Every roaming agreement is bilateral by nature, so you will always have one operator that usually sends more traffic, what we call a net payer for roaming and a so-called net receiver in terms of roaming, and that is why you will usually see that operators who are net payers have been very aggressive in trying to negotiate discount agreements because it is in their own commercial interest to come to these discounts.

Q321 Baroness Eccles of Moulton: So, that is another imbalance. In a way, you have covered two imbalances and the third imbalance will be the degree of trade going both ways.

Dr Stapper: And that is a very important aspect because this imbalance is the one that has stimulated competition in this market the most.

The Committee suspended from 5.10 pm to 5.18 pm for a division in the House

Q322 Lord St John of Bletso: Dr Stapper, you mentioned the cost of 3G licences. So far, we have spoken about the cost of voice roaming. My question is, what about the transparency on the cost of data roaming and what scope do you think there is for the Directive to include the cost of voice roaming?

Dr Stapper: I will ask my colleague to answer that.

Mr Rumbelow: At this stage, the Commission proposal does not include SMS and data roaming within the scope of its deliberation and I think that before any consideration is given to data and SMS roaming being included, we would need to see a full and detailed procedural analysis undertaken by the Commission. Given the timeframe that this current proposal could be determined in, it is going to be very, very difficult for that detailed analysis to be undertaken. At this stage, we do not believe that SMS and data roaming should be included within the scope of this particular proposal. Data and SMS roaming is still an emerging market and therefore, to give it fair consideration, that analysis would need to be quite thorough. Just as a point of reference—and we have said this in our written evidence—we have already taken a step in reducing the data roaming charge for business customers with effect from last month and we intend to do a similar thing for consumers in the course of the next few months. So, we have already recognised that although the market is emerging in terms of data and SMS, there is an ability for operators to certainly advise the

consumers and allow consumers a more attractive retail tariff for their data roaming requirements.

Q323 Lord St John of Bletso: There have been occasions when in fact there has been more abuse of data roaming charges than voice roaming charges and we have heard that voice roaming charges are coming down. You mentioned that T-Mobile's data roaming charges have come down but is that the same situation with the other wholesale operators? I would be interested to hear from Mr McCoubrey as well on this issue.

Mr Rumbelow: Particularly on the data roaming side, the market is emerging and is not in the same mature condition as voice traffic roaming and that is partly because there are still many technical reasons why that sort of roaming traffic cannot be undertaken within the European footprint. It goes back to Dr Stapper's earlier comments about the state of the market in Europe. Not all operators have the same degree of network coverage within their own countries and therefore, to have a consistent pattern of data roaming facility and therefore to allow for a true costing of that in terms of the wholesale price, it is still in very much an emerging market. Therefore, at this stage, it would be wrong to apply the same criteria in terms of analysis of the data market as we are examining here, if you like, the basic voice traffic market. As I say, the proposal we have made as T-Mobile refers to business data customers roaming within the T-Mobile footprint within Europe.

Mr McCoubrey: From our perspective, I would tend to agree with T-Mobile's assessment of the situation regarding data and SMS. It is still very much an immature service. I think I have seen one of the European Parliamentary Committee's proposals that this should be reviewed over a year following the regulation being adopted and then decisions taken. I think that is the right way. I do not think that we should be taking steps now to try and roll data and SMS into this particular phase of the regulation because I imagine that this will be a phased approach to regulation and I also note that the same committee has made a proposal that, if we cannot have the necessary protection as smaller operators at the start of the regulation, then that is something that also should be reviewed within one year to ensure that any appropriate measures are put in place. There are some complex and detailed things here that require further assessment over and above all the analysis that is being undertaken for voice.

Q324 Baroness Eccles of Moulton: Much earlier on, the concept of a sunset clause was touched on. How do you see that actually being applied and managed? There are obviously a number of different ways of dealing with a sunset clause. First of all, if there are going to be regulation, would you be in favour of it?

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

Dr Stapper: Certainly we would be because we believe that the industry will not have any incentive to increase prices after they have reduced them. One of the concepts, as far as I understand it, that is currently being introduced into the sunset clause by the German presidency in its proposal is that there will be a review after 12 or 18 months and if this review is sufficiently positive, then the regulation will, as planned, expire after three years. Of course, we would like to see an earlier sunset but I think that the sunset in itself is certainly an important tool to make this regulation proportionate.

Q325 Baroness Eccles of Moulton: How is it going to be possible for whoever is conducting a review to have access to sufficient data to be confident that it is going to be sensible to trigger the sunset 18 months later? Data seems to be a bit of a problem.

Dr Stapper: I think that there is a great deal of data out there. We, as operators, have collected data to show how our code of conduct has translated into lower retail charges. Moreover, data has already been collected by regulatory authorities because the national authorities were actually supposed to investigate the market and a number of these authorities have collected the necessary data to look at the roaming market, so they are used to judging such data. Not one of these investigations has shown that the market was not competitive. There were concerns that prices were too high in some cases and there was never an allegation of market failure.

Q326 Baroness Eccles of Moulton: And there is no concern amongst the operators about commercial confidentiality being contravened by having to reveal certain data in order to prove a point?

Dr Stapper: No because this data remains with the authority and will not be disclosed to our competitors in the market.

Q327 Baroness Eccles of Moulton: And it does not leak?

Dr Stapper: No. We are used to disclosing extremely confidential information in many of our businesses and so far there has been no leakage.

Q328 Baroness Eccles of Moulton: That is a very comprehensive answer to the sunset question. What about a sunrise clause? Well, it would not be a clause, it would be a sunrise delay in the regulation being applied. What would be your view on that?

Dr Stapper: We think that wholesale regulation should be sufficient to stimulate competition on the retail side. A number of stakeholders to whom we have spoken say that there is ample evidence that these wholesale savings will be passed on to the consumer. In our view, if a sunrise clause is

introduced, such a sunrise clause should be limited to looking at data that shows how these wholesale savings have been passed on to the consumer. We, as an industry, have signed up to the code of conduct to actually illustrate that such a retail price index works in practice.

Q329 Baroness Eccles of Moulton: Does Meteor have anything to say on this?

Mr McCoubrey: On the subject of the sunset clause and what sort of tests you would have to look at, on the basis of national regulation, the regulators have to periodically assess 18 markets that have been established by the Commission. So, the national regulatory authorities and the European Commission are well versed in having a look at a market and seeing if it is functioning. What has failed to happen in the past with the wholesale international roaming is that it has been looked at on a national basis and, when you look at three or four different networks appearing to compete for some minutes, you could argue that that is competitive on a national basis. The issue is that the wholesale market does not work correctly and it has to be looked at from a pan-European basis. So, if there is to be a sunset clause and test, it needs to be that the Commission and other experts need to analyse and demonstrate that there is an effectively functioning pan-European wholesale market. In terms of sunrise, I would agree with my colleague, as we do occasionally, that, if we sort out wholesale regulation—I think that we have different views on exactly what is needed at the wholesale level—and if we have an equal playing field at the wholesale level that allows the smaller operators to challenge the larger players in the retail market, I do not feel that we need retail regulation.

Q330 Lord Geddes: That has answered my second question in one easy motion although perhaps on that last point—I will come on to consumer protection tariffs in a minute—would T-Mobile like to comment on whether you would favour wholesale or retail caps coming in at the same time or would you rather wholesale initially and then look at retail?

Dr Stapper: We believe that wholesale should be sufficient and the market will prove that these wholesale savings will be passed on to the consumer.

Q331 Lord Geddes: Your reply does not surprise me but thank you for giving it. We were in Brussels last week taking evidence from a number of different witnesses including the Commissioner herself and the Raconteur in the European Parliament and there was quite a lot of discussion about the necessity or lack of necessity for consumer protection tariffs. Would you like to comment on that?

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

Dr Stapper: The consumer protection tariff has the intention to introduce absolute price caps which in our view is very similar to what the Commission originally suggested. So, in order for such a mechanism, which we do not believe is necessary, to be introduced, we believe that a number of conditions will have to be met for the industry to be flexible which is not normally the case under an absolute price cap. Those conditions should be opt-in which is something that is actually being proposed by the Council and also by some of the members of the European Parliament and, more importantly, it needs to be a true consumer protection tariff meaning that it only imposes a price limit which avoids abuses by some operators. It should not be at a level which would *de facto* lead to a situation where this protection tariff will be applicable to all customers.

Mr McCoubrey: I have a certain notion of sympathy with the consumer protection tariff in the sense that it will, if set at the right level, establish a price above which consumers will know they are not going to be charged. So it does, as it says, protect the consumer. We have the same concern as smaller operators at the wholesale level that, if you move into averaging certain segments of the market, the smaller operators may be at the wrong side of the averaging. If the target was, say, 30 cents and there was an average target, the smaller operators could be charged 40 or 50 cents and meanwhile the larger players could give advantage to members of their group with something lower than that to achieve the average. It is exactly the same argument that needs to be had in terms of the retail consumer. I think that the standard retail consumer, you and I who are not part of large businesses, does need a degree of protection to make sure that we are not on the wrong side of averages. So, there has to be clear consideration both at the wholesale and at the retail level to establishing appropriate absolute levels if we are going to regulate both sides of the market.

Q332 Lord Geddes: I would like to come in to the opt-in/opt-out argument. I would like to ask another question which we have not touched on yet. Do you think it is right that a receiver should pay as well as a sender? If you phone me and I have no idea I am getting that call, why should I pay for it? I may not want the call.

Dr Stapper: The rationale for this approach, which is different from the domestic service where you do not pay for a receiving call, is that we had to take care of the situation that the caller does not know where you are and he should not be charged an extra amount for a call to a foreign country that he did not expect. The concept was that the person calling you will only be charged for the domestic part of the call whereas the roaming customer will be charged for the additional cost that occurs because you are in a foreign network.

Q333 Lord Geddes: I want to challenge you on that for a moment. The rationale that you have just put up is that the caller does not know that the receiver is in a different country. Therefore, what you have just said, why should the caller pay for effectively an international call? The receiver does not know that he is going to be called in the first place. Why should he be charged?

Dr Stapper: Because the receiver can turn his phone off if he does not want to make any calls plus he is aware of the fact that he will be charged for this call because in every price list which we have this is clearly indicated.

Lord Geddes: He is aware of it but it is a *de facto* position. I am not buying that argument.

Q334 Baroness Eccles of Moulton: Let me ask what happens if you leave a message. If you leave a voicemail message, who pays for it? If you are in Germany and I am in England and I am calling you and you do not answer because you have switched your phone off and I leave a voicemail message on your phone, presumably you pay for it when you switch on and see that there is a voicemail message and dial 901. I am not paying for it presumably as the caller, or am I?

Dr Stapper: You are paying for the call to the voicemail, namely the domestic call. If the roaming customer turns the phone back on and wants to retrieve the message, you are paying the roaming rate—

Baroness Eccles of Moulton: You are paying for listening and that is all right. That one is okay.

Q335 Lord Geddes: I must confess that I am far from satisfied but I hear what you say. Could we probe this opt-in/opt-out. Again, we have heard quite a lot of evidence on this subject. I think what you said, if I may ask Mr McCoubrey, is that the rationale as we understand it is that the industry would much prefer an opt-in situation rather than an opt-out situation and the rationale given to us is that an opt-out situation would be unbelievably complex and very expensive. Is that correct? Is that the sole reason why you prefer the opt-in relative to the opt-out?

Mr McCoubrey: From our perspective, it is a practical matter and it is more to do with where we are now. We have the UK/Ireland special roaming arrangement that is in place. That is going to be way cheaper than whatever the consumer protection tariff level is going to be, I can pretty much guarantee that, and bearing in mind that at least 50 per cent of our own customers' roaming traffic occurs in the UK—it is the single most important destination from the Irish perspective—for us to then have to get everybody to opt back into what is the best deal for them just seems impracticable and improbable. So, it is a practical reason from our perspective why we

5 March 2007 Mr William McCoubrey, Dr Volker Stapper and Mr Richard Rumbelow

prefer to have opt-in to consumer protection tariff on the basis that you are going to be on the best deal anyway.

Q336 Lord Geddes: So, if you want to get on to it, you have to opt in.

Mr McCoubrey: Yes. If you want to pay more would be our philosophy.

Q337 Lord Geddes: Would you go along with that, Dr Stapper?

Dr Stapper: I think there is another reason why we believe that opt-in is the right solution and that is because opt-in is the way in which we do business. Our customers are used to opting into minute bundles tariff options. So, introducing such a regulation as an opt-in scenario would actually mirror the way in which we do business.

Chairman: I think we are coming to the end of our questions. Lord St John, do you have any other questions?

Q338 Lord St John of Bletso: Yes, more on the issue of increasing customer lock-in. New technologies such as IP multimedia subsystems, we have been told, can reinforce the grip of mobile operators on their wholly-owned retail activities and increase customer lock-in. Do you believe in this?

Dr Stapper: I am sorry, I am not sure I understood the question.

Q339 Lord St John of Bletso: It is about new technologies, IP multimedia subsystems, so basically my question is about the lock-in of customers and open competition. Obviously one of the problems that many customers have is they get locked in to their mobile operators and I was looking for the inflexible consequences of pricing. I was interested to read this in a submission we have received by the CMA.

Mr McCoubrey: I am not a technical expert in terms of how the networks work but my understanding of the IMS is that it is a sub-protocol on the network that allows different parts of the network to talk to each other. What it does is allow greater commonality at the touch points with the edge of the network, so a mobile network can talk in the same language with a fixed network, with a broadcasting network, with an internet network, so you can start to converge services. If anything, I would imagine it should broaden the openness of the communications environment rather than constrict and lock in a customer. As I say, I am not an engineer.

Q340 Lord St John of Bletso: The concern is this would lead to customers being locked in and the concern that I have is there should be sufficient

competition so that customers would not be locked in because there is a huge amount of naivety from customers on the retail charges.

Mr Rumbelow: If the question asked relates to access to services that a customer enjoys on their handset, T-Mobile does not operate a walled garden approach in terms of people getting access to general internet services. Some operators do encourage customers to go to managed service offerings, which are usually run by themselves, but we do not have that approach. In other words, people can gain general access to general internet services, for example, if their phones enable them to do that.

Lord Haskel: We have really covered all the points that we wanted to. The only other thing is whether in a sunrise clause you would prefer a sunset clause.

Chairman: I think we have covered that.

Q341 Lord Geddes: Can I just ask an entirely personal question, which was what I was talking to Lord Haskel about. I happen to be on Vodafone and I have just got a message, free, gratis and for nothing, from: "Free MSG. Lowest international calls from 1p per minute. Text Simple to 80556. This costs you £5 and you get £5 credit", et cetera. "Text to opt out". It does not say what you do when you opt out. I am sorry to bring up an entirely personal thing but what on earth is all that about?

Mr McCoubrey: I think you may have just been subjected to an unsolicited marketing message.

Q342 Lord Geddes: I think I was.

Mr McCoubrey: Which could probably be the subject of an entire inquiry in itself!

Baroness Eccles of Moulton: We ought to turn on our mobiles and see if we have got the same message.

Lord Geddes: I wonder who these people are.

Q343 Lord St John of Bletso: I have just one final question. You have mentioned in your submission to us that there has been a legal challenge to Article 95. Our understanding of this challenge to Article 95 is that whilst the lawyers might say that there is scope for a delay *de facto*, it is unlikely that this Directive will be delayed on the basis of a legal challenge under a breach of Article 95. Would you agree with that?

Dr Stapper: I would say that all the relevant stakeholders, including the Commission and the Council, believe that Article 95 is the proper basis for revision. We do not share this view because we believe that it is only applicable if there are diverging laws in the Member States.

Chairman: Good, thank you. Are there any other questions? Thank you very much indeed. I am sorry we have kept you slightly beyond our target but in light of injury time I think we have fulfilled our 60 minutes. Thank you very much indeed.

Written Evidence

Memorandum by BT

INTRODUCTION

BT Group plc is one of the world's leading providers of communications solutions and services operating in 170 countries. BT consists principally of four lines of business: BT Global Services, Openreach, BT Retail, and BT Wholesale. Openreach, BT Retail, and BT Wholesale operate almost entirely within the UK supplying a wide range of communications products and services and offering a comprehensive range of managed and packaged communications solutions. BT Global Services addresses the networked IT services needs of multi-site organisations both in the UK and internationally.

BT no longer owns any GSM or 3G network infrastructure, following the de-merger of mmO2 in 2001. BT now offers a range of “convergence” mobile services using a range of technologies including WiFi, Bluetooth, digital broadcasting, and resale of capacity on an existing mobile network. The final activity in this list is generally known as a Mobile Virtual Network Operator (MVNO). Host networks are referred to as MNOs (Mobile Network Operators).

As an MVNO BT is only active in the retail market and makes no wholesale profit. BT's retail charges are based on the wholesale rates it has to pay the host MNO—which are commercially negotiated and are higher than the inter-operator wholesale charges to allow for the additional billing and transaction costs in the relationship.

The proposed Regulation imposes a retail margin deemed (by the Commission) adequate for MNOs but which will be less than adequate for MVNOs and then greatly increases retail costs through the requirement to provide information free of charge to roaming customers over the mobile network while they are roaming. This latter cost is unlimited if customers make a large number of information requests and may be insupportable for many MVNOs.

If there is to be an EU Regulation, BT would prefer it to focus exclusively on wholesale charges—as a general rule BT believes that retail regulation should only be used if wholesale regulation is unable to correct a problem. If retail pricing is to be covered, the EU Regulation should ensure that any retail margin limits (a) allow sufficient margin “headroom” for MVNOs, (b) take adequate account of the potentially very costly transparency requirements, and (c) allow retail prices for receiving calls to reflect the actual termination rate paid (rather than the average).

QUESTIONS

Q1—*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?*

BT supports the Commission's aim of delivering good retail deals for roaming consumers and believes this is best achieved through wholesale regulation.

Since consumers are generally sold packages which may include domestic calls, roaming calls, minute “buckets” or unlimited minutes, data, and text messages it is very difficult to isolate a single element and categorise it as appropriate or excessive without taking account of the whole picture. Nevertheless BT welcomes the Commission's action on wholesale roaming prices in order to bring them more closely into alignment with costs.

BT is not convinced that the market is as competitive as it might be and has argued that the Commission should retain the market for mobile access and call origination within the list of markets susceptible to ex-ante regulation—as National Regulatory Authorities may need to intervene with remedies if single or collective dominance is found.

The European Commission has recognised that MVNOs have a role to play in intensifying competition. In a recent press release¹ the Commission said “*Experience from other Member States has shown that the entry of MVNOs can boost competition with tangible benefits for consumers in terms of lower prices*”. Furthermore,

¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/06/97&format=HTML&aged=0&language=EN&guiLanguage=en>

commenting² on a decision of the French regulator, Commissioner Reding said “*It is particularly important for regulators to take into account the impact of virtual mobile operators entering these markets.*”

The impact of MVNOs is not confined to lower prices but may also extend to more innovative products, particularly through the combination of different technologies, and to greater penetration where a familiar consumer brand may attract additional customers. The innovation factor could be particularly important in future as MVNOs may be more willing to consider innovative mixtures of technologies and spectrum than MNOs with a substantial sunk investment in a particular technology.

MVNOs are collectively a powerful force acting on the side of the consumer. Yet their continuing commercial viability is weakened by the detailed way in which the Commission is proposing to implement its Regulation. Not only is there to be a very slender retail margin imposed, but retail costs will be dramatically increased because of the detailed and expensive transparency requirements. The European Parliament has recently released a briefing note³ which casts significant doubt on the proportionality of the transparency measures proposed by the Commission.

Q2—*Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

BT welcomes the Commission’s move to cap the wholesale rates charged between operators but has serious concerns about the proposed regulation of retail prices and the detailed, mandatory, transparency requirements. BT believes that if wholesale rates are reduced, market dynamics will ensure that retail prices drop significantly.

If retail and wholesale prices are to be capped the fixed maximum retail margin needs to be sufficient to allow a retail-only operator to function. Any prescribed maximum retail margin should recognise the mark-up above wholesale inter-operator tariffs that such undertakings must accommodate, as well as any increased transparency costs imposed by the Regulation.

Q3—*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?*

It is noteworthy that mobile roaming prices have started to come down and it is quite possible that NRAs, particularly collaborating through the European Regulators Group, would be able to address these concerns if given more time.

Q4—*Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

Yes. The Regulation will reduce the ability of MVNOs to compete in the market by imposing a reduced retail margin and higher retail costs for transparency. This risks seriously damaging innovation in the sector; which in turn may lead to reduced investment. By attempting to fix retail and wholesale roaming prices at an extremely low level the Regulation will reduce the scope for innovative tariffing for different customer groups.

Q5—*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?*

To the extent that MNOs are able to exploit price elasticity of demand effects in related markets for data, text, and other new services it is possible that these prices will rise. There are clearly issues on how to recover the common costs of the network from the various services carried and telecommunications is one of many industries which has historically distributed these costs unevenly across different customer groups—for example by Ramsey pricing.

Q6—*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?*

It seems likely that those operators with a higher than average domestic termination rate will continue to promote themselves to roamers. This will be a serious problem for the host MNO or MVNO if the relevant domestic termination rate is above or even close to the allowed retail tariff for receiving roaming calls. Such calls could represent an uncontrollable loss.

² <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/632&format=HTML&aged=0&language=EN&guiLanguage=en>

³ IP/A/ITRE/NT/NT/2006-17 PE 382.177

Q7—*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?*

BT has no independent figures. Whether the Commission number is correct would depend on their definition of the term "affected".

Q8—*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?*

BT believes that the Regulation should be focussed solely on wholesale prices. As already described, an imposed retail margin (even if big enough for the MNOs) will translate to a smaller retail margin for MVNOs. Transparency should be encouraged via Internet publication, via the customer's bill where there is a monthly contract, and via notification at the time of purchase. Subsequent enquiries about tariffs should be chargeable—otherwise MVNOs face the potential of funding unlimited total end-to-end call or SMS charges from an already reduced retail profit margin.

If there is to be retail regulation then it would be better imposed on a sunrise basis where price reduction targets are not met. But such targets must be realistic and must take account of any added transparency costs.

Q9—*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?*

While wholesale prices for making and receiving calls remain significantly different, it is appropriate for there to be separate caps. A target price would allow the possibility, subject to competitive conditions, for the undertaking to retain a proportion of any cost savings made. The proposed Regulation is flawed insofar as it attempts to prescribe a capped retail price for receiving calls but does not prescribe a matching capped wholesale price for the national termination element of the call. Thus an undertaking could have a minimal or negative profit on calls delivered via an operator with a high termination rate.

23 February 2007

Memorandum by the Communications Management Association ("CMA")

INTRODUCTION

CMA is an association of ICT Professionals from the enterprise community in both private and public sectors. It is a registered Charity almost 50 years old, totally independent and without supplier bias. It is run by the members, for the members and aims to influence regulation and legislation, provide education and training and disseminate knowledge and information for the public good.

CMA's contribution to public consultations is generated by a process described at the end of this document. CMA's communications with the European Commission are normally pursued through the International Telecommunications User Group (INTUG), which has made many submissions on roaming since the late 1990s.

SUMMARY

CMA agrees with the European Commission statement launching the DG Information Society Consultation on Roaming Charges of March 2006. That statement said: "*consumers continue to pay unreasonably high prices for using their mobile phone abroad, that this is reducing cross-border use of mobile phones and presents an obstacle to the European market for electronic communications*".

CMA therefore supports Commissioner Viviane Reding's proposals for wholesale and retail caps on international roaming prices, based on a proportional mark up over national Fixed to Mobile termination rates (FMTRs). CMA also believes charges for receiving calls whilst roaming internationally should be abolished. CMA believes this is a unique situation which will not set a precedent for regulation of other submarkets.

COMMENT

A *Sunday Times* interview of Arun Sarin, Chief Executive of Vodafone, on 20 November 2005, reported: “Sarin said Vodafone was ‘a highly consumer-centric business’—hence its sponsorship of Manchester United, Ferrari, and the England cricket team. He acknowledged that about 60 per cent of group profits (and 40 per cent of revenues) come from businesses, which are less price-sensitive and less likely to complain about the cost of international roaming calls”.

Sustained overpricing of mobile roaming at retail level has been demonstrated by more than seven years of industry research, user surveys and tariff analyses. Despite this, the debt burden of 3G licences seems to have deterred the regulator from effective action to address the issue, although other issues, such as billing limitations, on/offnet calling rates and GSM gateway policy have been actioned.

CMA is concerned that the minority interests of mobile operators have had undue influence on the UK response to the European Commission’s consultation, whilst the impact on the remainder of the business community in the UK has been overlooked. CMA expects Her Majesty’s Government to present a balanced view to the European Commission, taking into account overall economic net gain of the proposals.

The remaining pages of this response provide specific responses to the call for evidence by the Internal Market Sub-Committee (Sub-Committee B) of the House of Lords Select Committee as input to their Inquiry into the European Commission’s proposed caps on mobile telephone roaming charges.

SPECIFIC RESPONSES

(i-a) *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?* **Yes**

Fixed line charges for carrying voice traffic have fallen significantly over recent years, but mobile tariffs including roaming costs have remained almost static. Commission analysis has calculated that international roaming charges are four to six TIMES cost, in contravention of the cost-orientation levels required by law. Businesses do achieve volume discounts, but despite this one major multinational reports that their package deal, which on benchmarking a statistically large sample was shown to be extremely competitive, only cut their mobile roaming tariff to THREE times cost. Others have reported that operators sometimes charge their customers off-net rates when the call remained on the same network with zero roaming cost incurred by the operator.

(i-b) *Do you think there is currently sufficient competition in the market?* **No**

The sustained overpricing of mobile telephony charges, especially for roaming, proves that no effective competition exists. Joint dominance operates at international level, even if not in national markets. Mobile operators and service providers continue to act in a way that has a similar pricing profile to a complex multi-country cartel.

(ii) *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?* **Yes**

European Commission initiatives on wholesale tariffs have had limited impact on retail price levels, in a market which remains heavily vertically integrated, with few Mobile Virtual Network Operators (MVNOs) or truly independent providers. New technologies such as IP Multimedia Subsystem (IMS) could reinforce the grip of mobile operators on their wholly-owned retail activities and increase customer lock-in. CMA therefore strongly supports the Commission’s proposals to introduce without delay new EU regulation aimed at a radical reduction in retail international roaming charges.

(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?* **No**

Continued overpricing of international roaming, despite nearly a decade of evidence-based complaints by CMA through INTUG, and by other representative bodies and observers, proves that self-regulation has failed.

Are National Regulatory Authorities in a co-regulated environment able to address these concerns on their own? **No**

The “dawn raids” provided the EU with evidence of overpricing and some suspicion of collusion. They revealed the significance of roaming charges to the revenues and profits of mobile operators, but little was done to reduce prices in a self-regulated environment. The numerous operators in the roaming market do not make this market competitive, since there is no transparency on how roaming and origination charges are derived and applied. Operators should be required to provide this data to National Regulatory Authorities (NRAs) and to the Commission, to enable an open assessment of the relationship between roaming charges and mobile operator costs, including the charges made by call originating or call terminating operators.

(iv) Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector? **No**

On the contrary, the proposed regulation will increase innovation and investment, by making new applications (which are currently inhibited by unrealistically high roaming charges), viable. This will drive up usage volume in scale and scope, generating revenue to fund innovation and encourage investment, including by the incumbent mobile operators themselves.

Pressure from MNOs to eliminate Market 15 (mobile access and origination) must not succeed, as it would make it impossible for NRAs to take effective action against market abuse, such as that now associated with international roaming charges, and inhibit development of the MVNO sector. This would result in less competition in the entire business service market, as customers migrate to converged IP platforms.

(v-a) Do you think that the pressure for lower roaming charges could potentially spill-over into higher prices for other mobile telephony services? **Not necessarily**

If excessive roaming tariffs were abolished, price-demand elasticity would result in a significant increase in volumes that might entirely compensate for, or even exceed, the loss of supernormal profit levels. The US market operates without excessive charges, suggesting that the European market would settle down after a few months.

(v-b) Would you anticipate any other unintended consequences that may affect consumers? **Only positive ones**

New technologies like location-based applications, IMS, mobile TV, and near-field payment systems, will result in what a Sunday newspaper described as a “gateway to life” handset. Vertically integrated operators will focus on customer retention through bundled offerings which will obscure the real cost of individual elements. Excessive roaming charges must be eliminated well before MNOs hide them in the integrated environment permanently.

Supernormal profit margins on SMS are even greater than those for voice roaming, since text messages are carried virtually for free in the signalling channel. Damage to business customers from high roaming charges for data is even worse than for voice, since such charges inhibit ICT investment in innovative data-enabled pan-European business processes.

(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? **Yes**

Open and thriving international competition will deter the temptation to raise prices outside the roaming sector.

(vii-a) Is the Commission’s estimate that 147 million EU citizens are affected by excessively high international mobile roaming charges accurate? **Probably**

The impact analysis and research undertaken by the Commission suggests that such a figure is not unreasonable and will be increasing daily. If the debate over roaming charges continues without action, the number can only rise above this estimate.

(vii-b) *Do you have any other figures to offer?* **No**

(viii-a) *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?* **No**

The Sunrise clause simply gives mobile operators a six-month regulatory holiday in which to enjoy excessive margins. MNOs have claimed the industry is exceptionally fast moving, and that, to survive, they must be able to react quickly to changes. This seems inconsistent with the claim that they need six months to adjust to the proposed Commission regulations, despite many months advanced warning.

(viii-b) *Should legislation apply solely to wholesale fees rather than retail tariffs?* **No**

Excessive retail pricing of mobile roaming has been demonstrated for nearly a decade by industry research, user surveys and tariff analysis. Indeed, national mobile termination rates have also remained unjustifiably high, as demonstrated by the success of GSM gateways. The Commission has proved that international roaming prices are at least four to six times cost, with return on investment at levels normally associated with cartels. The collective behaviour of mobile operators to date and political lobbying by associations acting on their behalf, prove that no action will be taken without regulation and that wholesale regulation alone will not result in price reductions for the citizen consumer. This deters use of a valuable service, and inhibits improvements in business productivity. Radical price reductions will increase usage, to the direct benefit of the UK and European economy, as shown by the Commission impact analysis. Regulation must address wholesale and retail prices.

(ix-a) *Do you believe that separate sub caps for making and receiving calls should be applied or a single average cap?*
Separate sub-caps (zero for receiving)

To promote a pan-EU market in telecoms, roaming prices within the EU should be pegged to the same price as those charged for calls from mobiles to fixed numbers within the operator's home state, and thus charging users for receiving a call on their mobile within the EU should also be abolished and prohibited. This action would result in a level playing field for both businesses and consumers compared with the US, where flat rate price packages when roaming across states have been available for some years. This pricing strategy should apply to both voice and data; roaming data charges should be pegged to national supplier rates for the same services. Linking international roaming charges to national mobile charges has many virtues, not least simplicity and clarity—badly needed in mobile pricing. Crucially, it has the compelling logic of being based on a generally more competitive market. Premiums for international roaming over national calls must be based on additional costs incurred carrying a call between Member States on terrestrial networks. Volume prices for such calls are already offered to business customers for less than 5 Eurocents a minute: clearly wholesale costs are somewhat lower than this. The marginal cost of roaming over the cost of providing national services is therefore very small.

(ix-b) *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?* **Linkage to MTRs with mark-up**

Regulation should not list specific target prices, since overall voice and data tariff levels are likely to continue to fall over time, and any specific price caps would need to be reviewed at annual intervals. Absolute price caps would be very complex to manage and would be based on the Highest Common Factor, given different cost basis in each Member State. A mark-up on MTRs provides a better solution.

FOOTNOTE—CMA'S INTERNAL CONSULTATION PROCESS ON REGULATORY ISSUES

CMA seeks to represent fairly the views of business consumers to external bodies. Any consultation document (condoc) received by, or notified to, CMA is analysed initially by the appropriate Forum Leader for its relevance to business users based in the UK. (The majority of CMA's members are based in this country, with a third of them having responsibility for their employers' international networks and systems). If the document is considered relevant to CMA, it is passed, with initial comments, to members of both the appropriate Forum and the 20 or so members of CMA's "Regulatory College"—ie: those user members who have experience in regulatory issues, either with their current employer, or previously with a supplier.

The CMA Chairman and CEO are also members of the College.

The detailed comments from the College are collated by the Forum Leader in the form of a draft response to the condoc.

Note:

If the condoc has significant international import, the views of the international user community could be sought. This is done through the International Telecoms User Group (INTUG).

If time permits, the draft response is sent to all user members of the Association, with a request for comment. Comments received are used to modify the draft. The final version is cleared with members of the appropriate Forum and Regulatory College (and, if the subject of the consultation is sufficiently weighty, with the CMA Board).

The cleared response is sent by the CMA Secretariat to the originating authority.

It might be signed off by the Leader of CMA's Regulatory Forum, and/or by the CMA Chief Executive and Chairman.

19 February 2007

Memorandum by EVUA Limited

INTRODUCTION

EVUA has a membership of over 70 multinational companies with British and UK based foreign companies representing almost 40 per cent of the total. Member companies have an annual telecommunications spend exceeding 3 billion Euros per year, some 1.5 billion of which is expended on mobile communications charges. The high cost of mobile roaming has been a serious concern to enterprises for many years. EVUA, representing large enterprises, has consistently raised this issue directly with mobile operators and through public debate but with less success than it has desired.

Roaming costs for mobile voice and data are so high and unpredictable that many of the EVUA member companies are, as a matter of policy, restricting use of mobile phones for staff travelling abroad. This means that their people's efficiency is reduced. EVUA therefore believes that it is entirely appropriate for the European Commission to introduce legislation and fully supports the proposed regulation to bring down the prices of mobile roaming.

THE MOBILE INDUSTRY

The recent initiative from Viviane Reding, Commissioner for Information Society and Media at the European Commission has resulted in several operators reducing their retail roaming charges. However, in some cases, the reductions are accompanied by the need to pay a monthly fee which makes the actual cost variable and the benefits difficult to assess.

Operators are not giving way easily and are continuing to lobby in an effort to stop or delay the proposed regulatory changes. Clearly they are concerned about the effect the proposal may have on their revenues. EVUA believes that the lower retail charges will lead to more competition. Increased traffic volumes should also transpire, which will offset loss of revenue to the operators.

THE EFFECT ON BUSINESS

In today's world of international trading, businesses rely on effective, value for money communications and, increasingly, require this on a global basis. It is therefore no surprise that in a recent survey conducted by Ovum for the EVUA, 71 per cent of respondents said that the high cost of international roaming is their biggest enterprise mobility concern; the majority also said that mobile service providers' response to this concern is "poor".

SENDING DATA WHILST ROAMING

Although everything has its price, the costs of mobile roaming are so high (see Fig 1) that enterprises can no longer justify this as the price of doing business. This is particularly so as the cost of transmitting and receiving data, such as emails, whilst roaming is often regarded as prohibitive. Many EVUA member companies are actively encouraging staff to consider which means of communication to use when travelling internationally,

to avoid exorbitant charges. The measures taken include text messaging as an alternative to email and avoiding the use of mobile for data except as a last resort.

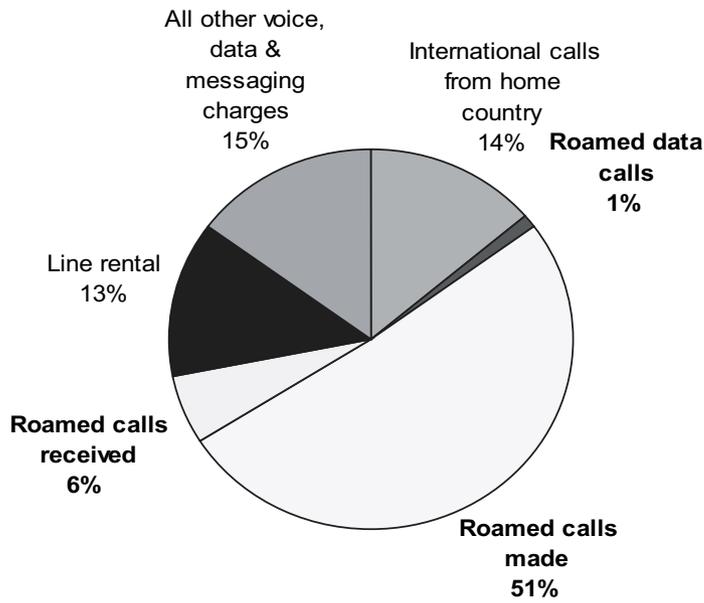
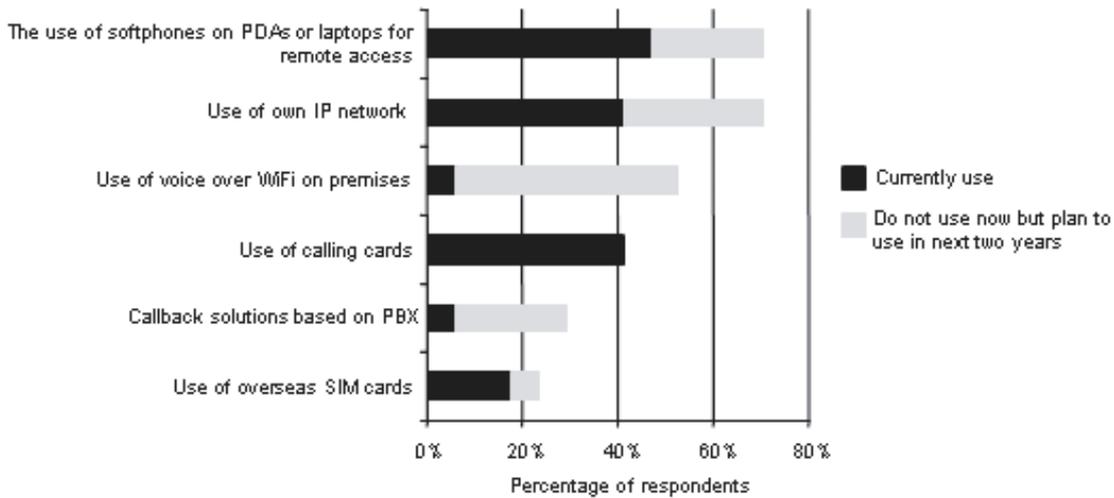


Fig 1: Breakdown of a typical monthly mobile bill (UK site of an EVUA member company)

ALTERNATIVE TECHNOLOGIES

EVUA members are looking to alternative technologies to help reduce spend and many are using or planning to use softphones, calling cards, their own company networks and other means as alternatives to mobile telephones (see Fig 2).



Source: EVUA/Ovum

Fig 2: “What methods do you use or are you considering using to reduce the cost of international roaming?”

Needless to say, mobile operators are not in favour of these alternatives.

The GSM Association has continually supported the current pricing regime for roaming and maintains that there is a “very competitive market, characterised by high levels of service innovation”. However, there is no sign of competition driving down roaming pricing as the GSM Association claims. Indeed the complexity of pricing factors such as set up fee, per second or per minute billing and so on, serves only to worsen and to confuse the situation. So far, only the proposal from the Commission has had any effect.

THE EC PROPOSAL

Enterprises mainly use major operators who have a presence, either directly or through partnership, in many countries. It seems that the savings made by providers from such economies of scale are not being passed on to their customers. Indeed, they continue to treat each of the countries as having entirely separate networks and organisations.

EVUA does not believe that a mobile user should be subjected to excessive call charges if using the same mobile operator network (or partner network) in another country nor should the charge be many times the cost of a fixed line call between the same two locations (see Fig 3).

Enterprise users are fully aware of the real cost of international fixed line calls, which are generally very low and have been falling for a number of years. They expect similar pricing for mobile calls but recognise that mobile would, for a time, be more expensive than fixed.

As the main part of a mobile international call is routed via fixed lines, operators have gained significant cost reduction in fixed line tariffs over the past years. EVUA believes these savings should be passed on to mobile customers, whether business users or consumers, following normal commercial practice.

It should be noted that retail regulation would not be needed if the market was working effectively. Competitive forces should bring down the prices. This is what we should expect from a well functioning market for international roaming.

EVUA strongly welcomes the proposals from the Commissioner, which will be a great benefit to both the business and consumer user community.

The linkage between mobile termination rates and wholesale prices, and percentage mark-ups for determining retail prices should be retained to ensure a consistent approach.

EVUA sees no need for a sunrise clause to be included in the regulation as the operators have already had many years to prepare.

EVUA regards the early introduction of retail price capping as vital.

ABOUT EVUA

Formed in 1992, EVUA, a non-profit user organisation for large multinational companies, has evolved into an effective organisation which promotes global networking solutions for multinational companies. Continually striving to make the communications market more competitively priced for the business world, EVUA also gives its members a voice in legislation and the opportunity to gain inside knowledge on the latest developments in the telecommunications world.

Membership includes companies from Europe, USA and the Far East, the majority of them being Global 500 organisations. EVUA is a global telecommunications focus group examining the network service requirements of multinationals and driving the marketplace to deliver these at competitive rates. To achieve this EVUA addresses issues as diverse as enterprise network services, managed services, outsourcing, mobility, IP and conferencing.

For more information about EVUA please visit www.evua.org.

February 2007

Memorandum by the Finnish Communications Regulatory Authority

GENERAL VIEW ON THE REGULATION OF INTERNATIONAL ROAMING CHARGES

1. Finnish Communications Regulatory Authority (FICORA) was the first European regulator to analyse the market for international roaming services on public mobile networks. In its decision on significant market power, FICORA stated that none of the Finnish mobile network operators has significant market power (SMP) in the wholesale market for international roaming services in Finland. FICORA also noticed in its decision that competition between mobile network operators has not yet resulted in price competition.

2. In the spring of 2005, FICORA commissioned a consumer survey on mobile phone usage abroad. The survey complemented the market analysis related to the SMP decision on international roaming. The survey revealed that Finnish consumers were particularly satisfied with the functionality of their mobile phone abroad. Instead, consumers were rather dissatisfied with the costs incurred from using a mobile phone abroad. The poor availability of transparent price information was seen as a major flaw and a considerable number of consumers (42 per cent) had no idea of the costs incurred from using a mobile phone abroad. Although consumers hold an image of high prices, only about 3 per cent of consumers had manually selected from their handset the network they use abroad.
3. FICORA's survey also showed that international roaming service prices have little or no impact on the choice of mobile subscription. 90 per cent of the respondents in the survey reported that international roaming prices had no impact on their choice of subscription. Thus, the demand for international roaming services seems rather inelastic and FICORA estimates that only the major international undertakings, whose staff travels frequently, are in a position to gain volume discounts on international roaming services.
4. In order to give consumers more information on roaming, FICORA publishes on its website regular price comparisons on retail roaming prices. In addition, FICORA has published a guideline for consumers on how to use a mobile phone abroad in the most economical way. The last update of roaming price comparison, which has been published in November 2006, shows that retail roaming charges are still manifold in the EU compared to domestic calls. For example, a one-minute from Sweden to Finland costs, on the average, from 0.65 euros to 0.79 euros depending on the operator. A similar call from the UK costs, on the average, from 0.98 to 1.38 euros. In Finland, the typical price for a mobile call is ca. 7 eurocents per minute.
5. FICORA sees that due to the special characteristics of international roaming services and its trans-national nature, national regulatory authorities have not been able to solve the problem of high international roaming charges within the current regulatory framework. Therefore, a new regulatory instrument to deal with the high retail prices is needed.

FICORA'S VIEWS ON THE ISSUES ADDRESSED IN THE SUB-COMMITTEE B'S INQUIRY

(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?*

6. FICORA considers that charges are excessive for international roaming calls. Wholesale charges, and thereafter retail prices do not reflect the costs related to international roaming (IR) service. According to FICORA's analysis on the significant market power, there are competition problems in the market. However, significant market power can not be found with national market definition. In its analysis, FICORA observed that operators were increasingly using traffic direction mechanisms and discount schemes in the wholesale level which was the main reason for not finding neither single nor joint dominance on the national basis. The wholesale discounts are not, however, sufficiently channelled to retail charges.

(ii) *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

7. FICORA considers that it is appropriate that the Commission introduces a legislation to cap the cost (or charges) of roaming. Prices are in most of the cases excessive and do not reflect the costs of providing the service. Roaming is a part of a service bundle and the retail competition does not take place in roaming charges. Consumers do not choose their subscription with regard to roaming; this was found in a consumer survey conducted by FICORA in 2005.

(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?*

8. Operators have done little to self-regulate the charges as they are still substantially above the Commission's target even with the threat of regulation. FICORA wants to emphasize that the market of international roaming is trans-national by nature. Therefore, asymmetric regulation in terms of rules and price caps applied and the timing of the regulation would endanger the functionality of the market mechanisms especially if methods applied in the wholesale regulation would vary in member states.

9. Due to the reasons stated above FICORA considers that the regulation should be clear and uniform in all member states and that it should leave no room for national implementations. Therefore, in order to ensure equal grounds for all market players within European market, it is appropriate that the regulation is assessed by EU regulation.

10. Because in this market the wholesale prices are agreed bilaterally by operators in different countries it is very difficult for national regulators to make the decisions for single or joint dominance and tackle the problem by standard SMP regulatory framework.

(iv) Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?

11. The revenue sources of different operators depend on varying travelling patterns of different countries. For some operators wholesale price cuts would mean significant reductions in revenues although the volumes would presumably increase. Super-normal profits and excessive prices can not be justified by investments. Moreover, investments and innovations are in normal market conditions driven by competition. Monopolistic profits do not guarantee incentives for investments and innovations.

(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?

12. FICORA does not expect spill-over to take place due to the regulation of wholesale charges. This is because the demand of domestic retail usage is independent with the wholesale usage where the demand is generated by foreign customers.

13. In the Commission's impact assessment it is stated that "The reason for this, suggested by economic theory, is that a firm does not necessarily have an incentive to use monopoly profits made at wholesale level to compete for the acquisition and retention of domestic retail customers. After all, no matter what the firm does at domestic retail level, profits from the provision of wholesale roaming services are likely to remain unchanged. This is so because the volume of incoming roaming traffic depends on the demand for roaming calls of another firm's customers. Lower roaming prices at retail level for one's own customers therefore will not result in greater wholesale roaming gains, giving the firm an incentive simply to hold onto its monopoly profits." (European Commission (2006c), p 48)

14. In retail level roaming is a part of bundle of mobile services. Thereby operators can gain higher roaming revenue by attracting customers with other services. If the retail margins have been high traditionally, lower regulated roaming prices mean lower roaming revenue which can, in theory, lead to lower incentives to attract customers in the retail market. The magnitude of spill-over depends on the competitive situation in each country. The operators will set their national call prices to a profit maximizing level also when the regulation has come into force. Therefore the spill-over effect can be higher in countries where the operators have more market power. However, for example the declining price development in many of the Member States indicates that the mobile markets are rather competitive in prices of national calls.

15. In Finland tariff spill-over would not probably be the case due to the fact that the regulation is not going to have as substantial impact on Finnish operators as on operators in some other countries. The inter-operator-tariffs (IOT) charged by Finnish operators have been relatively low compared to European operators in average. Also the retail mark up applied by the Finnish operators has been relatively low. Therefore we do not expect to see any spill-over effect to national charges.

(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?

16. The remaining imbalance between the EU Member States and other countries is evidently a problem for European consumers who are travelling outside EU. FICORA does not find any substantial arbitrage opportunities because suggested retail roaming caps are still notably above the prices of national calls.

(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?

17. FICORA has no reason to question the Commission's estimate.

(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?*

18. There is little evidence that operators would have incentives to lower their retail charges by the amount desired by the European Commission if only wholesale charges were regulated. The demand operators are facing is rather inelastic as consumers do not value roaming services high when subscribing to a particular network as roaming is part of bundle with other, more important features such as national calls. European Commission has analysed the economic effects of wholesale-only scenario in its Regulatory Impact Assessment.

19. It should be noted that due to traffic direction mechanisms and wholesale discounts operators have been able to charge lower retail charges during the recent years. However, this cost-pass-through has not occurred to a notable extent.

20. For the reasons stated above, FICORA considers that a sunrise clause would not lead to sustainable price cuts beyond the monitoring period. It should be noted that latest sunrise clause proposals state that the average prices would be monitored in any case also after the test period. Thereby, there would be no *de facto* difference to a situation where the charges were actually regulated.

(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?*

21. Single average price cap would provide operators with more flexibility in price setting. However, the relevant question is the level of average cap applied. The proposed methods for calculating the average cap have been based on wholesale costs (plus retail mark-up) that reflect the cost of originating a call in a visited network. This type of cap applied to both originated and received calls would therefore be too high in case of received calls which have different cost structure. Therefore, FICORA proposes two separate caps for the originated and received calls. With regard to methodology applied in the determination of retail price cap, FICORA considers that setting the maximum retail price simply as eurocents could be feasible as long as the retail mark-up applied reflects costs properly.

CONCLUSIONS

22. In FICORA's view, it is important to ensure that users of public mobile networks travelling within the EU do not have to pay unjustifiable charges for international roaming services as they make calls and receive calls. For this reason, FICORA hopes that the proposed regulation will enter into force as soon as possible.

23. It is essential that the new regulation can be implemented in all Member States within a reasonable timeframe. Consequently, regulation should be as simple as possible and leave no room for national interpretation. For this reason, FICORA supports a price cap mechanism which is defined as unambiguously as possible. However, retail regulation should guarantee enough flexibility for competition and innovation.

24. FICORA regards that the regulation should be applied uniformly within the Community and in EEA countries without national enforcement powers. National enforcement would probably cause that the regulation will enter into force at different times in different countries, which would distort the mobile operators' prerequisites for competition. In order to ensure equal treatment of consumers and operators in different countries, it is important to apply the regulation in such a manner that the price determination methodology is the same in all EEA countries.

22 February 2007

Memorandum by the GSM Association (GSMA)

1. EXECUTIVE SUMMARY

1.1 Since 1991 and the introduction of GSM mobile services in the EU, the total cost of ownership and use of mobile has fallen each year, without exception.

1.2 In 2006, the average retail price of an EU roaming call fell by 25 per cent. Further price cuts have since been announced by operators. The GSM Association (GSMA) believes regulation is unnecessary, as the market is competitive and delivering on-going declines in roaming tariffs.

1.3 The GSMA believes that the EU's proposal is driven by a flawed premise that regulation should be used to create single, harmonised pricing for roaming services, EU wide. This fails to recognise that the costs of providing mobile services vary considerably between markets.

1.4 The European Commission's proposal on roaming regulation is unwarranted and undermines its own better regulation policy. The GSMA filed a complaint of maladministration with the European Ombudsman regarding the process adopted by the Commission (including inter alia the absence of any proper industry consultation and an improper impact assessment which was of limited scope and included incorrect figures). The Ombudsman has already confirmed that the complaint has been taken up for further investigation. The GSMA also believes that Article 95 is an illegal basis for the Commission to take action on the issue of roaming prices.

1.5 The Commission, and National Regulators, have undertaken analysis of the competitiveness of the European roaming market. These studies have shown no evidence of a failure in the market.

1.6 In its current form, the Commission's proposals could lead to significant, unintended consequences, which could adversely affect both consumers and operators, damaging the competitiveness of the European Union and could lead to investment levels falling by up to €500 million per year across Europe⁴.

1.7 In the unfortunate event of imposed regulation (either at the retail or wholesale level), the GSMA believes that various potential amendments should be considered to minimise the unintended consequences for consumers and operators alike, in particular:

- the use of a single, average cap which would provide operators with greater flexibility to compete;
- the modification of the retail mark-up to ensure operators can cover their costs and provide an adequate contribution to profits; and
- the elimination of the permanent linkage between Mobile Termination Rates and any wholesale price cap.

2. STATE OF THE INTERNATIONAL ROAMING MARKET & PROPOSED REGULATION

(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) *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?*

2.1 *The EU mobile industry is highly competitive and has consistently delivered increasing value to consumers*

2.1.1 There is strong competition amongst operators in the EU mobile industry, which continues to drive down the price of the package of services offered to consumers. Since 1999, the number of mobile operators and service providers competing in EU markets on price, quality and service innovation has more than trebled to 301,⁵ an average of more than 12 per Member State. Driven by intense competition, operators' voice revenues per minute for all calls (international roaming & domestic) have declined at an average rate of 5 per cent per annum over the last five years.

2.2 *International roaming is a highly competitive and functioning market with market forces delivering declining prices for consumers*

2.2.1 International roaming represented €8.5 billion in aggregate industry revenues in the EU25 in 2005, with the retail market estimated at €5 billion. Around one in three mobile phone users in Europe roam, and this is dominated by business usage. However, roaming traffic is highly concentrated with the five largest countries accounting for two-thirds of the traffic with clear imbalances at a national level mirroring trade/tourist flows.

⁴ Section 3.2.3, p 16, GSMA's response to the Commission's 2nd phase consultation.

⁵ Source: EC's Reports on the Implementation of Telecommunication Regulatory Package.

2.2.2 Operators have already delivered significant roaming price reductions over the last year. The average price for making and receiving a mobile phone call when roaming within Europe fell by 25 per cent during 2006, according to a retail price index compiled by leading consultancy AT Kearney.⁶ A group of leading European Operators also established an EU-wide agreement (Code of Conduct) to lower wholesale prices on a reciprocal basis.

2.2.3 In some of the most popular business and tourist destinations in Europe, operators already offer a range of innovative tariff plans below the Commission's proposed price caps, that allow roamers to make a two-minute mobile phone call home for as little as 33 Euro cents per minute⁷. For visitors making calls of four minutes or longer, even better tariffs are available, reducing the per minute charge to as little as 19 Euro cents.

2.2.4 Europe's mobile operators have also made it easier for consumers to exercise their own choices by launching a web site that will allow users to quickly compare roaming tariffs across the European Union.⁸

2.3 Analysis indicates that the Commission's proposed regulation is at best marginal and may even harm consumer welfare relative to no regulation⁹

2.3.1 The Commission's justification for regulation is based on a partial and misleading impact assessment and creates the risk of regulation being imposed on a basis not supported by established economic theory or market evidence.

2.3.2 A number of potential unintended consequences of the proposed regulation (discussed further in section **Error! Reference source not found.**) are ignored. By omitting these broader costs, the Commission has overstated the net welfare benefit of the proposed regulation.

2.3.3 The Commission also underestimates the potential benefits for the alternative options of no regulation and wholesale-only regulation. In comparison with the Commission's proposal, the "No policy change" and "Wholesale regulation only" options are assumed to deliver only 10–18 per cent and 18–25 per cent reduction in retail prices respectively. This level of reduction has already been reached by the market.

2.3.4 The GSMA has filed a complaint with the European Ombudsman setting out its concerns regarding the Commission's proposed regulation, highlighting issues with the Commission's consultation process and impact assessment.

3. UNINTENDED CONSEQUENCES OF THE PROPOSED REGULATION

(v) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

(vi) *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?*

(vii) *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?*

3.1 *The Commission's proposals would adversely affect consumers, reduce competition and innovation among European mobile operators and damage the competitiveness of the European Union*

3.1.1 Since retail roaming services are offered by operators as part of a bundle, together with other mobile services bought by individual subscribers, the pricing of retail roaming services is interdependent with the pricing of the other retail services. In particular, operators aim to ensure that over the lifetime of subscribers, the revenues earned on services sold to subscribers are sufficient to cover the costs of serving those subscribers including the initial acquisition cost.

3.1.2 The Commission's proposed price caps do not allow for sufficient mark-up, taking into account additional retail costs and common costs that operators incur. As a result, operators would be forced to offer the service below cost or make less than proportionate contribution to profits. If operators are forced to recover costs by rebalancing prices, consumers will pay more for their other mobile services than they would in the absence of the proposed regulation. In addition, losses arising from wholesale regulation are likely to impact profitability and investment.

⁶ http://www.gsmworld.com/news/press_2007/press07_10.shtml

⁷ http://www.gsmworld.com/news/press_2006/press06_66.shtml

⁸ http://www.gsmworld.com/news/press_2006/press06_35.shtml

⁹ http://www.gsmworld.com/documents/roaming/review_commission_impact.pdf

3.2 *The Commission's proposal will reduce choice for consumers by rendering illegal some of the most innovative and attractive roaming tariff plans available today*

3.2.1 With the proposed flat, per minute retail price cap, various innovative pricing propositions based on non-linear pricing models would be eliminated. Any pricing plan with upfront fees and lower per-minute charges or inclusive ("free") bundles of minutes for a flat rate fee would be outlawed.

3.2.2 Many of Europe's leading mobile operators have launched such tariff packages with discounted roaming rates aimed at regular travellers. These tariff plans have been instrumental in delivering significant price reductions for all types of customers. By not allowing operators to differentiate and compete on innovative pricing propositions, customers would lose the benefit of price plans targeted to meet their specific needs.

3.3 *Reduction in contribution from roaming may negatively impact operators' current and future investments, particularly in new roaming products and services*

3.3.1 The Commission's proposed regulation could lead to investment levels falling by up to €500 million per year across Europe¹⁰. The impact could vary significantly across Europe. In particular, operators in relatively poorer Member States, that receive significant tourist numbers, may be particularly adversely affected, with a consequence for investment in their networks, particularly in extending 2G and/or 3G coverage.

3.3.2 Maintaining or extending service to more remote locations may no longer be financially viable. For example, detailed analysis of the Austrian mobile market showed that almost 4 per cent of mobile antenna sites in the western mountainous regions of Austria (where it is costly for operators to deploy and run mobile networks) would no longer be economically covering their costs. Thus, coverage in skiing and other tourist regions may be at risk under the Commission's revised proposals.

3.3.3 Reduced investment in network coverage could lead to consumers no longer being able to make or receive roaming calls successfully in some locations.

3.3.4 The unprecedented nature of this regulatory intervention, which is outside the established European framework for telecoms regulation, raises regulatory risk and may also deter investment in the EU more generally.

3.4 *The proposed regulation will reduce the bargaining power of European mobile operators resulting in a disadvantaged position relative to non-EU operators*

3.4.1 Regulation of the wholesale roaming rates for EU operators will reduce the bargaining power of EU operators vis-à-vis non-EU mobile operators when negotiating wholesale roaming agreements.

3.4.2 As an example, if regulation leads to non-EU mobile operators having access to lower wholesale prices on a non-reciprocal basis (either under international trade agreements or arbitrage opportunities), there could be a significant loss in wholesale roaming revenues based on the net traffic flow with non-EU operators and consumers. The GSM Association has estimated that regulation could result in EU operators losing over €540 million in net balance of payments per year. This net loss in revenue for EU operators resulting in a reduction in overall welfare will have no corresponding increase in benefits for EU consumers.

4. POTENTIAL AMENDMENTS TO MINIMISE THE NEGATIVE IMPACT OF REGULATION

(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?*

4.1 *The GSMA maintains that regulation, in particular retail, is unnecessary and damaging. However, in the event of imposed regulation (either at the retail or wholesale level), the GSMA believes that various potential amendments should be considered to minimise the unintended consequences for consumers and operators.*

¹⁰ Section 3.2.3, p 16, GSMA's response to the Commission's 2nd phase consultation.

4.1.1 It is critical that operators retain flexibility to compete if retail regulation is to be applied. The Commission's proposed "Absolute/Flat cap" on a per-call/per-minute basis limits the flexibility that operators have in retail pricing as well significantly restricts choice of tariff plans for consumers. An "Average Cap" on the other hand, would provide operators with more flexibility to compete on price and offer innovative tariff plans tailored to the needs of different customer segments.

4.1.2 Similarly, the proposed separate sub-caps for making and receiving calls will be extremely restrictive treating each call type as if it is a distinct market. A single cap would be more appropriate since customers buy international roaming services as a whole, including the ability to make and receive calls.

4.1.3 The proposed retail mark-up should be modified to allow for roaming to make a proportionate contribution to cover retail costs and overall profits. This would avoid spill-over effects on domestic markets (eg restricting the option to roam and/or tariff rebalancing) due to retail costs not being covered and/or reduced contribution to profits.

4.1.4 In establishing an appropriate retail mark-up, the representative retail cost estimate that the Commission should use to cover industry average retail costs is the 75th percentile retail cost per minute, which is estimated at €13.43 c/min according to a study by AT Kearney for a representative sample of operators in Europe. For the avoidance of doubt, this figure does not include any profit contribution.

4.1.5 Retail prices levels should be set using target prices calculated based on absolute competitive mark-up level (eg 30 per cent on total costs) instead of the currently proposed percentage mark-up on wholesale costs—since retail costs are not dependant on the underlying wholesale costs for roaming.

4.1.6 In addition, the target price levels should allow for sufficient headroom to compete by going below the cap level in certain tariffs or for promotional periods when seeking to build market advantage as is normal in competitive markets.

4.1.7 Lastly, the proposed permanent linkage with domestic MTRs at the wholesale should be eliminated since this does not take into account additional network costs (in particular in terms of network dimensioning arising from the distribution of traffic across the day) that roaming incurs relative to domestic call termination services. MTRs should be used only to calculate the initial level for the wholesale price cap.

23 February 2007

Memorandum by Joseph Muscat MEP

I make this submission as a Member of the European Parliament responsible for preparing an opinion for the Committee on the Internal Market and Consumer Protection on the roaming proposal. The replies below represent my personal views but are not evidence in the technical sense. Nor should they be construed as expert statements.

(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?

Although many operators have recently reduced international roaming charges, it appears clear that they have been, and in many cases remain, very high compared to national calls. Recent prices reductions would appear to largely be due to political pressure. Mobile telephony today, including the ability to make and receive calls in another country, is not a premium product but a commodity. There does not appear to be any good reason for a call being priced at a level very much higher than for a national call simply because a border has been crossed.

I cannot opine on whether the higher prices for roaming are due to lack of competition or to other structural problems on the market.

(ii) Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?

Regulatory intervention, in particular of this nature, should always be considered a last resort measure. Considering the problems described by the Commission in its proposal and impact assessment, I do believe it was appropriate for the Commission to make the proposal.

(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?*

I am not aware of any industry wide self regulation. The recent moves by various operators to reduce roaming prices are of course to be welcomed. However, they remain high and absent a regulation might revert to even higher levels. So I do not believe the industry has done enough.

I believe the view expressed by the European Regulators Group is that National Regulatory Authorities are not able to address the concerns.

(iv) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

I do not believe so, and it is certainly not the intention. Unintended consequences can occur, but there will be close monitoring of the market and I take it that the Commission will be prepared to present appropriate proposals in case of problems of this nature developing.

(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?*

Again I do not believe so. If it were to happen, one way of viewing it is that the high roaming prices were used as hidden subsidies for other services. That does not appear likely. Of course, if there is concerted behaviour by operators to adjust other prices, then I would believe that competition authorities would take an interest.

(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?*

I rely on the Commission's view that that would not be the case.

(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?*

I have no better estimate.

(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?*

To be sure to achieve lower roaming prices at the consumer level, a sunrise clause, which by definition would delay the full impact of the regulation, is not helpful. For the same reason, wholesale regulation only would not be an effective option.

(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?*

I believe there should be a single average cap at wholesale level, but that calls made and received at retail level should be treated differently as no roaming charges are applied at all for calls received. On balance, I believe using formulae with linkages to Mobile Termination Rates etc, is preferable as the methodology applied will be clearly expressed, as it allows for the caps to be gradually adjusted and as the regulation may need to be in place for some time. The choice is however not easy as price caps, with no formulae, have the clear advantage of simplicity.

1 February 2007

Memorandum by OneCompare.com

1. *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

OneCompare.com feels that it is necessary to introduce legislation as the industry has been slow to self regulate itself on the costs of international roaming charges. This is evident as the major mobile operators only started to reduce their tariffs following the significant level of interest generated by the EU committee's movements to reduce roaming charges.

Without regulation in this industry, the networks continued to charge customers extortionate prices and continue to do so now. Many of the mobile operators have not actively promoted their international roaming packages—customers must opt in to activate before they travel. If they do not subscribe for the package they will be charged standard rates and tariffs. This means that many mobile customers are unaware that they will need to sign up for the various opt-in schemes.

OneCompare.com believes that the mobile networks do not have the intention of self regulating to a more reasonable pricing structure for the consumer unless they extend discounts they offer with “opt-in” packages to their entire customer base as a standard procedure.

- Networks with opt-in packages:
O2, Vodafone, Orange (in the form of Orange bundles).
- Networks that have extended price cuts to their entire user base:
T-Mobile, 3.

2. *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?*

Put simply, the networks have not done enough to comply with the guidelines as outlined by the commission. The availability of opt-in packages (regardless of promotion) do not offer a significant reduction in rates to the consumers hit the hardest by roaming charges particularly those who are not technology savvy and take their phone abroad on holiday to keep in touch with friends and loved ones.

- T-Mobile has reduced charges for its entire user base, however this is to a level that is not in line with EU recommendations (55p per minute to make and receive a call).
- 3 have met the EU's guidelines impeccably, however they do not have a strong enough worldwide infrastructure to extend these same charges in the majority of EU territories (such as France and Spain) in which the majority of roaming charges are incurred.

3. *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

The move could cause problems for providers of cheaper international SIM cards that have previously traded on the fact that roaming call charges could be cut by as much as 66 per cent. Consumers are unlikely to invest in a cheaper SIM card when charges are only marginally cheaper than the consumer's current network and there is an initial outlay of £25–£35 with accompanying complications such as having an unlocked phone.

This isn't to say however that innovative companies won't move further in this market as there is still huge scope for a mobile voice over IP application for mobile phones with the right infrastructure which could considerably undercut the proposed retail prices of mobile phone calls.

4. *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?*

Yes. Price wars which have caused increases in the amount of bundled minutes and text messages have been rife over the past year, reducing network operator margins down to the lowest they have ever been.

This increase in home bundle value is sure to cease with regulation of roaming charges and value added services such as internet and data services are unlikely to continue their reduction in price down to the point where they become used widespread by UK consumers.

5. *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?*

Research from OneCompare.com has shown that roaming charges affect a large section of the UK population—63 per cent of mobile user's have used their mobile when travelling abroad. In many cases when "international roaming charges" are added to their bill it can come as quite a shock as rates can vary enormously.

- 49 per cent don't know how much it costs to make and/or receive calls when abroad.
- 43 per cent don't realise that they pay incoming call costs while abroad.

6. *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?*

OneCompare.com believes that the sunrise clause only provides a grace period of six months for networks to cut prices—any networks failing to do so after this will have caps imposed. This allows networks to prepare new cost cutting measures to lessen the impact of a decreased retail price and will certainly delay consumer price cuts.

7. *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?*

Yes this is a possibility. Consumers and particularly holidaymakers rather than businessmen are particularly frustrated and often caught out with having to pay to receive calls. Removal of incoming call charges could placate consumers to the point where they are happy to pay current excessive roaming rates for making calls in Europe.

By providing consumers with this element of control—they can remain contactable and can make a decision to choose whether or not they want to incur these charges. This empowers the mobile customer and allows them to make an informed decision in the simplest way.

ABOUT ONECOMPARE.COM

OneCompare.com is now one of the leading independent online mobile phone tariff and handset comparison service providers in the UK. Their reputation rests solely on its 100 per cent impartiality; due to a programme which is set up to sweep all available deals in the market. Over two million people have visited the website to get better deals in the past 12 months. The company also reviews new deals and products and is a regular commentator in the national press.

February 2007

Letter from Mr Keith Porteous Wood

I am a parliamentary researcher but am submitting this short response to the call for evidence in my private capacity.

(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? EXCESSIVE*

Do you think there is currently sufficient competition in the market? NO

Comment on above two questions:

Calls from UK landline to US landlines and mobiles can be as little as 2 p per minute. Yet calls to EU mobiles is 10 times that, which suggests extortionate fees in the EU relative to the US, where there seems no logical reason for the cost base to be any lower. Part of the reason these high costs is the massive charges made by the Chancellor in auctioning off air space, which is in effect a huge hidden tax on mobile phone usage.

Frequent European travellers end up paying massive roaming charges, even with Vodafone passport at around 75p supplement per inward an outward call for minimal marginal cost by the operators that are mainly in European groupings. Other operators are much more expensive still. This is a constraint to trade because users feel constrained not to use their mobile phones when abroad because of the excessive cost but are nevertheless traveling freely and frequently in the EU.

(ii) *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?* YES

I suggest a £1 a month maximum cap. Regulators should not forget that operators will gain huge extra traffic and volume if they reduce these charges. Given the minimal marginal cost, they might even end up making more profit without the roaming charges.

(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?* NO

Are National Regulatory Authorities in a co-regulated environment able to address these concerns on their own? NO

(iv) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?* NO

(v) *Do you think that the pressure for lower roaming charges could potentially spill-over into higher prices for other mobile telephony services?* NO (please see response to ii)

Would you anticipate any other unintended consequences that may affect consumers? NOT ADVERSE ONES

(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?* YES

(vii) *Is the Commission's estimate that 147 million EU citizens are affected by excessively high international mobile roaming charges accurate?* YES

Do you have any other figures to offer? NO

(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?* NOT SURE

Should legislation apply solely to wholesale fees rather than retail tariffs? DEFINITELY NOT, and it should be forced to come into effect very soon, not allowing the operators to drag their feet, which they are past masters at doing.

7 February 2007

Memorandum by Mr Ewan Sutherland

1. *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?*

Yes, the charges are excessive. No, there is little, if any, competition on roaming markets.

There is no measurable competition on the retail market, with roaming being sold as a residual and largely ignored element in a complex package or "bundle" also including the handset, access, call origination, call termination, text messages and Internet access. Few customers consider the price of roaming in selecting an operator or in switching to another operator.

Roaming was previously a bilateral exchange between operators. A British operator sending its customers to the Spanish operators and receiving in return visiting Spanish customers. This explains the enthusiasm of British operators to sign multiple roaming contracts in foreign countries, to increase the traffic generated by visitors to the UK, rather than to make incremental improvements in the service provided for its own customers when abroad.

With the introduction of traffic direction technology, the only competition is to be part of a large group in order to secure its business for incoming traffic. The operators in any given pair of countries know on which networks their customers will roam, minimising any prospect of wholesale competition. Today everything is kept within the “family”.

2. *Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?*

Yes.

The European Commission (EC) aggravated the problem. In the late 1990s the EC approved the industry agreements for roaming, despite their violation of Article 81 (1) of the EC Treaty, which deals with collusion. A considerable number of mergers were approved under terms that discouraged the abolition of roaming charges by trans-national operators, in order to protect smaller national players.

The regulatory method set out in the Framework Directive of 2002 has clearly failed.

The structure of a retail market in one country and the bilateral exchange on the wholesale market between two countries makes it almost impossible for any one regulator to resolve the problem.

The EC has important duties in the completion of the Internal Market. It has also adopted a policy for a single European information space, which cannot exist while roaming charges remain as barriers between member states.

3. *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?*

No.

No.

The operators have responded to the political pressure created by Madam Reding with rather complex reductions to some prices. The overall effect of these is very difficult to evaluate, given the wide range of roaming tariffs.

There has been no “self-regulation” other than some transparent attempts dating from 2000 and again in 2006 to stave off regulation by improving the transparency of price information.

National Regulatory Authorities (NRAs) have demonstrated no ability to regulate roaming. Despite a legal obligation to complete market analyses as soon as possible after 23 July 2003 they have been dilatory to the point where their willingness to act is questionable. The market analyses in Norway, Finland, Italy and Sweden found nothing other than high prices. The NRAs complain but have failed to identify either the underlying problem or to suggest any actions that might be taken.

The French abandoned their inquiry blaming “Brussels” and making a wholly irresponsible suggestion of using the mechanism for the regulation of trans-national markets.

The Spanish have argued that the proposed regulation is not required, apparently since “their” operators are net beneficiaries of roaming, pointing towards regulatory capture. Other southern regulators seem to share this opinion, but are less brazen in expressing it.

4. *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

No.

Quite the reverse, all it does is to remove the excess profits. Competition will come from trans-national offers. In a properly functioning market there would be “happy hours” to call home from Ibiza and special deals for Manchester and Malaga for those with holiday homes.

Some commercial solutions already exist outside the European Union. For example, in Hong Kong there are “one phone, two numbers” solutions for the SAR and China. In the former British East Africa, there are no roaming charges for pre-paid customers in Kenya, Tanzania and Uganda. Once Cotel launched this service, other operators grouped together to do likewise.

Investment in 3G network infrastructure appears to be modest because the financial markets doubt the operators will produce an adequate return. Instead, they are focusing on increasing their profit margin from reselling pop videos and sports clips. Some are looking for simpler growth in developing countries.

5. *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?*

No. Yes.

If the prices in other markets, such as the cost of handsets or making calls, were to rise it would imply that those markets were uncompetitive. This is a greater risk in countries where the mobile call market is more highly concentrated than in the UK, such as France, Luxembourg, Slovakia and Slovenia.

Unintended consequences are almost inevitable. Probably, the absorption of smaller national operators in some EU member states into the larger groupings. This should not cause any disadvantages for consumers.

6. *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?*

No.

At the recent Global Symposium for Regulators (GSR) organised by the International Telecommunication Union (ITU), there was considerable interest from other continents for action to reduce excessive roaming rates.

The Arab Regulators Group has studied roaming prices. It presented proposals to the Arab ICT ministers in June 2006 for action to limit wholesale prices. They also propose to cap the retail margin at 15 per cent, the informal figure used by mobile operators until the introduction of the Inter Operator Tariff (IOT) system in 1997.

Other countries would follow a European lead in pushing down prices.

7. *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?*

It is very difficult to arrive at a figure for this. It would be necessary to analyse the statistics for private and business travel. As a ballpark figure, it appears to be plausible.

8. *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?*

No. No.

A sunrise clause would serve no useful purpose, it merely postpones the inevitable.

Failure to regulate retail prices would render the whole exercise a waste of time. It would merely result in changes in the net flows of wholesale revenues with no reason to pass on savings. Once the political pressure was removed the mobile operators would return to their established approach to roaming as a means to increase revenues.

The price cap regime should be imposed as quickly as possible to contain a problem that is already a decade old.

9. *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?*

Including specific prices in the Regulation would be complicated, since any future changes would require amendment of the legal instrument. The MTRs are known to be falling so that the roaming caps will also fall.

The use of the Mobile Termination Rates (MTRs) is a crude instrument. It is mere benchmarking, but of a sort that worked well in the 1990s in other telecommunications markets. Some people seem to think it is rocket science and have proposed a variation or a complex formula, but this is misguided. All these numbers represent are limits above which prices cannot go, the operators are free to go lower.

The EC proposal is too generous on calls to the fixed networks. These could be distinguished from calls with high MTRs and set at a level of a couple of pence per minute.

The three times multiplier for calls to another member state appears to be overly generous and could be reduced.

The gravest omissions from the proposals are the exemptions for SMS and for Internet access. The former is of considerable importance to younger customers. The latter is of great importance to business which is very slow in adopting mobile Internet access because of the problems of budgeting and the certainty of unsupportable total invoices. To delay acting to reduce these charges until 2009 or 2010 is to fail to create a single mobile Internet market.

23 February 2007

Memorandum by TeliaSonera

TeliaSonera is honoured to provide you with its views on the above mentioned topic and to respond to your call for evidence.

Please find below the issues and questions raised in the correspondence received on 17 January 2007 followed by our answers.

We remain at your service for any further questions you may have or any additional clarifications you may require.

(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?

End-user prices for international roaming are perceived as high by end-users within the Member States, unless you have a special tariff or corporate rate.

This is a problem since it tends to lead to a mind-set amongst the general public that result in reduced usage. That in turn, inhibits the service from developing as fast as it could.

Prices for products and services are normally higher at the beginning of the “product’s or services life cycle”, and will drop as the product/service matures and usage is shifted from the “early adopters” to the “mass market”.

Few operators have yet at national level managed to build out their infrastructure to fully cover the national territory. This in turn leads to limited alternatives being available to foreign operators wanting to offer a quality of service to their home customers roaming in the visited country. Competition in international roaming is highly dependent on choices of operators available in the visited country and the geographical coverage of each of these operators. It is therefore important that any form of regulations does not inhibit the establishment and development of new operators.

(ii) Is it appropriate for the Commission to introduce legislation to cap the cost of roaming?

It was appropriate for the Commission to take action as the wholesale market for international roaming seemed to be in a “dead-lock” or not developing fast enough.

Since the introduction of a regulatory proposal by the Commission at the beginning of 2006 a great deal of movement has been seen and confirmed at the wholesale level. Major operators have voluntarily reduced their wholesale tariffs reaching the 0.45 €c per minute in 2006, and 0.36 €c in 2007. This in turn has resulted in retail price reduction of 25 per cent (and on some destinations even more) according to market measurements provided by an independent consultant, AT Kearney.

This proves that the heart of the problem did indeed lie in at the wholesale level and that the intervention by the Commission did have the sought after result.

As to the question whether or not further intervention is necessary, one needs to consider it from two aspects. From a market point of view, and from political point of view.

From a market point of view the threat of regulation alone seems to have been sufficient to move wholesale prices downwards, which in turn has lead to desired movements at the retail level. It is likely that the process now in motion at the wholesale level will continue, but to ensure that it does so, an imposed regulation on wholesale prices over the next three years could be justified. Since the retail level seems to follow the trends at the wholesale level, albeit with a certain time difference which is natural, there is at this point of time no justification to introduce a regulation of the retail market.

From a political point of view the situation is however quite different. The European Parliament (EP) has asked the Commission to provide a proposal for regulation, which the Commission has done. The Commission's first draft was not accepted by the EP, which led the Commission to reconsider its work and present a new proposal. It could therefore now be very difficult (if not impossible) for the European Parliament not to adopt some form of regulation as proposed by the Commission. The issue becomes even more sensitive as the Commission has stated that the purpose of the regulation is for the benefit of the end-users in Europe and that this is a good opportunity for the EU institutions to prove that they bring value to the European citizens. In this perspective it could be very difficult for the EP to justify opting for a solution of "no regulation whatsoever".

(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?*

Had the question addressed the past three years instead of the last two, the answer would have clearly been "no".

However, in the last two years the industry has reacted strongly to the threats of a regulation and especially in 2006 many actions were taken to reduce the level of wholesale prices. This in turn has led to retail prices decreasing a trend which has continued into 2007.

The existing Framework does not give national regulatory authorities the right to act outside their national boundaries, and they have therefore not been able to address the international roaming market efficiently.

(iv) *Does the proposed Regulation risk narrowing down the space for competition and thereby harming innovation and investment in the sector?*

If the regulation is limited to the wholesale level, and structured in such a way that operators can predict, or know, the wholesale levels to which they have to adapt to ahead of time, then the negative impact on smaller operators, and/or operators with recent investments, should be limited. By this we mean that the level of wholesale prices in the first year of regulation should be set with due care given to the cost levels of smaller operators and thereafter decreased in yearly steps according to a predetermined percentage. This would give predictability to the regulation and allow operators to take necessary steps to reduce their costs.

The wholesale regulation proposed by the Commission could be made simpler by introducing a common cap for all outgoing calls (whether national in the visited country or to another EU country). This common cap could be set at 2.6 times the average European MTR for the first year.

Setting the cap too low or introducing a retail regulation as proposed by the Commission would most certainly have consequences on competition and innovation. It would have consequences on competition because the levels of return would not cover some operator's costs, or give them sufficient returns on their investments. Such operators are generally the smaller or new operators that we do need to keep on the market to have alternative choices in order to promote competition.

One should also note that with the retail regulation proposed by the Commission certain innovative pricing packages offered at present to the end-users will become "illegal" and would have to be removed from the market. Such a move, apart from reducing end-user choice, sends a signal to the market which is to the detriment of innovation and investments in new offers.

(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?*

We are doubtful that lower roaming charges would lead to higher prices for other telephony services as we believe that lower retail prices, providing that they are allowed to move freely in an unregulated market, will eventually lead to higher volumes and new innovative offers, in turn leading to new and increased revenues.

It must however be remembered that any product or service which does not recover its cost or give a satisfactory return is doomed to be phased out. As it is not very likely that international roaming as such will be phased out, the consequences could be that operators, not earning a high enough margin per minute on the imposed prices, would change the structure of their offers to the end-users. One such change could be that only the high volume users would have the international roaming service as part of their basic subscription. Such an evolution is not sought after neither by industry nor by 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?*

Yes. Legal advisors have not yet been able to bring forward reassuring arguments to the contrary, and the financial consequences to European industry would be substantial if no reciprocity of tariffs is obtained.

(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?*

Statistics show that 33 per cent of all mobile subscribers roam internationally. 25 per cent are business users and approximately 8 per cent ordinary citizens (Source: GSM-Association). Such percentages would indicate that the Commissions figure is exaggerated.

Key issue is however, as stated earlier, how customers perceive prices and how they react to them. If prices are perceived too high, or excessive, (this goes even for business customers who are less price sensitive than ordinary citizens) and that this leads to restrictive usage by most users, then prices need to come down.

(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?*

Absolutely! Our answer is "yes" on both accounts.

Any imposed regulation is the introduction of an artificial force into the market and no one can with certainty predict the consequences. Therefore such interventions should be kept to a minimum and introduced only if, and after, it has been clearly documented that the markets are not able to react to customer demands on their own. In the case of the present situation, where markets clearly show signs of reacting and there is proof that prices are moving downwards both at wholesale and retail level, the regulators should take a "time out" on retail regulation and only introduce such a regulation if and when the wholesale regulation proves to be ineffective.

A sunrise clause should be triggered by predetermined factor obtained through a price index measurement that regularly and systematically measures evolution of prices. Such a mechanism exists already today through industry efforts (Ref. GSM-Association).

It must also be considered that even if the commissions proposal is adopted and that a retail regulation automatically comes into force six months after the adoption of a wholesale regulation, considerable time (24 months or more) would have passed since the Commission made its market analysis and impact assessment. During that period, ie end 2005 to beginning 2008, the market situation would have changed considerably and it is no longer certain that the Commissions original proposal is the best remedy for the actual market situation. This is a further reason why the sunrise clause would be more efficient, as it would allow the regulator to review the regulation of the retail market in real time while in parallel observing and measuring market progress.

(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?*

The simpler the regulation can be made the easier it will be to implement and the more predictable it will become. We believe however that the wholesale regulation should have two maximum caps. One for outgoing calls, irrespective of calls made locally in the visited EU country or to another EU country while visiting an EU country. Such a cap can be designed as a multiple of the average European MTR as indicated above. Parallel with this a cap could be set for receiving calls at one single average European MTR.

As a final comment TeliaSonera would like to stress the importance of accompanying any imposed regulation by clear and measurable objectives, that would allow the European Parliament and Member States to follow the progress and the efficiency of the regulation and to remove the said regulation as soon as objectives are reached.

23 February 2007

Memorandum by Mr Stephen Townsley

NB: I have no connection with the mobile phone industry other than as a private customer.

High charges for mobile phone “roaming” arose from the historical position that mobile phones were the luxury tool of the business user. I would refer members to the budget in which Norman Lamont taxed the use of business mobile phones due to the alleged annoyance suffered by the majority in public spaces such as restaurants. In recent years up to 90 per cent of the population has mobile phones. Some have a business phone and a private phone in order to avoid the tax issue.

Technological change means that now the location of a mobile phone can be known to within a few metres. Business changes mean that mobile phone companies are multi-national trading across the boundaries of European states.

In my case I travel for personal reasons to Denmark and Germany where I have friends. While I am abroad with my English T-Mobile phone I telephone a T-Mobile subscriber in the same country. I am charged an international call. Conversely they are charged an international call to speak to me and I am charged to receive that call. In fact technological change means that the host network in the foreign country knows where I am and other than a quick check on my credit worthiness a call that costs fractions of a penny to route over a network costs me 70p per minute.

Calls from home create an incoming charge to me. Again the calling network knows I am not in the UK. It would be a technologically trivial task to warn a UK caller that the mobile number was now roaming and the call would be charged at an international rate. This already happens if you call a US 800 style number that is not free from Britain.

As a mobile phone user I want to be charged a fair price for the use of my phone. I want competition between networks. If the EU is a meaningful single market then roaming mobile phones should be considered normal and not exceptional. The cost should reflect the widespread use of mobile phones and if the market cannot provide low-cost roaming fees then regulation needs to be used.

Thank you for the consideration of my submission.

4 February 2007