Roaming on public mobile communications networks within the Union. Recast

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The Council took note, in a public session, of a progress report on a draft roaming regulation and discussed this proposal on the basis of the presidency questionnaire. The proposal aims at revising the current regulation by **introducing pro-competitive structural measures and extending its validity until 30 June 2022**. The proposed structural measures aim to tackle the lack of competition and consumer choice, which causes the high roaming prices. The intention is to open the market to different types of providers and raise consumers' awareness of roaming prices, as well as increase choice by allowing them to purchase roaming also as a standalone service.

The current roaming regulation will expire on 30 June 2012. The aim of the incoming Danish presidency will be to achieve a **first-reading agreement** with the European Parliament early 2012.

The presidency's **progress report** is intended to inform ministers of the work done so far and to identify issues, which will need more in-depth consideration.

The working party discussed the proposal at several meetings on the basis of three clusters which cover the main elements of the proposal:

- structural measures;
- price caps;
- transparency,
- safeguards and
- supervision.

Most delegations welcomed the proposal. However, most sought clarification with regard to the **exact scope of the wholesale access obligation**, and inquired about the **technical and practical feasibility of de-coupling domestic mobile services and international roaming services**, and about the implementation time-frame for particular actions indicated in the regulation. The delegations also expressed some concerns about the level of the proposed price caps and the margin of the price caps at wholesale and retail level.

- **Structural measures**: many delegations enquired about the level of the envisaged effects of the structural measures: would they indeed meet the Digital Agenda target of narrowing or closing the gap between current roaming prices and domestic prices? In addition, concerns were expressed about the envisaged costs regarding the implementation of the structural solutions, which, as assumed by some delegations, could be substantially higher than the EUR 300 million estimated by the industry, as indicated in the Commission’s impact assessment. Delegations put detailed questions on how the wholesale access obligation would work in practice, e.g. according to which criteria should mobile network operators have to meet "reasonable requests" for wholesale roaming access. Some delegations believe that the text of the Regulation should better clarify the scope of access (direct wholesale roaming and wholesale roaming resale) as well as the maximum period for granting access. Many delegations believed that the scope of the wholesale access obligation should cover wholesale inbound roaming in the visited network as well as resale wholesale roaming in the home network.
- **Role of the BEREC (Body of European Regulators for Electronic Communications)**: delegations also questioned the process for the BEREC to publish guidelines on wholesale access

conditions for the delivery of roaming services and some delegations argued that a deadline should be put to BEREC to produce such guidelines. Issues requiring further discussion on the wholesale access obligation concern the scope of the access obligation, the pricing rules related to the access and a time period for granting access. Regarding the price for the access, some delegations pointed out that, in order to recover costs not directly related to wholesale access, network operators should be allowed to levy a charge to cover a reasonable part of the costs separately from the price for the actual roaming service.

- **The issue of competition:** delegations appear to support the approach of granting end-users the right to select an alternative roaming provider as facilitating the availability of roaming as a stand-alone service would address structural problems by raising consumer awareness of roaming prices, allowing distinct consumer choice concerning roaming services and thus **increasing competitive pressure on the demand side**. In this context, however, delegations did question the proposed technical solution for de-coupling, which needs to be put in place in order to meet the objectives of the structural measures. Many delegations are not yet convinced at this stage about one or the other technical solution for decoupling and are therefore reluctant to predetermine the technical solution in the Regulation. A number of delegations proposed to clearly set out general principles in the Regulation in order to provide BEREC with sufficient guidance, whilst at the same time **retaining flexibility to future-proof the Regulation in light of rapid market and technological developments**. Many delegations referred to the need to fully involve BEREC in the definition of a technical solution. The Regulation could consequently set out criteria according to which BEREC and industry could work out guidelines for technical solutions, which could be made binding in the EU through the adoption of implementing acts. In this regard, the Regulation could include, for example, the following criteria: the ability to effectively foster competition, user-friendliness, cost-effectiveness, network integrity and time constraints for implementation. In this regard, BEREC is currently investigating less complex solutions, such as roaming resale and local break out for data, which would deliver benefits to different consumer segments, quickly and without undue expenditure of time and resources on implementation. According to BEREC, the Commission's parallel proposals to reduce wholesale prices and introduce a general right of wholesale access for roaming purposes, can already be expected to deliver material competition benefits in the medium term.
- **Wholesale and retail price caps**: discussions focussed on the proposed level of these caps and the linkage between the levels of the wholesale and retail caps. In general, some delegations believed that the level of retail caps could possibly be set lower so that the margin between the wholesale and retail caps could be reduced and the **retail prices would not be more than three times the wholesale prices**. With regard to the caps generally and the retail caps for data roaming particularly, the issue appears to be finding the right balance between the interests of consumers, who are looking for cheaper prices, and offering opportunities for potential new market entrants, who might refrain from entering the market where price caps are set too low. In general, delegations appeared to prefer to start a detailed examination of the level of the caps once discussions on the structural measures have advanced. Delegations seemed to agree that, in order to determine the most adequate level for the various caps, due consideration should be given to the need to create incentives for alternative providers to enter the market so that market dynamics would yield more competitive prices, while at the same time ensuring that consumers are protected from excessive price levels.
- **Price cap withdrawal mechanism**: delegations put questions regarding the proposed date for their expiration (2016 for retail caps), which for some delegations would be premature as the structural solutions might not yet be fully in place and competition might not yet be sufficiently developed in the roaming market. Whereas some delegations were not clear about the need for a threshold, other delegations questioned the level of 75% for the threshold for earlier removal of the caps, i.e. if average wholesale charges based on off-net unbalanced traffic would fall to 75% or less of the caps they will be withdrawn. Some delegations plead in favour of tightening the threshold to 50% rather than 75% of the retail price cap as the proposed price caps may be too high to indicate competition across the EU.

- **Review mechanism**: many delegations felt that the proposed date of 30 June 2015 for the Commission to report on the functioning of the Regulation would be too early to usefully assess the impact of the structural measures on competition. Concerning the review of the Regulation, various delegations submitted initial views as to its scope and timing but also pointed out that these suggested adjustments would depend on the Council's final position regarding the level and duration of the price caps.
- **Transparency and safeguard mechanism**: delegations appeared to agree with the new possibility in the Roaming proposal to easily opt out from the automatic message service as certain customers might be well informed about roaming charges. With regard to bill-shocks and the cut-off limit, some delegations pointed out that, although certain pre-paid customers know the amount of credit available to them and are therefore less likely to suffer from bill shocks, there could still be a need to apply the cut-off limit to other pre-paid customers. A considerable number of delegations called for an extension of the information requirements and the transparency mechanism provided for in the draft Regulation to the use of data roaming services outside the Union.