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Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the interim report on the state of development of roaming services within the European Union

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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

on the interim report on the state of development of roaming services within the European Union

(Text with EEA relevance)

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1. INTRODUCTION

One of the Commission's more recent policy priorities has been to create an internal market for roaming services and eliminate the excessive charges which existed. In June 2007, a first Regulation on roaming on public mobile telephone networks within the Community[1] (the Roaming Regulation) was adopted to contribute to the smooth functioning of the internal market while achieving a high level of consumer protection, fostering competition and transparency in the market.

The Roaming Regulation was aimed at addressing a situation which directly disfavoured cross-border economic activity (roaming) compared to intra-State economic activity (domestic use of mobile phone services). [2]

The Commission conducted a first review of this Regulation, which revealed that competition was still not working satisfactorily. Consequently, the Commission presented proposals for amending the Roaming Regulation. These amendments were adopted by the European Parliament and Council in June 2009[3] and included an extension in time and in scope to cover SMS and data roaming services.

The Roaming Regulation, as amended, is valid until 30 June 2012. In the meantime the Commission's task is to monitor and report to the European Parliament and Council on the functioning of the Regulation. The Commission must review the functioning of the Regulation by 30 June 2011 at the latest.

In addition, the Commission is required to prepare an interim report no later than 30 June 2010 on its monitoring activities in relation to roaming. This Communication forms the interim report for the purposes of the Roaming Regulation, as amended. Given that the amending Regulation has only been in force since June 2009, this interim report provides a general summary of the latest trends in roaming and an initial assessment of the progress towards achieving the objectives of the Regulation.

2. BACKGROUND

Since the adoption of the amending Regulation, the Commission has continued to work closely with the European Regulators Group (ERG) and with its successor, the Body of European Regulators for Electronic Communications (BEREC), to monitor implementation as well as developments in roaming services. BEREC conducts an extensive data collection exercise which forms the basis for the Benchmark Data Reports, the latest of which was published in April 2010 and gave important input to this Communication. In March 2010, BEREC also issued a report on alternative retail voice, SMS and data roaming tariffs, as well as a roaming compliance report, both of which have provided useful input to this document. [4]

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1 Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community, OJ L 171, 29.6.2007, p.32.

2 See point 20 of the ECJ Advocate General's conclusions on Case C-58/08.

3 Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No 717/2007, OJ L 167, 29.6.2009, p.12.

4 For all ERG/BEREC reports, see: http://www.erg.eu.int/documents/index_en.htm.

On 24 March 2010, the Commission organised a workshop on roaming services attended by representatives of the industry, consumer associations, national regulatory authorities (NRAs) and Ministries. The views expressed at the workshop have also been taken into account in the Commission's reporting exercise.[5]

2.1. Current Regulation

The Roaming Regulation regulates wholesale and retail voice roaming charges and includes measures to increase transparency. A price cap, with yearly reductions, applies at the wholesale level; since July 2009 the relevant wholesale cap has been €0.26 and this will fall to €0.22 as from 1 July 2010. At the retail level a maximum price cap for a Eurotariff, which all operators were required to offer, again with yearly reductions, was established and applied by default to all customers unless they had explicitly requested another tariff plan in 2007. It is currently set at €0.43 per minute for calls made and €0.19 for calls received and, as from 1 July 2010, these maximum caps will be further reduced to €0.39 and €0.15 respectively. In accordance with the amended Roaming Regulation, these price caps are billed per second, with the possibility of establishing a minimum charging period of 30 seconds at the wholesale level and also for calls made at the retail level. Whilst operators are obliged to offer a Eurotariff, they also remain free to provide alternative retail offers for voice roaming services. In addition, as from 1 July 2010 operators will not be able to levy any charge on consumers for receiving a voicemail while roaming.

For SMS, a wholesale cap at €0.04 and a retail Euro-SMS tariff which operators are required to offer with a cap of €0.11 were also established (as for voice services, operators can also provide alternative offers). For data roaming, a wholesale cap was set and is currently at the level of €1 per Megabyte (MB); this will also decrease on a yearly basis and will be €0.80 from July 2010. Transparency measures for consumers have also been introduced. Operators must send information on roaming charges as soon as the customer enters another Member State and, in addition, information on the possibility to call 112 in the visited Member State free of charge. Transparency measures also include provisions to avoid 'bill shocks' in data roaming services (the 'cut-off limit'). The cut-off limit became available, at the consumer's request, from 1 March 2010 and a €50 cut-off limit will apply by default as of 1 July 2010 to all those consumers who have not already opted for a different limit.

[5] For more information on this workshop, see: http://ec.europa.eu/information_society/activities/roaming/workshop/index_en.htm

3. MAIN TRENDS IN ROAMING SERVICES

3.1. Evolution of roaming prices

Voice

Key points

- Prices for voice calls made and received are now around 46% and 55% lower, respectively, than before the entry into force of the first Roaming Regulation.
- Average prices for Eurotariff offered by operators and alternative tariffs are clustered around the levels of the regulated caps.
- There is only a small difference between regulated (Eurotariff) and unregulated (alternative) tariffs. There is significant variation across Member States.
- The new billing provisions introducing per-second billing have led to a reduction of 63% in the surcharge caused by the previous billing methods for calls made and to its elimination for calls received.

Overall, compliance with the new price caps and billing provisions has been good. Therefore, consumers have continued to benefit from lower roaming tariffs, and the current prices for making and receiving calls represent a reduction of around 46% and 55%, respectively, as compared with the situation before the entry into force of the first Roaming Regulation. Consumers now also benefit from the new provisions on per-second billing and as a result the surcharge due to the previous billing method has been reduced by more than half for calls made. However, prices at both wholesale and retail levels (see Figure 1 below) remain clustered around the levels of the caps.

The average wholesale price per minute at the end of 2009 was €0.23. At the retail level, the average prices per minute at the end of 2009 for the Eurotariff offered by operators were €0.38 for calls made and €0.17 for calls received. These average prices have been following a downward trend in line with the reductions in the regulated caps.

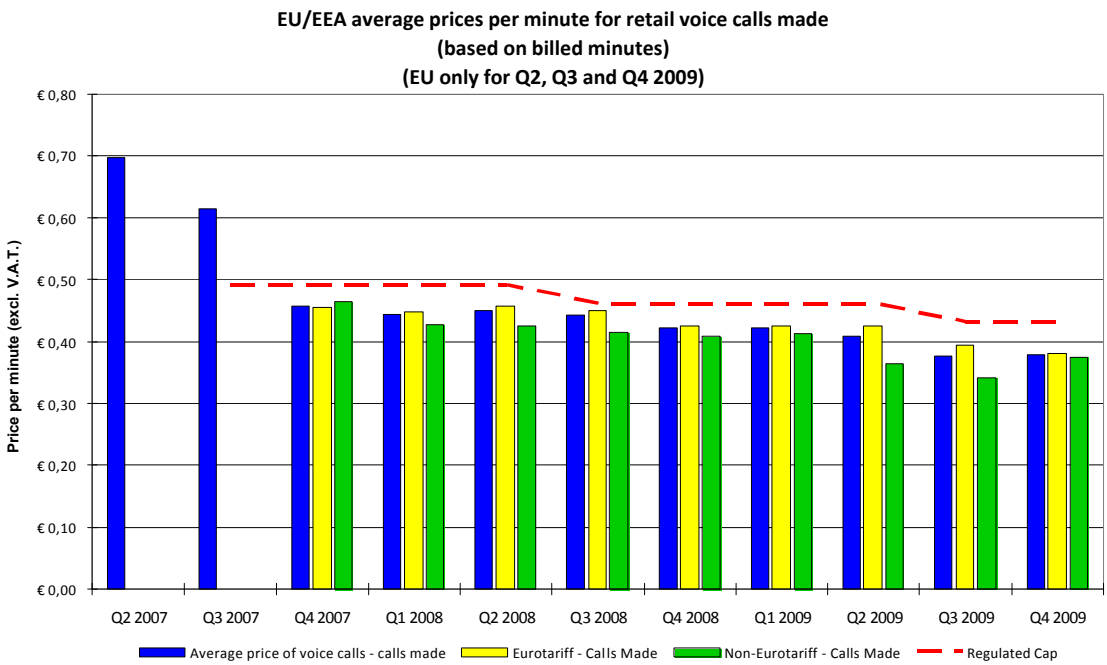


Figure 1 (Source: BEREC)

There are alternative tariffs available for calls both made and received; these are in some cases lower than the Eurotariff offered by operators, but there is significant variation between Member States. The average price for calls made under alternative tariffs has increased during the second half of 2009 and is now almost at the same level as the average price per minute for the Eurotariff (see Figure 1 above). For calls received, alternative tariffs are on average lower than the Eurotariff offered by operators, but following the regulated cap reductions in July 2009 these average prices are now almost at the same level.

Per-second billing for voice calls was introduced with a view to eliminating the hidden charge that per-minute billing represents for consumers and to ensure that users pay for what they actually consume. The data gathered indicate that this has led to a significantly lower surcharge[6]. NRAs have stated that some operators who were not able to implement these provisions on time, but had intended to do so as soon as possible and to compensate consumers for any loss.

At the retail level, previous billing surcharges were estimated to add around 24% for calls made and this has now been reduced by more than half to 10%. For calls received, per-minute billing applying previously was estimated to add around 19% of surcharge for consumers and, given that pure per-second billing now applies, this surcharge should have been completely eliminated. NRAs are monitoring the correct application of these provisions by operators.

[6] i.e. a difference between the actual and the billed usage.

SMS

Key points

- SMS prices have decreased by around 60% on average.
- Prices at the wholesale level and for the Euro-SMS offered by operators are clustered at the level of the regulated caps.
- The average price for alternative SMS tariffs is higher than the regulated cap (€0.14 for Non-Euro SMS compared to €0.10 for Euro-SMS); the Euro-SMS tariff offered by operators is generally the best option for consumers at this stage.

Compliance with the price caps for SMS introduced at wholesale and retail levels has also been good and consumers are now benefiting from significantly lower prices for SMS roaming compared to the situation before the entry into force of the amending Regulation. However, prices are clustered around the levels of the caps and competitive alternative tariffs have yet to develop.

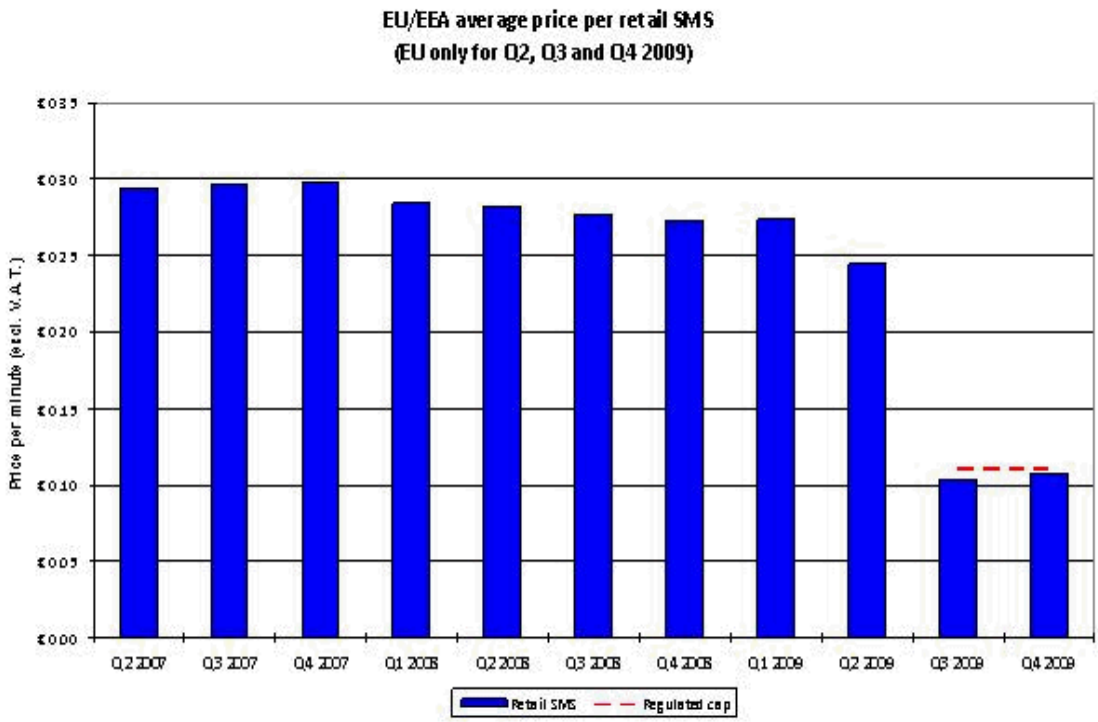


Figure 2 (Source: BEREC)

There has been a significant reduction in the average SMS price at the wholesale level, which fell from €0.13 before the entry into force of the amending Regulation to €0.04 at the end of 2009. This reduction has not yet resulted in more competition at the retail level.

The average price for the Euro-SMS tariff offered by operators was €0.10 at the end of 2009, while the regulated cap is €0.11. Compared with an average of €0.24 prior to the entry into force of these provisions, this represents a reduction of around 60%.

It is also possible for operators to offer alternative tariffs; however there has not been much innovation thus far on alternative SMS tariffs across the EU. The price levels of these alternative tariffs vary significantly and the average price per SMS under the alternative tariffs was €0.14 at the end of 2009, which is considerably higher than the regulated cap. Only in very few Member States are there alternative tariffs which are more attractive than the regulated Euro-SMS tariff offered. In many Member States these alternative tariffs are at the level of the cap whilst in some Member States they are considerably higher, in some cases even above €0.20 per SMS. Therefore the Euro-SMS tariff is, in the majority of cases, the best option for consumers.

Data

Key points

- Significant reduction in wholesale data prices (from €1.2 to €0.55 per MB), the average price is now well below the level of the regulated cap.
- Retail data prices are following a downward trend but the pass-through of the reductions at the wholesale level is still not fully apparent.
- Bill shocks are still a concern.

The amending Regulation introduced a wholesale cap for data roaming services which is now at the level of €1 per MB, charged on a per kilobyte (kb) basis. The cut-off limit facility at the retail level was made available at the consumer's request as of 1 March 2010. Whilst the introduction of the wholesale price cap has led to a significant decrease in average wholesale prices and average retail prices have also fallen, consumers are not yet fully benefiting from the reductions at the wholesale level and there are large divergences between Member States.

Operators' compliance with the wholesale price cap appears to have been good and the average wholesale charge has decreased significantly. The average price per MB was €0.55 at the end of 2009, which is considerably below the level of the regulated cap. The average wholesale price before the entry into force of the amending Regulation was €1.2 per MB, which means there has been a 50% reduction.

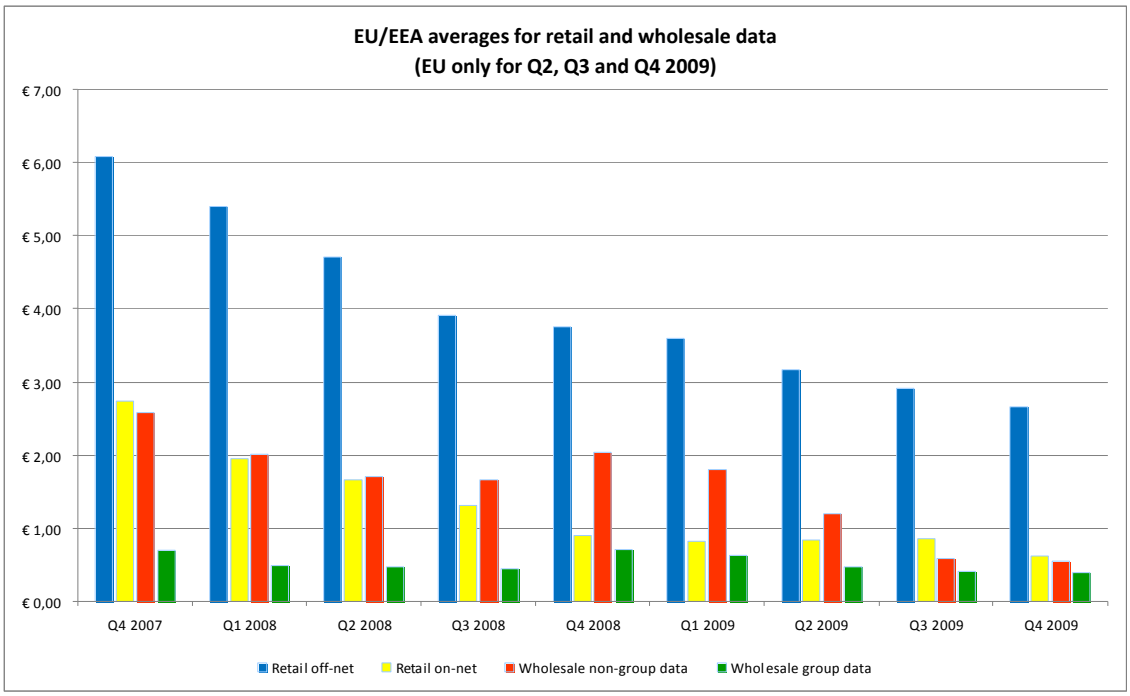


Figure 3 (Source: BEREC)

As Figure 3 above shows, the average retail prices for data are also following a downward trend; however it is not clear whether the reductions at the wholesale level are being passed through to the retail prices in all cases. The average retail price per MB was €2.66 at the end of 2009, which is a large reduction from the beginning of 2009 when the average price stood at €3.62. However the lower wholesale prices are giving rise to even greater margins for operators since retail prices have not fallen at the same pace. Furthermore, there is considerable variation between countries; average retail prices in some Member States are around €4 per MB and even close to €6 per MB.

Furthermore, operators' standard prices remain higher than the average referred to above. Standard tariffs can be around €2 to €5 per MB and even above €7 per MB. The decline in the average data prices at retail level may therefore be explained by the growth of flat-rate or bundled offers and the more efficient use that consumers make. In general operators have retained the practice of offering special packages on a time basis, i.e. mainly on a daily or monthly basis. This means that a subscriber using high volumes may benefit from a significant reduction in the price paid per MB whilst consumers using low data volumes in most cases will end up paying for more than they consume.

Operators now benefit from a wholesale cap billed on a per kb basis and introduced to avoid a repeat of the billing increment issue already experienced with voice. Nevertheless, operators do not always bill customers on the basis of actual consumption, i.e. on a per kb basis, and higher billing increments such as 10kb or 100kb are frequently used.

Persistent high standard prices, together with the billing increments applied, continue to lead to 'bill shocks' for consumers in some cases. It is expected that the full

implementation of the cut-off limit as of 1 July 2010 will help eliminate these 'bill shocks'.

3.2. Traffic evolution

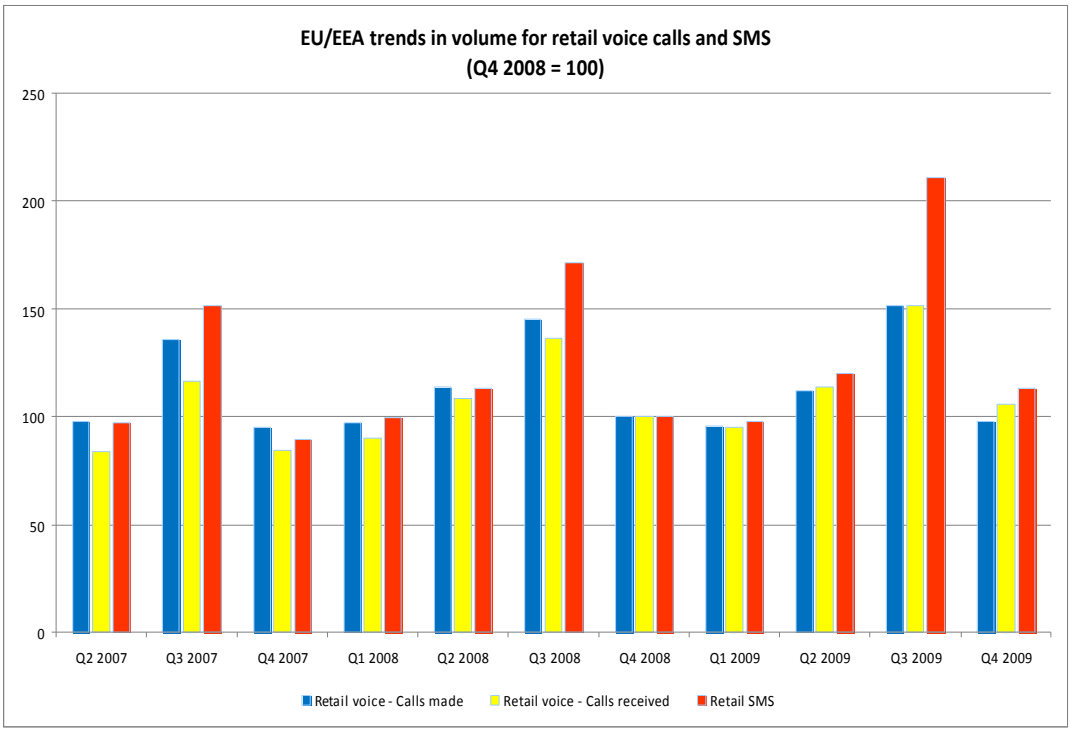
Key points

- Volumes for voice, in particular for calls received, and SMS continue to grow.
- Data roaming services grew by more than 40% in volume terms in 2009.

In order to assess traffic evolution properly it is necessary to refer to the same periods every year, thereby taking the seasonal distribution of travel into account.

In general terms, developments in traffic volumes are influenced by the economic recession and the reduction in travel within the EU. The impact of the Roaming Regulation on volumes cannot be reliably isolated from the effects of the overall economic situation.

Despite these economic developments, as Figure 4 below shows, consumers have continued to make use of roaming services. This demonstrates consumer confidence and the benefits of the Roaming Regulation, particularly against the background of a recession which has also resulted in a significant decline in tourism and business travel[7]. Volumes of voice traffic for calls received and SMS roaming services have generally grown over the past two years, with a seasonal peak during the third quarter of each year. Volumes for calls made over the last year have remained stable and even fell slightly in the second quarter of the year.



[7] Eurostat estimates a 12% decrease in travelling.

Figure 4 (Source: BEREC)

A substantial increase in volumes was observed for SMS services following the entry into force of the amending Regulation, which introduced the SMS price cap. SMS volumes rose by 20 % in the third quarter of 2009 compared with the same quarter of 2008, indicating that the lower prices and increased transparency led to higher consumption.

As Figure 5 below shows, volumes for data roaming services have continued to increase significantly, with a growth rate above 40 % in 2009. Given that mobile data is a growing service, this trend is expected to continue in the near future.

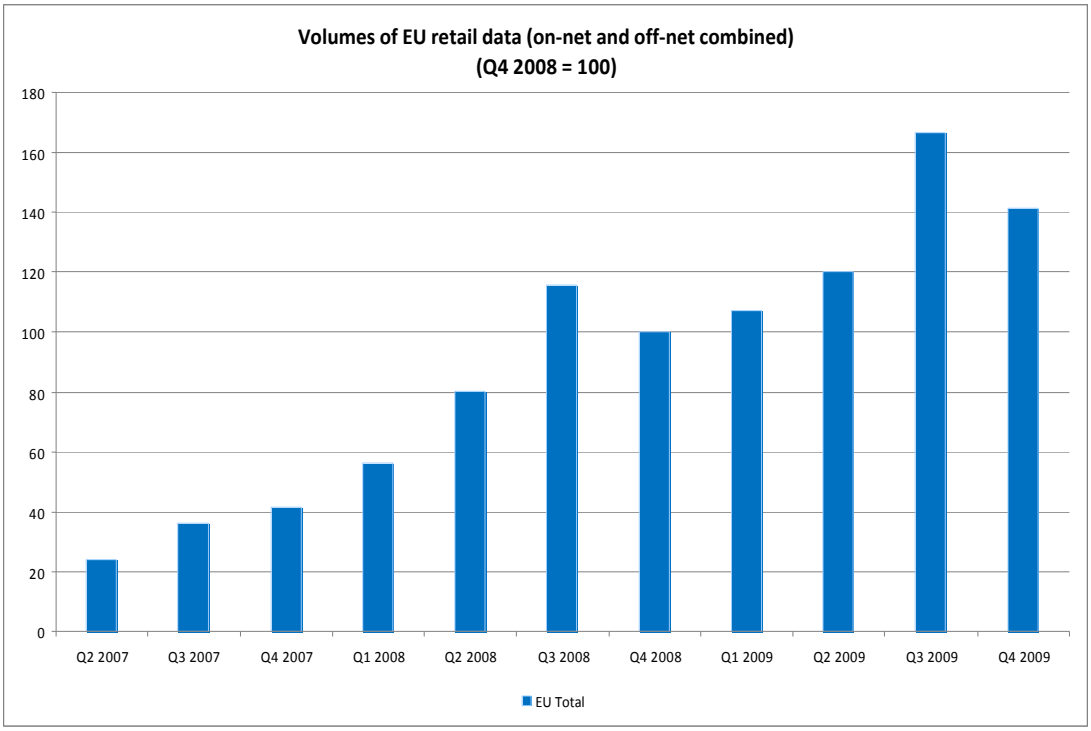


Figure 5 (Source: BEREC)

3.3. Transparency measures

The Roaming Regulation contains a number of transparency measures aimed at ensuring that consumers are aware of roaming prices. In addition to notification on the applicable voice and SMS roaming charges, the home provider is also obliged to inform the roaming customer of the applicable data roaming charges. Although customers receive several separate messages, this enables them to be well-informed about roaming prices. In any event, consumers can request their operator to stop sending these SMSs on roaming price information.

Some operators were not in a position to fulfil all the requirements of the amended Roaming Regulation on 1 July 2009, but in most cases these early problems were soon resolved. The NRAs monitor compliance in any remaining cases, which mainly concern new entrants (MVNO) which initiated activities after 1 July 2009.

Moreover, and in order to eliminate ‘bill shocks’ when using data roaming services, a cut-off limit was introduced by the amended Regulation. Since 1 March 2010

operators have to make available a facility whereby consumers can specify in advance the maximum amount they want to spend on data services abroad. A notification is sent upon reaching 80% of this limit and, after it has been reached, the customer must be given the option of continuing to receive these services. As of 1 July 2010, a €50 cut-off limit will apply by default to all customers who have not opted for another limit.

The implementation of this facility on 1 March 2010 was generally reported to be satisfactory. While some initial problems were reported, most of these now appear to have been solved. NRAs had to intervene in some instances to ensure compliance and one operator decided to prevent data roaming usage for prepaid customers until its systems had been fully adapted to accommodate the cut-off limit. This cut-off limit must be made available to all types of customers using data roaming services, both prepaid and postpaid[8].

NRAs are closely monitoring the implementation of these provisions to ensure that the 'cut off limit' facility is correctly applied, in particular with an eye to 1 July 2010 when it will be applied to all customers. Since the 'cut-off limit' has only been available since 1 March 2010 to those customers specifically requesting it, a more detailed analysis concerning its overall implementation, and the consumer perception of it, will be included in the Commission's 2011 review.

4. PROGRESS TOWARDS ACHIEVING THE OBJECTIVES OF THE REGULATION

The main objectives of the Roaming Regulation are to promote competition, consolidate the single market and ensure that consumers do not pay unjustifiably high prices compared to domestic charges when crossing borders. The Roaming Regulation provides for the necessary conditions for competition to flourish, and the Commission expects operators to take this opportunity to develop competitive roaming offers.

The Regulation has been successful in providing adequate consumer protection and in contributing to consolidate the internal market; this has been achieved mainly through the imposition of price caps.

Price developments, as well as the diversity of offers, provide a good indication of the extent to which competition has grown. In this respect, for voice and SMS, the extent to which operators offer prices below the levels of the regulated caps is considered as a key indicator of the level of competition in the market. However, prices for voice and SMS roaming services currently remain clustered close to the levels of the caps. A higher margin between wholesale and retail prices for the regulated caps on voice was introduced by the amending Regulation to allow competition to develop at the retail level, in particular for alternative operators, but this has not yet been translated into greater price competition.

There appear to be a variety of alternatives to the regulated Eurotariff and Euro-SMS tariff. For voice services, there are alternative tariffs with varying pricing structures

[8] See also point 27 of the revised ERG Guidelines on International Roaming Regulation available at: http://www.erg.eu.int/doc/publications/erg_09_24_final_roaming_regulation_erg_guidelines.pdf.

(i.e. limited in time, with a monthly subscription or with a set-up fee, billed per minute). The average price per SMS under the alternative tariffs is higher than the Euro-SMS offered by operators. In some Member States alternative tariffs for roaming SMS are significantly higher than the regulated cap.

As for data roaming services, it is not yet clear whether the reductions in wholesale charges will result in competitive retail data roaming services. In this respect, since operators' standard prices remain high, the extent to which customers are benefiting from good-value special packages provides a strong indicator of whether operators are passing through the benefits of lower wholesale data roaming tariffs.

While average prices for data roaming services are falling, the average retail prices still present a substantial margin over the wholesale rates. Operators' standard prices do not appear to have decreased, which means that the fall in average prices may be due to increased and more effective use of existing offers.

It appears that roaming charges are still higher than domestic mobile services; prices for domestic services are generally declining, with increasing availability of flat-rate and bundled offers. BEREC is examining the trends in both roaming and domestic prices with a view to a full analysis in the 2011 review.

It follows from the above that there are not yet sufficient competitive dynamics in the structure of roaming services. The structural problems of the roaming market, stemming both from the absence of competitive constraints on the supply side and from demand characteristics, are still present. In particular, the roaming market presents specific cross-border characteristics that have so far resulted in a lack of effective competition which NRAs have not been in a position to address. Even though the present system of price caps has brought benefits in terms of protecting consumers and furthering the internal market, it has not shown itself to be capable of solving these problems adequately.

At wholesale level, where traffic is balanced between mobile operators, there may not be sufficient incentive to set wholesale charges at a competitive level. Equally, however, average prices for non-group wholesale traffic remain close to the maximum caps, suggesting that the competitive dynamics are not yet strong. In addition, end-users at retail level do not buy roaming services separately but together with domestic services.

Technological developments and/or the alternatives to roaming services, such as the availability of VoIP or WiFi, may render the EU roaming market more competitive. While these alternatives, in particular VoIP services, are increasingly being used at the domestic level, there have been no significant developments in their use when roaming.

In the Commission's view, effective competition is intrinsic to a well-functioning roaming market. Indicators of such competition include average prices which are not clustered around the levels of the regulated caps and the existence of alternative offers showing innovation and competitive dynamics.

5. CONCLUSION

Overall, implementation of the amending Roaming Regulation has gone smoothly and operators have complied with the new provisions, while NRAs are ensuring that this continues. Consumers are benefiting from reductions in the prices for voice and SMS roaming services and from increased transparency. The prices for data roaming have also fallen but consumers are not yet enjoying fully the reductions seen at wholesale level. So far, competition in the roaming markets has not developed sufficiently and structural problems persist.

The cut-off limit provision will apply by default from 1 July 2010. On that same date, new reductions on the glide paths will apply and in addition operators will not be able to levy any charge on consumers for receiving a voicemail while roaming.

The Commission will produce its full review of the functioning of the Roaming Regulation by 30 June 2011. In that review, the Commission will evaluate whether the objectives of the Regulation have been achieved. To this end, the Commission will review the developments in wholesale and retail charges, the extent of competition in the provision of roaming services and the quality of these services. It will also:

- assess the developments in mobile services at domestic level,
- examine the availability and quality of services alternative to roaming, in light of technological developments;
- assess whether there are methods other than price regulation to address the structural problems of the roaming market and create a competitive internal market for roaming.

The 2011 review will thus analyse whether further regulation of roaming services will still be necessary, either in the form of price regulation or through some alternative long-term approach, or whether the Regulation should expire in 2012, leaving roaming services to market forces alone. Whatever the approach, it should ensure that the benefits achieved so far are not lost.