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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the review of the wholesale roaming market

{SWD(2016) 200 final}

1. INTRODUCTION

Since 2006 the Commission has taken action to address the high roaming charges paid by consumers for using their mobile phones when travelling abroad in another EU Member State. Regulatory measures adopted by co-legislators in 2007, 2009 and 2012 introduced binding maximum retail and wholesale roaming charges.

The ultimate objective of these measures was to ensure that market forces would achieve a single market for mobile communication services in which no differentiation exists between national and roaming tariffs; accordingly, the Commission was required to verify whether the measures achieved this objective¹. However, although wholesale and retail roaming charges decreased following the adoption of these measures, differences remained between roaming and national tariffs. For this reason, given that eliminating differentiation between national and roaming retail tariffs is an important part of an effective and functioning telecom single market, the Commission considered it necessary to take further measures to pursue this objective.

The elimination of roaming surcharges was reaffirmed as a general policy objective in the Commission's Digital Single Market Strategy which includes it as an important element for creating the right conditions for digital networks and services to flourish².

In 2015, the European Parliament and the Council adopted Regulation (EU) 2015/2120³, which entered into force on 29 November 2015 and, *inter alia*, amended Regulation (EU) No 531/2012⁴ (the Roaming Regulation). Regulation (EU) 2015/2120 introduced the abolition of retail roaming surcharges in the Union from 15 June 2017, subject to fair usage of roaming services and allowing for the possibility for operators to apply for a derogation in exceptional cases where a roaming provider is not able to recover its overall actual and projected costs of providing regulated roaming services from its overall actual and projected revenues from the provision of such services. This new regulatory regime for retail roaming services in the Union is referred to as the 'roam-like-at-home' (RLAH) regime in this report.

However, Regulation (EU) 2015/2120 did not provide for measures on the wholesale roaming market, because additional investigation of market conditions was necessary.

For the abolition of retail roaming surcharges to be sustainable throughout the EU, national wholesale roaming markets in the EU need to be competitive and to deliver wholesale roaming charges that enable operators to sustainably offer retail roaming services without any additional charges.

Since a wholesale roaming market functioning properly is a precondition for achieving the RLAH regime, the Roaming Regulation entrusted the Commission with the task of reviewing

¹ See in particular Article 19(2) of the original wording of Regulation (EU) No 531/2012, which called upon the Commission to make appropriate proposals if differences between roaming and national tariffs had not approached zero.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Single Market Strategy for Europe, COM(2015)192final, 6.5.2015.

³ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

⁴ Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union.

the wholesale roaming markets and making appropriate proposals to enable the abolition of retail roaming surcharges in the Union from 15 June 2017⁵.

This report presents the results of the Commission's wholesale roaming review. In section 2 of the report, the Commission analyses the functioning of wholesale roaming markets in the Union under current Regulation. In section 3, it presents its proposal on how to enable through measures at wholesale level the abolition of retail roaming surcharges in the EU from 15 June 2017.

In order to gather the necessary evidence for this review, the Commission:

- in cooperation with the Body of European Regulators for Electronic Communications (BEREC), collected comprehensive data from operators in autumn 2015⁶;
- commissioned an external study to estimate the costs of providing wholesale roaming services⁷;
- organised a 12-week public consultation from 26 November 2015 to 18 February 2016⁸.

This report is accompanied by a legislative proposal to amend the Roaming Regulation. The details and underlying reasoning of this proposal can be found in the legislative proposal⁹ and associated impact assessment¹⁰. The detailed methodology and results of the analysis of the functioning of wholesale roaming markets in support of this report can be found in the accompanying staff working document (SWD)¹¹

2. FUNCTIONING OF THE WHOLESALE ROAMING MARKETS IN THE EU

In accordance with Article 19 of the Roaming Regulation, the Commission has assessed the following¹²:

- the developments in competition in the retail roaming markets;
- the costs of providing wholesale roaming services in the EU;
- the degree of competition in national wholesale markets.

The Commission has also assessed the anticipated impact of the retail RLAH obligation on the functioning of wholesale roaming markets.

⁵ In accordance with Article 19 of the Roaming Regulation.

⁶ The data collected were analysed in collaboration with the Commission's Joint Research Centre (JRC).

⁷ European Commission, *Assessment of the cost of providing wholesale roaming services in the EEA*, Final report, study conducted by TERA Consultants, to be published.

⁸ A summary and the full synopsis report of the results of the public consultation are available here: <https://ec.europa.eu/digital-single-market/en/news/summary-report-public-consultation-review-national-wholesale-roaming-markets-fair-use-policy>. In addition to questions on the wholesale roaming review, the public consultation included two sets of questions on fair use policy and the sustainability mechanism provided for in the Regulation. The Roaming Regulation confers implementing powers on the Commission on these two topics.

⁹ Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets

¹⁰ Commission Staff Working Document Impact Assessment accompanying the Proposal for a Regulation amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets

¹¹ Commission Staff Working Document accompanying the Report from the Commission to the European Parliament and to the Council on the review of the wholesale roaming market

¹² The other elements for the review set out in Article 19 of the Roaming Regulation have been considered by the Commission in assessing the most appropriate regulatory measures (see section 3 below and, for more details, the accompanying Impact Assessment).

2.1. Competition developments in retail roaming markets

BEREC analysis¹³ shows that there have been some important developments on the retail roaming markets recently, with domestic offers proposing more affordable roaming prices to customers. However, as noted by BEREC, most of the new, RLAH-like, retail roaming offers are not real RLAH offers in the sense of the Roaming Regulation, i.e. covering the whole of the Union for no additional surcharge (no add-on) within fair-use limits. In addition, these developments are unevenly distributed across Member States.

At the current levels of competition in wholesale roaming markets, the retail markets have not been capable of delivering full Union-wide RLAH. Potential technological and service developments like the spread of over-the-top services and embedded SIMs do not constitute a full and operational substitute for retail roaming services so far¹⁴. Therefore, their current market pressure has remained limited, and this does not seem likely to change in the near future.

2.2. Assessment of the cost of providing wholesale roaming services

Assessing the costs of providing wholesale roaming services is a delicate and complex task. There is no unique method to analyse and assess those costs and each method implies a large set of choices and assumptions with both merits and limitations. In recent years, national regulatory authorities (NRAs) have acquired a solid experience in cost modelling for the purpose of regulating termination rates taking into account Commission Recommendation 2009/396/EC on the regulatory treatment of fixed and mobile termination rates in the EU¹⁵. The external study built on this experience and developed a cost model that takes countries' specific features into account as much as possible¹⁶. For that purpose, NRAs provided the contractor with detailed information on their respective cost models as well as country input data. In addition, the study used data from operators on costs that are specific to roaming services, such as roaming operational and management costs, roaming financial and data clearing costs, roaming negotiation and contract management costs.

While a certain degree of uncertainty necessarily remains over the cost estimates provided by the cost model, they provide a useful benchmark, which may be used in conjunction with other data sources and observations, in particular: effective wholesale roaming charges observed on the market, domestic retail and wholesale prices, and for voice, national regulated mobile termination rates (MTRs).

Based on these different data sources, the cost of providing wholesale roaming services in the European Economic Area (EEA) can confidently be assumed to be below 4 ¢cent/minute¹⁷, 1 ¢cent/SMS and 0.85 ¢cent/MB, including transit costs borne by the visited operator.

On the specific issue of the impact of seasonality on the cost of providing wholesale roaming services, a number of Member States explicitly stressed, in a joint political declaration made when Regulation (EU) 2120/2015 was adopted, the need to 'take into account the impact of

¹³ BEREC Report on the wholesale roaming market, BoR(16)33, February 2016, section 2.3.

¹⁴ See section 4 of the accompanying SWD.

¹⁵ Commission Recommendation of 7.5.2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, C(2009)3359final

¹⁶ See section 5 of the accompanying SWD.

¹⁷ The cost estimate for voice provided by the cost model is slightly higher than 4 ¢cent/minute in Malta. However, this estimate is at odds with the average wholesale roaming charge for unbalanced traffic reported in 2015 by operators of this country (3.7 ¢cent/minute).

seasonality on the cost structure of the service providers operating in tourist areas'¹⁸. The impact of roaming seasonality was carefully analysed in the study using the best available data to quantify it¹⁹.

Due to massively increasing domestic demand for data services, the needs of networks to support domestic users tend to exceed the summer seasonal peak only a few months after that peak, and in any case before it recurs the year after. Accordingly, since networks are already being dimensioned and expanded to cope with this general upward trend, any peak due to seasonal roaming flows does not seem to provoke any generalised increase in network costs due to data roaming under RLAH conditions.

While seasonality-related costs are not negligible for voice services in some countries²⁰, the effective impact of seasonality on the estimation of the upper bound of wholesale roaming costs in the EEA remains small. This is because countries where seasonality effects are assessed as the highest (Croatia, Greece, Spain, Bulgaria) are not among the higher cost countries for voice origination services (Malta, Sweden, Netherlands, Latvia). The seasonality effects measured in the higher cost countries for voice are smaller.

2.3. Degree of competition in wholesale roaming markets in the EEA

Wholesale roaming markets display a number of market failures which have been described in the past²¹. Wholesale roaming markets have an oligopolistic character: in order to provide roaming services to its customers, an operator can buy wholesale roaming services from only three to four operators in a given country, and some of these operators may be difficult to avoid for network coverage and capacity reasons. Operators have only imperfect substitutes at the wholesale level as well, a situation that a previous report ordered by the Commission already analysed²². Wholesale roaming agreements are generally driven by the amount of traffic that the visiting operator is able to offer during bilateral negotiations. The main negotiation driver in bilateral roaming agreements is the amount of inbound and outbound traffic that can be balanced between each pair of operators, rather than the final price agreed for the unbalanced part. Mobile virtual network operators (MVNOs) and smaller operators with low volumes of traffic usually obtain no, or only limited, discounts from the maximum wholesale roaming charge provided in the Roaming Regulation.

To reduce the excessive wholesale roaming charges resulting from this not fully competitive market, these charges have been capped by successive Union regulations. These caps are

¹⁸ 'As well as all the situations where there are significant traffic imbalances related to seasonality issues or resulting from different travel patterns across Member States, which is likely to be accentuated by the expected surge in demand resulting from the elimination of the surcharges'; see Doc 12279/15 of 29 September 2015.

¹⁹ Quarterly data on roaming traffic from BEREC, data provided by some NRAs and operators, monthly data on nights spent by non-residents by country from Eurostat.

²⁰ The theoretical estimation exercise is particularly difficult given the localised impact of seasonal peaks (and similarly localised impact of counterbalancing effects), possible congestion mitigating techniques and the limited granularity (in geography and time) of available data. Potential extra costs for seasonal peaks for some countries are spread over all users (domestic and roamers) due to significant seasonal in-country displacement to touristic areas and due to the compensating effect of roamers on capacity usage in metropolitan areas during the summer holiday season.

²¹ European Commission, Impact assessment of policy options in relation to the Commission review of the functioning of Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 on roaming on public mobile telephone networks within the Community, COM(2011)407final, SEC(2011)871final

²² WIK-Consult (2010), Study on the Options for addressing Competition Problems in the EU Roaming Market, SMART 2010/018, December, p. 20-23.

currently set at 5 €/min, 2 €/SMS and 5 €/MB by the Roaming Regulation. The effective degree of competition in wholesale roaming markets as currently regulated has been assessed during this review²³.

Evolution of wholesale roaming charges since 2007

The evolution of wholesale charges for voice and SMS roaming services has been very closely aligned with the successive, decreasing wholesale charges caps set at Union level since 2007²⁴. In the case of wholesale roaming charges for data, market prices have been substantially lower than the successive caps over the 2009-2015 period (the first wholesale roaming data charge cap became applicable in 2009).

Roaming traffic flows in the EEA

Observed patterns of voice roaming traffic between EEA countries reflect to some extent particular historical, linguistic, cultural and economic links between countries²⁵. Inbound/outbound roaming traffic ratios for the three mobile services (voice, SMS, data) tend to confirm a north/south divide in Europe between high-tourism southern locations and lower-tourism northern locations. However, this divide is not systematic. Cyprus, Greece, Malta and Spain stand out as very pronounced net receivers of roaming traffic for all three services, while Ireland, the Netherlands, Norway, Slovakia and the UK are pronounced net senders. Some countries, such as France, Italy, Latvia, Lithuania and Sweden, have a more balanced situation.

Functioning of wholesale roaming markets

Stakeholders widely acknowledged in the public consultation that any competitive dynamics on the wholesale roaming markets in the EU are essentially linked to existing Union wholesale roaming charges caps, which provide a starting point for price negotiations in bilateral roaming agreements. Without regulation at Union level, wholesale roaming charges would be higher than they are, as evidenced by unregulated wholesale roaming charges applied in the Union before the regulating measures were enacted and outside the Union currently. Due to the market failures described above, the wholesale roaming market would still exhibit structural problems if the regulation would be removed.

As regards regulation at Union level, the review shows that, while national wholesale roaming markets show a certain degree of competition in all Member States²⁶, in certain national wholesale roaming markets the observed prices are substantially above estimated costs. Only the unbalanced part of roaming traffic experiences some price competition (prices for the balanced part usually remain close to the cap level). However, those prices are usually well above domestic wholesale prices (where these are known) by an amount that cannot be justified by roaming-specific costs. Group operators with a footprint in several countries can steer traffic within their networks and internalise wholesale roaming costs. Also, they typically negotiate wholesale roaming charges with other operators at group level, so that members of the group get more attractive terms and prices from the group's higher volume commitments. In contrast, a number of market players, in particular smaller operators with

²³ See section 6 of the accompanying SWD.

²⁴ *International roaming BEREC Benchmark Data Report April — September 2015*, BoR(16)28, February 2016.

²⁵ BEREC Report on the wholesale roaming market, BoR(16)33, February 2016, section 2.4.

²⁶ In particular, wholesale roaming prices for unbalanced traffic have been below the caps in recent years, though still significantly in excess of most operators' estimated production costs.

smaller traffic volumes and MVNOs, do not generally benefit from wholesale roaming charges substantially lower than the caps.

In general, operators whose outbound roaming traffic (largely) exceeds inbound roaming traffic seek to minimise the wholesale charges to be paid to visited networks for providing retail roaming services to their subscribers. They therefore favour low wholesale roaming charges. In contrast, operators whose inbound roaming traffic (largely) exceeds outbound roaming traffic seek to maximise their revenues from providing wholesale roaming services. They therefore favour higher roaming charges.

Depending on their respective positions and bargaining power in bilateral wholesale roaming negotiations, operators expressed different perceptions of the effective functioning of wholesale roaming markets in the public consultation²⁷.

Certain historic incumbents, operators with a large footprint and generally operators with large inbound roaming traffic argue that wholesale roaming markets are competitive on the grounds that wholesale market charges are often below the current regulatory caps.

Other operators, in particular smaller ones, MVNOs, and operators with large outbound roaming traffic, argue that prices available to them on the wholesale market are at or close to the current caps, but in any case substantially above costs and far too high for their respective domestic charging models to be sustainable once retail roaming surcharges would be abolished in June 2017.

MVNOs also argue that wholesale charges they have to pay for roaming are a multiple of wholesale tariffs they pay domestically to their host mobile network operators, which shows that even if mobile network operators do compete to offer domestic wholesale services to MVNOs, they apparently do not actively compete to offer them wholesale roaming services.

2.4. Anticipated impact of the retail RLAH obligation on the functioning of wholesale roaming markets

The retail RLAH obligation may affect the functioning of the wholesale roaming market in different ways. An RLAH-triggered increase in roaming traffic may contribute to reducing wholesale roaming charges due to economies of scale. In contrast, the obligation on the home operator to provide RLAH to its customers could exacerbate and aggravate the structural differences and imbalances in market players' relative negotiating positions in bilateral roaming negotiations. This would strengthen further the negotiating position of net receivers of roaming traffic and weaken that of net senders.

In addition, under RLAH, the visited operator may attempt to recover part of the lost revenues on its retail roaming arm (as home operator) through higher wholesale roaming charges. In other words, the potential risk of distortion of competition and investment incentives in domestic and visited wholesale markets stemming from the introduction of RLAH will strongly depend on how the wholesale market will work when RLAH would be applicable.

²⁷ The public consultation was open from 26 November 2015 to 18 February 2016 on the following page: <https://ec.europa.eu/digital-single-market/news/public-consultation-review-national-wholesale-roaming-markets-fair-use-policy-and>.

3. THE PROPOSAL TO TACKLE THE IDENTIFIED ISSUES ON THE WHOLESALE ROAMING MARKET

3.1. The remaining obstacles to the functioning of RLAH

By establishing the obligation to charge retail roaming services at domestic prices (no more retail roaming surcharges) subject to the fair use policy of these services, Regulation (EU) 2015/2120 has introduced the substance of a new retail regime for regulated roaming services. This is the RLAH regime, which has so far hardly been offered across the Union under the current conditions of wholesale roaming markets.

Indeed, while retail pricing of roaming and domestic services is aligned by regulation, the provision of retail roaming services does not use the same wholesale inputs as retail domestic services. This is because providing retail roaming services requires by definition the use of a different (visited) network. These wholesale roaming inputs therefore need to be bought on the market by the visiting operator, including a number of costs specific to roaming (i.e. not incurred in providing domestic services).

To ensure that the retail roaming services can be provided at domestic retail prices, it is necessary for wholesale roaming inputs to be available at a price that makes providing RLAH generally possible for the visiting (home) operators while ensuring that the visited operators can recover the costs of providing these services.

Fully competitive national wholesale roaming markets, which would make prices directly linked to the marginal costs of visited networks, would clearly facilitate the sustainability of RLAH. However, the analysis shows that wholesale roaming markets do not always function in this manner and that the future RLAH obligation is by itself highly unlikely to lead to well-functioning wholesale roaming markets that would enable the provision of RLAH in the Union by 15 June 2017.

In light of the problems summarised in this report, additional measures are necessary in order to regulate the wholesale roaming markets in order to enable the provision of RLAH in a sustainable way.

A Union-wide approach would further avoid a situation where individual Member States take divergent approaches to deal with the problem of high wholesale charges. Such a situation would create obstacles to the internal market since roaming services providers would be treated differently in their home country (as visited network operator) and in the country in which they are offering retail roaming services (as visiting network operator).

Indeed, in an RLAH context, the lack of consistent regulatory approaches between national wholesale markets could actually create distributive distortions unrelated to costs among operators and ultimately among consumers. The reason for this would be the following dual interests at wholesale level:

- on the one hand, visited networks need to cover the costs of providing wholesale roaming services and appropriately invest in their networks to accommodate roaming traffic;
- on the other hand, visiting operators, which may not cover their costs of providing retail roaming services via regulated retail roaming charges any more under RLAH, need to avoid margin squeeze.

The risk of margin squeeze could potentially result in higher prices on domestic markets (waterbed effect) and/or the refusal to provide retail roaming services, at least for certain retail customers.

Further regulation at Union level is therefore necessary to deliver wholesale roaming charges lower than the ones in place and closer to the underlying costs. This would enable RLAH in 2017 while maintaining the sustainability of domestic charging models. Therefore, the Commission is presenting a legislative proposal to the European Parliament and the Council accompanying this review report.

3.2. Stakeholders' views

Almost all operators responding to the public consultation²⁸ agree that setting price caps at Union level, applicable in all Member States, is the most appropriate approach to continue regulating wholesale roaming markets in the RLAH context²⁹.

Operators are, however, divided as regards the level of these caps that would enable sustainable RLAH. Only 28 % of responding operators (certain historic incumbents and operators with a large footprint, and generally operators with large inbound roaming traffic) are of the view that, under the current rules, the functioning of the wholesale roaming markets would deliver RLAH in 2017. By contrast, 53 % (smaller operators, MVNOs, and operators with large outbound roaming traffic) consider that this would not deliver RLAH in 2017. The proportion of operators which do not know (18 %) is significant, while only one operator thinks that it depends on the Member State.

Mobile operators are split along the same lines as to whether the RLAH obligation will increase or decrease competition on the wholesale roaming market³⁰. Operators defending the current caps argue that this obligation will increase competition on wholesale roaming markets. By contrast, operators defending lower caps argue the opposite.

As to the most appropriate regulatory measure at wholesale level in order to enable RLAH in 2017, 28 % of responding operators consequently favour keeping current caps unchanged or removing any wholesale regulation, against 58 % who think that wholesale roaming charges caps should be lowered.

National regulatory authorities and governments express views similar to those of the operators in their countries. Large inbound roaming countries consider that national wholesale roaming markets function well, while large outbound roaming countries take the opposite view. Finally, consumers and consumer associations are cautious in expressing views on wholesale roaming markets since they are not directly involved in these markets.

3.3. The legislative proposal

Home market perspective

Distortions affecting competition and investments on the home operator's domestic markets mostly depend on the risk of margin squeeze due to high wholesale roaming charges

²⁸ For a detailed analysis of the results of the public consultation, see Annex 2 to the accompanying impact assessment.

²⁹ Only 4 out of the 40 mobile operators responding to the consultation (including two respondents from the same company) argue that lifting wholesale regulation would be the best approach.

³⁰ See section 7 in the accompanying SWD.

compared with domestic retail prices that can be applied to the end-user, in particular for smaller/net outbound operators. Simulations at country level and operator level³¹ show that if wholesale roaming charges caps are maintained in 2017 at the current level, RLAH will probably not be reconcilable with domestic charging models. This would undermine the sustainability of domestic charging models for at least 20 % of the operators in the analysed sample and/or in at least six Member States. This is not in line with the Roaming Regulation's objective of enabling RLAH in the Union. Nor is it compatible with the exceptional character of the sustainability derogation possibility, which assumes that the domestic charging model is sustainable under RLAH for all or virtually all operators in the Union, for the benefit of their customers.

In addition, wholesale roaming revenue opportunities are expected to increase considerably with the increase in roaming volumes in the RLAH context and the corollary decrease in underlying wholesale roaming unit costs. This is likely to lead to substantial and growing transfers from outbound operators to inbound operators if wholesale roaming caps are maintained at today's level.

As briefly summarised in section 2.4 above, it is not expected that this issue would be solved by a unique, unidirectional, positive effect of the RLAH obligation on competition on wholesale roaming markets. It is unlikely that RLAH volumes by themselves will contribute to a general decrease of wholesale roaming charges of a magnitude that would reduce the cost of RLAH to a sustainable level, especially for countries where this cost is high in comparison to domestic revenues. New business models and negotiation dynamics among operators may evolve with the establishment of RLAH. However, there is a risk that the negotiating position of the net sender of roaming traffic, including the weaker market players on wholesale roaming markets, would in fact deteriorate further due to the obligation to impose RLAH. In the absence of countervailing measures, this risk cannot be excluded. At the same time, it is legitimate to set safeguard caps at a level enabling operators with greater Union coverage or greater traffic volumes to derive commercial advantages from the possibility of internalising costs within the group or from negotiating better terms with visited operators who have some margin for negotiation relative to their own underlying network costs.

In conclusion, enabling RLAH in the Union in 2017, while maintaining the sustainability of domestic charging models for all or virtually all operators, requires further regulation of wholesale roaming markets so that they deliver lower charges than today. By providing a lower starting point for negotiations, lower caps are expected to deliver lower wholesale market charges than today.

Visited market perspective

With regard to the risks for competition and investment incentives in visited markets, the functioning of roaming markets should ensure cost recovery. This is in order to preserve incentives to invest in visited networks and avoid distortion of domestic competition in the visited markets caused by regulatory arbitrage of operators using roaming access remedies to compete in otherwise competitive domestic visited markets.

On the first aspect, the cost estimates and the information gathered on current wholesale prices on the market show that current wholesale roaming charges are well above underlying costs, in particular for data services.

³¹ See section 6.2 in the accompanying impact assessment.

On the risk of regulatory arbitrage, one should first of all take into account that the visited operators are empowered to include conditions to prevent permanent roaming or anomalous or abusive use of wholesale roaming access on the basis of Article 3(6) of the Roaming Regulation. In this latter regard, contractual terms in wholesale roaming agreements may be used to discourage such practices; usually this is done by excluding permanent roaming from any price discount. The existence of a difference between discounted and non-discounted wholesale roaming charges, hence between maximum charges and possible negotiated prices, is therefore a crucial element enabling operators to control such practices. Also in this case, the proposed measures have been assessed against this risk and the possible measures available to reduce this risk.

In conclusion, there is scope for further reducing wholesale roaming charges caps from the current level, in particular for data services, while keeping the caps above underlying costs in all countries.

New Union wholesale roaming charges caps

In assessing the measures necessary to enable RLAH in 2017, the Commission has considered the policy objectives set out in the Roaming Regulation:

- i. enable a sustainable abolition of retail roaming surcharges for all, or virtually all, operators in the Union, avoiding distortions on the home markets;
- ii. ensure cost recovery at wholesale level, preserving incentives to invest in visited networks and avoiding distortion of domestic competition in the visited markets.

The Commission has therefore sought to minimise the possible cases in which operators would rely on the possibility to obtain a derogation for sustainability reasons by reducing the level of Union wholesale roaming charges, while keeping the caps above underlying costs in all countries (see section 2.2).

The sustainability assessment derogation foreseen in Article 6c of the Roaming Regulation is based on two tests:

- a country-level estimation of the average cost of RLAH for retail roaming providers (home operators) compared with their average revenues;
- a sustainability test at (home) operator level³².

The two tests, based on partially different sets of available data, are complementary and indicative tests of the level of sustainability of domestic charging models with the wholesale roaming charges included in the proposal. The operator-level test in particular is not meant to be an accurate prediction of the actual number of possible sustainability derogations. These will have to be assessed by NRAs with much more data from operators which will actually apply for such derogation than is currently available to the Commission, and on the basis of a method to be further laid down in a forthcoming implementing act.

As a result of this analysis, the Commission proposes to set maximum regulated wholesale roaming charges at 4 €/min, 1 €/SMS and 0.85 €/MB. In the Commission's view, this level:

³² Based on operators' data collected in autumn 2015 in collaboration with BEREC for the wholesale roaming review.

- ensures the recovery of costs of providing wholesale roaming services by visited operators;
- leaves space for competition below the cap;
- keeps investment incentives in the visited markets;
- may act as a safeguard against unwanted permanent roaming or anomalous or abusive use of wholesale roaming access and the potentially resulting national market distortions.

On the retail side, this level of charges should enable RLAH to be sustainably provided by virtually all operators in the Union, including operators with less bargaining power on the wholesale roaming markets. At the same time, operators with wider Union reach will not be deprived of the possibility to derive advantages from this commercial strategy.

Additional measures

The Commission also proposes to allow the visited and visiting operators to agree together to opt out of the regulated cap in favour of an unregulated level, e.g. capacity-based pricing or any other pricing method. The analysis shows that this could bring a positive impact for the wholesale roaming market, in particular in the initial phase of RLAH when there is uncertainty about demand evolution.

Finally, the specific price regulation applicable to roaming entails that an overall Union cap applies to a composite product which may also include other wholesale access and interconnection inputs, including in particular those subject to national or, potentially, cross-border regulation. In this regard, divergences across the Union in the regulation of these inputs are foreseen to decrease, in particular through the prospect of additional measures taken in accordance with the Framework Directive aiming at ensuring greater consistency of regulatory approaches. In the meantime any dispute between visited network operators and other operators on the rates applied to those regulated inputs necessary for the provision of wholesale roaming services should be addressed taking into account the opinion to be issued by BEREC, in accordance with the specific regulatory obligations applicable to roaming, the Framework Directive and the Specific Directives.

Review

The Commission proposes to review the measures adopted by the co-legislators two years after 15 June 2017 and to empower BEREC to collect the data necessary for that review.

The Commission intends to do its utmost to assist the European Parliament and the Council in reaching an agreement on the proposal in the shortest possible timeframe so that consumers of mobile communications services can benefit from RLAH starting from 15 June 2017. This is important to meet the public's expectations and ensure that the EU continues to deliver concrete results for them.