



DTI Consultation

**Consultation on the Proposal for a
Regulation of the European
Parliament and of the Council on
roaming on public mobile networks
within the Community
(Brussels 12.7.2006)**

BT's response

12 January 2007

BT would welcome comments on the contents of this document which is also available electronically at <http://www.btplc.com/responses>.

Comments should be addressed by e-mail to Neena Rupani at neena.rupani@bt.com

Consultation on the proposal for a regulation of the European Parliament and of the Council on roaming on public mobile networks within the Community (Brussels 12.07.2006)

BT's response to DTI's Consultation published 23 October 2006

Executive Summary

- BT supports the aim of the proposed Regulation to reduce prices for roaming on public mobile networks within the EU. However, BT has significant concerns that the Regulation as currently drafted will disproportionately affect the smaller players in the industry, and risk stifling competition and innovation.
- Appropriate robust regulation at the wholesale level should obviate the requirement for regulation at the retail level. Retail regulation should only be considered for those operators whose retail prices fail to fall to a specified average level in a given timeframe.
- BT supports measures to improve tariff transparency, but the measures required by the draft Regulation are highly prescriptive, overly burdensome on smaller operators, impractical and costly to deliver. They risk creating confusion and may result in less information and choice for consumers.

Appropriate aims and regulation

1. BT fully supports the Commission's overall aim of ensuring that mobile roaming charges fall quickly and substantially across Europe for all consumers. BT also agrees that wholesale prices should be brought more closely into alignment with costs. Therefore BT supports the DTI's views on the idea of imposing a price cap on international wholesale roaming charges.
2. BT believes that appropriate and targeted upstream regulation could be designed to be sufficiently robust and thorough such that competition at a retail level ensures that reductions in wholesale costs are passed through to retail charges. This would eliminate the need for additional regulation in downstream markets.
3. BT is unconvinced that the Commission's proposal to set a retail price cap for incoming and outgoing calls will actually lead to substantially lower consumer prices overall. Nor do we believe it will allow suppliers sufficient flexibility to continue to offer innovative products and packages tailored to consumers' preferences. BT therefore has concerns that the impact of this regulation may lead some Mobile Virtual Network Operators (MVNOs) to cease offering roaming in particular countries. Such an outcome would seem to be at odds with the intention of the regulation.
4. The explicit focus on individual call pricing adopted in the proposal is contrary to the development of mobile call pricing over the past 3 years in the UK. In response to consumer demand, pricing has tended to focus on minute bundles and inclusive call packages, the success of which has shown that the customer is focused on overall certainty of cost of service rather than being concerned with the level of individual call costs. There is no basis for believing that when it comes to roaming calls that consumer preferences are any different. The proposed regulation will be in conflict with this trend and possibly stunt competition rather than promote it, as the diversity of approach to propositions is a function of the diversity of customer requirements.

Effect on non-network operators

5. Notwithstanding the above, if retail price control regulation on roaming charges is to be put in place, BT believes the proposal needs to be revised to prevent discriminatory effects on MVNOs. An equivalent revision would also need to be made in respect of any "sunrise clause", whereby retail price regulation would only come into effect after a certain period of time and only if mobile providers had not reduced their retail prices by that time. BT is

encouraged by the concept of a sunrise clause, but there would need to be a tight definition of the tests that would trigger its imposition.

6. MVNOs are a growing segment within the UK offering increased choice to consumers and providing vigorous competition for Mobile Network Operators (MNOs). Across Europe, MVNOs have pioneered innovative price packaging and service offerings and expanded service into new customer segments. At the deepest level of MVNO – where the MVNO is only using the wireless network of their MNO partner rather than reselling MNO propositions as done by Service Providers on a retail minus basis, they will be negotiating a wholesale price for individual call classes from the MNO host which are then a component in the overall proposition to the end customer. In the case of roamed calls the MNOs have the ability to cross subsidise outbound roaming for their customers from the inbound roaming revenues they receive – MVNOs do not have this flexibility today as they do not receive any inbound roaming. Technically any visitors to the country of the MVNO are roaming onto the underlying host network – not the MVNO.
7. MVNOs play an important role in boosting both competition and innovative services such as fixed –mobile convergence. The measures proposed in the draft Regulation appear to take little or no account of the different cost structures on which MVNOs' operations are based. These are different from those of the MNOs, and the proposed measures may therefore have disproportionately adverse impact on MVNOs. BT's concern is that far from protecting consumers from seemingly high calling rates on roaming calls as intended, the Regulation has the potential to reduce competition for mobile services generally and thereby facilitate higher rates and reduced consumer choice in the longer term. This potential arises if, as the Commission proposes, non-network operators are subject to the burden of direct regulation such that their emerging business models are compromised.
8. Unlike network operators, MVNOs:
 - Have to pay wholesale costs (to network operators) that are not subject to any current or proposed regulatory price control
 - Have to pay a handling charge (to network operators)
 - Do not receive payments for inbound roaming calls
9. In general MVNOs operate on lower margins, with lower revenues and smaller customer bases.

Key concerns

10. BT's key concerns, which we expand on below, are that as a result of these differences:

- The combination of retail and wholesale price caps will mean a reduction in margins common to all forms of mobile operators. However the additional costs (such as handling charges) borne by MVNOs will not reduce, eroding the MVNOs' competitive position compared to MNOs.
- The absence of a wholesale price cap in relation to incoming roaming calls gives rise to a risk of margin squeeze common to all forms of mobile operator. However, the additional administrative price mark-up increases this risk for MVNOs, even raising the risk of retail prices being capped below cost. The relatively small size of MVNOs also decreases the likelihood of margin squeeze on one route being compensated by above-average returns on another.
- The transparency obligations would, unless modified, also impose a disproportionate burden on MVNOs, as the costs and complexity of new systems/processes would be borne from a lower revenue/customer base. A more flexible approach, particularly for non-standard tariffs, would alleviate this burden without significantly reducing the practical benefits of greater transparency.

Detrimental effect of proposed regulation

Disproportionate impact on margin

11. The broad effect of the Regulation is to control consumer prices by capping both wholesale and retail prices, so reducing the overall margin for all mobile operators.
12. The specific problem for MVNOs is that they have to pay an additional wholesale charge (reflecting processing costs relating to billing etc) which will not decrease in proportion to the other price changes that are imposed by regulation. The margin reduction is therefore far greater for MVNOs than for MNOs, putting the former at a competitive disadvantage.

Potential "margin squeeze" on inbound roaming

13. The proposed Regulation which sets a retail price ceiling of 130% of average mobile termination rate (AMTR) leaves all mobile players, but especially MVNOs, exposed to the potential of being forced to price below costs. This is due to the fact that the maximum allowable retail charge for an inbound international roaming call will be 130% of the AMTR, whilst the actual MTR for the operator/country in question may well be above this charge.

14. This gives rise to the possibility of a margin squeeze between wholesale and retail prices where the mobile termination rate for the country concerned exceeds the average.
15. The impact of this price squeeze is exacerbated for MVNOs, as these have to pay an additional administrative mark-up to the MNO and so could be forced to set retail price below cost.
16. While some visited countries could clearly have a mobile termination rate below average, partly off-setting this margin squeeze, there is no guarantee of a net balance. The relatively small size of MVNO operators (and sometimes provision of services in a limited number of countries) increases their exposure to this risk.

Pricing transparency

17. The proposed transparency requirements in the Regulation are highly prescriptive as to the methods by which customers are to be informed of roaming charges. To state that all such communications should be done through SMS text or voice call ignores the fact that customers have access to, and may prefer to use, a number of different communications channels. The prime example is the Internet. Given that the obligation applies generally so that the customer may choose to make the request before they go abroad or once abroad it would seem more sensible to offer a broader range of options for how this information can be provided. Whether accessed abroad via the mobile or via fixed access points (which is relatively inexpensive and generally easily accessible throughout Europe in the form of Internet cafes, WiFi hotspots, etc.), customers may prefer to be informed of roaming rates by the Internet and not by the methods specified in the regulation. This inflexibility is all the more worrying, as adequately informing customers of roaming prices using SMS may prove impossible in many situations due to the character limits associated with SMS (164 characters). This will likely create confusion rather than help to inform customers and increase transparency.
18. As MVNOs already operate on lower margins and lower revenues than MNOs, development costs for any transparency measures will have a correspondingly larger impact on them.
19. The provision of personalised tariff data is especially complex for corporate customers who are not on standard tariffs. Pricing 'guidance' may be more appropriate, providing a general indication of prices for the country concerned (which may then be subject to discounts based on the amount spent, for example).
20. The processing time for such calls could also be significant. The availability of information identifying the caller and the customer tariff is limited in the context of roaming. A customer service advisor would therefore have to

obtain the information orally from the customer, adding to handling time and cost.

21. While customers should be updated when tariffs change, the availability of web-based information should render further periodic provision unnecessary.
22. The requirement that all calls and SMS messages relating to tariff enquiries be free of charge to the caller represents an unlimited additional cost to MNOs and MVNOs. Coupled with substantially reduced retail margins it could force some operators to withdraw from offering roaming services and eventually from the market. It is hard to imagine a more market-distorting piece of regulation.
23. Therefore BT believes that the transparency requirements in Article 7 are overly burdensome and prescriptive, particularly for small operators and MVNOs, and particularly in the context of slim or non-existent retail margins (which are the only margins available to MVNOs).