

International Roaming

Preliminary Analysis of a “Roam like at home” scenario based on the proposal of the European Parliament adopted on 3 April 2014

At the time of preparation of this preliminary analysis, there are still uncertainties with regard to the outcome of the procedure for the adoption of a Regulation for a European Single Market for Electronic Communications. The analysis presented in this document is based on the European Parliament's first reading legislative resolution adopted on 3 April 2014 and on consequent assumptions. This input is without prejudice to any future BEREC Opinion or Guidelines on the Fair Use Policies or wholesale roaming market issues or a future final version of the Regulation. In any case, the official positions of BEREC as expressed in the previously published documents prevail in case of doubt.

Preliminary Analysis

On 3 April 2014, the European Parliament (EP) took up the position, within the framework of the procedure for the adoption of a Regulation for a European Single Market for Electronic Communications (TSM)¹, to abolish retail roaming surcharges in order to allow customers to “Roam Like at Home” (RLAH) with a fair use limit.

On 9 April 2014, the Body of European Regulators for Electronic Communications (BEREC) received a request from the European Commission (EC) of advice in assessing the state of the wholesale roaming market and defining the so-called fair use criteria for the use of roaming services in order to contribute to well-informed discussions between the Commission and the co-legislators and to a smooth and predictable transition in the mobile market in anticipation of the forthcoming requirements. To this end, BEREC has collected information from operators and all National Regulatory Authorities (NRAs) within the Member States². This paper outlines the first preliminary findings based on the information received from stakeholders and NRAs and it shall be an input for a discussion at the Stakeholder Forum taking place on 16 October 2014 in Brussels. In case of doubt, the official positions of BEREC as expressed in the published documents prevail³. In the end of the document some questions are raised, to which BEREC seeks further input for its answer to the EC request. Any input from stakeholders is welcomed.

BEREC notes that the legislative procedure is still at an early stage, in particular the Council still has to release its position on roaming, and some relevant parameters for the assessment are still to be defined (e.g. a precise definition of RLAH itself). As a result, a number of assumptions had to be made in order to carry out this review and consequently it can only be considered as a preliminary analysis to allow the identification of the possible scenarios, risks and impacts on the markets that RLAH might bring.

The preliminary analysis is based on BEREC’s understanding of RLAH as defined by the EP that it has to be applied to all customers and to all types of domestic tariffs for all regulated roaming services when periodically travelling abroad. This assumption would mean that in a RLAH model operators are not allowed to levy any surcharge on calls/ SMS/ data sent from a visited country to either the home country or any other country within the Member States until the fair use limit is reached. This definition is the basis for the further analysis of this document. BEREC notes that there are also other interpretations of the concept of RLAH⁴ and therefore suggests to legislators that the future regulation should define the concept of RLAH in a clear and precise way.

¹ Regulation on Telecom Single Market or TSM proposal, see: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0281>

² Member States refer to all 31 EEA Member States (28 EU Member States plus Iceland, Liechtenstein and Norway).

³ BEREC published its views on the European Parliament first reading legislative resolution on the European Commission’s proposal for a Connected Continent Regulation on 17 May 2014, see: http://bereg.europa.eu/eng/news_consultations/whats_new/2203-bereg-publishes-its-views-on-the-european-parliament-first-reading-legislative-resolution-on-the-european-commissions-proposal-for-a-connected-continent-regulation

⁴ Example of another interpretation is: that for a roaming call to a third Member State an international tariff could be charged.

Overall impact of RLAH

BEREC understands that the approach of RLAH could contribute to a Single Market. However, the implementation of RLAH is a complex process and requires a range of risks to be understood and trade-offs to be considered. Preliminary analysis has revealed a number of concerns about the implications of implementing RLAH. These issues are intrinsically linked and should be taken into account in a holistic manner.

An important economic principle is ensuring that operators in both the domestic network and the visited network are able to recover efficiently incurred costs. This principle can be formulated as a requirement that retail prices for roaming services exceed the wholesale roaming charges, which in turn exceed the efficient costs of service provision as follows:

$$\text{retail domestic price} > \text{wholesale roaming charge} > \text{wholesale roaming cost}$$

In order to reduce the risk of domestic tariff increases (waterbed effect), the above mentioned principle entails that every domestic retail price in all Member States needs to exceed the wholesale roaming charge. As this is not the case in a large number of countries, a reduction of the wholesale caps might be needed for operators to provide RLAH on a sustainable basis. However, the potential for reducing the wholesale caps is constrained by wholesale roaming costs and eventual indirect regulation of domestic mobile wholesale access (market 15 of the Commission Recommendation 2003/311/EC on relevant product and service markets)⁵. Failure to allow the visited network to recover its costs may harm dynamic efficiency by undermining incentives to invest and innovate.

The challenge is finding a balance between wholesale charges that are sufficiently low to support RLAH for a fair use without requiring increases in retail prices in domestic countries, and sufficiently high to allow cost recovery and avoid an increase in retail prices in the visited countries or the distortion of national wholesale markets.

An important complication is that both retail prices and wholesale costs vary by country (and between operators within Member States), whereas the wholesale caps are currently set on a uniform basis across the Member States. In addition, there is uncertainty around both retail prices (due to the prevalence of bundling, making it difficult to extract prices per units) and wholesale costs (due to lack of information, particularly in relation to data services).

These circumstances mean that it is not possible to design a perfect solution satisfying the condition in the formula above for all Member States and for all retail tariffs. Consequently, it is necessary to consider in greater detail the scale and scope of the various risks to competition and consumers and the potential for mitigating negative effects through other measures.

⁵ Commission Recommendation of 11 February 2003 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, see: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003H0311&rid=1>

Ability of all roaming providers to offer RLAH on a sustainable basis

The preliminary results of BEREC's analysis show that it might not be sustainable for operators in a large number of Member States to offer RLAH services taking into account the level of the current wholesale caps and existing retail prices⁶.

In most of the countries retail prices are either below the current wholesale caps, or not sufficiently above them to allow a margin to be earned (a situation broadly akin to margin squeeze), particularly for data services. This situation is particularly important where retail prices are based on bundles, so that incremental revenues extracted from roaming services under a RLAH obligation might be significantly below the average retail revenues per unit considered above, while wholesale charges are purely incremental as they are charged on a variable basis.

In this context, if RLAH is to be introduced without other changes to the international roaming regime, BEREC is concerned that mobile operators might review the pricing strategies of their mobile retail tariff leading to waterbed effects. This would mean that domestic retail prices for mobile services may rise, in order to compensate the costs of the obligation to offer roaming without surcharge. A likely effect is that customers who never or seldom travel outside their home country will not benefit from the RLAH obligation and the price for mobile services might increase also for these customers with the potential for distributional concerns affecting vulnerable consumers.

Retail Fair Use Policies (FUPs) are a potential solution to this problem but it needs to balance RLAH objectives and expectations as a tool to avoid market distortions. Its concrete formulation is still to be defined.

An alternative or complementary solution to reduce the impact might be to review the wholesale roaming market and assess if a reduction of wholesale roaming caps or other wholesale arrangements are needed to make RLAH available on a sustainable basis.

Wholesale market issues

The review of the wholesale market must be carried out carefully and should take into account the following issues:

Risks arising from low wholesale caps

Reducing wholesale caps from their current levels might be necessary to allow RLAH to be provided on a sustainable basis. On the other hand, if wholesale caps are too low there is the risk that some operators would not have the opportunity to recover their costs. If the costs of the visited network for providing wholesale international roaming services cannot be recovered from wholesale roaming charges, this raises the possibility that domestic retail prices in the visited country would increase (a waterbed effect).

Wholesale costs vary by country and by operator, whereas the wholesale caps are currently set on a uniform basis across the Member States. BEREC therefore considers that a uniform cap below the highest (efficient) wholesale cost could lead to a potential risk for some operators to sell

⁶ BEREC compared average retail domestic prices with wholesale roaming caps.

wholesale roaming services at a loss, which in turn bears the risk of distorting competition and increase of retail prices in the affected visited countries. In that case, setting different wholesale caps at national level could be necessary but very complex.

Moreover, low wholesale caps can lead to an indirect regulation of market 15. Arbitrage could occur if national mobile wholesale access agreements (Mobile Virtual Network Operator (MVNO) agreements) are bypassed by providers exploiting low wholesale roaming charges to sell SIM cards from third countries (permanent roaming), with the additional costs for international transit the visited networks have to bear.

Restricting access by the use of Article 3 of the Regulation on roaming on public mobile communications networks within the Union (III) (EU) No. 531/2012 (hereinafter “the Roaming Regulation”⁷ or allowing visited operators to enforce a FUP at the wholesale level, in order to limit the availability of wholesale caps to non-permanent roaming situations only, could mitigate some of the risks arising from low wholesale caps but this needs further analyses as to its necessity, its efficiency and its appropriate implementation.

In light of the above analyses, as long as the regulated wholesale caps are set at a level that do not indirectly affect national markets and at the same time permit the visited operators to cover its costs for providing roaming services, there should be no need to impose additional and more complex regulatory measures at the wholesale level.

Risks arising from high wholesale caps

Ensuring that cost recovery for the visited network is possible for all networks in all Member States with a uniform wholesale cap would require that the cap would be set to the level of the highest efficient costs in Europe. While this scenario would guarantee cost recovery, it would imply other risks.

If the costs of the domestic operator for offering international roaming services to their retail customers cannot be recovered from retail prices, the possibility of a ‘waterbed effect’ is rising, meaning the home network raises its retail prices in order to protect its revenues.

A further risk is that some smaller operators (with limited footprint across Member States) are concerned that they would face higher wholesale charges compared to multinational operators placing them at a competitive disadvantage and restricting their ability to compete in retail markets. Compared to the large groups, these operators are not able to steer their traffic on their own networks abroad, and hence are not able to internalize wholesale costs.

In addition, variations in retail prices across Member States could encourage permanent roaming (i.e. purchasing SIMs in countries with low(er) retail prices to be used abroad⁸). Since permanent

⁷ The scope of the Regulation limits ‘regulated roaming services to users when travelling within the Union’. This is taken into account in BEREC guidelines on the application of Article 3 of the Roaming Regulation where ...” requests for access to provide services which are not regulated roaming services are not covered by the Article 3 obligation” (see GL 3, BoR (12) 107, see http://berec.europa.eu/eng/document_register/subject_matter/berec/regulatory_best_practices/guidelines/1015-berec-guidelines-on-the-application-of-article-3-of-the-roaming-regulation-wholesale-roaming-access)

⁸ This scenario seems most likely in the case of data services as they do not need a local mobile number.

roaming might entail much higher traffic volumes than average roaming traffic patterns, this might lead to high wholesale bills. This might be of more relevance when wholesale charges are high.

In order to mitigate the negative effects of some of these scenarios, in particular the risks of permanent roaming described above, FUPs at the retail level might provide a sufficient remedy. The domestic operator will have an incentive to apply restrictive retail FUPs in order to mitigate its losses. Particularly for the lower-price operators, the higher the wholesale charges the more restrictive their retail FUP might need to be. The challenge is to define a retail FUP that provides adequate protection for operators from abuses of RLAH, while ensuring that they are not as restrictive as to undermine the spirit of allowing consumers to 'roam like at home'. However FUPs would not alleviate the potential competitive disadvantage that some smaller operators might experience.

Seasonality issues and capacity constraints

It is expected that the introduction of RLAH will stimulate demand, especially for data services, which leads to concerns that operators might suffer from scarcity of resources, especially in touristic spots. BEREC estimates⁹ that roaming data inbound traffic could rise from residual levels to more than 10% of the domestic traffic in a quarter of the Member States if customers are put in a position to confidently replicate their domestic consumption pattern when using roaming services in the Member States. In some geographic areas, during the main touristic seasons, this percentage could be significantly higher.

The methodology BEREC previously used to estimate wholesale roaming costs did not take into account seasonality effects and hence the circumstance that these costs have a longer period on return of investment. This could lead to a situation where operators face higher costs for specific geographical areas than the yearly average costs calculated on a national level. This issue and its impact should be considered when analyzing the wholesale roaming caps. In this regard, the potential lack of incentives to invest in the necessary resources only for certain periods of the year may lead to either congestion in visited networks or even waterbed effects in visited countries in the case operators opt for building the required capacities. One approach to address this problem could be a capacity based charging model¹⁰ but this would need further analysis.

Mobile Termination Rates

One important driver for wholesale roaming costs of roaming calls is the mobile termination rate as the visited network takes care of origination, transit and termination. The lack of convergence in the level of Mobile Termination Rates (MTRs) creates a risk to a sustainable introduction of RLAH. In the context of international roaming, the level of heterogeneity between MTRs¹¹ might appear

⁹ Estimates are based on data from the BEREC International Roaming Benchmark Reports, answers from NRAs to the BEREC Questionnaires, Eurostat Statistics and Eurobarometer Survey

¹⁰ Operators buy a fixed amount of capacity from the visited network for a fixed price in advance, instead of paying a per unit charge. They are then restricted to this capacity regardless of the actual traffic demand from their roaming customers.

¹¹ BoR (14)55 Termination Rates Benchmark Snapshot (as of January 2014), see http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/4403-termination-rates-benchmark-snapshot-as-of-january-2014-integrated-report-on-mobile-termination-rates-amp-sms-termination-rates

problematic taking into account that the wholesale caps are set at a uniform basis across the Member States.

Currently, the regulation of MTRs is based on the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC) (hereinafter the Termination Recommendation). The aim of the Termination Recommendation is the establishment of a common approach in regulatory treatment of termination rates. The variation of MTRs still exists, which indicates that the current regulatory solutions may not be sufficient in the future in order to cope with risks which the RLAH model entails. However, as BEREC has already stated, regulating MTRs through the Roaming Regulation is not the adequate option considering the broader scope of regulatory treatment of MTRs.

Alternatives to current wholesale regulation

There are some alternative models to regulate wholesale charges for roaming that could have merits. One option would be to introduce a wholesale cap based on a fix price per SIM and lower variable tariffs. Another alternative wholesale regime would be a capacity based charging model. The advantages of such a model could be avoiding network congestions for visited networks (especially in touristic areas), giving stable revenues to the visited operators necessary for network investments recovery and allowing for more flexibility for domestic operators. However, both options would require more in-depth evaluation to judge their desirability.

Retail Fair Use Policies

As stated above, RLAH might not be sustainable for most of the operators in light of the current level of retail and wholesale prices, which might lead to negative effects on domestic markets as explained above.

Under these circumstances, BEREC supports the draft proposal of the EP to establish retail FUPs. The exact limit of the FUP is a crucial factor to which extent the consequences of RLAH are limited. Restrictive FUP might be necessary to avoid the above mentioned consequences, but on the other hand might undermine the intention of the proposal of the EP that customers should be put in a position to replicate their domestic consumption pattern when travelling abroad. Therefore, all the effects RLAH might have on domestic and visited networks should be taken into account when defining the fair use limits. The following two extreme scenarios are based on different assumptions about the wholesale level. A potential solution should be in between:

- If wholesale caps stay at the level of the 2014 caps, RLAH could not be offered on a sustainable basis by most of the operators in the Member States. Especially in countries with very low domestic prices, this might lead to a situation, where operators face a margin squeeze and hence have to increase domestic retail prices in order to recover the costs they have to pay at the wholesale level. This would cause particular detriment to customers that never or rarely roam. If legislators decide that the implementation of RLAH should not lead to such situations, these effects could be limited with the introduction of a restrictive FUP.
- If wholesale caps are drastically reduced even below costs in some Member States, domestic operators in countries with a higher price level might be able to provide RLAH services on a sustainable basis without any restrictive FUP. However, setting the caps at a

level which is below the wholesale costs in a number of countries might lead to a situation where visited operators are not allowed to recover their costs for providing the wholesale roaming service. This might distort the market and lead to waterbed effects in the visited country.

BEREC analysed several potential forms of FUPs and identified a limitation in terms of time (eg. number of days per year) and volume as appropriate options that could be implemented. Furthermore, BEREC considers that the limits should be set as a minimum so that firstly the operators could have some flexibility to set higher limits for some or all tariffs, or even not to apply any limit at all and secondly introduce an incentive to develop competition on the FUP limits that can lead to more generous offers in specific market segments.

Regarding the definition of the exact level of the limits, BEREC analysed several options, such as the average number of days customers of the Member States spend abroad¹² or the European average consumption. For both dimensions the same rule applies: the higher the limit, the bigger the impact of RLAH.

Finally, BEREC suggests that the FUP and the corresponding limits should be defined at a later stage after having a final regulation and thus some of the uncertainties are smoothed out.

Timing for the introduction of RLAH

BEREC is concerned about the proposed short period foreseen between the publication of the implementing acts for fair use criteria and the EC report to the EP on the assessment of the wholesale market (15 June 2015) and the entry into force of the new regulation with the new prices (15 December 2015).

It is considered that FUPs and any adjustment in the wholesale market should be known well in advance before the implementation of RLAH, as operators will need some time to adapt their tariff schemes with the associated technical, legal and commercial complexities that have to be solved.

According to the majority of operators, the implementation of RLAH should not be imposed earlier than a year and a half before the publication of the implementing acts. They argue that this period of time would give them regulatory certainty since it would ensure better consistency and stability with the Roaming Regulation that has fixed the retail roaming price caps until 30 June 2017 with a review by 2016.

Abolition of decoupling measures

BEREC considers that the obligation of the separate sale of retail roaming services (Single-IMSI and LBO) might lose its merits if legislators decide to abolish retail roaming surcharges. This effect and a possible abolition of these obligations if no longer efficient or feasible should be taken into consideration.

¹² The results of the analysis of the European travel pattern show that a limit of 15 days covers more than 90% of Member State customers travelling to another Member State, with 30 days almost 100% (also the frequent travellers) are covered.

Transparency measures and extension of Eurotariff caps

An adaption of the transparency measures should be foreseen when RLAH will be introduced. Customers should be informed by their operators when they reach their fair use limit and receive personalized pricing information when the fair use limit is exceeded. Therefore, BEREC supports the extension of the Eurotariff caps that act as safeguards for the volumes beyond the fair use limits.

Questions

BEREC has identified several questions to which it would seek further input for its answer to the EC request from stakeholders. Inputs on further aspects, which are not explicitly addressed in the questions, are also welcomed.

Wholesale market Issues

1. Do you consider that any wholesale measures are needed (including reduction of caps)?
2. Do you consider that any additional measures (such as wholesale FUPs) are needed to limit the likely negative effects on national markets?
3. Are there any restrictions to implement such measures at the wholesale level?

Termination of regulated roaming calls

4. Do you share BEREC's findings (as presented in the document)?
5. Do you have any suggestions how this problem could be addressed?

Retail Fair Use criteria

6. Do you think that the options mentioned are appropriate?
7. Are there any technical restrictions?

Timing of RLAH

8. Do you share BEREC's concerns as presented in the document above?
9. How much time do operators need to implement RLAH (adapt tariffs etc)?

Decoupling measures

10. Do you share BEREC's views, as presented in the document above?
11. What are the implications if they are withdrawn from the regulation?