

Inputs from Sonaecom – Serviços de Comunicações S.A to ERG Draft Guidelines on EU Roaming Regulation

I. Introduction

a) Roaming Regulation

Regulation (EC) number 717/2007 from June 27 imposed to the mobile operator's certain limits on the charges that may be levied at wholesale and retail levels, for the provision of roaming voice services.

In accordance with Article 11, the Commission has carried out an evaluation of whether the objectives of the Regulation have been achieved. In result of this analysis, on 23 September 2008, it was presented a proposal on amending the Regulation, extending its validity beyond 30 June 2010 and introducing new regulations to data communications services, SMS, transparency measures and charging period (per second basis). Following the approval by the European Parliament, at 8 June the Council voted favorably on the amendment of the Regulation (EC) number 717/2007.

Regarding the proposals, Sonaecom reiterates the arguments previously presented, supporting its view that the intervention on retail prices is an unjustified principle, restrictive of the mobile operators market positioning, namely on their capacity to adapt their offers to the need of its consumers. For similar reasons, the intervention at the wholesale level is regarded as excessive, especially when taken in account that the relevant market has been considered competitive. Moreover, Sonaecom restates its doubts about the grounds for the intervention of the Commission on roaming prices by means of a Regulation.

b) ERG Guidelines

Since 2007, and during the implementation process of the imposed Regulation, the European Group of Regulators (ERG) has been publishing a set of guidelines on roaming, covering issues related with the rules set by the Regulation. Even though these guidelines are complementary to the provisions set out in the Regulation and therefore do not constitute a legal interpretation, they do work as an important instrument of guidance, not only for the operators, but above all for the National Regulators. In the context that arises from the amendments that have been recently approved, the ERG Guidelines assume a crucial role, especially in the extension of the Regulation to new services (such as data communications, SMS and also for the transparency measures).

Sonaecom believes that ERG Guidelines should work as a complement to the Regulation, informing about the best practices to ensure consistency and strict compliance with the rules imposed. Although the Regulation is pretty clear in most of its points, there still remain some open questions where, attending the orientation role that ERG has in the EU NRA's, these guidelines could help to mitigate. In this context, it is also important that the ERG Guidelines take into consideration the inputs presented by the mobile operators in the definition of the best practices.

Given the above, Sonaecom takes this opportunity to present a few suggestions and expects to see some of the proposals clarified, in order that all stakeholders can clearly and unambiguously use the provided guidance as a tool to support the compliance of Regulation (EC) number 717/2007.

II. Comments on ERG Draft Guidelines on International Roaming Regulation

Retail issues

a) Basic personalized pricing information: voice, SMS and data

Article 6 (transparency of retail charges for regulated roaming calls and SMS messages) states that information to be sent to the customer when he enters a Member State other than his home network *"shall also include the free of charge number (...) for obtaining more detailed information and information on the possibility of accessing(...) and information on the possibility of accessing emergency by dialing the European emergency services by dialing the European emergency number 112 free of charge."* Sonaecom's interpretation on this subject is that operators must send a message when customers enter a Member State which must include the free of charge number to access more details, namely the *"information on the possibility of accessing emergency by dialing the European emergency services by dialing the European emergency number 112 free of charge"*. That is, the 112 emergency number does not have to be mentioned on the message text. As regarding with the suggestion for inclusion of charges for sending a roaming MMS, Sonaecom believes that most customers are not familiar with MMS and not all handsets have this functionality. Therefore this should not be an option to be considered. Moreover, it's not understandable the need to communicate MMS prices as the Regulation does not mention it.

The document introduced a new Article – 6a – which imposed transparency and safeguard mechanisms for **regulated** data roaming services. As a starting point, considering that the Regulation only imposes regulated prices to **wholesale** data roaming services, it could be questioned if this obligation is applicable to **retail** data roaming services.

Within transparency and safeguards mechanisms for retail data roaming services, Sonaecom has been guiding its actions in an effort to provide information to its customers over the tariffs charged for these services and also about the risks inherent to an uncontrolled use of data roaming services.

According to the mentioned Article 6a, by 1 July 2009, operators should be able to send personalized tariff information for data roaming services every time the customer enters a different Member State and initiates for the first time a regulated data roaming service in that particular Member State.

As regards to Mobile handsets it's proposed by ERG to send two messages: the first one as soon as the customer enters a new Member State, together with the information required under Article 6. A second message to be sent when the customer connects to data roaming services, regardless of whether the information was sent when the customer enters the Member State. This proposal makes the Regulation even more demanding, something that must be avoided in these Guidelines. That is, ERG Guidelines should help to understand and better implement the Roaming Regulation and should by no means impose further requirements or difficulties.

While the Regulation doesn't specify directly the means of sending these messages, ERG suggests as possible solutions: SMS, e-mail, pop-up window or a landing page. As ERG recognizes, the last two mentioned solutions are technically difficult (if not impossible) to implement over mobile handsets. So, in this case, the solution for handsets would be an SMS.

However, considering what is imposed by the Regulation - that information must be sent as soon as the customer initiates a data session in a different Member State – how would it be guaranteed that the customer has access to this message, prior to using the services? For instance, this might happen when a roaming customer uses its handset to retrieve e-mails: as soon as the home operator detects this data session and a SMS with tariff information is sent to the customer, upon detection from the home operator, the customer has already started the data session and is charged for using data services. Furthermore, the customer might notice an SMS coming in the background but probably won't read this message until he has finished his e-mail application. Another example of this situation would be a received MMS, which involves data transmission/reception, but where the customer might be using data without noticing and is taxed before receiving the informative message.

The fulfillment of this obligation on the proposed terms raises further questions. The solution proposed by ERG (sending two messages to mobile handset users) could lead to overloading clients with too many informative messages, which might cause dissatisfaction and lead them to

disregard it. It should also be considered the question of costs and required developments associated with the transmission of multiple SMS.

It is noted that retail data roaming offers are characterized by a diversity of services and charging prices. As referred to tariffs, these could present a significant variation depending on the service used and the host operator in the Member State. Thus, Sonaecom draws attention to the possible complexity associated with the information to be sent and suggests that a single message is sent when a customer enters the Member State, informing that data roaming prices are available through a free of charge number.

Maximum charging intervals

a) Retail voice calls

It is mentioned (point 44) that *“The Regulation does not prescribe a minimum or maximum charging interval for other roaming retail voice calls made or received”*. Sonaecom would like to see it clarified which calls fall under the category of *“other roaming retail voice calls made or received”*. Our understanding is that the ERG Guidelines exclude calls outside the scope of Regulation such as those originated/received in non regulated territories and Premium rate/value added calls.

b) Wholesale voice calls

As far as mobile originated voice calls are concerned, wholesale level operators are allowed to extend the initial charging period up to a maximum of 30 seconds. Sonaecom understands that the operator can round up to 30 seconds the charged duration of any mobile originated call which actual duration is below this value. However, the operator cannot charge a setup fee of 30 seconds **on top** of the actual duration.

That results in: (i) A call of 1 second can be charged for 30 seconds (maximum); (ii) A call of 10 seconds can be charged for 30 seconds (maximum); (iii) A call of 31 seconds can be charged for 31 seconds (maximum).

Wholesale issues

a) Wholesale voice and data roaming

Sonaecom suggests that instead of insisting on the fact that the average price cap on the voice, SMS or data services shall be calculated on a 12-month period, ERG Guidelines should advise

operators to apply the regulated roaming prices (voice/ SMS/data) at the wholesale level on the Tap file, as to avoid bigger operators to overcharge smaller operators and to adjust prices at a later stage.

b) SMS

Sonaecom's understanding of what is stated in the New Roaming Regulation is that regulated roaming SMS messages are the ones which are sent **from** a roaming customer of an operator of a Member State, roaming in a Member State, **to** a client of a Member State; this is irrespective of his/her location (the recipient can for instance be roaming in a non EU country).

Under such interpretation, the following scenarios would fall under the scope of the SMS Regulation:

- A French mobile customer roaming in Portugal sends SMS to a French customer in Paris;
- A Portuguese mobile customer roaming in Greece sends SMS to a French customer roaming in Brazil.

Attending to this, the ERG Guidelines must clarify this matter.

General issues

a) Value-added services

According to the Roaming Regulation SMS messages which are sent to value-added numbers are not regulated. However, in a wholesale perspective, when involving roaming in, the operators are not able to identify that these numbers are value-added numbers.

b) Charges in currencies other than the Euro

Sonaecom doesn't see as reasonable that two different dates for the publication of exchange rates on the Official Journal of the European Union (6 May 2009 for SMS and Data and 1 June for voice) may apply. In a perspective of gaining greater consistency, Sonaecom suggests the adoption of a single date.