

Response to ERG Guidelines
T-Mobile Netherlands B.V.

T-Mobile Netherlands B.V. (hereafter “T-Mobile”) welcomes the draft ERG guidelines on roaming and would like to take this opportunity to give its comments on the Guidelines, as specified hereunder.

1. According to section 10 and 11 of the ERG Guidelines, Article 6a(2) requires a notification to be sent every time the roaming customer enters a Member State 'and' initiates for the first time a regulated data roaming service. This means that the customer receives two messages, in case the customer enters a Member State and subsequently connects to data roaming services. The word ‘and’ should be replaced by 'or'.

First of all, it was not intended by the Parliament that the customer receives two messages. The Parliament’s proposal as given in the Presidency compromise proposal dated 26 March 2009 says: “Such basic personalised tariff information shall be delivered to the roaming customer's mobile telephone or email address or via a popup window on the computer every time the roaming customer enters another Member State or initiates a regulated data roaming service in a particular Member State other than that of his home network for the first time after having entered that Member State.”

Moreover, any specification which requires such basic personalised tariff information to be sent when “*the roaming customer (...) initiates for the first time a regulated data roaming service*” adds huge additional complexity to the implementation of the “Basic tariff information” feature and might even fail due to technical constraints of certain mobile data applications.

It is sufficient to send only one message, since this reduces the risk that the SMS-messages are regarded as “spam” by the roaming customers, thus having a negative association of customers.

For the above reasons, the ERG Guidelines should cover those clarifications.

2. According to section 22a and 24 of the ERG Guidelines, the financial and volume limit must also be made available to prepaid customers. T-Mobile disagrees with the ERG Guidelines that bill shock measures are to be applied to roaming prepaid customers, for the following reasons:

It is in the nature of prepaid customers’ subscriptions that prepaid customers manage their own individual maximum financial limits of their subscriptions by their own. If an individual maximum financial limit is reached, the prepaid customer has to explicitly top up his/her account in order to allow for additional communications. This mechanism applies to all services and independent of the location of the customer – i.e. it applies in the home market as well as in the roaming scenario. Regarding data roaming services, the prepaid mechanism automatically guarantees

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Consequently, in case a home provider would apply a specific maximum financial limit according to Article 6a(3) to a prepaid customer, such a financial limit would interfere with the prepaid customer's individual maximum financial limit actively controlling his/her expenditures in the home market as well as in the roaming scenario.

In addition, adding a specific maximum financial limit for prepaid customers is technically very complex and cannot be financially justified.

Furthermore, if a home provider would be requested to apply a specific maximum financial limit according to Article 6a(3) also to prepaid customers, such an implementation would be required to be based on a "monthly billing period". Such a "monthly billing period" however does not exist for prepaid customers – a situation which is explicitly confirmed by the ERG in section 24.

3. According to section 22 of the ERG Guidelines, prepaid customers should be able to limit their spending on data roaming. This will result in an investment in the prepaid IT infrastructure of T-Mobile that can not be justified.
4. According to section 23 of the ERG Guidelines, the policy intention behind Article 6a(3) is to ensure that customers are unable to spend more on data roaming than they have consented to before starting the connection, thereby given them control on their expenditures. Therefore, according to the ERG Guidelines, T-Mobile does not have to make special arrangements for customers that pay separately for data access, since these are automatically protected from bill shock.

Following this line of argument (that customers should be protected from bill shocks), it would be fair to say that the Regulation does not object to the situation where an entity applies more severe measures to protect its customers from bill shock. I.e., according to the Regulation, the default financial limit must be close to but not exceed €50,- of outstanding charges per monthly billing period. But what if an entity currently already applies a measure whereby the default financial limit for its customers is lower than the €50,- per month imposed by the Regulation, thereby protecting its customers even more than officially needed. Does the regulation object to such more severe measures by an operator?

In addition, if the Regulation does object to the situation where an entity applies more severe measures to protect its customers from bill shock and T-Mobile is forced to

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For the above reasons, the ERG Guidelines should cover those clarifications.

5. According to the Parliament's proposal as given in the Presidency compromise proposal, "the home provider may offer to its roaming customers other limits with different, that is, higher or lower, maximum monthly limits".

It is unclear for T-Mobile, whether a specific choice by the customer for a different specific data roaming product results in a customer opt-out for the Regulation. This should be the case when a customer is fully informed by the general product conditions and it is clearly stated that by choosing this product, the customer will automatically opt-out for the Regulation. This could mean that a customer would choose a certain data bundle for €40,- and after using all data, the customer will pay a fixed price per additional MB until the next billing period.

6. According to section 35 of the ERG Guidelines, T-Mobile must allow their customers to opt-in for a facility that provides information on their accumulated consumption expressed in volume or in the currency in which they are billed by 1 March 2010. At the latest on 1 July 2010, T-Mobile should provide a standard maximum of €50,- for all customers that have not opted-in.

T-Mobile would like to receive clarification if it may implement and provide the facility to diminish bill shocks to their customers at the latest on 1 July 2010 (having given them the opportunity to indicate their choice from 1 March onwards)?