Europe

GSMA Comments on Elements of the Draft Proposal for a Single Electronic Communications Market Regulation 24 July 2013

Introduction

The European Commission has rightly recognised that underinvestment in Europe's telecoms infrastructure is holding back the region's growth and competitiveness, impacting all sectors. The initiative on the single electronic communications market represents a unique opportunity to set Europe back on the path to growth with a policy and regulatory framework for telecoms that can boost investment and deliver the services consumers are looking for.

The developing proposals must be assessed against this objective and our understanding of the current draft suggests that they fall short and, overall, will be value destructive for the industry. A more deregulatory, consistent and pro-investment reform agenda is required.

We welcome the Commission's recent efforts to share the detail and thinking behind its proposals. However its efforts to finalise an effective and balanced package against a very tight legislative time-table are handicapped by the need to accelerate procedures beyond what is compatible with a full and thorough stakeholder consultation.

For example, the discussions on detail in which we are now engaged would have been more effective prior to the start of the internal inter-service consultation. These reforms will set the context for investment in our industry and Europe's growth for the next ten years. It is vital we get them right.[1]

When measured against the overall growth and investment objective, there are positive and negative elements in the package. We would note that the impact of many of the negative elements will be felt almost immediately against the bottom line, while the constructive elements contained in some of the spectrum and net neutrality provisions will impact over much longer time-scales and/or risk being weakened through the course of the legislative process.

This paper focuses on the major value destructive elements of the package: those relating to roaming and international calls. Our comments are not exhaustive and we would emphasise that there are other areas where we have concerns.

1. Roaming Provisions

Any legislative overlays to Roaming III can only undermine the regulatory certainty needed to support investment in this sector. The current legislation was only adopted last year with widespread support from the European institutions, the most significant changes will be implemented by next year, and the review is scheduled for 2016.

[1] For the avoidance of doubt, the GSMA formally reserves its views on the process regarding the adoption of the draft proposals.

Mobile network operators are intensively implementing the technically complex provisions of the new Regulation, with the costs expected to run into several hundred million euro. Any new provisions will necessarily impact Roaming III. Operators implementing its structural provisions require stability and certainty – and the same goes for any alternative roaming providers considering entry into the market.

Market dynamics will deliver roaming prices close to domestic in the timetable foreseen in Roaming III, driven in particular by the move from voice to more price elastic data usage. The rebalancing is under way and successive waves of EU roaming regulations only hinder the process.

The Commission's stated intention of eliminating the roaming/domestic price differential would have an immediate impact on annual operator revenues estimated at between **€1.3 and €2.0 billion** depending on price elasticity.

Wholesale price cap cut for roaming

We understand that the Commission is considering sharp reductions in wholesale price caps in order to incentivise the involvement of operators in the proposed "alliances". Our view is that these cap reductions will create the opposite effect by making the alliance option less attractive through limiting the room for commercial negotiations.

Furthermore, these proposed cuts would create arbitrage effects on domestic revenues since an operator or MVNO would be able to offer 'permanent roaming' in a number of Member States at prices below the prevailing domestic rates in those markets. Those reselling roaming access would profit in the short run, without having to make any significant investments in networks or spectrum. This impact on domestic revenues is something the Commission has stated it wishes to avoid.

The estimated impact on mobile operator revenues of the proposed reduction in wholesale roaming caps falls into two categories: the direct impact on wholesale roaming revenues and the arbitrage effects on domestic revenues. The former's impact is estimated at **€350 million**. The impact of the proposed wholesale caps on domestic revenues in certain markets due to arbitrage activity is potentially orders of magnitude larger and runs into billions of euro. For example, in the very conservative case that arbitrage activity resulted in just a 5% reduction in domestic retail revenues in the following four markets: Belgium, Netherlands, Spain and UK, there would be an estimated impact on operator revenues of **€2.1 billion.**

Concept of roaming "alliances"

We would emphasise several concerns with the roaming "alliance" proposal as currently drafted. First, it is complex and will be difficult to enforce. Several details would need to be clarified before individual operators could make informed decisions on whether to join or continue with their obligations under the Roaming III Regulation. For example, the Commission plans to task BEREC with developing guidelines on "reasonable use" by December 2014. This key factor would remain uncertain up until that date.

Second, the implementation of the separate sale of roaming services will be almost complete by the time any eventual Regulation is adopted. Operators will already have sunk the costs to implement the provisions to support alternative roaming providers by the deadlines set by law. We do not yet see how the Commission intends to remedy this mismatch in time-tables.

Elimination of charges for incoming roaming calls

We understand that the Commission is planning to eliminate charges on incoming roaming calls. The current roaming regulation has these capped at 5 cents from July 2014. Nothing in the way such calls are

provided has changed to justify this. This pricing element is fundamental as it covers costs related to the delivery of calls from home operator networks into other Member States. We estimate the impact on mobile operator revenues of these provisions at **€290 million**.

One consequence of removing incoming call charges will be the exposure of operators to differences in mobile termination rates (MTR). Levying a charge on customers for receiving the roaming call enables this differential to be covered.

2. Intra EU international calls

We understand that the Commission is considering the introduction of a form of non-discrimination for intra-EU international calls and would like operators to change the way these offers are structured. We would urge the Commission to withdraw these provisions when finalising the draft Regulation.

Under the existing regulatory framework the international voice call market is not considered transnational, but part of national unregulated retail markets. According to the first Recommendation on Relevant Markets, only fixed international calls were potentially subject to ex-ante regulation. In practice, these markets were quickly deregulated because of the range of calling options available to consumers. Furthermore, mobile retail calls, apart from international roaming, have never been regulated.

The Commission has emphasised that its draft proposals in this area would not require intra EU international calls to be set at domestic prices. However, the complexity associated with alternative pricing structures (based on distance, zones or transit types etc.) makes the full elimination of tariff differentials between domestic and intra EU international calls the most likely scenario. Therefore we estimate the impact on mobile operator revenues of these proposals at **€2.23 billion**. This amount includes all outbound calls from mobile to both mobile and fixed lines, but not outgoing fixed line calls.

3. Summary – Impact on Revenues

	Description	Mobile Operator Revenue Reduction(1)
Retail Roaming	Impact of losing retail roaming revenues as a result of joining alliances and offering the services at 'domestic' equivalent rates (Range is due to impact of price elasticity effect)	**€1.3bn - €2.0bn**
Incoming Calls While Roaming	Impact of not charging customers for incoming calls while roaming	**€290m**
International Calling (IDD) Revenues	Impact of rates for Intra-EU IDD calls reducing to align with rates for domestic calls	**€2.23bn**
Domestic Arbitrage	There is also likely to be an impact on domestic revenues in certain markets due to the arbitrage of roaming rates undercutting domestic tariffs	**Billions of euros**

Wholesale Revenues(2)	Additional reduction in wholesale revenues as a result of the proposed price caps	**€350m**

(1) Over and above the impact of the caps which will come into effect in July 2014 as part of "Roaming III"
(2) Wholesale revenue loss is additive for an individual operator, but not for the market as a whole
Source: A.T. Kearney analysis