



ERG (07) 86rev1 080623

INTERNATIONAL ROAMING REGULATION

ERG Guidelines - Final Release¹

Introduction

- 1) This final set of ERG guidelines follows on from the two releases published over the summer. The first release, published on 5 July, covered roaming offers and tariffs, and in particular the Eurotariff. The second release, published on 22 August, covered various other issues, including transparency, currencies other than the Euro and geographical scope of the Regulation.
- 2) There were limited responses to the previous releases, though some amendments have been made and are reflected below. This release consolidates the 2 previous releases (with some re-ordering of material). However, much of the first release related to the obligations placed on providers in the first 3 months after the Regulation came into effect. Much of this guidance is no longer of relevance and has been excluded from this final release. The second release covered various other issues on which ERG considered guidance would be useful.
- 3) As before, these guidelines are complementary to the provisions set out in the Regulation, and are not presented as a legal interpretation of those provisions.

Retail issues

Transfers between Tariffs

- 4) Article 4(4) grants the right to all customers to request a switch between roaming tariffs, normally within 1 working day of the request. The service provider is permitted to enforce a minimum tariff period for the customer's previous roaming tariff before activating such a request, provided that the minimum period does not exceed 3 months.

Bundling of roaming regulated retail tariffs and other retail tariffs

- 5) Article 4(1) provides that a Eurotariff may be "combined with any retail tariff". Therefore retail tariffs for services other than regulated voice roaming calls (eg. tariffs for domestic and international voice calls, for domestic and international SMS and for mobile data services) must not be offered on the basis that they cannot be combined with the Eurotariff.

¹ Amended June 2008, paragraph 18



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- 6) However, it is not the intention of the Regulation to prohibit the sale of special roaming tariffs which may be advantageous to certain customers. The continuation of such tariffs is explicitly provided for in Article 4(3). For example, tariffs which provided attractive rates for roaming calls to or from certain third countries and higher rates (than under the Eurotariff) for roaming calls within Europe may be offered provided at all times that customers can choose the Eurotariff in accordance with Article 4.4.

Automatic welcome SMS messages

- 7) Unless they have opted not to receive such messages, all customers are entitled to receive a message by SMS on first arrival in a member state during a trip abroad. Such a message must:
 - a) provide roaming tariff information which is personal to that customer;
 - b) specify the maximum charges for roaming voice calls made back to the subscribers home country and within the visited country, as well as for calls received that a customer will pay under his tariff scheme; and
 - c) specify a freephone number from which the customer may obtain more detailed information on voice or data calls

In addition, ERG considers that it would be good practice to:

- d) where necessary, distinguish between charges which differ by the host networks for that country; and
 - e) specify the maximum rates which a consumer pay for a regulated roaming call made and received, where these are higher than the rates specified under (b) above
- 8) There is no requirement for further messages to be sent where the host network changes during a visit to a country. The information relevant to the new host network should have been covered by the initial message, as noted above. In practice, most customers would be likely to prefer not to receive subsequent messages during the same visit.

Additional detailed information

- 9) Where a customer contacts their home provider regarding further detailed information, the home provider should ensure that the information is immediately available, regardless of time of day. If using automated machines to comply with the obligation, the home provider should ensure that the customer can access the required information speedily and easily.
- 10) Furthermore, if contacted via SMS, it would be reasonable for the home provider to opt to send only essential personalised pricing information applying to voice calls, SMS, MMS, and other data communication services to its customers, where the detail of charges is complex. In this case, the home



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provider should make reference in its SMS message to the free of charge number designated for voice calls to get additional information.

Wholesale issues

Reductions in wholesale charges

- 11) The caps on wholesale charges apply to the average charges levied by any one network operator on any other. Charges may differ by time of day and at different times of the year and must be compliant when assessed on a one-year basis.
- 12) This maximum is an average charge to be calculated over a 12 month period. The necessary adjustments should therefore be made to existing wholesale rates to ensure that the average price cap is met by the end of the 12 month period. Network operators should enter into early bilateral negotiations in good faith with a view to adjusting the contractual pricing provisions as soon as possible. The result of such negotiations should provide assurance on both sides that the limits in the Regulation will be respected over the 12 month compliance period. ERG believes that 6 months after the Regulation came into effect should be a sufficient timeframe for such negotiations, which should therefore be complete by the end of 2007. One method of achieving this would be for a provider to implement a unilateral price cut so that charges levied after 30 August are transparently consistent with the Regulation.
- 13) Some providers expressed concern that wholesale charges would be maintained by other providers at their existing level throughout 2007 and much of early 2008, with the intention of making a reduction at a later stage to bring the annual average charge into line with the Regulation. ERG understands that this could have a significant adverse effect on cash flow of some operators, given the need to make immediate sharp reductions in retail tariffs from Summer 2007. In the absence of explicit bilateral agreement between the parties, ERG therefore considers this to be an unacceptable commercial practice, notwithstanding that it is not explicitly prohibited by the Regulation.

Example: Provider A maintains existing charges to Provider B until February 2008. In the absence of explicit agreement between the providers, the rates charged by A for March to August 2008 would need to take account of the above-cap rates in the first 6 months. If, for example, the rate charged for the first 6 months was double the regulated maximum, the maximum permissible rate for the second 6 months would be close to zero (after taking due account of pricing elasticity).

- 14) Where it becomes clear to a provider that overcharging of a wholesale customer over the year as a whole is likely, on the basis of expected traffic patterns, immediate remedial action should be taken.



General issues

Minimum/maximum charging intervals

- 15) The Regulation does not prescribe a minimum or maximum charging interval for regulated roaming calls. However, charge limits are expressed on a per minute basis. On condition that a provider does not under any circumstances adopt a charging interval that would give rise to a charge exceeding the maximum permitted levels when expressed on a per minute basis, ERG takes the view that the matter can be left to market players to adopt a convenient charging interval.
- 16) Nevertheless, the matter is of considerable interest to regulators and to stakeholders. ERG would consider it inappropriate if market players generally exploited the opportunity to increase the minimum charging interval, so as to claw back some of the wholesale price reduction. Where providers adopt a minimum charging interval of multiple numbers of seconds (for example, 30 seconds or 1 minute) the effective rate charged per second will be significantly greater, on average, than the rate implied by the charge limit.
- 17) ERG therefore proposes to monitor carefully both the rate charged per chargeable minute and the rate charged per elapsed minute, so as to be able to report on the size of the difference, in particular to the Commission for the purposes of their review of the Regulation in 2008. This will include reporting to the Commission on practices which have clearly changed following the entry into force of the Regulation.

Charges in currencies other than the Euro

- 18) The relevant exchange rate for charges in currencies other than the Euro for the first 12 months is the one quoted in the Official Journal for 30 June 2007² (and for following years the one quoted for 30 July).
- 19) The charge limits for the Eurotariff and the wholesale average charge should be calculated to the maximum number of decimal places permitted by the official exchange rate. This sets the maximum that can be charged in the national currency. Providers may wish in practice to quote charges in whole numbers of currency units, especially at the retail level, although this in practice is not compulsory. In this case, the numbers should be rounded down. Rounding up of these numbers to above the level of the relevant cap is not permitted under any circumstances.

Scope of regulated roaming call

- 20) For the purposes of Articles 3, 4 and 6 of the Regulation, a "regulated roaming call" comprises only voice calls and does not include either FAX or data calls, nor does it include Premium Rate Service (PRS) calls.

² Official journal C 145 of 30/06/2007, p.14



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Roaming calls made to/from ships and planes

- 21) The Regulation does not apply to calls made to/from ships and planes using satellite networks.

Geographical scope of the Regulation

- 22) The Regulation applies to calls made and received within the EU. ERG is aware that GSM Europe has prepared a table outlining its understanding of the inclusion/exclusion of various offshore territories of the EU, including the Outermost Regions defined in Article 299 of the Treaty. ERG has reviewed this table and has no comments on it. However, it should be noted that Article 299 of the EU Treaty sets out the definitive position; market players are strongly advised to consult the EU Treaty in this regard.

Application in EEA Member States

- 23) The scope of the Roaming Regulation has now been extended to the European Economic Area (EEA) Member States (Norway, Iceland and Liechtenstein), pursuant to the EU/EEA Agreement.
- 24) On 22 December, the European Free Trade Association (EFTA) Secretariat announced that the Roaming Regulation had entered into force in the EEA from that date.
- 25) From this time, network operators based in Iceland, Norway and Liechtenstein will be entitled to wholesale roaming on regulated terms from EU providers and will be required to offer such terms to EU providers.
- 26) As a consequence of the entry into force of the Roaming Regulation, the maximum rates for roaming as set in the regulation will apply throughout the territory of the EEA, i.e. all 27 EU Member States plus Norway, Iceland and Liechtenstein, which means that operators in all EU Member States and in the EEA States should apply the regulated tariffs from this date on.
- 27) Further information on application of the Roaming Regulation in EEA Member States is available from the EFTA Secretariat website at <http://secretariat.efta.int/>.

January 2008³

³ Amended June 2008, paragraph 18