



ERG response to the European Commission's call for
input on its proposed EC Regulation in the international
roaming market

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Section 1

Executive Summary

1.1 This response to the Commission's call for input is submitted on behalf of the European Regulators' Group and the Independent Regulators' Group¹. However, the Spanish Member of ERG and IRG (CMT) has stated that it is unable to subscribe to this response. ERG's² response to the Commission's specific questions is included at annex 1.

1.2 Commissioner Reding has been pressing mobile network operators for some time to reduce retail tariffs for international roaming, which are considered to be very high. While there have been some positive developments, ERG considers that the market is unlikely to address this issue fully in the short to medium term. This is because high retail prices are underpinned by wholesale roaming charges which appear to be several times above the level of costs. There are constraints therefore on the reductions that can be made to retail prices without a corresponding reduction at wholesale level, with currently no reasonable expectation that the latter will take place quickly. In addition, high retail mark-ups also appear to exist.

1.3 ERG supports the Commission's approach to tackling this issue by means of an EC Regulation. It has put considerable effort into analysis of roaming services using the tools provided by the current Framework³. While ERG believes that the Framework is generally sound, as it has already noted in its response to the Commission's call for input dated 25 November 2005, it is less able to deal with the specific competition problems that arise in the exceptional case of international roaming markets.

1.4 ERG has developed six high level criteria, based on the principles of regulatory best practice which it believes should be used to assess possible forms of regulation. ERG considers that any regulation should be:

- Coordinated: implemented at the same time and in a consistent way across the EU;
- Effective: in reducing retail roaming prices substantially and quickly;
- Avoid distortion: in other, potentially competitive, mobile markets;
- Simple to implement: to avoid lengthy delays and provide legal certainty;
- Flexible: to protect incentives for continued investment and innovation; and
- Subject to review: in line with good regulatory practice, to allow for an exit from regulation when appropriate.

¹ The European Regulators Group comprises 25 authorities from the EU Member States. The Independent Regulators Group comprises those 25 authorities plus authorities from Iceland, Liechtenstein, Norway, Switzerland, Bulgaria, Croatia, Romania and Turkey

² Purely for ease of reading, views in this paper are attributed to "ERG", rather than to "ERG and IRG"

³ ERG document ERG(05)20Rev1 - available at: erg.eu.int/doc/publications/consult_wholesale_intl_roaming/erg_05_20_rev1_wir_common_position.pdf

1.5 ERG considers that wholesale roaming markets are very similar throughout Europe and are susceptible to a uniform approach. However, this is not true of retail roaming markets. Consistency with principles of best regulatory practice requires flexibility to take account of national circumstances.

1.6 The principles underlying the Framework lay down that retail regulation should be imposed only to the extent that wholesale remedies are ineffective. ERG believes that this principle should be respected in framing the proposed Regulation. Given well-designed wholesale regulation, market forces should be able to play a strong role in bringing down retail tariffs. Nevertheless, it recognises that this cannot be left to chance. This has informed the proposals set out in this paper.

Preliminary conclusions

1.7 Against the background of the objectives and criteria set out above ERG considers that the following package of remedies will score well against those criteria:

- A uniform Europe-wide cap on wholesale roaming charges, set at a level of a reasonable maximum charge. ERG suggests one possible mechanism for setting a benchmark cap but others may be worth investigating. The example mechanism suggested by ERG would lead to reductions in average wholesale roaming charges of around 60%.
- Construction of a robust and authoritative index of retail international roaming charges so as to allow movements in average (or typical) charges to be monitored over time. In particular, this would permit transparency as to whether wholesale price reductions were being passed through to reductions in retail roaming prices.
- An obligation for MNOs to supply data regularly to the respective NRAs so as to allow monitoring of the index mentioned above.
- If market forces prove insufficient to guarantee substantial pass through of wholesale reductions to the retail level within a defined period, a form of retail price control might be needed. This will need a defined mechanism for implementation, which requires further consideration. ERG has not yet defined a concrete retail remedy, but it might for example:
 - (a) enforce a maximum permitted level of retail roaming charges if not already implemented voluntarily by the MNOs; and/or
 - (b) provide NRAs with powers to implement further reductions, to the extent that the benefits passed on to end users by MNOs, whether voluntarily or as a result of (a), were not commensurate with the level of wholesale charge reductions faced by the MNOs.

1.8 Benchmarking wholesale prices to a European wide cap has the benefit of minimising distortions in other mobile markets. Further, compliance monitoring of the cap can be undertaken directly by MNOs purchasing wholesale roaming services.

1.9 While various benchmarks may be used, one reasonable possibility would be to set the cap at double the benchmark mobile termination rate. The rate could be set towards the higher end of the EU average MT rates (for example, at the 75th percentile) to ensure proportionality. This is discussed further in Section 4 of this response.

1.10 The considerations arising from the suggested retail remedies are discussed further below. However, ERG believes that if retail remedies are required, then this should be in combination with remedies at the wholesale level to avoid significant distortions arising from retail-only regulation. Further, differences in national retail markets are such that they are not susceptible to uniform Europe-wide remedies of the type proposed above for wholesale roaming. Consequently, while a safeguard level of retail price reduction might be implemented on a Europe-wide basis, in order to remove the risk of exorbitant prices for particular types of call, a measured and proportionate regulatory regime will need to respect national market differences.

1.11 ERG considers further work, especially in relation to the detail of any Regulation is required. Once the detail of any Regulation is formulated, a Regulatory Impact Assessment (RIA) will need to be undertaken. ERG has had some early thoughts on what an RIA would need to consider, these are provided at Annex 3. ERG would like to offer its resource and expertise to the Commission in taking forward the work to develop and formulate an appropriate EC Regulation.

Section 2

Introduction

2.1 The European Regulators Group (ERG) understands from Commissioner Reding's speech to ERG on 8 February 2006, that the primary purpose of an EC Regulation in relation to international roaming services is to reduce substantially the current levels of retail prices for these services. This approach is necessary given the apparent inability of the Framework to deal with concerns over the current level of retail prices prevailing across the EU. While, as yet, there is no firm proposal for an EC Regulation, the Commission is seeking views from interested parties as to the form and application that it might take.

2.2 This response to the Commission's call for input is submitted on behalf of ERG and IRG. One regulatory authority, CMT in Spain, has not been able to agree with this submission and has therefore decided to respond separately.

2.3 This section sets out in greater detail the six criteria that ERG considers any Regulation should be assessed against, and highlights various issues concerning the approach that is taken to implementing any Regulation.

Assessment criteria

2.4 The ERG consider that any Regulation applied to the international roaming market should be assessed against the following criteria to ensure that it is effective in dealing with the issue in the market whilst also limiting the potential for distortion in other related and potentially competitive markets, and to allow continued innovation and developments in the market.

(i) *Coordination*

Any Regulation will need to be coordinated across the EU, both in terms of the regulation applied and the timing of its implementation. Further to be effective and to not distort the relative positions between different countries, it must apply uniformly to all MNOs from the same date. A uniform measure of whether regulation has succeeded in meeting its objectives across the EU, is also likely to be required.

(ii) *Effectiveness*

Regulation will need to be effective in meeting the objective of lowering retail roaming prices substantially and quickly. Further, any Regulation will need to balance the need for a coordinated approach at the wholesale level with the flexibility to take account of prevailing national circumstances at the retail level.

(iii) *Avoidance of distortion*

ERG is concerned that certain options for an EC Regulation might lead to significant distortions in related and potentially competitive mobile markets. Regulation tying wholesale or retail roaming prices to other mobile services for example, has the potential to lead to unintended and potentially damaging distortions in the national markets for domestic mobile services. While all forms of regulatory intervention have the potential to cause distortion, ERG considers that it is important to limit the potential for distortions in other mobile markets in applying an EC Regulation.

(iv) *Simplicity of implementation*

In addition to regulation being effective in meeting the immediate objective to lower retail roaming prices it must also be relatively straight-forward to implement and deliver a high level of legal certainty. For example, while a cost orientation obligation, supported by a detailed cost modelling exercise, may be effective in determining the appropriate cost-orientation charge level to which roaming prices should be reduced, it could take significant time and effort to be implemented, particularly across 25 Member States. Moreover, the details would be susceptible to lengthy legal challenge, especially in those Member States where, as previously highlighted by ERG, national appeals systems may lead to considerable implementation delays. ERG would prefer a simpler, more pragmatic approach, along the lines of the proposal set out in more detail in Section 3.

(v) *Flexibility*

Consistent with good regulatory practice, ERG considers that any regulatory intervention should allow for the development of sustainable competition in the relevant market. As such any Regulation in international roaming services markets, should seek to protect incentives for continued innovation and investment by, for example, continuing to allow MNOs to benefit from economies of scope and scale.

Overly restricting flexibility in this market, particularly in relation to retail tariff options, might have the opposite effect than that intended and lead to entrenched regulation.

(vi) *Review*

Consistent with the principles underlying the regulatory Framework, any Regulation should be as targeted as possible and allow for an exit from regulatory intervention once the market reaches a point that regulatory constraints are no longer required. This suggests that in addition to a metric to measure the impact of any Regulation, the regulation should be reviewed after a set period.

Potential approaches

2.5 Initial analysis of data collected by ERG in early 2005 as part of its work in informing its Common Position on wholesale international roaming⁴ supports the view that high wholesale international roaming rates are supporting the current levels of retail roaming rates for making calls whilst abroad. MNOs would appear therefore to have limited ability to reduce retail roaming rates in the absence of reduced wholesale rates.

2.6 The situation is different for receiving calls whilst abroad, where the underlying wholesale costs faced by MNOs in supplying their subscribers with these calls are different. For these calls the underlying wholesale input is call termination on a foreign MNO's network (typically regulated across the EU), plus international transit (typically competitive) although this is not always incurred, and some additional other costs such as call origination on the MNO's core network. It is therefore far from clear that the relatively high level of retail prices for these services is justifiable on the basis of high input (wholesale) costs.

⁴ ERG document ERG(05)20Rev1 - available at:
erg.eu.int/doc/publications/consult_wholesale_intl_roaming/erg_05_20_rev1_wir_common_position.pdf

Retail controls

2.7 The most obvious and immediate way to reduce retail prices would be to put retail regulation in place. In the absence of corresponding wholesale intervention, however, retail intervention could lead to significant market distortions⁵. ERG considers therefore that a regulatory package, combining both wholesale and retail measures is probably the most appropriate approach. This approach is further supported by the observation that perceived high retail prices appear to be maintained through high wholesale prices, suggesting action at the wholesale level is appropriate.

2.8 A number of methods for implementing retail regulation exist, however it is likely that the most effective would be some form of price regulation. Retail price regulation might be achieved in a number of ways, for example through tying retail prices to other retail services (domestic retail calls for example), setting an absolute retail charge, or a rate of return based on the absolute or percentage mark-up. ERG has had insufficient time to consider these possible options and how they might be applied in much detail; Section 4 to this response does however provide some further comment on ERG's initial thoughts in this area.

2.9 A uniform European retail control however, may well cause significant distortion as different MNOs in different Member States will have made different business decisions about the relative prices for different elements of the bundle of mobile services. There is no reason to necessarily believe that these differences are perverse or arbitrary, they may very well reflect differences in relative end-user preferences.

2.10 Nevertheless, despite these concerns ERG considers that some form of retail intervention might be necessary in order to provide sufficient guarantee that retail roaming prices do fall substantially, and that they do not subsequently rise again, in the event that wholesale regulation has been ineffective at ensuring such reductions.

Wholesale approach

2.11 Having identified that there are likely to be significant issues to be addressed if retail regulation were to be applied and that a large proportion of the problem stems from high wholesale prices, it should be more sustainable and is more in line with good regulatory practice to focus remedies directly at the wholesale level in the first instance.

2.12 While MNOs have been under increasing pressure to reduce roaming prices over the last few years, it would appear that their ability to do so has been hampered by the relatively slow reductions in wholesale prices over time⁶. Intervention to initiate a step-change reduction in wholesale prices, coupled with the right incentives on MNOs to pass-through savings in the form of reduced retail prices might provide the best approach.

⁵ One example is provided by the Australian Competition and Consumer Commission (ACCC). This approach tied the change in each operator's mobile termination charges to the retail price movements of its 'overall package of services'. However, the ACCC noted, in recommending a return to a cost-oriented approach to determining mobile termination charges in March 2004, that 'this [had] not been as effective as it was hoped, as retail prices in mobile services [had] not decreased as much as was expected.' This is in keeping with the outcome of the review process which concluded that 'during the monitoring period, the rate of change in the retail price of the bundle of mobile services... was, by and large, inconsistent with the price decreases observed by the Commission prior to adopting this methodology... [and that] such results would appear to call into question the foundation upon which the retail benchmarking principle is designed to work.'

⁶ Note that traffic direction technologies have continued to advance and become more widely employed over time, and other, specifically retail tariff initiatives have been increasingly available. However, these developments do not appear likely to reduce prices significantly in the near term.

2.13 As with a retail approach described above, there are a number of options for wholesale intervention. However, some form of charge regulation is likely to be the most immediately effective. Such a proposal is considered in more detail in the following Section.

Suggested approach

2.14 On basis of the work undertaken so far, including the work that led to the ERG Common Position of September 2005, which highlighted the significant challenges in applying the current regulatory framework to the issues identified in international roaming, ERG have considered five potential options for a regulatory package that may be implemented through an EC Regulation. These options are considered more fully in annex 2 to this response.

2.15 Given the limited time available to make this response these options are not presented or assessed in any detail. However, ERG has noted that the Commission has undertaken to carry out a full Regulatory Impact Assessment of the proposal. ERG would be happy to assist the Commission in its assessment of regulatory impact once the Commission has identified the detail of its approach.

2.16 In addition, ERG considers it is necessary to have some mechanism to review any regulation to assess whether it is still required after an appropriate period of time has elapsed and to have an in-built procedure for modification in the light of experience. Currently ERG considers that a review after 2-3 years of the regulation being in force is likely to be appropriate.

2.17 The next Section sets out ERGs currently preferred proposal for regulatory intervention.

Section 3

ERG Proposal

3.1 Against the issues described in the previous section, and the criteria set out in Section 2, ERG considers the following a pragmatic approach in providing the best balance between meeting the objective of reducing retail roaming prices, whilst endeavouring to avoid distortion of national markets and maintaining incentives for investment and innovation.

Single EU wholesale benchmark cap

3.2 ERG considers that some form of uniform wholesale 'benchmark' cap applied consistently across the EU on the average price charged by any given MNO to another, as the best basis for a regulatory package for intervention in this market.

3.3 Benchmarking wholesale prices to a European wide cap has the benefit of limiting distortions in other mobile markets assuming that the level of the cap is not tied to prices set by MNOs in these other markets. Further, compliance monitoring of the cap can be undertaken directly by MNOs purchasing wholesale roaming services. Additionally, providing the methodology for calculating compliance with the cap, applied to wholesale roaming services in aggregate, also allows MNOs a degree of flexibility in setting wholesale prices on individual routes or to vary tariffs by time of day.

An Example Methodology for setting a wholesale cap

3.4 While various benchmarks may be used, ERG considers that one pragmatic approach leading to a reasonable maximum charge is to take double the mobile termination rate (MTR). The costs associated with mobile termination are relatively well understood by NRAs across Europe – given the work that has gone into assessing them. Wholesale international roaming is an end-to-end service that consists of

- mobile call origination; plus
- either fixed or mobile termination; plus
- some other additional costs, such as signalling, billing and in some cases international transit.

3.5 The additional costs (highlighted in the third bullet point above) of the wholesale international roaming service are relatively small. Moreover, the cost of mobile origination is very similar and no higher than the cost of mobile termination. By setting the benchmark cap at double an average of EU MTRs, ERG considers that that lower costs accrued because of the difference between fixed and mobile termination (fixed termination is significantly lower than mobile termination) would more than outweigh the relatively small additional costs for signalling, billing, transit, maintenance of wholesale agreements etc.

3.6 Therefore, a cap set at double the mobile termination rate appears to provide a generous estimate of the actual costs of provision of wholesale roaming. It is likely to retain sufficient mark-up above underlying costs to protect incentives for MNOs to innovate and make use of relative efficiencies, thus not stifling market developments. It does represent, however, a significant reduction in current wholesale rates.

3.7 Further, since the proposal is for a single level at which the cap would be set consistently across Europe (rather than country-specific levels), the cap could be set towards the higher end of the average national MT rates (for example, the 75th percentile), to provide confidence that it would not be below cost, even for networks which have unavoidably higher costs.

3.8 Further consideration of the detail of this proposal is required, however it is clear that any regulation will need to relate only to intra-European traffic. The control should also apply to the relevant aggregate traffic sold by any given MNO to any other MNO in the EU rather than being aggregated over all wholesale international roaming services sold by a given MNO, in order to avoid MNOs charging lower rates to alliance partners and higher charges to others. To the extent that average prices between any MNOs are already below the specified benchmark cap there may be merit in considering the appropriateness of a requirement that prices should not increase.

3.9 Additional regulation to allow monitoring of at least retail roaming prices will also be necessary to measure retail pass-through. The exact metric for this calculation and how information would be collected, distributed and monitored as well as the level for which any additional retail regulation would then be required are all issues that require further thought. Section 4 explores questions around further retail regulation in more detail.

Retail roaming price index

3.10 ERG notes that retail mobile markets are competitive in a number of Member States. Therefore, there are good reasons to believe that market forces will deliver pass-through of reductions in wholesale prices to the benefit of end-users and not simply to retail profits, at least to a significant extent. ERG also notes that retail services are sold as a bundle and that, therefore, such benefits may accrue to other elements of the retail bundle (cheaper national calls, for example) and not necessarily wholly or mainly to retail roaming services. As a general rule, NRAs should not seek to dictate consumer preferences as to the form in which those benefits are enjoyed.

3.11 Moreover, those preferences may vary between Member States, a phenomenon which it would be difficult to address adequately through a uniform European retail remedy. For those reasons, ERG would wish to avoid prescriptive retail regulation unless there was no alternative and to leave some flexibility to allow market players to respond to the preferences of their own end-users.

3.12 Nevertheless, ERG recognises that total flexibility is not a realistic option. It recognises that the Commission wishes to bring down substantially the maximum rates per minute for calls made or received while abroad which, in some tariffs, are at extremely high levels. It also recognises that there is a risk, particularly in Member States with less competitive retail markets, that wholesale price reductions will be converted into retail profits rather than end-user benefits. Further, movements in retail prices are currently very hard to assess in the round, owing to the complexity and diversity of retail tariffs. For those reasons, ERG considers that it will be necessary to develop an authoritative and robust index of retail roaming prices which could be used to monitor price movements. Whilst such indices have the potential for significant complexity, it is possible to define an aggregated index, to be calculated for each MNO, which would be relatively more straightforward. The details of any such index needs further consideration and initial thoughts are considered in Section 4.

Further retail remedies

3.13 The extent to which further remedies at the retail level are considered necessary is dependant on the extent to which MNOs are prepared to respond positively to the measures advocated above, by voluntarily reducing (or committing to reduce) retail roaming prices alongside the wholesale reductions arising from the measures recommended above. For that reason, ERG believes that it would be preferable to delay implementation of any form of retail price control to allow the combination of the above measures and market forces to work. This should not need a long period. Measures which could be formulated, to come into effect if necessary at the end of such a period could include:

- a requirement that a substantial percentage of wholesale reductions should be passed through to retail roaming price reductions. ERG notes that it would not be straightforward to set such a percentage. It needs to be substantial enough that it gives rise to a reduction in retail roaming prices which is commensurate with the objectives of the regulation. On the other hand, it should not be so high that it prevents MNOs from constructing tariffs which actually do reflect end-user preferences.
- a power for NRAs to enforce a higher percentage reduction than that implied above, to the extent that end-users have not received total benefits (in various forms) commensurate with the reductions in wholesale charges. This will ensure that the wholesale reductions are not simply converted into retail profits.

3.14 There should be a simple mechanism to bring such additional measures into effect. Initial thoughts on the potential mechanisms for such to be effected are considered in Section 4.

Review

3.15 ERG considers that any regulation should be reviewed following an appropriate period of time, to assess whether it is still required and should be capable of modification in the light of market circumstances. ERG considers that a review of any obligations after 2-3 years is likely to be appropriate.

Section 4

Further Issues

4.1 The ERG has identified a number of additional issues that it considers worthy of further consideration. ERG would welcome the opportunity to work with the Commission in considering these issues further.

Process issues

(i) Regulatory Impact Assessment

The Commission has stated its intention to provide a regulatory impact assessment (RIA) prior to proceeding with any specific regulatory action. ERG agrees that this is a necessary consideration and welcomes the opportunity to provide input into this assessment. ERG has set out some initial thoughts on the issues to be considered within the scope of an RIA as set out in Annex 3.

(ii) Further consultation

Given the short time to comment on the significant issues which may arise from an EC Regulation in international roaming services, ERG considers that a further round of consultation would be appropriate, following the presentation of a specific detailed proposal, and prior to submission to the Parliament and Council.

(iii) Impact on NRA market reviews of wholesale international roaming

ERG would welcome clarification from the Commission concerning NRAs' analysis of the wholesale international roaming markets, in light of the proposal of an EC Regulation for international roaming services.

Policy issues

(i) Wholesale regulation with potential for retail follow-up

ERG proposes the adoption of wholesale regulation in the first instance (combined with obligations to provide data on prices paid by consumers for retail roaming services), with the potential for retail charge regulation to be applied if retail roaming prices do not fall sufficiently. It may also be necessary to consider whether an obligation on MNOs to supply wholesale international roaming services is required, in the event that some MNOs refuse to supply wholesale services to the detriment of other providers.

(ii) Potential formulation of a retail roaming price index

ERG recognises that a retail roaming price index would need to be relatively straightforward to calculate with information that is readily available to MNOs or not unduly onerous to collect. One possible starting point would be to consider the average revenue per roaming minute, determined by 'total retail roaming revenues' (received from a MNO's own subscribers) divided by 'total retail roaming minutes' (both made and received by the MNO's own subscribers). Variations from this starting point may then merit consideration, for example, a degree of disaggregation may be appropriate in order to identify the average revenue per roaming minute for contract and pre-pay subscribers separately.

Further, there may be merit in considering whether such a retail roaming price index should be made publicly available.

(iii) Potential measures for retail charge regulation

While ERG believes that retail charge regulation may be appropriate in the event that retail roaming prices are not observed to fall substantially and promptly following wholesale price reductions, it has not formulated any specific proposals as yet. However, in broad terms, ERG is not in favour of mechanisms which tie the retail price for international roaming to the retail price of other services (for example, domestic mobile services) given the likelihood that this will lead to distortion of the prices of the tied services. For example, there is a significant risk that MNOs may choose to increase the prices of the tied domestic services which would not only compromise the effectiveness of the Regulation in reducing retail roaming prices, but would also leave consumers paying higher prices for domestic calls.

Given this observation, should retail charge regulation be necessary, ERG suggests that a charge control cap set at an absolute level is likely to be more appropriate, noting that if such a ceiling is applied to all international roaming calls, this should be set above existing rates for domestic calls to avoid concerns relating to arbitrage opportunities. Given differences in national circumstances, a degree of flexibility in retail regulation between Member States is likely to be appropriate to ensure that any retail regulation is both effective and proportionate. One approach could be to set a uniform European cap while giving NRAs appropriate discretion to set tighter national caps, where national market circumstances suggest this is appropriate.

(iv) Potential mechanisms to effect retail charge regulation

In ERG's proposal, further consideration is necessary regarding the process by which any retail charge regulation may be brought into effect, if sufficient reductions in retail roaming charges are not observed following wholesale reductions. It may be possible to stipulate that retail charge regulation will take effect if expected retail reductions are not observed with reference to the retail roaming price index. However, to stipulate this in a mechanistic way may risk failing to take account of significant differences in the extent of competition and pricing structure of retail markets in different Member States. It may be more appropriate for the decision on retail regulation to be made with reference to an appropriate judgment of developments in the relevant retail market.

(v) Longer-term issues

There is merit in considering whether there are more fundamental structural solutions to the issues identified in international roaming services that could be developed with a longer term perspective.

Greater commercial freedom for MNOs to attract foreign subscribers to use their network while roaming would be, for example, a radical change from the present scenario. This change could lead to a completely different and possibly more competitive market structure. ERG would then welcome further engagement with the Commission on whether such solutions may be worth considering in the longer term.

Geographic scope

(i) Limited to intra-EU traffic

ERG considers that the EC Regulation limiting the rates charged for wholesale international roaming should be applied to intra-EU traffic only. The vast majority of traffic generated by

European mobile subscribers when travelling abroad in Europe falls into this category and it would be disproportionate to require MNOs within the EU to provide wholesale international roaming services to MNOs outside the EU at lower rates when MNOs outside the EU have no obligation or incentive to reciprocate.

In particular, ERG believes that it would not be appropriate to apply such regulation to the 'Outermost Regions' of the EU given that the traffic patterns for subscribers in these areas differ significantly from the rest of the EU.

(ii) WTO/GATS

A specific issue arising from the above and meriting further investigation is the degree to which WTO/GATS rules allow for wholesale regulated prices to apply to other EU MNOs only. As indicated above, if all MNOs across the world are able to purchase wholesale international roaming from MNOs in the EU without providing reciprocal reductions in wholesale charges, the imbalance in negotiations may lead to a significant outflow of funds from the EU to the rest of the world.

Implementation issues

(i) Implementation of regulatory proposal

Further work on the detail of ERG's proposal is necessary, in terms of: the mechanics of the wholesale charge cap; the exact specification of a retail roaming price index; and the form and process by which retail charge regulation is effected, should this be necessary. ERG would welcome the opportunity to work with the Commission on any of these details and on taking this proposal further should this be appropriate.

Annex 1

ERG response to specific questions

ERG response to questions raised by the Commission

1.1 In its call for input, the Commission asks the following questions:

(i) *What form should a regulation of international roaming charges take i.e. should it be targeted at wholesale level charges or retail level or both?*

1.2 Good regulatory practice dictates that regulation should be targeted at the cause, rather than at the symptoms of a particular problem. Previous work undertaken by ERG, and in some cases individual NRAs, suggests that the high level of wholesale prices (Inter-Operator Tariffs), act to maintain high retail prices for roaming calls. However, IOTs are only relevant for making calls whilst abroad – there is no IOT in the case of consumers receiving calls abroad. Nevertheless retail prices for these calls also appear high.

1.3 While action at the wholesale level might facilitate reductions in retail prices for making calls, assuming mobile network operators (MNOs) pass-on savings at the wholesale level to the retail level, it is not clear that the same will be true in respect of receiving calls. Furthermore, especially where retail markets are not effectively competitive, it is also possible that MNOs will not pass-on savings made from reduced IOTs to reductions in end-user tariffs for calls made and received while abroad.

1.4 Effective wholesale regulation appears to be a necessary component of any regulatory package. ERG recognises however, that complementary retail measures may need to be formulated to guarantee pass-through of wholesale savings to the retail level.

(ii) *What regulatory and pricing mechanism (or control) would achieve the desired objectives of such a regulation in the most effective and simple manner?*

1.5 As stated above, ERG sets out in this response a high-level proposal for the type of Regulation that might be applied in this area. More detail on this proposal is set out below and in Section 4. In essence, ERG's thinking for a Regulation at the wholesale level is for an single uniform EU-wide cap on wholesale roaming prices, benchmarked against cost-based levels already existing across the EU.

1.6 It should be recognised however, that the exact detail of how the proposal functions and is implemented require further consideration. ERG would be happy to work with the Commission in taking this proposal forward.

1.7 The complementary retail measures mentioned above should include the construction of a robust index of retail roaming prices, so that the degree of pass-through can be measured and price trends monitored authoritatively. ERG considers that the index could be fairly straightforward to calculate. It expects, therefore, that the formulation of the index would be defined in a technical Annex to the Regulation. MNOs would then be responsible for calculating the latest value of the index regularly (for example, every 3 months) and reporting to the respective NRA for the purposes of monitoring and calculation of a national average.

1.8 ERG also believes that retail price control measures will need to be formulated but that introduction of such measures should be delayed for a reasonable period. In principle, market forces should be able to play a large part in passing through wholesale savings to the retail level. It may be that retail price controls can be avoided; in ERG's view, this is the preferred outcome.

1.9 ERG notes that while the issues to be dealt with at wholesale level appear to be very similar across Europe, this is unlikely to be the case at retail level. Any price control applied at retail level would therefore need to be applied flexibly, in order to take account of different national circumstances.

(iii) *What is your view on the impacts - positive and negative - that regulation of international roaming charges could have:*

- *in general economic and social terms?*
- *on industry players?*
- *on consumers?*

1.10 Given the shortness of time available for responses, ERG has not had the opportunity to undertake a full analysis to answer these questions in any detail. Further, the impact of any Regulation will in no small part be determined by specific details of the regulation that is put in place and will likely impact on industry and consumers in different Member States to different degrees, dependant on a range of factors, including the competitiveness of national domestic mobile markets. In assessing any Regulation, ERG would expect an RIA exercise be undertaken. Some initial thoughts on what an RIA might cover is included at Annex 3 to this response.

Annex 2

Alternative Options Assessment

2.1 In addition to the ERG proposal in Section 3, ERG has considered a broad range of different regulatory options to address issues in international roaming services. This annex sets out a number of alternative options (in addition to the ERG proposal). The arguments for and against presented in this annex are not intended to be comprehensive but rather to highlight some of the main issues which arise from assessing these options against the criteria presented in Section 2.

Alternative options

Option 1 – Regulated wholesale price only

Wholesale benchmark cap only	Arguments for	Arguments against
<p><i>Description:</i></p> <p>Uniform wholesale price cap across EU, set against appropriate benchmark (eg, double average EU mobile termination rate).</p>	<ul style="list-style-type: none"> • coordinated across EU • likely to avoid distortion of other (potentially competitive) services • relatively straightforward to implement • provides flexibility in wholesale pricing (within the cap) and ultimate flexibility in retail pricing (allowing market developments and innovation) 	<ul style="list-style-type: none"> • significant risk that will not be effective (especially in Member States with less competitive retail markets) and wholesale reductions translate into retail profits • limited means to assess reductions in retail prices

Option 2 – Regulated wholesale price + retail monitoring obligation (ERG proposal)

Wholesale benchmark cap + retail monitoring obligation + potential to apply retail charge regulation after reasonable period	Arguments for	Arguments against
<p><i>Description:</i></p> <p>Uniform wholesale price cap across EU, set against appropriate benchmark (eg, double average EU mobile termination rate), plus retail obligation to provide information to allow monitoring of pass-through of wholesale savings to retail roaming prices, plus potential to apply retail charge regulation in absence of sufficient pass-through.</p>	<ul style="list-style-type: none"> • coordinated across EU • likely to avoid distortion of other (potentially competitive) services • relatively straightforward to implement • provides flexibility in wholesale pricing (within the cap) and ultimate flexibility in retail pricing (allowing market developments and innovation) • provides means to monitor degree of pass-through 	<ul style="list-style-type: none"> • retail charge regulation may ultimately be necessary in some Member States to ensure effectiveness

Option 3 – Regulated wholesale price - tied to ‘other’ service (eg. domestic services)

Tied wholesale price + retail monitoring obligation + potential to apply retail charge regulation after reasonable period	Arguments for	Arguments against
<p><i>Description:</i></p> <p>Wholesale prices tied to ‘other’ wholesale service (possible domestic airtime prices), plus retail obligation to provide information to allow monitoring of pass-through of wholesale savings to retail roaming prices, plus potential to apply retail charge regulation in absence of sufficient pass-through.</p>	<ul style="list-style-type: none"> • coordinated across EU • relatively straightforward to implement • provides flexibility in wholesale pricing (within the cap) and ultimate flexibility in retail pricing (allowing market developments and innovation) • provides means to monitor degree of pass-through 	<ul style="list-style-type: none"> • significant risk of distortion of other (potentially competitive) services: for example, if tied to domestic airtime prices then prices for wholesale MVNO access may rise • difficult to coordinate: benchmark wholesale service (eg domestic airtime prices) may not exist in all Member States • potentially lessening of retail competition if MVNO model becomes less sustainable as a result of the above • implementation likely to be complex: determining existing prevailing price of benchmarked wholesale service (eg potentially complex commercial arrangements for MVNO access) • retail charge regulation may ultimately be necessary in some Member States

Option 4 – Regulated wholesale price + regulated retail mark-up simultaneously

Wholesale benchmark cap + regulated retail price (tied to domestic retail prices)	Arguments for	Arguments against
<p><i>Description:</i></p> <p>Uniform wholesale price cap across EU, set against appropriate benchmark (eg, double average EU mobile termination rate), plus regulation of the retail price by tying retail international roaming prices to domestic retail prices.</p>	<ul style="list-style-type: none"> • coordinated across EU at wholesale level • relatively straightforward to implement at wholesale • provides flexibility in wholesale pricing (within the cap) 	<ul style="list-style-type: none"> • effectiveness in reducing retail roaming prices compromised if MNOs choose to increase prices of tied domestic services • significant risk of distortion to domestic retail prices – these may rise as a result of regulation hence leaving consumers worse off • implementation likely to be complex: determining price of domestic services is difficult given bundling of retail services • retail pricing flexibility constrained and may reduce incentives for MNOs to be innovative with retail tariffs and packages

Option 5 – Regulated retail prices only

Regulated retail prices with no wholesale regulation	Arguments for	Arguments against
<p><i>Description:</i></p> <p>Regulation of retail prices by tying to domestic retail prices as above but no associated wholesale regulation.</p> <p>Alternatively retail regulation through setting an absolute cap on price per minute for all retail international roaming calls</p>	<ul style="list-style-type: none"> • if absolute cap on retail prices likely to be very effective in reducing retail roaming prices • implementation of cap on retail prices may be relatively straightforward 	<ul style="list-style-type: none"> • lack of coordination at wholesale level – in particular without wholesale regulation there may be competitive distortions with smaller, unaligned MNOs suffering ‘margin squeeze’ • if retail prices regulated by tying to domestic retail prices then above concerns apply (effectiveness, risk of distortion, implementation complexity) • retail pricing flexibility constrained and may reduce incentives for MNOs to be innovative with retail tariffs and packages

Preliminary conclusions

2.2 Immediate retail intervention is likely to meet the requirement for expediency, but the cost of such an approach is uncertain: it may well cause distortions in domestic mobile markets if this is achieved by tying retail roaming prices to the price of domestic services, potentially to the detriment of consumers in the form of increased prices for retail domestic services.

2.3 Conversely, wholesale regulation without any form of retail monitoring or potential for retail charge regulation may well be ineffective if MNOs choose to keep wholesale reductions as retail profit rather than passing on the benefits to consumers.

2.4 Targeted regulation at the wholesale level coupled with incentives for retail pass-through are likely to provide a more appropriate balance between meeting the objectives whilst minimising market distortions. Furthermore, this approach is likely to foster better incentives for continued market development and investment, and allow for regulatory exit at an appropriate time.

2.5 A more detailed assessment of these options, in the form of a Regulatory Impact Assessment, would be required to develop these preliminary conclusions.

Annex 3

Considerations in undertaking an RIA of the proposal

Introduction

3.1 As discussed in Section 4, ERG considers that a full Regulatory Impact Assessment on the EC proposal is necessary before a specific regulatory intervention is proposed. This Annex discusses ERG's views on the considerations to be taken into account when undertaking an RIA in this case. ERG would welcome the opportunity to work together with the Commission in undertaking the RIA.

3.2 RIAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen amongst others. They form part of best practice policy making and are commonly used by regulators before concluding on the preferred option for regulation.

3.3 An RIA for any proposal in international roaming is likely to be more significant than proposals made by any individual NRA in other markets because of the spread of such regulation over 25 Member States. This not only underlines the importance of undertaking a thorough RIA, but also that the specification of the RIA needs to be extensive in order to capture as many impacts as possible.

Main features of the RIA

3.4 As discussed earlier in Section 1, ERG considers that any regulation applied to the international roaming market should be assessed against certain criteria (or objectives) in order to ensure that it is effective, while minimising the potential for distortion in other markets and the potential to impede market development. In order to assess whether the criteria have been met, some measure of the criteria is required. This measure can be the impact (where possible quantifiable), of any proposal on the market as described below.

3.5 An EC proposal reaching across different Member States will impact on different participants in international roaming, including consumers, industry and NRAs. It will also impact on the future development of mobile services more generally, such as potentially the pricing of other services, effect on competition and innovation.

3.6 A proposal for regulation may meet some criteria and not others, and in order to ensure that the chosen proposal meets most of the criteria, it is useful to characterise the impacts in terms of three broad features that are generic to any RIA.

- (a) Benefits
- (b) Costs
- (c) Risks

3.7 This allows the discussion of the impacts of the proposal to be compared against whether a criteria has been met (Benefits), or not (Costs and Risks). To explain by means of an example, a proposal might meet the criterion of being effective in lowering roaming prices

(Benefit), but may not meet the criterion of simplicity of implementation, because it may require significant resources in implementation and monitoring (Cost), and, may further carry a risk of Coordination not being met if it requires more time for some Member States to implement it than the others (Risk).

3.8 When choosing between proposals, it might sometimes be necessary to accord weights to some of the effects above such that a conclusion on the appropriate proposal is reached on balance after assessment of all the impacts.

3.9 Below is an illustration of how any proposed option might be assessed in an RIA through the impacts on various participants and effect on the market.

Impact on	Benefits	Costs	Risks
Consumers	<p>1. <i>Roaming prices</i> – are the effective roaming prices consumers pay likely to be lowered as a result?</p> <p>(a) are average per minute prices or per call charges likely to be lowered?</p> <p>(b) are prices for both making calls and receiving calls likely to be lowered?</p> <p>(c) are prices for all roaming destinations likely to be lowered?</p> <p>2. <i>Consumer type</i> – is it likely that the proposed option for regulation will extend to all types of consumers?</p> <p>(a) Prepay, contract, large corporates, small and medium businesses</p> <p>(b) Are low income consumers also direct or indirect beneficiaries or is it only high income consumers?</p> <p>3. <i>Welfare of the consumer</i> – is the proposed option likely to increase consumer welfare as a result of all the above?</p>	<p>1. <i>Increasing complexity of tariffs</i> - is the proposed option likely to increase the complexity of tariffs available to the consumer and reduce transparency of pricing options?</p> <p>2. <i>Increased transaction costs</i> – is the proposed option likely to imply increased search costs, and/or subscribing to new tariff packages to avail of lower reduced retail charges?</p> <p>3. <i>Quality and choice of services</i> – is the proposed option likely to reduce the choice of tariff packages and bundles and value added services.</p> <p>4. <i>Welfare effects</i>: Is there a reduction in consumer welfare from the above costs?</p>	<p>1. <i>Distortion in the prices for other services</i> – does the proposed option carry the risk of negatively affecting charges for other services purchased as part of the bundle (would other prices in the bundle be restructured upwards as a result?)</p> <p>2. <i>Welfare effects</i>: Is there a risk of reduction to welfare from a change in prices of other services?</p>
Industry	<p>1. <i>Effect on non-aligned MNOs</i> – will the proposed option bring smaller non-aligned MNOs to a comparable competitive position at the wholesale level to aligned MNOs and allow them to compete effectively at the retail level?</p> <p>2. <i>Effect on MVNOs</i> – will MVNOs and SPs be able to compete effectively? Does this make intervention discriminatory?</p>	<p>1. <i>Implementation costs</i>: Will industry incur significant costs in implementing the remedy (such as changes to contracts, billing systems, regulatory compliance, other overheads)?</p>	<p>1. <i>Incentives to innovate</i> – Does it reduce incentives to invest and innovate in wholesale roaming services (eg. traffic direction technologies), and retail services (new services and tariffs)</p> <p>2. <i>Competition issues</i> – does the proposed option result in different levels of competition between MNOs in different Member States and dilute their competitiveness?</p>
NRAs	<p>1. <i>Effect on coordination</i> – will the proposed option be beneficial by allowing coordination in methodology and timing such that internal market objectives are realised?</p> <p>2. <i>Implementation</i> – can the</p>	<p>1. <i>Complexity of remedy and compliance issues</i> – does the proposed option mean significant monitoring costs?</p>	<p>1. <i>Proportionate</i> – is there a risk of the remedy being too wide, or too narrow or improperly arrived at?</p> <p>2. <i>Review and entrenchment</i> – is remedy entrenched and difficult to adjust or withdraw if markets become more competitive?</p> <p>3. <i>Inconsistency with other</i></p>

	proposed option be easily and quickly implemented?		<i>regulation?</i> – is there a risk that proposed option is inconsistent with other regulation in mobile services?
Effect on competition	<p>1. <i>Level of competition:</i> Does the option allow the market to function more effectively?</p> <p>2. <i>Entry barriers</i> – is the proposed option pro-competitive, by reducing entry barriers?</p>	<p>1. <i>Intensity of competition:</i> If different operators are affected differently, could this distort competition or favour certain types of operators?</p>	<p>1. <i>Competition in services provided in EU</i> – does it create differences in competition between Member States?</p> <p>2. <i>Distortion in other markets</i> – is there a risk of distorting competition in other services and markets (eg. mobile calls and access)?</p>