



Department for Culture Media & Sport

Minister of State for Digital and Culture
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Sir William Cash MP
Chairman of the European Scrutiny Committee
House of Commons
London
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CMS 300766/asg
16 March 2017

Dear Bill

Commission's report on the review of the wholesale roaming market 10327/16 Commission's proposal for a regulation on rules for wholesale roaming 10329/16

The wholesale roaming markets regulation

1. The General Approach to the Wholesale Roaming Regulation was agreed at Telecoms Council on 2 December, supported by the UK. The Council completed trilogue with the European Parliament and the Commission on 31 January, agreeing wholesale caps as follows:
 - Voice calls: €0.032/minute; and
 - SMS text messages €0.01/message - both from June 15, 2017.

Data caps:	June 2017 - Dec 2017	Jan. 2018 - Dec 2018	Jan. 2019 - Dec 2019	Jan. 2020 - Dec 2020	Jan. 2021 - Dec 2021	Jan. 2022 -
€ / gigabyte	7.7	6.0	4.5	3.5	3.0	2.5
€ / megabyte	0.0077	0.0060	0.0045	0.0035	0.0030	0.0025

2. The draft regulation was approved by the ITRE committee of the European Parliament on February 28, 2017. Adoption by Parliament plenary is expected later in March. There will be an 'A point' vote at a Council of Ministers meeting, which is likely to be in April (the next Telecoms Council is not until June). We should know the date within the next two to three weeks.
3. I would be grateful if you could provide clearance on this file in order for the UK to vote in favour of the agreed text of the regulation at Council.



Implications of the wholesale roaming regulation for UK operators

4. UK operators wanted caps for data lower than in the Commission's original proposal. This is because more UK consumers roam to other Member States (many to holiday destinations in southern Europe) than users from other Member States come to the UK. Therefore the flow of revenue is asymmetric, but the lower the cap, the less the difference. This is particularly relevant to virtual mobile network operators (MVNOs), who must pay outward roaming charges but do not receive revenues from inward roamers. UK operators are generally content with the caps agreed in trilogue.
5. DCMS economists have analysed the possible cost to the UK mobile industry of implementing 'roam like at home' (RLAH), using data on roaming from a study for the Commission by the TERA consultancy¹. The key input is the amount of data UK consumers use once RLAH comes into effect. Based on TERA data, this would be 2 GB *per* month. The overall impact on UK firms would then be about £110 million *pa*. If consumers used 3 GB a month, it would be in the region of £200 million *pa*.

The implementing regulation on fair use policy and the sustainability mechanism

6. The problems that the fair use policy (FUP) addresses are:
 - the imposition by operators of too restrictive fair use limits, which would endanger RLAH for those periodically travelling in the EU; and
 - the FUP should prevent serious market disruptions by allowing operators to protect against abusive or anomalous use of RLAH.
7. The Commission's first draft FUP (5 September 2016) allowed operators to limit customers' roaming to periods of thirty days, with a maximum of ninety days *per* year. The first draft was withdrawn and replaced on 26 September with an FUP incorporating three main elements:
 - (a) The principle of residence and stable links;
 - (b) Monitoring abusive and anomalous behaviour; and
 - (c) Ancillary measures for prepaid cards and open data bundles².
8. UK had two areas of concern:
 - the idea of placing of a limit on 'open' data packages when roaming; and
 - limiting the use of data by PAYG (pre-pay) roamers.

¹ <https://ec.europa.eu/digital-single-market/en/news/commission-publishes-study-cost-providing-wholesale-roaming-services-eu>

² An 'open data bundle' is: 'a tariff plan for the provision of one or more mobile retail services which does not limit the volume of mobile data retail services included against the payment of a fixed periodic fee, or for which the domestic unit price of mobile data retail services, derived by dividing the overall domestic retail price, excluding VAT, for mobile services corresponding to the entire billing period by the total volume of mobile data retail services available domestically, is lower than the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) 531/2012;'

9. Because of these reservations, the UK abstained in the vote at COCOM on 12 December, along with eight other Member States. Seven voted against, and twelve in favour. There was no qualified majority vote (QMV) in favour, but neither was there a majority against - there was a 'plurality' of votes in favour and, by the QMV rules, the Commission was allowed to adopt the regulation, which it did on 15 December 2016.

Features of the fair use policy

10. The regulation specifies fair use policies that mobile operators *may* apply, if they choose to, with the intention of guarding against 'abusive or anomalous' usage. They are not intended to protect against fraud, for which normal contract terms would apply. This is without prejudice to any fair use limits that apply to domestic use - which will continue to apply while roaming.
11. 'Stable links' of customers with the Member State of the provider, or of residence there, are used to determine if the usage might be abusive or anomalous. Operators may require customers to provide proof of residence or stable links, which include 'durable' employment or contractual links, courses of study, retirement and other situations requiring 'an analogous level of territorial presence'. The only other indicators of risk of abusive or anomalous use that operators may consider are:
 - a. Long inactivity of a SIM card used mostly for roaming;
 - b. Subscription and use while roaming of multiple SIM cards by one customer.
12. For pre-pay (pay-as-you-go) customers, as an alternative to establishing residence or stable links, operators may limit consumption of data roaming services (but not of voice or text messages). The limit must be no less than the the volume obtained by dividing the overall amount of paid-for credit remaining at the commencement of roaming by the regulated roaming charge (cap).
13. The Body of European Regulators of Electronic Communications (BEREC) is drafting guidance on implementing fair use policies, aiming to have the guidance finalised before Easter.

Brexit implications

14. I note that you raise some questions about the position of roaming after the UK leaves the EU and in relation to free trade agreements, and bilateral agreements. We will be seeking the best possible deal which delivers for British consumers and business as part of our exit negotiations. We will examine precedents from other agreements, however we will not seek to replicate an existing model unless it delivers the right deal for the UK. The Great Repeal Bill will end the authority of EU law. The same rules and laws will apply on the day after Brexit as they did before, including for roaming. Any decision to diverge will be taken after that point and an assessment of the likely impacts will be made at that time.

I have written in kind to Lord Boswell (Chairman of the House of Lords European Union Committee) and am copying this letter Les Saunders (Cabinet Office) and Pooja Lakhani (Departmental Scrutiny Co-ordinator).

Yours ever

A handwritten signature in blue ink that reads "Matt Hancock". The signature is written in a cursive style with a large, stylized flourish at the end.

Rt Hon Matthew Hancock MP
Minister of State for Digital and Culture