

On September 23, 2008 the European Commission presented a revised proposal for the EU Roaming Directive in effect since June 30, 2007 ((EC) Directive No. 717/2007). It states therein that the prices to end customers for roaming services continue to be high. The directive, which previously applied only to speech, is therefore to be extended to the year 2013 and expanded to the field of SMS and data.

1. Basic principles

The Association of Providers of Telecommunication and Value-Added Services (*Verband der Anbieter von Telekommunikations- und Mehrwertdiensten* = VATM) had already commented on the EU Roaming Directive in 2006; however, with the conveyance of the reform proposals it calls attention to the following points, which should be accorded special attention in order to preserve and expand competition.

1.1 Adaptation of the conditions

The VATM welcomed in principle the initiative of regulatory intervention already when the presently valid directive was being debated. At that time the Association spoke out in favor of effectively regulating the wholesale fees for roaming calls, in order to thereby stimulate competition and through free pricing to arrive at lower prices for the end customer, which make additional regulatory interventions at the retail level dispensable. The VATM continues to be of the opinion that effective regulatory measures at the wholesale level stimulate competition and make additional measures at the retail level obsolete. As the European Commission itself emphasizes already in the context of its proposal of 9/23/2008, there has been no price competition worth noting. Instead, the prices for end customers are positioned in many cases only slightly below the upper limit for retail prices. At the same time, the lack of competition is brought about specifically by the upper limit for retail prices provided in the governing regulation, currently 46 (euro) cents. Regulating only the wholesale level would result in greater flexibility for the company, which is a prerequisite for the company to be able to differentiate itself from the competition on the end customer side through pricing, and which is ultimately the only thing that will lead to competition.

1.2 Producing equality of opportunity for all mobile telephone providers.

Unfortunately, even the updated draft directive does not make sufficient allowance for the requirements for equal competitive conditions. In addition to the mobile telephone network operators, companies that have no mobile telephone network of their own are also operating as providers of mobile telephone connections (so-called service providers; they have

contributed significantly to the competition in the national mobile telephone markets, and have growing numbers of customers and a market share of up to 20 percent. Yet no attention has been paid to these companies up to now at the wholesale level, although they for their part are obligated at the same time according to Article 4 of the Directive to charge the end customers the regulated retail price. The VATM therefore points out that along with the investments of the network operators it is **essential** that appropriate attention also be paid to the interests and business models of the service providers. Only in that way can there be reasonably planned competitive conditions for all providers in the long term and can end customers profit from the offerings in the competition. Equality of opportunity for all mobile telephone providers – and thus effective competition in the retail markets – could be produced by including the providers that have no mobile telephone network of their own in the wholesale regulation according to Article 3 of the draft directive. At the same time it should also be stipulated that the homeland network operator can collect a defined surcharge on the particular wholesale level compared to the mobile telephone operator that has no network, in order to compensate for the costs that arise from operating the network. This surcharge would have to be based on the costs that arise for a homeland network operator for handling roaming calls until the data are handed over to the provider that has no mobile telephone network.

Details of the proposals

2.0 Voice roaming

The European Commission proposes a further annual reduction of the upper limits for wholesale and retail prices, so that upper limits of 17 cents at wholesale level and 34 cents at retail level will be reached in 2013. Furthermore, mobile telephone providers will be required to charge for roaming with one-second precision at the wholesale and retail level. From the perspective of the VATM, the current price level in the area of voice roaming can be attributed essentially to the reciprocally granted volume discounts and the accompanying market failure in wholesale markets. As the VATM already set forth in the past, limiting the wholesale fees to 1.5 times the individual scheduling fees would make it possible to lower the upper limits for wholesale services to 13 cents. Such effective regulation for preliminary services would make all additional obligations at the end-customer level (e.g., upper limits for pricing and interval timing) superfluous in the future.

2.1 SMS roaming

The European Commission plans to set upper price limits at 4 cents at the wholesale level and 11 cents at the retail level. The VATM agrees in principle with the European Commission that retail prices for SMS roaming should not exceed the national SMS retail prices without justification. The criticism is justified, however, that the commission does not furnish any evidence of the current price level in the EU member states in its proposal. There are clear indications, however, that the upper price limits proposed by the European Commission are lower than the price levels in a number of EU member states. The VATM emphasizes that regulating the prices indirectly for purely national telecommunication services cannot be the task of a European directive. Instead, the national regulatory and competition authorities should remain responsible for investigating the competitive conformity of national telecommunication prices. If the present retail prices for SMS roaming should in fact exceed the national SMS prices in an improper manner, regulation at the retail level can be avoided by introducing an effective upper price limit at wholesale level (see also point 1.2).

In the final analysis, it should be considered that a politically initiated lowering of the price can also have an effect on other markets, such as equipment subsidy, connection and in-country calls (the 'waterbed' effect). Otherwise we support the measures leading to greater price transparency, which is not to be confused with regulation of retail prices, but normally makes such regulation superfluous. In point of fact, the introduction of an upper price limit at retail level is equivalent in the present case to price fixing, and does not promote competition. The Commission already found the same to be true of the prices that have been in effect for voice roaming since the middle of 2007.

2.2 Data roaming

According to the current proposal, an upper price limit at wholesale level of 1 € per MB and a variety of transparency measures are to be introduced. In the estimation of the Association, introduction of a wholesale price limit for roaming data services is by far the most important component of the Commission's proposal. Using data roaming service should be just as natural as sending an SMS. The VATM attributes the billing shock currently experienced by consumers primarily to the market failure at wholesale level. Here too, volume discounts are granted, so that large companies can purchase them at significantly lower prices than smaller providers. This forces the latter to constantly offer lower retail prices than the large mobile telephone groups, and to fan the flames of price

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competition. In our view, the upper price limit of 1 € per MB envisioned by the European Commission is therefore still much too high to create equal competitive conditions. Smaller providers have already lowered their wholesale prices for roaming data services to 25 cents per MB.

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More than 90 of the telecommunication and service companies that operate in the German market are active in the VATM. All are in direct competition with the ex-monopoly Deutsche Telekom AG, and are committed to greater competition in the telecommunication market – in favor of innovations, investments and employment. Since the opening of the market in 1998, the competitors have made investments of some 35 billion € in the fields of landline and mobile telephony. The new landline and mobile telephone companies directly secure over 50,000 jobs in Germany, and in addition around 50% of the employment in the supplier companies.