Commission Implementing Regulation (EU) No 1203/2012 of 14 December 2012 on the separate sale of regulated retail roaming services within the Union (Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 531/2012 of the European Parliament and of the Council of 13 June 2012 on roaming on public mobile communications networks within the Union[(1)], and in particular Article 5(2) thereof,

After consulting the Body of European Regulators for Electronic Communications,

Whereas:

(1) Regulation (EU) No 531/2012 introduces the concept of separate sale of regulated retail roaming services. Firstly, Article 4(1) of Regulation (EU) No 531/2012 imposes an obligation on domestic providers to enable their customers to access regulated voice, SMS and data roaming services, provided as a bundle, by any alternative roaming provider. Furthermore, the provisions on separate sale of regulated retail roaming services as laid down in Article 4(1) include the requirement for domestic providers and roaming providers not to prevent roaming customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider.

(2) In order to ensure consistent and simultaneous implementation across the Union of the separate sale of regulated retail roaming services, Regulation (EU) No 531/2012 requires the Commission to adopt, by means of implementing acts, detailed rules on the information obligations about the possibility for roaming customers to opt for an alternative roaming provider and on a technical solution for the implementation of the separate sale of regulated retail roaming services.

(3) In accordance with Article 5(4) of Regulation (EU) No 531/2012, the technical solution to implement the separate sale of regulated retail roaming services may combine one or more technical modalities for the purposes of meeting all the criteria set out in Article 5(3) of Regulation (EU) No 531/2012. Several technical modalities should therefore need to be implemented, if not all of these criteria can be met by only one technical modality. This Regulation should lay down detailed rules on this technical solution comprising the requirements for domestic providers to deploy network elements and to provide related services concerning each technical modality, in order to ensure access

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to these facilities necessary to allow alternative roaming providers to offer separate roaming services and to provide for the switching process between donor and recipient roaming providers.

(4) At the same time, the technical solution should make it possible to give effect to the obligations referred to in Article 4(1) of Regulation (EU) No 531/2012. Therefore the technical solution should ensure both the possibility for customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider and that domestic providers and roaming providers comply with the obligation not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider.

(5) Currently all retail roaming services are provided together with domestic mobile communication services by the domestic provider. Regulation (EU) No 531/2012 enables the roaming customer to select an alternative roaming provider for regulated roaming services provided as a bundle and to acquire those roaming services separately from the domestic mobile services. In this regard, the roaming customer concludes a contract with an alternative roaming provider for the provision of those services.

(6) There are several technical modalities to implement the separate sale of roaming services as a bundle, including dual International Mobile Subscriber Identity (dual-IMSI) (two separate IMSI on the same SIM card) and single IMSI (the sharing of one IMSI between the domestic and roaming providers). The dual IMSI technical modality is based on a second profile on the roaming customer's SIM card that can be used by the alternative roaming provider for the sale of regulated roaming services, while the first profile is still used by the domestic provider for the sale of domestic services and possibly non-regulated roaming services. Under the single IMSI technical modality the separate roaming services are technically still provided by the domestic provider, which serves as the host mobile network operator to the alternative roaming provider. The separate roaming services are provided on a wholesale basis to the alternative roaming provider, which resells the services to the roaming customer at retail level. The most basic version is a pure resale option. Furthermore, there are a number of potential enhancements to the pure resale technical modality that enable the alternative roaming provider to control which visited networks are to be used preferably and to recover discounts on the wholesale roaming services purchased from the host mobile network operator (MNO) based on wholesale agreements with visited network operators or wholesale aggregators.

(7) In accordance with Article 5(1) of Regulation (EU) No 531/2012, access to the network elements and services necessary for the separate sale of regulated retail roaming services should be provided free of charge. Consequently, pricing of any additional services which go beyond what is necessary for the separate sale of regulated retail roaming services is not covered by Article 5(1). Access to facilities and support services for the separate sale of regulated retail roaming services includes the facilities and services needed in the process of switching a customer.

(8) The Body of European Regulators for Electronic Communications ('BEREC') has carried out its expert assessment on the solutions to implement separate roaming

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services[(2)]. BEREC considers that the implementation of dual-IMSI requires significant development and standardisation activity and estimates that the implementation costs would impose a significant overhead on retail prices. Given that this technical modality would also require upgrading of the currently used SIM cards to include dual-IMSI functionality, the dual-IMSI technical modality fails to provide a cost-effective and consumer-friendly option for the separate sale of regulated retail roaming services.

(9) In contrast, the single IMSI technical modality appears more appropriate in the light of the criteria set out in Article 5(3) of Regulation (EU) No 531/2012. Firstly, in relation to criteria (h), (i), (j), (k) of Article 5(3) all identified technical modalities including the single IMSI technical modality can be implemented in a way that meets these criteria. Secondly, the single IMSI is consumer and user-friendly given that the roaming service is technically provided in the same way as it has been so far and therefore the same seamless user experience can be expected. Thirdly, the implementation costs of single IMSI are lower than for dual IMSI and no major standardisation activities are needed to enable it. BEREC also considers that there are no implementation bottlenecks for implementing single IMSI.

(10) The efficiency of the single IMSI technical modality in terms of competition effects could be enhanced if the alternative roaming providers could steer the roaming traffic to a visited network of their preference. However, the implementation of traffic steering arrangements for an enhanced single IMSI technical modality would be justified only if the implementation costs were proportionate to the expected competition benefits. So far, there is no evidence that the necessary traffic steering arrangements for an enhanced single IMSI technical modality could be implemented at reasonable cost by 1 July 2014. Therefore, at this stage, the single-IMSI technical modality in the form of roaming resale is considered as being sufficient to meet all criteria provided in Article 5(3) except criteria (b) and (e), which are only partly met.

(11) Neither the dual IMSI technical modality nor the single IMSI technical modality nor its enhancements meet all the criteria as provided of Article 5(3) of Regulation (EU) No 531/2012. In particular, none of them make it possible to give effect to the obligation imposed on domestic providers and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider. However, at least one of the technical modalities of the technical solution needs to provide for the ability to give effect to this obligation as one of the obligations imposed in Article 4(1) of that Regulation.

(12) In the current implementation and configuration of home networks such local data roaming services are prevented. A second technical modality is therefore needed to respond to the requirement of Regulation (EU) No 531/2012. In order to separate local data roaming services from the domestic bundle, visited network operators should not be prevented not only from technically processing the roaming customer's data traffic, but also from providing the service at retail level.

(13) On the other hand, the single IMSI technical modality does not make it possible to serve all categories of consumer demand on competitive terms, such as the intensive usage of data services. Since wholesale caps for data roaming services are not strictly cost-

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oriented and will not decrease after 2014 despite an expected decrease in wholesale cost, it seems unrealistic that alternative roaming providers that have to rely on wholesale data roaming services would be able to offer retail data roaming services for heavy data users at attractive prices compared to price levels for domestic mobile data services. However, a technical modality that gives effect to the obligation on domestic providers and roaming providers not to prevent customers from accessing regulated data roaming services provided directly on a visited network by an alternative roaming provider puts alternative data roaming providers in a position to provide local data roaming services, i.e. data roaming services without relying on a wholesale data roaming service.

(14) Retail data roaming services are currently provided by domestic providers based on wholesale agreements with the visited network operators. Data roaming traffic is sent and received over the radio access network of the visited network operator, and routed between visited network and home network. The home network operator provides the connection to the internet service and charges the roaming customer for the data roaming service. The current GSM/GPRS, EDGE and UMTS standards already enable the visited network operator to technically handle data roaming traffic and to provide the connection to the internet service without the necessity of routing between home and visited network. However, according to the current industry practice, the home network operator still charges the customer for the data roaming service and the visited network operator provides the processing of the traffic as a wholesale service for the home operator.

(15) There are several ways to implement the requirement not to prevent local data roaming services. Basic requirements are the implementation and activation of the processing of data roaming traffic in the visited network and the requirement not to prevent the manual or automatic selection of a visited network. Possible enhancements include the modification of traffic steering elements in order not to interrupt an ongoing local data roaming session and the implementation of specific facilities to assist roaming customers in selecting a visited network or to support automatic selection of visited networks. Such basic requirements should allow the development of different business models for providing local data roaming services, either on temporary or permanent basis.

(16) In the case of temporary local data roaming services, the roaming customer can choose a local mobile network operator in that country for the provision of retail data roaming services directly if the service is offered in the visited country and if there is a roaming agreement between the visited network operator and the domestic network operator. The temporary nature of this service means that there is no permanent configuration of the network or the terminal equipment, therefore the original roaming behaviour is restored once local data roaming service is not used anymore. This kind of service would provide a similar customer experience to that of wireless local area networks such as WiFi currently used by many laptop, smart phone or tablet users abroad. Voice, SMS and other associated roaming services would be provided by the home network operator as usual, except where the roaming provider in the visited network offers these services as well.

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(17) In the case of permanent local data roaming services the roaming customer concludes a contract with a provider of local data roaming services instead of the roaming provider using a home network. In this case, an alternative roaming provider, e.g. a mobile network operator or reseller, would provide local data roaming services and the necessary technical support (in the form of specific applications or similar) in one or more countries to roaming customers on a permanent basis based on its own network footprint and/or the network footprints operated by MNOs to which it concluded resale agreements in each country.

(18) Whereas the most simplistic commercial offers may not best meet the requirement for user-friendliness by requiring, e.g. the roaming customer to change terminal settings or to send a code by SMS to allow for the service and to select the visited network, it can be expected that depending on the popularity of the service, local data roaming services providers, terminals and applications suppliers or other actors will develop market-based solutions for enhanced user-friendliness. Consumer-friendliness of local data roaming services is considered good due to the flexibility to opt for and disconnect from local data roaming services providers instantaneously. Local data roaming services allow alternative roaming providers to exploit own infrastructure assets and commercial agreements for data roaming, e.g. through resale arrangements or permanent multi-country local data roaming services. According to BEREC, local data roaming services can be implemented rather quickly and are cost-effective as most of the costs are incurred by the alternative providers in proportion to the actual roll-out of local data roaming services. There is a high degree of interoperability as standards for the implementation of traffic processing in the visited network already exist. Therefore, the technical modality allowing for access to local data roaming services meets all the criteria provided in Article 5(3) of Regulation (EU) No 531/2012, except criteria (b) and (e), which are only partly met.

(19) The technical modality allowing for access to local data roaming services only ensures access to data roaming services. Therefore, it does not fully meet criterion (e) of Article 5(3) of Regulation (EU) No 531/2012. Furthermore, this technical modality does not fully meet criterion (b), because only data users are expected to be attracted by access to local data roaming services.

(20) The technical solution combining the two technical modalities, namely the single IMSI technical modality, implemented as a roaming resale service, and the technical modality allowing access to local data roaming services on a visited network, meets all the criteria of Article 5(3) of Regulation (EU) No 531/2012. Whereas neither the single IMSI technical modality nor the technical modality allowing access to local data roaming services alone fully meet criteria (b) and (e), they are complementary and meet criteria (b) and (e) only in combination.

(21) In accordance with Article 4(2) of Regulation (EU) No 531/2012, the switch between roaming providers is to be carried out without undue delay, and in any case within the shortest possible period of time depending on the technical solution chosen for the implementation of the separate sale of regulated retail roaming services. In the case of the single IMSI technical modality, like the change of provider for domestic services,