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 (recast) (Text with EEA relevance)

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

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile communications networks within the Community[(3)] has been substantially amended[(4)]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) The objective of reducing the difference between national and roaming tariffs, which was included in the Commission's Benchmarking Framework 2011-2015, endorsed by the i2010 High Level Group in November 2009, and included in the Commission Communication entitled 'A Digital Agenda for Europe', should also remain the goal of this Regulation. The envisaged separate sale of roaming services and domestic services should increase competition and therefore lower the prices for customers and create an internal market for roaming services in the Union with no significant differentiation between national and roaming tariffs. Union-wide roaming services can stimulate the development of an internal telecommunications market in the Union.

(3) An internal telecommunications market cannot be said to exist while there are significant differences between domestic and roaming prices. Therefore the ultimate aim should be to eliminate the difference between domestic charges and roaming charges, thus establishing an internal market for mobile communication services.

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(4) The high level of voice, SMS and data roaming prices payable by users of public mobile communication networks, such as students, business travellers and tourists, acts as an obstacle to using their mobile devices when travelling abroad within the Union and is a matter of concern for consumers, national regulatory authorities, and the Union institutions, constituting a significant barrier to the internal market. The excessive retail charges are resulting from high wholesale charges levied by the foreign host network operator and also, in many cases, from high retail mark-ups charged by the customer's own network operator. Due to a lack of competition, reductions in wholesale charges are often not passed on to the retail customer. Although some operators have recently introduced tariff schemes that offer customers more favourable conditions and somewhat lower prices, there is still evidence that the relationship between costs and prices is far from what would prevail in competitive markets.

(5) High roaming charges constitute an impediment to the Union's efforts to develop into a knowledge-based economy and to the realisation of an internal market of 500 million consumers. Mobile data traffic is facilitated by allocating sufficient radio spectrum in order for consumers and businesses to use voice, SMS and data services anywhere in the Union. By providing for the allocation of sufficient and appropriate spectrum in a timely manner to support Union policy objectives and to best meet the increasing demands for wireless data traffic, the multiannual radio spectrum policy programme established by Decision No 243/2012/EU of the European Parliament and of the Council[(5)] will pave the way for a development that will allow the Union to take the global lead on broadband speeds, mobility, coverage and capacity, facilitating the emergence of new business models and technologies, thereby contributing to reducing the structural problems at roaming wholesale level.

(6) The widespread use of internet-enabled mobile devices means that data roaming is of great economic significance. This is a decisive criterion for both users and providers of applications and content. In order to stimulate the development of this market, charges for data transport should not impede growth.

(7) The Commission noted in its Communication entitled 'On the interim report on the state of development of roaming services within the European Union' that technological developments and/or the alternatives to roaming services, such as availability of Voice over Internet Protocol (VoIP) or Wi-Fi, may render the internal market for roaming services in the Union more competitive. While these alternatives, in particular VoIP services, are increasingly being used at the domestic level, there have been no significant developments in their use when roaming.

(8) Given the rapid development of mobile data traffic and the increasing amount of customers using voice, SMS and data roaming services abroad, there is a need to increase the competitive pressure, to develop new business models and technologies. The regulation of roaming charges should be designed in a way that does not discourage competition towards lower price levels.

(9) The creation of a European social, educational, cultural and entrepreneurial area based on the mobility of individuals and digital data should facilitate communication between people in order to build a real 'Europe for Citizens'.

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(10) Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)[6], Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)[7], Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)[8], Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)[9] and Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)[10] (hereinafter together referred to as 'the 2002 regulatory framework for electronic communications') aim to create an internal market for electronic communications within the Union while ensuring a high level of consumer protection through enhanced competition.

(11) Regulation (EC) No 717/2007 is not an isolated measure, but complements and supports, insofar as Union-wide roaming is concerned, the rules provided for by the 2002 regulatory framework for electronic communications. That framework has not provided national regulatory authorities with sufficient tools to take effective and decisive action with regard to the pricing of roaming services within the Union and thus fails to ensure the smooth functioning of the internal market for roaming services. Regulation (EC) No 717/2007 was an appropriate means of correcting this situation.

(12) The 2002 regulatory framework for electronic communications draws on the principle that *ex-ante* regulatory obligations should only be imposed where there is not effective competition, providing for a process of periodic market analysis and review of obligations by national regulatory authorities, leading to the imposition of *ex-ante* obligations on operators designated as having significant market power. The elements constituting this process include the definition of relevant markets in accordance with the Commission's Recommendation on relevant product and service markets within the electronic communications sector susceptible to *ex ante* regulation in accordance with Directive 2002/21/EC[11] (hereinafter referred to as 'the Recommendation'), the analysis of the defined markets in accordance with the Commission's guidelines on market analysis and the assessment of significant market power under the Union regulatory framework for electronic communications networks and services[12], the designation of operators with significant market power and the imposition of *ex-ante* obligations on operators so designated.

(13) The Recommendation identified as a relevant market susceptible to *ex-ante* regulation the wholesale national market for international roaming on public mobile networks. However, the work undertaken by the national regulatory authorities, both individually and within the European Regulators Group (ERG) and its successor the Body of European Regulators for Electronic Communications (BEREC) established by

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Regulation (EC) No 1211/2009 of the European Parliament and of the Council[13], in analysing the wholesale national markets for international roaming has demonstrated that it has not yet been possible for a national regulatory authority to address effectively the high level of wholesale Union-wide roaming charges because of the difficulty in identifying undertakings with significant market power in view of the specific circumstances of international roaming, including its cross-border nature. Following the entry into force of Regulation (EC) No 717/2007, the roaming market was withdrawn from the revised Recommendation[14].

(14) In addition, the national regulatory authorities responsible for safeguarding and promoting the interests of mobile customers normally resident within their territory are not able to control the behaviour of the visited network operators, situated in other Member States, on whom those customers depend when using international roaming services. This obstacle could also diminish the effectiveness of measures taken by Member States based on their residual competence to adopt consumer protection rules.

(15) Accordingly, there is pressure for Member States to take measures to address the level of international roaming charges, but the mechanism for *ex-ante* regulatory intervention by national regulatory authorities provided by the 2002 regulatory framework for electronic communications has not proved sufficient to enable those authorities to act decisively in the consumers' interest in this specific area.

(16) Furthermore, the European Parliament resolution on European electronic communications regulation and markets[15] called on the Commission to develop new initiatives to reduce the high costs of cross-border mobile telephone traffic, while the European Council of 23 March 2006 and 24 March 2006 concluded that focused, effective and integrated information and communication technology (ICT) policies both at Union and national level are essential to achieving the goals of economic growth and productivity and noted in this context the importance for competitiveness of reducing roaming charges.

(17) The 2002 regulatory framework for electronic communications, on the basis of considerations apparent at that time, was aimed at removing all barriers to trade between Member States in the area that it harmonised, inter alia, measures which affect roaming charges. However, this should not prevent the adaptation of harmonised rules in step with other considerations in order to find the most effective means of enhancing competition in the internal market for roaming services and achieving a high level of consumer protection.

(18) This Regulation should therefore allow for a departure from the rules otherwise applicable under the 2002 regulatory framework for electronic communications, in particular the Framework Directive, namely that prices for service offerings should be determined by commercial agreement in the absence of significant market power, and to thereby accommodate the introduction of complementary regulatory obligations which reflect the specific characteristics of Union-wide roaming services.

(19) The retail and wholesale roaming markets exhibit unique characteristics which justify exceptional measures which go beyond the mechanisms otherwise available under the 2002 regulatory framework for electronic communications.

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(20) A common, harmonised approach should be employed for ensuring that users of terrestrial public mobile communication networks when travelling within the Union do not pay excessive prices for Union-wide roaming services, thereby enhancing competition concerning roaming services between roaming providers, achieving a high level of consumer protection and preserving both incentives for innovation and consumer choice. In view of the cross-border nature of the services concerned, this common approach is needed so that roaming providers can operate within a single coherent regulatory framework based on objectively established criteria.

(21) Regulation (EC) No 717/2007 is to expire on 30 June 2012. Prior to its expiry, the Commission has carried out a review in accordance with Article 11 thereof, where it was required to evaluate whether the objectives of that Regulation had been achieved and to review developments in wholesale and retail charges for the provision to roaming customers of voice, SMS and data communications services. In its report to the European Parliament and the Council of 6 July 2011 on the outcome of the review of the functioning of Regulation (EC) No 717/2007, the Commission concluded that it was appropriate to extend the applicability of Regulation (EC) No 717/2007 beyond 30 June 2012.

(22) Data on the development of prices for Union-wide voice, SMS and data roaming services since the entry into force of Regulation (EC) No 717/2007, including in particular those collected on a quarterly basis by national regulatory authorities and reported through the medium of the BEREC, do not provide evidence to suggest that competition at the retail or wholesale levels has reasonably developed and is likely to be sustainable from June 2012 onwards in the absence of regulatory measures. Such data indicates that retail and wholesale roaming prices are still much higher than domestic prices and continue to cluster at or close to the limits set by Regulation (EC) No 717/2007, with only limited competition below those limits.

(23) The expiry on 30 June 2012 of the regulatory safeguards which apply to Union-wide roaming services at wholesale and retail levels by virtue of Regulation (EC) No 717/2007 would therefore give rise to a significant risk that the underlying lack of competitive pressures in the internal market for roaming services and the incentive for roaming providers to maximise their roaming revenues would result in retail and wholesale prices for Union-wide roaming that do not constitute a reasonable reflection of the underlying costs involved in the provision of the service, thereby jeopardising the objectives of that Regulation. Regulatory intervention in the market for mobile roaming services should therefore be extended beyond 30 June 2012 in order to ensure the smooth functioning of the internal market by allowing competition to develop, while at the same time guaranteeing that consumers continue to benefit from the assurance that they will not be charged an excessive price, in comparison with competitive national prices.

(24) The policy objective laid down in Article 8 of the Framework Directive concerning end users' ability to access and distribute information or run applications and services of their choice should be promoted by national regulatory authorities.