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Book Review

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International Roaming Regulation: Roaming into a (Dis-)connected Continent?

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☞ EU law; European Commission; European Parliament; Mobile telephony; Telephone charges

This article outlines the legislative proposals of the European Commission and the European Parliament for an abolition of international roaming charges. Considering the current European legislative framework and the effectiveness of the proposed amendments, we conclude that neither of the proposals ensures a coherent re-organisation of international roaming.

Introduction

In September 2013 the European Commission—as part of its “most ambitious plan in 26 years of telecoms market reform”¹ to create a single telecoms market across the EU—proposed measures to phase out all roaming charges by 2018. In April 2014 the European Parliament, in response to the Commission’s proposal and as it did not consider this timeline fast enough, voted for an outright abolition of any roaming charges from as early as 2015. This rigorous proposal, however, appears to clash with the regulatory approach taken in the previous and largely

successful three EU Roaming Regulations and may thus cause more uncertainty, inconsistency and conflict for the industry than it intends to solve.

After consideration of the current legislative framework for international roaming, this article outlines the Commission’s and Parliament’s proposals for a new regulatory regime and evaluates the effectiveness of the proposed amendments. We conclude that neither of the proposals ensures a coherent re-organisation of international roaming.

Current regulatory framework

International roaming allows customers of a mobile network operator in one country to obtain all telephone services from an operator in another country. The roaming service provider ensures that the customer remains connected to a mobile network abroad while using the same mobile device and telephone number as at home. The European regulatory regime for international roaming has always been a highly controversial area of telecommunications law. From a regulatory point of view, the core issue is the fact that national legislators and regulators alone are unable to effectively tackle roaming charges, as the affected networks and markets are located in different economies and thus beyond the control of a single national authority. Against this background the European Commission considered it in line with the principle of subsidiarity (art.5 Treaty of the European Union) to directly regulate roaming charges by means of regulations which are immediately binding on all telecoms operators rather than directives which first have to be implemented into national laws.

International roaming was first introduced in 1987 by the GSM Memorandum of Understanding (MoU) which was signed by 13 EU Member States. However, the first official, specific European endeavour to regulate international roaming took place in 2007 with the Roaming I Regulation (717/2007). It introduced yearly decreasing price caps for voice calls made and received, both on a wholesale level (between the host and the home network provider) and on retail level (between the home network provider and the customer).

Roaming II (544/2009) introduced similar price caps for text messages (SMS) and data services (at wholesale level) and set measures to protect consumers against “bill-shocks”.

The third, most recent, regulation, Roaming III (531/2012), entered into force on July 2012. It set a price cap for data services at retail level and further lowered the price caps for voice calls and text messages. From July 1, 2014 until June 30, 2017 the maximum retail euro tariff is €0.19/1 min. for outgoing calls, €0.05/1 min for incoming calls, €0.06/SMS for messages and €0.20/MB for data roaming services (all prices excluding VAT). In addition, Roaming III included a number of new regulatory provisions for the separate sale of roaming

¹ European Commission press release, IP/13/828, “Commission proposes major step forward for telecoms single market” (September 11, 2013).

services by domestic mobile services. In particular, pursuant to art.4 of the regulation, since July 1, 2014 end customers have the right to switch to an alternative roaming provider at any time while travelling abroad. They can thus conclude a separate roaming contract with a different (potentially cheaper) mobile operator, but keep the same mobile number. To this end, domestic providers have to enable their customers to access regulated voice, SMS and data roaming services, provided as a bundle by any alternative roaming provider, without undue delay and free of charge. This is referred to as home country based “decoupling”. Furthermore, neither domestic nor roaming providers shall prevent their customers from accessing data roaming services provided on a visited network, which is referred to as “decoupling” in the visited country. Domestic providers also have to inform their customers about the possibility of opting for alternative roaming providers.

Commission’s proposal of September 2013

Both the recent global economic recession and the shift to an internet-based economy forced Europe to introduce new forms of growth to spur economic revival, re-establish competition and drive innovation. Under the European Digital Agenda, Europe’s latest goal is to integrate the various (so far national) electronic communications markets to create a unified single market that promotes competition and investments and provides quality services to European citizens. Enhanced levels of network infrastructures, competitiveness and harmonisation, as well as social and territorial cohesion across Europe, are just some of the reasons brought forward for Europe’s plan to create a single market in the telecommunications sector.

With a view of achieving a “Connected Continent”, the European Commission introduced a proposal for a new regulation for the telecoms sector in September 2013.² The proposal is designed to complement the existing regulatory framework for electronic communications and to simplify the European rules for mobile operators. Regarding international roaming, the Digital Agenda for Europe set the total elimination of roaming charges as the ultimate target for the creation of a unified and competitive European single market.³ Based on this political target, the Commission felt:

“[O]bliged to introduce a new legislative package proposing the abolition of surcharges for roaming calls received while abroad, whilst the other roaming charges are supposed to be phased out by encouraging competition between operators, or at least between alliances of operators.”⁴

To this end, the Commission proposed two measures:

First, as of July 1, 2014 roaming charges for incoming calls were to be banned entirely, except for cases of anomalous or fraudulent usage. For outgoing calls, texts and data services roaming charges would remain permissible, subject to the gradually decreasing maximum price caps until June 30, 2017 provided under Roaming III.

Secondly, regarding those roaming services for which charges would still be allowed to be levied, the Commission proposed a sui generis voluntary regime which it described as “a choice between a carrot and stick”.⁵ Put simply, operators would be given the option to prevent their customers switching to alternative roaming providers if they offer them use of their devices across the whole of Europe at domestic rates. To this end the Commission proposed that operators would not be subject to the “decoupling” obligations under art.4 of Roaming III (see above) if they applied their respective domestic service rate to both domestic services and regulated roaming services throughout the Union, as if the regulated roaming services were consumed within the home network, and ensured that this offer could be used in all Member States. The latter voluntary “roam like at home” offer could be achieved either through own networks in the host state or by virtue of bilateral or multilateral roaming agreements with roaming providers in other states. The purpose of such roaming agreements would be to allow the virtual extension of the home network coverage and the sustainable provision of regulated retail roaming services by each roaming provider at the same price level as their respective domestic mobile communications services. In order to foster such co-operation, the Commission proposed that roaming providers should negotiate roaming agreements “in good faith” and “on fair and reasonable terms”.

As a result of this voluntary “roam like at home” offer, customers would be able to use their mobile devices abroad at domestic service prices, at least as long as their use stayed within the “typical domestic consumption pattern associated with their respective domestic retail packages while periodically travelling within the Union”. The latter requirement is referred to as the “reasonable use criterion”. According to that exception, a roaming provider could limit its “roam like at home” offer to a “reasonable use” of services without losing the advantage proposed by the Commission of not being subject to the “decoupling” obligations of art.4 of Roaming III. To facilitate the gradual shift to a (reasonable) “roam like at home” model, the Commission also proposed a glide path from July 2014 which would acknowledge the successive increase of either the amount of contracts offered or the number of countries covered at domestic prices.

² Proposal for a Regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, COM(2013) 627 [2014] OJ C177/64.

³ See Opinion of the European Economic and Social Committee on New measures on the EU single market for telecoms, TEN/534, 21/1/2014 [2014] OJ C177/64, para.4.6.1.

⁴ See Opinion of the European Economic and Social Committee on New measures on the EU single market for telecoms, TEN/534, 21/1/2014 [2014] OJ C177/64, para.4.6.2.

⁵ European Commission, *Digital Agenda for Europe, “Connected Continent legislative package”* (September 2013), <http://ec.europa.eu/digital-agenda/en/connected-continent-legislative-package> [Accessed September 29, 2014].

The European Parliament's vote after first reading

On April 3, 2014, only two weeks before the re-election of the European Parliament, its members voted for a significant amendment to the Commission's proposal regarding international roaming.⁶

Instead of the Commission's approach of limiting the abolition of roaming charges to incoming calls and relying on voluntary "roam like at home" offers as well as competition for all other services, the European Parliament proposed to abolish retail roaming charges for *all* the services regulated under Roaming III outright from December 15, 2015.

The Parliament considered the Commission's proposal to merely create an incentive for "roam like at home" offers to be insufficient. Instead the Parliament has now proposed to force operators to provide such offers. The proposal's central art.6a reads:

"With effect from 15 December 2015, roaming providers shall not levy any surcharge in comparison to the charges for mobile communications services at domestic level on roaming customers in any Member States for any regulated roaming call made or received, for any regulated roaming SMS/MMS message sent and for any regulated data roaming services used, nor any general charge to enable the terminal equipment or service to be used abroad."

This obligation to provide a "roam like at home" offer for all services is subject to one crucial limitation, however. By way of derogation, roaming providers would be entitled to limit the consumption of regulated retail roaming services at a domestic price level to "the typical domestic consumption pattern" by referring customers to "fair use criteria". Thus, the Parliament adopted the "reasonable use criteria" which the Commission had developed to limit its voluntary "roam like at home" approach (see above), to now limit its mandatory "roam like at home" solution. As in the Commission's proposal, roaming providers would have to publish and include detailed quantified information on how any fair use criteria are applied in terms of main pricing, volume or other parameters of the retail package in question in their contracts. For any customers' use of roaming services in excess of the set limits of fair use, the provider could continue charging retail roaming charges subject to the price caps set in Roaming III for the period until June 30, 2017. These regulated prices would therefore remain relevant (only) for calls, texts or data services in excess of a "fair use" limit.

The Body of European Regulators of Electronic Communications (BEREC) now has to submit guidelines on the fair use criteria by December 31, 2014. Based on these guidelines the Commission would adopt detailed rules on the application of "fair use" by June 30, 2015. The national regulatory authorities would have to apply these rules when monitoring and supervising the implementation of the fair use criteria in their Member State.

Following the Parliament's vote, the new term under the Digital Economy Commissioner Günter Oettinger may result in changes to the Commission's initial legislative proposal or the adoption of the European Parliament's approach. The final decision of the Council is not expected before November 2014.

Commission's versus Parliament's proposal

The Commission's proposal has opened the path for Europe to finally resolve the international roaming issue. The proposal follows the example of other continents which have dealt with this issue. The Asian Pacific countries, for example, have thoroughly examined the roaming issue, and even though they have not yet introduced a regulatory scheme, have entered into bilateral agreements reducing roaming charges. Further, in North America, Canada has recently announced the adoption of a new legislative plan aimed at imposing legal restrictions on the three largest national mobile providers in order to stop what was seen as excessive pricing.⁷

However, in Europe the debate is more politically charged, with Members of the European Parliament using its decision to abolish roaming charges as a selling point in the parliamentary election two weeks after the vote. While end-users are prepared to celebrate victory as a result of the revised bill,⁸ mobile operators are concerned that both proposals, the Commission's and the Parliament's, will put their future at risk and ultimately harm consumers.⁹ Others argue that the proposals create more issues than they actually solve, while reducing incentives to invest at the same time.¹⁰ Upon closer inspection both proposals indeed raise some fundamental questions.

Evaluating the Commission's proposal

Effects of the proposal on Roaming III

Despite the criticism on the details, the Roaming Regulations I to III have prima facie successfully tackled excessive roaming charges and reduced inconsistencies

⁶ European Parliament legislative resolution of April 3, 2014 on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, C7-0267/2013 — 2013/0309(COD).

⁷ See Reuters, "Canada to cap domestic wireless roaming rates" (December, 18, 2013).

⁸ See BEUC, "Telecoms Single Market — key priorities for BEUC" (June, 24, 2014), p.6, <http://www.beuc.org/digital-rights/telecoms-single-market> [Accessed September 29, 2014].

⁹ See ETNO, "Position on completing the Telecoms Single Market Proposals for a 'Connected Continent'" (November, 11, 2013), p.2, https://www.etno.eu/datas/press_corner/press-releases/2013/ETNO%20paper%20on%20Telecoms%20Single%20Market%2020131119.pdf [Accessed September 29, 2014].

¹⁰ ETNO, "Position on completing the Telecoms Single Market Proposals for a 'Connected Continent'" (November, 11, 2013), p.2, https://www.etno.eu/datas/press_corner/press-releases/2013/ETNO%20paper%20on%20Telecoms%20Single%20Market%2020131119.pdf [Accessed September 29, 2014].

across Europe. With the successive reduction of price caps, the three regulations followed a rather consistent and predictable approach while leaving the door open for competition in roaming services. Thanks to the latest reduction in price caps as of July 2014, consumers have seen price reductions of 80 per cent for calls and SMS and of 90 per cent for data roaming since 2008.¹¹ Owing to lower prices the volume of calls and data roaming has multiplied in recent years in almost every Member State.¹² Data roaming has increased 1500 per cent across the EU since 2008.¹³ In most cases, the increased demand has outweighed the lower returns for roaming providers resulting from the price regulation. The concept is working.

More importantly, the structural measures introduced by Roaming III, in particular the decoupling obligations, only came into force on July 1, 2014. These measures were introduced to bring down prices even further by promoting competition from alternative roaming providers rather than by a direct price regulation which, from a regulatory policy point of view, is always just the second-best solution. In midst of this crucial phase where existing roaming providers as well as potential alternative providers are implementing these Roaming III obligations and have already invested some estimated € 500 million¹⁴ for this purpose, the Commission in effect has proposed a complete regulatory U-turn. By offering roaming providers the chance to evade the decoupling obligation through a “roam like at home” offer, the Commission is eroding the basis for the business model for alternative roaming providers and thereby underpinning the approach taken by Roaming III. Companies that had considered entering the roaming market to provide cheaper roaming services under Roaming III will now think twice following the Commission’s proposal. Sadly, the structural measures under Roaming III have not been given any real chance yet, let alone sufficient time to unfold their potential to reduce roaming prices in a more competitive way than by regulatory price fixing.

Considering the success of the existing roaming regulations and the fact that the decoupling obligations only came into force in July 2014, it is in fact difficult to see any immediate reason for a new regulation. To continue the Roaming III approach of price caps combined with structural measures to allow competition would be more consistent with the overall European

regulatory regime. Roaming III simply needs more time before it is possible to assess its full impact on the roaming market and the need for further legislative steps.

“Roam like at home” versus decoupling

In any case, the amendments proposed by the Commission do not appear to be the perfect option for the European telecoms market. For a start it is questionable whether the flexibility (“decoupling” or “roam like at home”) offered by the new proposal promotes certainty and harmonisation in the interest of a European single market, since the binding nature of a regulation cannot be aligned with a voluntary regime. It is likely that some roaming operators would consider the “decoupling” solution introduced by Roaming III as the less burdensome solution.¹⁵ They have already invested in the implementation of the “decoupling” obligation and alternative providers have set up new offerings under the existing regulatory regime. These investments would be for nothing if roaming operators turned to a “roam like at home” model.¹⁶

Further, BEREC has expressed criticism that nothing could prevent roaming operators from freely raising their domestic rates in order to compensate for the losses they would be subjected to by the adoption of the “roam like at home” solution.¹⁷ This “waterbed effect” would ultimately also affect customers who never use roaming services and endanger the foundations of mobile telecoms.¹⁸ It would also distort competition, as small and medium-sized mobile operators with a smaller domestic customer base would find it more difficult to socialise the additional costs incurred. Such smaller providers might actually incur losses if they were to provide roaming services at domestic rates despite the potentially very high additional costs of accessing foreign networks. This is despite their option to conclude bilateral or multilateral roaming agreements (as proposed by the Commission). Such agreements are likely to only benefit larger mobile providers with the bargaining power to determine the wholesale prices and other terms, compelling smaller players either to accept the conditions or to leave the market.

Moreover, the voluntary nature of “roam like at home” and the unclear scope of a “reasonable use” do not help achieve a harmonised single European market, as a first

¹¹ See European Commission press release, IP/14/151, “Roaming: 300 million extra customers for telecoms companies when roaming charges end, survey shows” (February 2, 2014).

¹² European Commission press release, IP/14/151, “Roaming: 300 million extra customers for telecoms companies when roaming charges end, survey shows” (February 2, 2014).

¹³ European Commission press release, IP/14/151, “Roaming: 300 million extra customers for telecoms companies when roaming charges end, survey shows” (February 2, 2014).

¹⁴ Bitkom, “Stellungnahme zum Fragenkatalog der SPD-Bundestagsfraktion zur Reform der Medien- und Kommunikationsordnung” (July 28, 2014), p.20, http://www.bitkom.org/de/themen/54886_80040.aspx [Accessed September 29, 2014].

¹⁵ J. Allen, “EU proposed telecoms regulatory changes: good politics, bad economics” (December 29, 2013), <http://www.analysismason.com/About-Us/News/Newsletter/EU-regulation-article-Oct2013-RMDV0/> [Accessed September 29, 2014].

¹⁶ European Commission press release, IP/14/151, “Roaming: 300 million extra customers for telecoms companies when roaming charges end, survey shows” (February 2, 2014), p.20.

¹⁷ See BEREC, “Views on the proposal for a Regulation ‘laying down measures to complete the European single market for electronic communications and to achieve a Connected Continent’” (October 17, 2013), p.9, http://berec.europa.eu/eng/news_consultations/whats_new/1673-berec-views-on-the-proposal-for-a-regulation-laying-down-measures-to-complete-the-european-single-market-for-electronic-communications-and-to-achieve-a-connected-continent [Accessed September 29, 2014].

¹⁸ BEREC, “Views on the proposal for a Regulation ‘laying down measures to complete the European single market for electronic communications and to achieve a Connected Continent’” (October 17, 2013), p.9, http://berec.europa.eu/eng/news_consultations/whats_new/1673-berec-views-on-the-proposal-for-a-regulation-laying-down-measures-to-complete-the-european-single-market-for-electronic-communications-and-to-achieve-a-connected-continent [Accessed September 29, 2014].

look at the conditions of those roaming providers which have already launched a “roam like at home” offer confirms. While designed to reduce bill shocks for consumers, the existing voluntary roaming packages offered by mobile operators have not completely removed restrictions in use and other limitations. One roaming provider, for example, has offered domestic rates for mobile roaming services but only for a limited number of days each year.¹⁹ Another provider is only offering the “roam like at home” solution for specific destinations, while a third has established a monthly fee to activate the domestic rates.²⁰ These examples are only a first indication that the “roam like at home” solution is not best suited for achieving harmonisation and transparency in international roaming.

Bilateral agreements and GATS

In any case, roaming providers will be cautious not to grant any foreign company particularly favourable conditions in bilateral or multilateral roaming agreements. That is because, owing to international trade obligations, any beneficial results of such agreements may have to be extended to companies of every other country within the EU. The General Agreement on Trade in Services (GATS), which governs the international trade in services, generally forbids Member States from making preferential arrangements with one or more countries that are unwilling to extend their beneficial results to third countries.²¹

Pursuant to s.5(a) of the GATS Annex on Telecommunications:

“Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule.”

The principal purpose of the obligation to provide most-favoured-nation (MFN) treatment under GATS (art.I:1) is to ensure equality of opportunity, in this case for services and service suppliers from all members of the World Trade Organization (WTO). Until today no formal case has been brought to the WTO regarding the MFN principle. Nor is there any agreement on how the GATS framework applies to international roaming arrangements.²²

However, the GATS obligations have already limited several initiatives for roaming agreements outside Europe. It was reported, for instance, that the Trans-Tasman

Roaming Agreement between Australia and New Zealand had been delayed owing to concerns that any reciprocal benefits regarding roaming services would have to be extended to companies from other countries, too.²³ Australia was considered to be obliged under the WTO agreements to ensure that any benefits granted by Australian operators to New Zealand mobile operators were also available to operators from other countries (and vice versa).²⁴ Consequently, before concluding bilateral or multilateral roaming agreements within Europe, the signing parties (and supervising authorities) would have to ensure consistency with the international trade obligations of the Member States.

As a further negative side-effect bilateral and multilateral roaming agreements (as proposed by the Commission) may create opportunities and economic incentives for the “worst of all evils”: anti-competitive agreements between the signing parties that go beyond the scope of international roaming. Fostering such agreements may thus cause more harm than good for competition.

Currency exchange issues

A further issue of the Commission’s proposal concerns currency exchange rates. Putting roaming prices on a level with domestic ones would result in every country which abandons or adopts the euro automatically having a different pricing plan.²⁵ It is not clear whether differences in the European exchange rate could be sufficiently aligned by a simple currency conversion.²⁶

Evaluating the European Parliament’s proposal

Fair use

The European Parliament has criticised the Commission’s proposal as it believes tackling roaming through voluntary agreements—as an alternative to the current obligations of Roaming III—would generate “a high degree of uncertainty”.²⁷ The Parliament’s own approach of making “roam like at home” offers mandatory on the other hand is more straightforward and less complex. However, some regulatory uncertainty nonetheless remains. There is no clear definition of what constitutes “fair use”. The criteria may vary between the Member States owing to different cost structures for roaming services. Neither is there any legal provision that would prevent a “waterbed effect” on domestic prices.

¹⁹ See Deloitte, “What is the next roaming strategy for EU Operators?” (June 2014) p.3.

²⁰ Deloitte, “What is the next roaming strategy for EU Operators?” (June 2014) p.3.

²¹ See M. Ryan, “The application of the GATS to bilateral arrangements for the reduction of international mobile roaming charges” [2013] Int. T.L.R. 10.

²² Ryan, “The application of the GATS to bilateral arrangements for the reduction of international mobile roaming charges” [2013] Int. T.L.R. 10, 14.

²³ See “Trans-Tasman mobile roaming talks hit Roadblock” (August 1, 2011), http://www.computerworld.co.nz/article/495831/trans-tasman_mobile_roaming_talks_hit_roadblock/ [Accessed September 29, 2014].

²⁴ T. Voon, “Discrimination international: Mobile Roaming Regulation: implications of WTO law” (2013) 16(1) *Journal of International Economic Law* 91.

²⁵ E. Sutherland, “Roaming III: regulating charges until 2022” [2012] C.T.L.R. 203.

²⁶ Sutherland, “Roaming III: regulating charges until 2022” [2012] C.T.L.R. 203.

²⁷ European Parliament legislative resolution of April 3, 2014 on the proposal for a regulation of the European Parliament and of the Council laying down measures concerning the European single market for electronic communications and to achieve a Connected Continent, C7-0267/2013 — 2013/0309(COD), Amendment 205.

Remaining incentives for decoupling

More fundamentally, the Parliament's proposal still entirely undermines the approach initiated by Roaming III, i.e. to promote competition for roaming services through decoupling obligations. The proposed mandatory "roam like at home" offer from December 2015 would take away any commercial incentive for customers to switch to an alternative roaming provider.²⁸ Incentives to switch could, in theory, remain for all roaming services in excess of any fair use limit, i.e. for all services for which the home provider may levy roaming surcharges again. However, in practice, when crossing the border to another country consumers will generally rely on their use of roaming services being within the "typical domestic consumption pattern associated with their respective domestic retail packages". Hence, there will be no incentive to switch upon arrival. Subsequently, many customers who indeed receive (and take note of) a message informing them they are close to exceeding the fair use limit will consider it not worth the hassle to switch their provider only to reduce roaming costs for the remaining days of their trip. This is true even more so given that all roaming services used in excess of any fair use limit will be subject to the maximum charges pursuant to Roaming III. So the risk of excessive bills would be limited. In any case, relying on such "untypical" consumption patterns hardly forms a plausible or attractive business case. Hence, the Parliament's proposal would be the end of the business model for alternative providers created by Roaming III. Any investments would have been in vain. Not surprisingly some mobile operators have expressed their fears that if the proposed framework finally passes, this would indicate the destruction of the European roaming market.²⁹

In fact, once roaming charges have been abolished after December 15, 2015 (except for excessive uses), there would no longer be any need or legal justification for any decoupling obligation.³⁰ Combining "roam like at home" with the "decoupling" obligations imposes an unnecessary burden on roaming providers while not adding any advantages in terms of competition or prices. Hence, the Council will have to ensure that the new legislation is fully synchronised with the existing Roaming III Regulation.

Timeline

The European Parliament's proposal also appears overambitious in relation to the timetable for the introduction of the "roam like at home" pricing model on

December 15, 2015.³¹ A sustainable implementation of the new pricing model for retail charges requires a re-assessment of the wholesale charges and a clear definition and implementation of the fair use criteria. The Parliament's proposal envisages a report of the Commission on wholesale charges and other arrangements for June 30, 2015. This would leave only six months for the legislator to re-assess the roaming market and—if necessary—to alter the wholesale charges, and for the operators to adjust their tariff schemes and national offerings in line with what the legislator eventually adopts.

Conclusions

The political campaign of European institutions and several politicians presented the ban of roaming charges as a simple solution. This is far from the reality. The parliamentary vote in favour of a new roaming regulation on April 3, 2014 constituted little more than a politically motivated move, only a few weeks prior to the next election of the European Parliament. Unfortunately this move may backfire as—if accepted—it will send a negative signal to investors and financial markets regarding the predictability of the European regulatory framework. Roaming providers have already undergone three successive waves of regulatory reform, and in the midst of implementing the latest rules for the promotion of competition under Roaming III, they are now faced with a fundamental regulatory change of direction that would eradicate the very basis for competition from alternative roaming providers that Roaming III envisaged. While the proposed outright prohibition of roaming charges may appear as the most straightforward solution, it ignores economic realities, in particular the undeniable additional costs of roaming. These costs would have to be transferred to a broader customer base, potentially leading to higher domestic prices and an ineffective cross-subsidy from non-roamers to roamers. In addition the ambiguous "fair use criteria" will cause uncertainty and does not help to harmonise the European single market. Unfortunately, owing to the short timeline until the proposed mandatory abolition of roaming charges, affected parties may not have enough time to demonstrate the deficiencies of the proposed approach.

Given the success of the existing roaming regulations, the new proposal has gone too far in adopting a consumer-friendly approach. No regulatory restructuring should take place unless it is clear and guaranteed that every target set by the European instruments will be achieved and a balance between the conflicting rights of

²⁸ European Commission press release, IP/14/151, "Roaming: 300 million extra customers for telecoms companies when roaming charges end, survey shows" (February 2, 2014), p.2.

²⁹ BEREC, "Views on the proposal for a Regulation 'laying down measures to complete the European single market for electronic communications and to achieve a Connected Continent'" (October 17, 2013), p.5, http://berec.europa.eu/eng/news_consultations/whats_new/1673-berec-views-on-the-proposal-for-a-regulation-laying-down-measures-to-complete-the-european-single-market-for-electronic-communications-and-to-achieve-a-connected-continent [Accessed September 29, 2014].

³⁰ BEREC, "Views on the European Parliament first reading legislative resolution on the European Commission's proposal for a Connected Continent Regulation" (May 17, 2014), p.5, http://berec.europa.eu/eng/news_consultations/whats_new/2203-berec-publishes-its-views-on-the-european-parliament-first-reading-legislative-resolution-on-the-european-commissions-proposal-for-a-connected-continent-regulation [Accessed September 29, 2014].

³¹ BEREC, "Views on the European Parliament first reading legislative resolution on the European Commission's proposal for a Connected Continent Regulation" (May 17, 2014), p.5, http://berec.europa.eu/eng/news_consultations/whats_new/2203-berec-publishes-its-views-on-the-european-parliament-first-reading-legislative-resolution-on-the-european-commissions-proposal-for-a-connected-continent-regulation [Accessed September 29, 2014].

operators and end-users can be struck. In this regard, it would be preferable to preserve the current roaming framework as introduced by Roaming III, assess its impact on competition, harmonisation and the consumers' benefit, and then make a decision regarding the future of international roaming. A "reduce price, evaluate and then

decide" approach seems to be the compromising solution, since the combination of Roaming III with the new proposal may cause more problems than it solves. Regardless of the final form of the new EU rules on roaming, the hope remains these will help roaming move towards a connected rather than a disconnected continent.