

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 16-6119

12 January 2017

SUBCOMMITTEE II ON FREE MOVEMENT OF SERVICES

EEA EFTA Comment

on the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets

SUMMARY

The EEA EFTA States welcome the European Commission's proposal to lower the wholesale caps on international roaming. The EEA EFTA States believe, however, that the level of the proposed caps is too high, especially considering the following:

- The proposed caps are higher than the assumed underlying costs of providing wholesale roaming services. It is important that the price level is brought down to reflect the actual underlying costs.
- High wholesale caps in combination with generous fair use policy might have a detrimental and undesirable effect on domestic competition.
- The static character of the price caps does not take into account possible efficiency gains and overall volume increases following the introduction of RLAH.

The EEA EFTA States encourage the European Parliament and the Council to lower the proposed wholesale caps and to introduce a glide path.

1. INTRODUCTION

1. The EEA EFTA States support the abolition of retail roaming surcharges introduced by Regulation (EU) 2015/2120, also known as "Roam Like At Home" (RLAH), and believe it is one of several important premises for the establishment of a sound and well-functioning Digital Single Market across the European Economic Area. As a measure to enable the introduction of RLAH from 15 June 2017, the EEA EFTA States welcome the European Commission's proposal to lower the wholesale caps on international roaming as of that same date. However, the EEA EFTA States have concerns regarding certain provisions in the proposed regulation.

2. THE PROPOSED PRICE CAPS AND POSSIBLE AMENDMENTS

2. The EEA EFTA States agree that the regulation should ensure that operators that are visited are able to recover the costs incurred in providing wholesale roaming services, including common and joint costs. This is important in order to preserve the investment incentives in networks visited as well as to avoid any distortion of competition in the markets visited. The EEA EFTA States believe, however, that the level of the proposed price caps is too high. With reference to the Commission's report to the European Parliament and the Council on the review of the wholesale roaming market, where it follows that "the cost of providing wholesale roaming services in the European Economic Area (EEA) can confidently be assumed to be below 4 cent/minute", it seems clear that the current proposed price caps are higher than the underlying costs. We believe that the wholesale caps need to be significantly lowered to better reflect the underlying costs and to secure sustainable price models from the moment that RLAH is introduced and in the years to come. This view can also be found in the European Parliament's Industry, Research and Energy (ITRE) Committee's draft report, where the rapporteur expresses concern that excessively high price caps will lead to decreased competition in the market. Numerous operators across Europe have raised the same issue. In this regard, the EEA EFTA States share this concern and underline the necessity of lower price caps.
3. The level of the wholesale caps is likely to become even more important than previously expected due to the very generous fair use policy proposed in the Commission's draft implementing act. High wholesale caps in combination with generous fair use policy might have a detrimental and undesirable effect on domestic competition, especially in markets where usage is high and/or retail prices are low. The domestic operator might choose to raise its retail prices in order to recover its wholesale payments. This could imply price increases for some customers, including those who do not travel or who travel rarely, to compensate for the losses that operators have to bear due to other customers using RLAH services while travelling frequently. Alternatively, the domestic provider could file for a derogation authorisation or even stop offering retail roaming services at all.
4. For mobile virtual network operators (MVNOs) and smaller mobile network operators (MNOs) with low volumes, the high proposed price caps constitute an even greater threat to their operation. The main negotiation driver in bilateral roaming agreements is the amount of roaming traffic an operator can offer its partner. The starting point of the Commission (cf. recital 13) is that the proposed price caps should leave a margin for commercial negotiations between operators. However, it is widely known, and even stated by the Commission in the above-mentioned report, that the "MVNOs and smaller operators with low volumes of traffic usually obtain no, or only limited, discounts from the maximum wholesale roaming charges provided in the roaming regulation". The EEA EFTA States are thus concerned about the situation for these types of operators with the introduction of RLAH, as they constitute an important competitive force in our respective domestic markets and it is vital that they are able to continue to compete in the domestic mobile market. For MVNOs and small MNOs with low volumes, it is therefore important that the price level is brought down to reflect the underlying costs of providing wholesale roaming services.

3. THE PROPOSED STATISTIC CHARACTER OF PRICE CAPS AND POSSIBLE AMENDMENTS

5. The Commission's proposal stipulates that the wholesale cap levels should be applicable until 30 June 2022. The static character of the price caps does not take into account the continuous technological development of 4G towards 5G and the associated growing efficiency in handling increasing volumes. Recent figures from the Nordic countries show a significant increase in roaming traffic over the summer – both data and voice – due to the introduction of RLAH by several operators this spring. To ensure that the regulation takes these developments into account, the EEA EFTA States agree with the ITRE Committee's draft report that the regulation should include a glide path setting concrete price cap levels reflecting these efficiency gains and overall volume increases.
6. If a glide path is introduced, it is equally important that it does not start at a higher level than the one put forward in the Commission's proposal. On the contrary, the starting point should be lower and the prices should decrease over time.
7. If a glide path is not introduced, then at the very least the review process foreseen in the amended Article 19 of Regulation (EU) No 531/2012 should secure a true review of the wholesale roaming price caps, taking into account technological developments and increased total volumes.

4. FINAL REMARKS

8. With reference to the above-mentioned arguments, the EEA EFTA States would like to urge the European Parliament and the Council to lower the proposed wholesale caps and to introduce a glide path. Furthermore, an extension of the revision clause to encompass a revision of the level of the price caps should be envisaged.