Public consultation on the review of national wholesale roaming markets, fair use policy and the sustainability mechanism referred to in the Roaming Regulation 531/2012 as amended by Regulation 2015/2120

Fields marked with * are mandatory.

1. General Information

You are invited to first read the background document to this consultation and fill in the online questionnaire available below.

The questionnaire of the public consultation has a first section on general information from the respondent, followed by three sections, which are dedicated to the areas to be covered by the legislative act and by the implementing acts to be adopted before **roam-like-at-home (RLAH)** becomes applicable from 15 June 2017:

- National wholesale roaming markets review
- Fair use policy
- Sustainability mechanism

You can skip questions that you do not feel comfortable responding to. You can also pause at any time and continue later. Once you have submitted your answers, you will be able to download a copy of your completed responses.

We would expect individual consumers to be interested in replying to the questions in the 'Fair use policy' section in particular (questions 43 to 54), as well as to questions 36 to 42 on permanent roaming in the section on 'National wholesale roaming markets review'.

Throughout the questionnaire, "the Regulation" refers to Regulation 2015/2120 (OJ L 310 of 26 November 2015) amending the Roaming Regulation 531/2012 (see the background document to this consultation).

* **Question 1:** You answer as:

- ( ) Individual in your personal capacity
- ( ) Consumer association or user association

- ○ Business (please specify sector below)
- ○ Mobile Network Operator
- ○ Mobile Virtual Network Operator
- ○ Other Electronic communications network or service provider
- ○ Internet content provider
- ○ Government authority
- ○ National Regulatory Authority
- ○ Other public bodies and institutions (please specify below)
- ◉ Other (please specify below)

Please specify business sector or "other":

The GSMA represents the interests of mobile operators worldwide.
www.gsma.com

If you answer as an individual in your personal capacity, what is your name?

* If you answer as an individual in your personal capacity, what is your e-mail address?

kwalravens@gsma.com

* **Question 2:** Is your organisation registered in the Transparency Register of the European Commission and the European Parliament?

- ☑ Yes
- ☐ No
- ☐ Not applicable (I am replying as an individual in my personal capacity)

If yes, please indicate your organisation's registration number in the Transparency Register:

30988577529-37

If you are an entity not registered in the Transparency Register, please register in the Transparency Register before answering this questionnaire. If your entity responds without being registered, the Commission will consider its input as that of an individual.

* Please enter the name of your institution/organisation/business:

The GSMA

Please enter your organisation's address:

Park View, 4th Floor, Chaussée d'Etterbeek 180, 1040 Brussels, Belgium

Please enter your organisation's website

www.gsma.com

Please enter the name of a contact person:

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Please enter the e-mail address of a contact person:

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If you object to publication of the personal data on the grounds that such publication would harm your legitimate interests, please indicate this below and provide the reasons for such objection.

* **Question 3:** What is your country of residence? (In case of legal entities, please select the primary place of establishment of the entity you represent)

- [ ] Austria
- [ ] Belgium
- [ ] Bulgaria
- [ ] Czech Republic
- [ ] Croatia
- [ ] Cyprus
- [ ] Denmark
- [ ] Estonia
- [ ] France
- [ ] Finland
- [ ] Germany
- [ ] Greece
- [ ] Hungary
- [ ] Italy

- [ ] Ireland
- [ ] Latvia
- [ ] Lithuania
- [ ] Luxembourg
- [ ] Malta
- [ ] Netherlands
- [ ] Poland
- [ ] Portugal
- [ ] Romania
- [ ] Spain
- [ ] Slovenia
- [ ] Slovakia
- [ ] Sweden
- [x] United-Kingdom
- [ ] Other

If other, please specify:

2. Review of national wholesale roaming markets

The Regulation imposes an obligation on operators of mobile telecommunications to not levy any surcharge in addition to the domestic retail price on a roaming customer in any Member State for any regulated roaming call made or received, for any regulated roaming SMS message sent and for any regulated data roaming services used, subject to fair use policy.

A service provider that wants to offer roaming services to its customers (the 'home operator') has to buy them from mobile network operators located in the different visited countries ('visited operators'). To this end, commercial agreements between service providers have to be concluded. The term “wholesale roaming services” refers to the provision of roaming services between service providers located in different countries. The provision of wholesale roaming services implies the payment of wholesale roaming charges from the home operator to the visited operator. The level of this wholesale roaming charge is currently regulated at EU level (Regulation No 531/2012). The wholesale roaming charge represents the main cost of providing retail roaming services for the home operator, at least when it has a net negative wholesale balance, i.e. when the traffic of its customers roaming on foreign networks is greater than the traffic it receives from foreign customers roaming on its own domestic network.

The main questions of the review of national wholesale roaming markets are whether, under the current EU Roaming Regulation, the functioning of these markets is sufficiently competitive to enable the abolition of retail roaming surcharges in the EU from 15 June 2017, subject to fair use policy, by the home operator, and, if not, what measures would be needed to ensure this objective.

The questions in this section aim at gathering views from stakeholders on the competitive situation of national wholesale roaming markets in the EU, as well as views on the main regulatory options available at the wholesale level, including on possible additional safeguards to mitigate the risks that might be associated with permanent roaming.

2.1. Functioning of national wholesale roaming markets

Question 4: Under current roaming regulation, do you consider that any of the following national wholesale roaming markets are well-functioning markets in the EU (multiple choices possible)?

- [ ] voice
- [ ] SMS messages
- [ ] data
- [ ] none
- [ ] it depends on the visited Member State
- [ ] don't know

Please indicate the factor(s) showing that the market(s) is/are functioning well and provide examples:

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The wholesale market is currently characterised by regulated safeguard caps
with commercially negotiated prices significantly below the caps being
prevalent.  This is evidenced by the BEREC data on the wholesale roaming
market.
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Question 5: If the answer to Question 4 is "it depends on the visited Member State", please indicate the Member States, if any, where, under current roaming regulation, you consider that the following wholesale roaming markets are well-functioning markets:

	voice	SMS	data	don't know
Austria	○	○	○	○
Belgium	○	○	○	○
Bulgaria	○	○	○	○
Czech Republic	○	○	○	○
Croatia	○	○	○	○
Cyprus	○	○	○	○
Denmark	○	○	○	○
Estonia	○	○	○	○
France	○	○	○	○
Finland	○	○	○	○

Germany	○	○	○	○
Greece	○	○	○	○
Hungary	○	○	○	○
Italy	○	○	○	○
Ireland	○	○	○	○
Latvia	○	○	○	○
Lithuania	○	○	○	○
Luxembourg	○	○	○	○
Malta	○	○	○	○
Netherlands	○	○	○	○
Poland	○	○	○	○
Portugal	○	○	○	○
Romania	○	○	○	○
Spain	○	○	○	○
Slovenia	○	○	○	○
Slovakia	○	○	○	○
Sweden	○	○	○	○
United Kingdom	○	○	○	○

Question 6: If the answer to Question 4 is "it depends on the visited Member State", please indicate what the relevant factor(s) influencing the functioning of the national wholesale roaming market might be (multiple choices possible):

- ☐ the number of operators on the national market of the visited Member State
- ☐ whether the visited Member State has a positive or negative imbalance of roaming traffic
- ☐ the size of the (positive or negative) imbalance in roaming traffic of the visited Member State
- ☐ whether a (positive or negative) imbalance in roaming traffic of the visited Member State is concentrated in a short period of time within the year
- ☐ the size of the national market of the visited Member State
- ☐ whether one or more operators in the visited country has significant spare capacity in its network

- [ ] other (please specify below)
- [ ] don't know

Please explain in which direction the factor(s) identified might influence the level of competition on the national wholesale roaming market (i.e. towards more or less competition). If those factors differ across different Member States, please specify the Member States associated with the identified factors:

Question 7: If you find any national wholesale roaming markets to be well-functioning in response to Question 4 or 5, please indicate, for each of them, which elements and analysis lead you to that conclusion:

Refer to response on question 4.

Question 8: For each of the national wholesale roaming markets that you do not find well-functioning in Question 4 or 5, if any, please indicate the obstacles to efficient functioning and/or competition that you identify in these markets:

Question 9: If you are a mobile operator, do you negotiate wholesale roaming prices with some other mobile operators in the context of (a) roaming alliance(s)?

- ( ) Yes
- ( ) No
- ( ) don't know

Please explain your response and provide examples:

Question 10: If you are a mobile operator, please indicate for which service(s), if any, the level of negotiated prices are substantially below existing wholesale roaming price caps (multiple choices possible):

- [ ] voice
- [ ] SMS messages
- [ ] data
- [ ] don't know

Question 11: If you are a mobile operator, do you apply roaming traffic steering techniques (i.e. routing the traffic of your subscriber while roaming) to one specific visited network?

- ( ) Yes

- No
- don't know

Please explain your response and provide examples:

Question 12: If the answer to Question 11 is 'Yes', how much of your roaming traffic is steered towards one or more specific networks in a visited country?

- all traffic
- only a fraction (please indicate below the share of overall roaming traffic)
- don't know

Please explain your response and provide examples:

Question 13: If the answer to Question 11 is 'No' or the answer to Question 12 is 'only a fraction', please indicate the reasons why, including technical as well as cost obstacles to full control of traffic in visited countries, or any other strategic or commercial reasons:

Question 14: Do you consider that Roam-Like-At-Home (RLAH) (i.e. the fact that roaming consumption will be charged at domestic retail price) might have any effect on the functioning of the national wholesale roaming markets?

- Yes
- No
- it depends on the visited Member State
- don't know

Please explain your response and provide examples; if you consider that RLAH might have an effect on the functioning of the wholesale roaming markets, please specify which and justify:

The wholesale and retail roaming markets are inter-linked and intervention in one has implications for the other. In the case of RLAH, with higher and higher volumes, the intervention at retail level leads operators to seek better wholesale deals (through lower pricing) or change the way they purchase wholesale access (e.g. through limiting the number of networks that customers can roam on in certain Member States). For operators with low volume of roaming consumption before the introduction of RLAH, the increase in volumes will create higher pressure on decreasing wholesale negotiated prices.

Question 15: If the answer to Question 14 is "it depends on the visited Member State", please indicate the Member States, if any, where you expect RLAH to have an effect on the functioning of the wholesale roaming markets:

Question 16: If the answer to Question 14 is 'Yes', would you expect any of the following national wholesale roaming markets to be well-functioning markets under RLAH (multiple choices possible)?

- ☐ voice
- ☐ SMS messages
- ☐ data
- ☐ none
- ☐ it depends on the visited Member State
- ☐ don't know

Please explain your response and provide examples:

As noted above, commercially negotiated prices below the regulated safeguard caps are currently the norm for wholesale roaming. As such one could say that the market is well-functioning, and will continue to be well-functioning as long as commercially negotiated prices rather than regulated prices remain the norm. It might be necessary to maintain the concept of wholesale safeguard caps, both as a safeguard in case of contractual terms misuse and a basis for commercial negotiation.

Question 17: If the answer to Question 16 is "it depends on the visited Member State", please indicate the Member State(s), if any, where you expect the following national wholesale roaming markets to be well-functioning markets under RLAH:

	voice	SMS	data	don't know
Austria	○	○	○	○
Belgium	○	○	○	○
Bulgaria	○	○	○	○
Czech Republic	○	○	○	○
Croatia	○	○	○	○
Cyprus	○	○	○	○
Denmark	○	○	○	○

Estonia	○	○	○	○
France	○	○	○	○
Finland	○	○	○	○
Germany	○	○	○	○
Greece	○	○	○	○
Hungary	○	○	○	○
Italy	○	○	○	○
Ireland	○	○	○	○
Latvia	○	○	○	○
Lithuania	○	○	○	○
Luxembourg	○	○	○	○
Malta	○	○	○	○
Netherlands	○	○	○	○
Poland	○	○	○	○
Portugal	○	○	○	○
Romania	○	○	○	○
Spain	○	○	○	○
Slovenia	○	○	○	○
Slovakia	○	○	○	○
Sweden	○	○	○	○
United Kingdom	○	○	○	○

Question 18: If you expect any of the national wholesale roaming markets to be a well-functioning market under RLAH in Question 16 or 17, please indicate, for each of them, which elements and analysis lead you to that expectation:

Refer to response on question 16.

Question 19: For each of the national wholesale roaming markets that you do not expect to be a well-functioning market under RLAH in Question 16 or 17, if any, please indicate the obstacles to efficient functioning of and/or competition that you expect in these markets:

Question 20: Do you consider that the functioning of the national wholesale roaming markets absent regulation would be capable of delivering RLAH at the retail level in accordance with the domestic charging model?

- Yes
- No
- it depends on the Member State
- don't know

Please explain your response and provide examples:

Fair use policy and assessment of the wholesale market have to be done together. RLAH without FUP cannot be supported by the wholesale market absent regulation, but it also cannot be supported with regulation as noted by BEREC (http://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/4826-international-roaming-analysis-of-the-impacts-of-8220roam-like-at-home8221-rlah); without FU BEREC deems that either retail prices in some Member States would need to go up, or operators in some Member States would be required to sell wholesale access below cost. Either of these outcomes would be a distortion of national markets. Therefore the FUP is fundamental to support the implementation of RLAH.

Question 21: If 'No', please indicate what are in your view the obstacles in national wholesale roaming markets for the sustainability of RLAH at the retail level in accordance with the domestic charging model:

2.2. Main regulatory options at wholesale level

Question 22: Is the provision of retail roaming services at domestic prices, subject to a fair use policy designed to prevent anomalous or abusive use, sustainable with current wholesale roaming price caps and without changing the domestic charging model?

- Yes
- No
- it depends on the Member State
- don't know

Please explain your response and provide examples. Please formulate your answer by reference to wholesale prices negotiated and effectively paid:

It depends on the fair use policy and how anomalous or abusive use is defined. If the intention is to allow domestic usage levels whilst infrequently roaming, then this is sustainable for most tariffs of most operators in most Member States. The sustainability exemption should be designed in a way to tackle the remaining issues; such as some domestic offers or discounts not sustainable with RLAH with Fair use.
This is why sustainability should be assessed at a tariff level rather than an operator level.

Question 23: If the answer to Question 22 is "it depends on the Member State", in which Member State(s), if any, do you think this would not be sustainable with current wholesale caps and without increasing domestic prices?

	not sustainable	don't know
Austria	○	○
Belgium	○	○
Bulgaria	○	○
Czech Republic	○	○
Croatia	○	○
Cyprus	○	○
Denmark	○	○
Estonia	○	○
France	○	○
Finland	○	○
Germany	○	○
Greece	○	○
Hungary	○	○
Italy	○	○
Ireland	○	○

Latvia	○	○
Lithuania	○	○
Luxembourg	○	○
Malta	○	○
Netherlands	○	○
Poland	○	○
Portugal	○	○
Romania	○	○
Spain	○	○
Slovenia	○	○
Slovakia	○	○
Sweden	○	○
United Kingdom	○	○

Question 24: What are the obstacles at wholesale level making the provision of retail roaming services at domestic prices in the EU unsustainable? (multiple answers possible, please indicate their order of importance below).

- ☐ the existence of current wholesale roaming regulation
- ☐ too high wholesale roaming caps
- ☐ lack of effective competition in the provision of wholesale roaming services
- ☐ too large differences in the costs of providing wholesale roaming services across Member States with respect to the diversity of domestic retail prices for mobile services across Member States
- ☐ lack of efficient market, preventing trade of wholesale roaming traffic in a given country at the best pricing conditions at any time
- ☐ lack of bargaining power of smaller operators
- ☐ other (please specify below)
- ☐ don't know

Please rank your answers in order of importance (strongest obstacle ranked 1), explain your response and provide examples:

Question 25: What would be the most appropriate of the following options at wholesale level to enable the provision of retail roaming services at domestic prices in the EU, subject to any fair use policy to prevent anomalous or abusive use?

- lift any wholesale roaming regulation
- keep current roaming regulation (Regulation No 531/2012) unchanged, i.e. maintain current wholesale roaming price caps
- lower current wholesale roaming price caps
- other (please specify below)
- don't know

Please explain your response and provide examples:

Question 26: If you consider that new wholesale roaming price caps should be defined, should these caps be:

- EU-wide: the level of the wholesale roaming price cap is the same in all Member States
- country-specific: the level of the wholesale roaming price cap is different in each Member State, reflecting the differences in the costs of providing mobile communications services in each Member State
- other (please specify below)
- don't know

Please explain your response and provide justifications:

Question 27: In case of EU-wide new wholesale roaming price caps, should these caps be set:

- by reference to the costs of providing wholesale roaming services across the EU by a hypothetical efficient operator (i.e. an operator using the most efficient technologies and optimal operations commercially available)
- by reference to the actual costs of providing wholesale roaming services across the EU by existing operators
- other (please specify below)
- don't know

Please explain your response and provide examples. If you have chosen "actual costs", please indicate which sources of actual costs you would use:

Question 28: The Regulation sets the requirement of covering wholesale costs of operators in visited countries, and has the objective of supporting a sustainable RLAH provision at retail level in all Member States (outside specific and exceptional circumstances under which an operator may be authorised to apply retail roaming surcharges). Please specify how you would set an EU-wide cap that meets that requirement and that objective. Please indicate which are likely to be the main practical difficulties with this option and whether and how they could be overcome:

Question 29: In case of country-specific new wholesale roaming price caps, should these caps be set for each Member State using:

- a common cost model that can be populated with country-specific inputs for each Member State
- a cost model developed and applied by each Member State but based on a common methodology (as, for example, is currently recommended for mobile termination rates)
- other (please specify below)
- don't know

Please explain your response and provide examples:

Please answer the following three questions irrespective of your reply to Question 29.

Question 30: In case of a common cost model that would need to be populated with country-specific inputs for each Member State, please indicate which are likely to be the main practical difficulties with this option and how they could be overcome:

Question 31: In case of a cost model developed and applied by each Member State based on a common methodology, please indicate which are likely to be the main practical difficulties with this option and how they could be overcome:

Question 32: In defining a common methodology to estimate the costs of wholesale roaming services, please indicate which are the areas to focus on and how the common methodology should be defined:

Question 33: Should there be additional regulatory measure(s) to ensure the more efficient functioning of and/or competition on the national wholesale roaming markets and the sustainability of the abolition of retail roaming surcharges? Please specify, explain your response and provide examples:

Question 34: If you are a mobile operator with networks in more than one Member State, please: 1) specify these Member States, 2) order these Member States by the level of network costs involved in supplying wholesale mobile roaming services (ordering the Member States from higher network costs to lower network costs), 3) group these Member States by similar levels of network costs involved in supplying wholesale mobile roaming services:

Question 35: Do you think that there are specific costs related to investments made in order to accommodate seasonal traffic variations derived from increased roaming demand?

- Yes
- No
- don't know

If 'Yes', please explain your response and provide examples. In particular, please specify in what circumstances additional network investment needs in areas with localised seasonal traffic peaks would be sufficiently significant to merit inclusion in a cost model based on EU-wide or country-specific costs, and how to estimate those costs:

The impacts of seasonality must be assessed in a robust manner. As such, the Commission should be requesting network traffic information (both domestic and (visitor) roaming traffic) to fully assess the impact of seasonality on the cost of providing wholesale roaming services.

2.3. Possible risks associated with permanent roaming and possible solutions to address them

The Regulation specifies that, while conducting the wholesale roaming market review, the Commission shall take into account the need to prevent permanent roaming. Permanent roaming is understood as a situation whereby a subscriber actively uses a SIM card of an operator based in country A exclusively or almost exclusively either in his country of residence, which is different from country A, or in a number of countries other than country A.

Question 36: What are the risks associated with permanent roaming for a mobile operator, if any? Please explain your response and provide examples:

Each MNO manages its network on the domestic side with full control of its quality and performance according to its customer base size, strategy and

offers. All MNOs welcome roamers IN in general as long as there is no risk associated to this traffic. MNOs distinguish between business and technical risks and following non exhaustive examples can be given:

Business risks:
- Frauds, misuse or abnormal usage that lead to loss/higher costs especially on voice.
- Bypass of EU regulation by Rest of World MNOs willing to benefit from the EU Roaming Regulation for their own non EU customers, while they would not provide same benefit in return to EU customers/MNOs.

Two potential national market distortions:
1) Domestic market disruption: when in a given country a non domestic MNO delivers retail offers that target the domestic market, but based on roaming. This is the main risk especially for data services, since it is totally transparent in terms of customer experience.
2) when home operators, with low domestic prices having other countries' customers buying SIM's in their own countries and thus creating very low domestic revenues for that operator.
Both of these potential disruptions will impact network investment incentives.

Technical risks:
- Quality of services,
- network congestion,
- degraded service for domestic customers due to roaming, etc…
The difficulty is to make difference between unwanted permanent roaming and agreed permanent roaming.
Incurring wholesale costs leading to significant margin erosion and the need to increase domestic tariffs.

Question 37: In case you have identified risks associated with permanent roaming, should regulatory safeguards to mitigate those risks be foreseen in any future roaming regulation, in addition to the two included in the Regulation (i.e. fair use policy, lifting of obligation to give wholesale roaming access upon reasonable request if roaming access is sought for the purpose of permanent roaming)?

- Yes
- No
- don't know

Please explain your response and provide examples:

The regulation should not prescribe specific measures for preventing anomalous usage. Rather, it should be clear from the regulation that operators are free to take whatever measures necessary to prevent anomalous usage at the wholesale level. For instance, in order to disincentive market players to rely on 'non agreed" permanent, roaming, one solution could be to increase the level of the wholesale tariffs up to the wholesale caps. Another one would be to foresee the possibility in wholesale contracts to block such type of traffic.

Question 38: If 'Yes', which additional regulatory safeguards should be foreseen? Please explain your response and provide examples:

No practical measures have been identified at a wholesale level (other than refusing to provide access) that would fully protect against fraudulent and anomalous use. This question needs to be reassessed once the wholesale market review is complete. If the Commission maintains the concept of safeguard caps, then wholesale roaming providers will retail some commercial leverage by limiting commercial offers below the safeguards (as is the current practice) to operators that take measures at retail level to prevent anomalous usage. Operators that allow or encourage permanent roaming might not be given the same commercial terms as those that don't, but ultimately this would be a commercial decision for (visited) network operators.
However, GSMA considers that taking into account the objective of the Roaming Regulation, the M2M services should be explicitly excluded from its scope due to its specificities in terms of traffic and usage. GSMA would welcome such clarification in any new regulation on roaming. This may require to work on a common definition of M2M services, which the GSMA is ready to contribute to.

Question 39: Do you consider that there are currently or that there will be in the future circumvention mechanisms for users to get around limitations on permanent roaming in the context of RLAH?

- (●) Yes
- ( ) No
- ( ) don't know

Please explain your response and provide examples:

Yes - especially in the prepay market for data services where it is easier to bypass local requirements. Switching barriers in the EU retail markets are non-existent, therefore "pay as you go" customers could circumvent the Regulation by periodically switching their SIM cards while consuming permanently abroad. The SIM evolution (i.e eSIM) will increases dramatically the market dynamism and circumventing possibilities will also significantly increase. Smartphones with multiSIM capabilities will easily circumvent the Roaming Regulation.

Question 40: If the answer to Question 39 is 'Yes', please describe these mechanisms and explain why and for which services they would be more attractive in the context of RLAH, including possibly quantitative evidence:

See response to question 36.

All services but especially data services because continuous change of sim cards is not affecting data usage e.g. users can use the same account in OTT applications moving from one sim to another, while in voice services they need to switch number each time. Especially in Whatsapp application home country number can be used everywhere

For voice, some fraud issues can also easily be anticipated to gain on EU MTRs difference and/or on MTR/Voice IOTs difference which RLAH will provide at retail level (e.g. service priced at 0 will open doors to some fraud's opportunities).

Question 41: In case you consider measures circumventing limitations on permanent roaming as likely or more attractive in a RLAH setting, leading in particular to permanent roaming, please indicate how you consider this specific risk should be addressed:

- only at retail level
- only at wholesale level, in particular with safeguards against anomalous increase of demand for roaming traffic
- at retail and at wholesale level
- other (please specify below)
- don't know

Please explain your response and provide examples:

Operators have to be entitled to tackle those risks both at wholesale and retail; see previous answers to question 37 and question 38.

Question 42: If the answer to Question 41 is "only retail" or "at retail and at wholesale level", what measure would you consider most appropriate in addition to fair use policy?

- applying a minimum activation duration or minimum domestic activity before allowing pre-paid subscribers to use their roaming services (if so, please indicate the minimum activation period or domestic activity that you would apply)
- creating an industry database that would allow EU operators to detect and block end users using pre-paid SIM cards for permanent roaming
- other (please specify below)
- don't know

Please explain your response and provide examples:

See response to question 38.

3. Fair use policy

Like previous EU roaming regulations, the Regulation regulates the use of roaming services when periodically travelling in the EU. The Regulation provides that from 15 June 2017 customers may consume mobile communications services (voice, SMS, data) in the same way and for the same price whether they are at home or periodically travelling abroad in the EU.

In contrast, if the customer permanently stays in country A with a mobile subscription of country B, where costs and competitive conditions may be very different, this is not considered fair use of

roaming services, but anomalous or abusive roaming. In order to avoid such an anomalous use of roaming services, the Regulation provides that the operator may apply a surcharge to roaming consumption in excess of fair use.

More specifically, Article 6b of Regulation No 531/2012 as amended by the Regulation provides that "roaming providers may apply (…) a fair use policy to the consumption of regulated roaming services provided at the applicable domestic retail price level, in order to prevent abusive or anomalous usage of regulated roaming services by roaming customers".

This article also provides that "any fair use policy shall enable the roaming provider's customers to consume volumes of roaming services at the applicable domestic price that are consistent with their respective domestic tariff plans".

The set of questions in this section seeks views on the scope of fair use policies for roaming services and their formulation in practice. In particular, the replies to this set of questions will facilitate the further elaboration of the concept of periodic travel and contribute to the formulation of fair use policies on roaming consumption that ensures consistency with domestic tariff plans. Inputs will be used by the Commission when laying down detailed rules on the application of fair use policies in the Commission implementing act mandated by the Regulation.

Pursuant to the Regulation, in the case of domestic tariff plans including (un)limited volumes of domestic consumption per service (voice, SMS messages, data), roaming consumption at domestic prices means that roaming consumption is included without any surcharge in the (un)limited volume of the domestic tariff plan.

It is important to note that applying a fair-use policy is not an obligation imposed on mobile operators, but a possibility to which certain minimum parameters will be set by the Commission in accordance with the Regulation.

You are invited to respond to the questions below, to the extent possible for you, in the light of the evolution of pricing and consumption patterns in the Member States, the degree of convergence of domestic price levels across the Union, and any observable risks of distortion of competition and investment incentives in domestic and visited markets.

3.1. General approach and scope of roaming needs to be accommodated by any fair use policy

Question 43: Do you think any fair use policy should take a form other than time or volume limits on the level of consumption of roaming services at domestic prices?

- ○ Yes
- ◉ No
- ○ don't know

If yes, please specify:

```
When considering the design of the future Fair Use Policy rules, the
Commission should ensure it grants sufficient flexibility for MNOs to
implement it and it is  customer-oriented, simple and easily understandable.

Fair use policy should be flexible and take into account current market
developments as well as to protect from national markets disruptions. Various
```

types of fair use already exist in the EU: based for example on a number of days combined with volume limits, or only on volumes limits with bandwidth reduction. Fair use policy should not hamper market dynamism and innovation but allow marketing specificities, and retail offers differentiation, also giving operators the possibility to develop the most cost-effective and easy-to-implement solutions based on their technical constraints. It should allow any combination of days or volumes limits while taking into account the various needs of customers, for instance residential and business customers.

What matters in this respect is the key metric of traveling: customers have first to travel before consuming roaming services. So the first KPI related to roaming is to look at the real average number of days abroad. Then, volumes per service available while roaming would also be a metric.

GSMA calls for an early adoption of the implementing act on fair use policy: in order to allow a smooth and efficient implementation by the June 2017 deadline, the fair use policy has to be defined as soon as possible and before the end of 2016.

Question 44: Limits in any fair use policy should be:

- ○ set at the same level across the whole EU
- ○ set at different levels per Member State, based on harmonised criteria at EU level
- ○ applied by the operator, to ensure consistency with the respective tariff plans, in the light of harmonised criteria at EU level and monitored by NRAs
- ◉ other (please specify below)

Please explain your response and provide examples:

Part of GSMA members support a definition at Member State level to accommodate with diverse domestic market circumstances while others call for a definition at EU level considering it would be easier to implement.

Question 45: What should be the general objective of fair use policy on roaming consumption at domestic prices? Fair use policy should allow for (multiple answers possible):

- ☐ inadvertent roaming (the customer does not leave his/her country but may, unwillingly, be roaming due to a stronger cross-border signal in border areas)
- ☐ roaming needs of cross-border workers (workers residing in one Member State, usually near a border, and working on a daily basis in another Member State)
- ☐ roaming needs while on frequent travel for professional purposes (exceeding annual paid holiday duration, i.e. typically exceeding 5 weeks cumulatively per year)
- ☑ roaming needs while on travel for personal purposes, e.g. holidays, tourism
- ☐ other (please specify below)

Please explain your response and provide examples:

Roaming needs for cross-border workers do not match with the criteria of periodic travel enshrined in the Roaming Regulation and should thus not be taken into account in the fair use policy.

Similarly, while it is key for MNOs to be able to answer specific needs of business clients and close to border customers, this should rather be tackled by ad hoc offers. Usually these customers have corporate specific offers different from the retail mass market. The concept of "frequent travel" goes far beyond the criteria of periodic travel foreseen by the Roaming Regulation. Previous criteria set are strongly disproportionate and go far beyond the observed travel patterns of EU citizens as shown by BEREC in its December 2014 report.

3.2. Definition of the scope of periodic travel

According to Article 6b of Regulation No 531/201 as amended by the Regulation the "use of [roaming] services by roaming customers in a Member State other than that of their domestic provider for purposes other than periodic travel" is considered "abusive or anomalous usage of regulated roaming services". In this section we are seeking views about how the concept of "periodic travel" should be interpreted for the purpose of identifying abusive or anomalous usage of regulated roaming services at domestic prices.

Question 46: Please indicate at which level you think periodic travel should be established as a minimum amount of time for fair use policy:

- at EU level
- per Member State
- per operator
- per domestic tariff plan (e.g. possibly different for plans aimed at business users, frequent travellers, mass-market)
- other (please specify below)

Please explain your response and provide examples:

See answer to question 43 and question 44.

Irrespective of the level at which periodic travel is established (i.e. the EU, Member State, operator or tariff plan level), the definition of periodic travel should be based on a common criterion. This criterion should refer to travelling time abroad within the EU of individuals in the relevant group (i.e. all EU residents, all residents of the Member State, all subscribers of the operator or all subscribers of the tariff plan, respectively).

The purpose of the next questions is to identify the most appropriate criterion to define periodic travel for each of the relevant groups described in the previous question. One of the possible criteria relies on the concept of percentile which allows to define which part of each relevant group should be covered by periodic travel. The 100th percentile means that all individuals of the group considered are covered; the 50th percentile corresponds to the median, meaning that half of the group considered (the half travelling less) is entirely covered, while the other half (the half travelling more) is

not entirely covered (i.e. individuals in this half are not covered for the days abroad in the EU that exceed those of the median of the group).

Please answer all questions below even when they relate to the alternatives you have not selected in Question 46.

Question 47: In case of defining periodic travel at EU level, what should be the criterion to define periodic travel abroad in the EU on a yearly basis for the purpose of identifying abusive or anomalous usage of regulated roaming services at domestic prices?

- ☐ the X*th* percentile annual number of days abroad within the EU of the residents of all Member States (**please specify below which percentile, a figure between 0 and 100**). ***Example:*** *the 70th percentile is a number of days abroad such that the annual number of days abroad within the EU of 70% of the residents of all EU Member States would be covered by the definition of periodic travel in the fair use policy. This means that the annual number of days abroad within the EU of the top 30% most travelling residents of all EU Member States would not be fully covered by the definition of periodic travel in the fair use policy.*
- ☐ the maximum period for residing on the territory of a Member State without any condition or formality pursuant to EU applicable legislation (i.e. 3 months pursuant to Article 6(1) Directive 2004/38/EC)
- ☐ the weighted average annual number of days of paid holidays to which employees are entitled by law (i.e. mandatory minimum number of paid holidays) in the EU Member States
- ☐ the highest annual number of days of paid holidays to which employees are entitled by law (i.e. mandatory minimum number of paid holidays) in an EU Member State (5 weeks)
- ☐ 183 days per year (half a year)
- ☐ the average annual number of working days in the EU (in order to cover the needs of cross-border workers or frequent travellers for business purposes)
- ☐ the maximum annual number of working days in the EU
- ☐ tick this box if you consider that intermittent travel time (i.e. travel for less than 24 hours) should be excluded (e.g. should not count against the fair use limit) from the criterion selected above
- ☐ other (please specify below)

Please explain your response and provide examples, as well as indicating billing and implementation costs for implementing the preferred criteria if any. In case you chose the first option, please specify the percentile (a number bewteen 0 and 100):

Question 48: In case of defining periodic travel at Member State level, what should be the criterion to define periodic travel abroad in the EU on a yearly basis for the purpose of identifying abusive or anomalous usage of regulated roaming services at domestic price?

- ☐ the X*th* percentile annual number of days abroad within the EU of the residents of the Member State of the subscriber (**please specify below which percentile, a figure between 0 and 100**). ***Example:*** *the 70th percentile is a number of days abroad such that the annual number of days abroad within the EU of 70% of the residents of the Member State of the subscriber would be covered by the definition of periodic travel in the fair use policy. This means that the annual*

number of days abroad within the EU of the top 30% most travelling residents of the Member State of the subscriber would not be covered by the definition of periodic travel in the fair use policy.

- [ ] the annual number of days of paid holidays to which employees are entitled by law in the Member State of the subscriber
- [ ] in line with the criteria to establish residence in the Member State of the subscriber, e.g. one year (365 days) minus the minimum number of days of residence per year required to establish legal residence in the Member State of the subscriber
- [ ] the annual number of working days in the Member State of the subscriber (in order to cover the needs of cross-border workers or frequent travellers for business purposes)
- [ ] tick this box if you consider that intermittent travel time (i.e. travel for less than 24 hours) should be excluded (e.g. should not count against the fair use limit) from the criterion selected above
- [ ] other (please specify below)

Please explain your response and provide examples, as well as indicating billing and implementation costs for implementing the preferred criteria if any. In case you chose the first option, please specify the percentile (a number bewteen 0 and 100):

Question 49: In case of defining periodic travel at operator level, what should be the criterion to define periodic travel abroad in the EU on a yearly basis for the purpose of identifying abusive or anomalous usage of regulated roaming services at domestic price?

- [ ] the X*th* percentile annual number of days abroad within the EU of the subscribers of the operator (**please specify below which percentile, a figure between 0 and 100**). ***Example:*** *the 70th percentile is a number of days abroad such that the annual number of days abroad within the EU of 70% of the subscribers of the operator would be covered by the definition of periodic travel in the fair use policy. This means that the annual number of days abroad within the EU of the top 30% most travelling subscribers of the operator would not be covered by the definition of periodic travel in the fair use policy.*
- [ ] the X*th* percentile annual number of days abroad within the EU of the subscribers of the tariff plan of the subscriber (please **specify below which percentile, a figure between 0 and 100**). ***Example:*** *the 70th percentile is a number of days abroad such that the annual number of days abroad within the EU of 70% of the subscribers of the tariff plan of the subscriber would be covered by the definition of periodic travel in the fair use policy. This means that the annual number of days abroad within the EU of the top 30% most travelling subscribers of the tariff plan of the subscriber would not be covered by the definition of periodic travel in the fair use policy.*
- [ ] other (please specify below)

Please explain your response and provide examples, as well as indicating billing and implementation costs for implementing the preferred criteria if any. In case you chose the first option, please specify the percentile (a number bewteen 0 and 100):

3.3. Consistency with domestic tariff plans

In the previous section, we have considered the scope of "periodic travel" in terms of number of days per year. This constitutes the first parameter to be set in any fair use policy on roaming consumption at domestic prices. In the following set of questions, we are seeking views about whether and how operators could complement the design of any fair use policy formulated in those terms, so as to ensure its consistency with different domestic tariff plans.

Question 50: The scope of periodic travel is discussed in section 3.2. on a yearly basis, in particular to accommodate for the seasonal variations of travels over the year. However, it might be possible for actual fair use limits reflecting the annual scope of periodic travel to be set for shorter periods than a year, provided the sum of those shorter period limits is equal to or higher than the annual definition of periodic travel. Please indicate the period of time over which fair use limits reflecting the scope of periodic travel established in the previous section should be applied.

- a year, i.e. no further temporal break-down of fair use policy.
- a semester
- a quarter
- a month
- a week
- a day
- other (please specify below)

Please explain your response and provide examples, including considerations on billing and implementation costs:

The fair-use limits should be flexible enough to allow operators to implement it in the most efficient and less costly way into their systems. A vast majority of GSMA members would support an additional break down per month, in line with current applicable domestic practices and easier to implement in terms of IT.

Question 51: In the case of domestic tariff plans with a **limited (fixed)** volume per service (voice, SMS messages, data), what should be the minimum share of the domestic tariff plan that should be available to the subscriber at domestic prices while periodically travelling abroad in the EU as considered in section 3.2. above?

- 100% (the whole volume of the domestic tariff plan is available without any surcharge to the customer while periodically travelling abroad in the EU)
- between 50% and 100%
- 50% (i.e. half of the whole volume of the domestic tariff plan is available without any surcharge to the customer while periodically travelling abroad in the EU)
- less than 50%
- the percentage share should depend on the domestic tariff plan (please specify how below)

Please explain your response and provide examples, including considerations on billing and implementation costs. If you chose the last option, please specify how the percentage share should depend on the domestic tariff plan:

When setting the rules for fair-use, and considering that these are minimum requirements and that operators can go beyond them, simplicity and cost minimisation must be the main drivers as well as flexibility to ease implementation in various operators' systems.

Part of GSMA members support a definition based on a fixed/absolute minimum number of units per service per year for reasons of simplicity, stability and predictability, while others support a definition based on a percentage per tariff. Operators should be able to comply with the fair-use in either ways.

Question 52: In the case of a domestic tariff plan including **unlimited** volume of any particular service (voice, SMS messages, data), of two of these services, or of the three services, what should be the minimum basis for setting any limits in the fair use policy on roaming consumption of that (or those) service(s) at domestic prices available to the customer while periodically travelling abroad in the EU as considered in section 3.2. above?

- the application by analogy of any domestic fair use policy to which the nominally unlimited domestic tariff plan might be subject
- the roaming fair use limits allowed for in the largest fixed volume domestic tariff plan of the operator (if any)
- the average daily domestic consumption of the subscribers of the tariff plan of the subscriber
- other (please specify below)

Please explain your response and provide examples, including considerations on billing and implementation costs:

See answer to question 51.

Question 53: In the above two sections the formulation of possible parameters for fair use policies includes a maximum number of days per year (defining periodic travel), possibly broken down in shorter periods, and possibly complemented by limits on the volume of consumption available while roaming abroad in the EU during that maximum number of days. If you think that the minimum parameters for fair use policy should be formulated differently, please specify:

Please refer to answer to question 43; fair-use policy should be flexible in terms of days and/or volumes, easy to understand for end users and as less complex and costly as possible for the operators to implement.

3.4. Incoming calls on pre-paid SIM cards

Question 54: Do you think that use of pre-paid SIMs roaming only with the purpose to receive calls should be addressed under fair use policy?

- Yes
- No
- don't know

If 'Yes' , please explain your how you would address this risk through fair use policy:

```
Pre-paid SIMs roaming only with the purpose to receive calls would be contrary
to normal usage and could even lead to some domestic disruption of the visited
market.

To avoid frauds and a bypass of the Regulation, fair use policy rules must
define a possible limit for MTC volume as well as it will do for MOC, SMS and
Data.
```

4. Sustainability mechanism

In some specific and exceptional circumstances, the provision of RLAH may affect the sustainability of an operator's domestic charging model, for example, if its domestic prices are below the prices they have to pay to the visited network operators hosting their roaming customers when travelling abroad in the EU and the operator's overall revenues are low relative to its effective roaming costs. For these exceptional cases, and in view of avoiding an increase in domestic prices, the Regulation foresees, as an exception, the possibility for these operators to still apply a surcharge to their roaming customers, subject to a prior authorisation of the national regulatory authority. To obtain this authorisation, the operator will have to provide to the national regulatory authority all the necessary information proving that the abolition of roaming surcharges would lead to its domestic charging model becoming unsustainable. The Regulation provides that the roaming surcharge applied shall however not be higher than the strict minimum necessary to recover the operator's costs of providing retail roaming services.

Pursuant to the Regulation, the methodology for assessing the sustainability of the abolition of retail roaming surcharges shall be based on an analysis of: (i) the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated roaming services,(ii) the overall actual and projected revenues from the provision of regulated retail roaming services, (iii) the consumption of such services and of domestic services, and (iv) the level of domestic competition, prices and revenues, and any observable risks that domestic prices would be appreciably affected by RLAH pricing.

This set of questions seeks views on the appropriate methodology to be used by national regulatory authorities for assessing the sustainability or otherwise of a domestic charging model following the abolition of retail roaming surcharges and, consequently, on the necessary information to be submitted by a roaming provider to its national regulatory authority for the purposes of that assessment. All inputs will be used by the Commission when laying down detailed rules on this methodology in the Commission implementing act mandated by the Regulation.

4.1. Determining the overall actual and projected costs from the provision of regulated retail roaming services

This section seek views on how to determine the overall actual and projected costs of providing regulated retail roaming services by reference to the effective wholesale roaming charges for unbalanced traffic and a reasonable share of the joint and common costs necessary to provide regulated roaming services.

The costs of providing regulated retail roaming services, calculated by reference to the effective wholesale roaming charges for unbalanced traffic and to a reasonable share of necessary joint and common costs, can be represented as follows:

Costs of providing retail roaming services =
retail roaming costs + wholesale roaming payments for unbalanced traffic (if total wholesale roaming payments > total wholesale roaming revenues)

Retail roaming costs

Question 55: One way to determine retail costs of providing roaming services would be to obtain them from the operator's accounts. Do you think that it is an appropriate way to do so?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate the retail costs of providing regulated roaming services:

GSMA would like to highlight that the methodology suggested by the Commission appears to be rather difficult to implement in practical terms given the need for a prospective analysis which relies on highly uncertain roaming traffic forecasts. In addition, trying to allocate both revenue and costs at the retail level depending on each type of offer (including 2, 3 or 4 play offers with discounted handsets) is questionable as there is no standard methodology to do so and such allocation mechanism depends on each operator and its own business strategy. A simpler methodology should be studied and GSMA is willing to contribute to such effort would the Commission decide to modify its approach.

Question 56: Please indicate the categories of retail roaming costs that you consider should be included to estimate the costs of regulated retail roaming services, including a reasonable share of joint and common costs. Please provide a brief description for each category of cost and specify the different categories of costs involved :

Total wholesale roaming payments

Question 57: Do you agree that wholesale roaming payments should be based on the payments for these services obtained from the operator's accounts?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate the wholesale roaming payments:

Wholesale roaming payments for unbalanced traffic

Question 58: Do you agree that wholesale roaming payments for unbalanced traffic should be obtained by summing up wholesale roaming payments for bilateral unbalanced traffic between the domestic operator and each individual EU operator visited by the domestic operator's customers when roaming?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate the wholesale roaming payments for unbalanced traffic, as foreseen in the Regulation:

Total wholesale roaming revenues

Question 59: Do you agree that wholesale roaming revenues should be based on the revenues for these services obtained from the operator's accounts?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate wholesale roaming revenues:

4.2. Determining the overall actual and projected revenues from the provision of regulated retail roaming services

This section seeks views on how to determine the overall actual and projected revenues from the provision of regulated roaming services

Revenues from the provision of retail roaming services

There are several approaches that could be used to estimate the revenues derived from the provision of retail roaming services. In principle, the revenue streams from retail roaming services that should

be considered for the purpose of assessing sustainability should be composed of:

- In-bundle revenues (i.e. revenues derived from the use of services up to the volume limits allowed by the bundle)
- Out-of-bundle revenues (i.e. revenues derived from the use of services exceeding the volume limits allowed by the bundle)
- Out-of-fair use policy revenues (i.e. including any surcharges derived from the use of services exceeding the limits allowed by the roaming fair use policy)

Question 60: Do you agree that the revenue streams from retail roaming services that should be considered for the purpose of assessing sustainability should be composed of the three types of revenues described above?

- Yes
- No
- don't know

If you have responded 'No', please indicate which other revenues from retail roaming services should be taken into account in the assessment of sustainability and/or which of the above revenue streams you believe should not be taken into account:

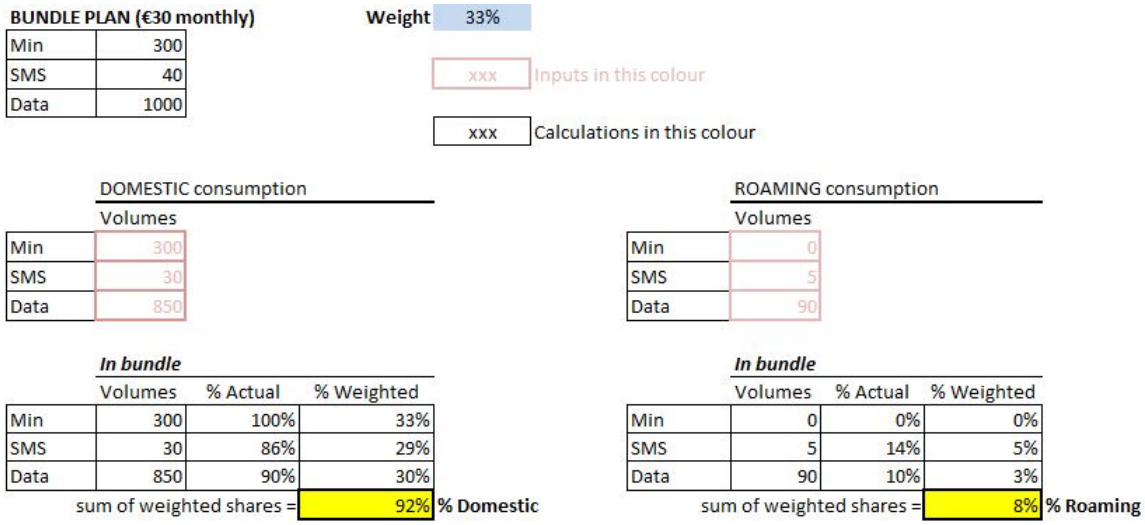
Question 61: In the case of *in-bundle* revenues, one possible approach would be to derive retail roaming revenues as a share of total domestic and roaming consumption within the bundle (i.e. the revenues derived from the bundle should be allocated pro rata between roaming and domestic consumption volumes). Do you consider that this approach to derive *in-bundle* retail roaming revenues would be appropriate?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to calculate actual and projected in-bundle revenues from retail roaming services:

In the case of bundled offers, each tariff plan typically includes certain limits of usage for each of the services (i.e. minutes of voice calls, number of SMS and Mbytes of data). Under RLAH the end-user will be able to consume the in-bundle volumes like at home while roaming, subject to fair use. The difficulty in assessing the share of consumption lies in the fact that the level of usage of each service may vary (e.g. an end-user may consume 100% of voice call minutes, 80% of SMS and 50% of total data allowed by the bundle). In order to estimate the share of consumption (i) while roaming and (ii) domestically, one possible approach to derive the share of in-bundle revenues driven by retail roaming traffic (as opposed to retail domestic traffic) is to give weights to the different volumes of services.

Below we present a simplified example to illustrate this approach. For the sake of simplicity, in the example we give equal weights to each of the three services. As there are three services, an equal weight would imply a 33% weight for each (i.e. 1/3 each). In the example, the actual domestic and roaming consumption in-bundle is 92% and 8%, respectively (note that for simplicity we assume that for voice the roaming consumption occurs after the domestic consumption, resulting in 30 minutes of calls out-of-bundle, to be taken into account in a subsequent stage). Thus, in the example the in-bundle revenues of this plan (€30) should be allocated 92% to domestic consumption and 8% to roaming consumption:



BUNDLE PLAN (€30 monthly) **Weight** 33%

Min	300
SMS	40
Data	1000

xxx Inputs in this colour

xxx Calculations in this colour

DOMESTIC consumption

	Volumes
Min	300
SMS	30
Data	850

In bundle

	Volumes	% Actual	% Weighted
Min	300	100%	33%
SMS	30	86%	29%
Data	850	90%	30%
sum of weighted shares =			92% **% Domestic**

ROAMING consumption

	Volumes
Min	0
SMS	5
Data	90

In bundle

	Volumes	% Actual	% Weighted
Min	0	0%	0%
SMS	5	14%	5%
Data	90	10%	3%
sum of weighted shares =			8% **% Roaming**

In other words, the weight for each roaming service is obtained as follows:

SMS = (roaming consumption)/(roaming + domestic consumption) x (weight) = 5/(5+30) x 33% = 5%

Question 62: Do you consider that an approach using weights like the one depicted in the example above is the most appropriate to derive the share of in-bundle volumes and, subsequently, the in-bundle revenues that should be allocated to retail roaming services?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to calculate the share of revenues from retail roaming services:

Question 63: In your view, with an approach using weights for every service, which of the following weights would be preferable for bundles incorporating the three main mobile services (voice, SMS, data):

- consider that each service (voice minutes, SMS, data) has the same weight (i.e. 33%) in the bundle of services, irrespective of the respective volume limits
- consider that each service (voice minutes, SMS, data) has a weight proportional to their estimated underlying cost
- other (please specify below)

- don't know

Please explain your response and provide examples:

Question 64: In the case of out-of-bundle and out-of-fair use policy revenues, do you agree that these should be based on the revenues obtained from out-of-bundle and out-of-fair use policy consumption while roaming? It should be borne in mind that out-of-bundle roaming consumption would normally be priced in the same way as out-of-bundle volumes for domestic consumption, whereas out-of-fair use policy roaming consumption would be subject to a maximum surcharge on top of the applicable domestic rate (whether in-bundle or out-of-bundle, depending on the circumstances).

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate out-of-bundle and out-of-fair use policy retail roaming revenues:

Question 65: In the case of dual-, triple- or quadruple-play bundles, some of the in-bundle revenues could be associated with services unrelated to roaming (e.g. fixed telephony, pay-TV or fixed broadband). In your opinion, what would be the best approach to estimate the share of revenues related to mobile services (which, subsequently, would have to be allocated to roaming and domestic consumption, as described in the previous questions)?

- consider that each service (fixed telephony, mobile telephony, pay-TV and/or broadband) has the same weight (i.e. 1/(number of services in the bundle)) in the bundle of services
- consider that each service (fixed telephony, mobile telephony, pay-TV and/or broadband) has a weight proportional to their estimated underlying cost
- consider that each service (fixed telephony, mobile telephony, pay-TV and/or fixed broadband) has a weight proportional to the price of an offer from the same operator providing the service on a standalone basis (if any)
- other (please specify below)
- don't know

Please explain your response and provide examples:

4.3. Actual and projected time series to be considered to assess sustainability of a domestic charging model under RLAH

Application for derogation from the RLAH regulation ***before*** its implementation

Question 66: In the case of an application before the implementation of RLAH, the period of the *projected* time series used to assess sustainability should be:

- 6 months
- one year
- two years
- three years
- other (please specify below)

Please explain your response and provide examples:

Any application based on historic data prior to the implementation of RLAH is meaningless as it won't capture the elasticity effect of roaming at domestic prices. As such, a prospective analysis is required.

Question 67: In the case of an application before the implementation of RLAH, please explain on which basis would the operator assess the impact of RLAH on the roaming traffic of its customers (i.e. the price-elasticity of demand for roaming following the elimination of roaming surcharges imposed by RLAH):

- based on the impact on the demand for roaming of previous rounds of price reductions imposed by the Roaming Regulations
- based on the impact on the demand for roaming of the introduction by *that operator* of a RLAH-type of offer before the implementation of the RLAH obligation
- based on the impact on the demand for roaming of the introduction by *another operator* of a RLAH-type of offer before the implementation of the RLAH regulation
- based on the impact on the demand for domestic services of previous changes in the prices of the operator's domestic tariff plans
- it would not be possible to estimate the impact on demand for roaming of the introduction of the RLAH regulation
- other (please specify below)

Please justify your response and explain how you consider the operator could overcome any difficulties in estimating the impact on demand of the introduction of the RLAH obligation:

Application for derogation from the RLAH regulation ***after*** its implementation

Question 68: In the case of an application after the implementation of RLAH, the period of the actual time series data ***after*** the implementation of RLAH used to assess sustainability should be at least:

- no actual time series data should be needed to assess sustainability
- 3 months
- 4 months
- 6 months

- (●) one year
- ( ) other (please specify below)

Please explain your response and provide examples:

> The minimum period is one year due to seasonality of roaming demand. However, an ex post application will not help the operator recover the losses that it has incurred. Given the time lag associated with data availability, extraction and analysis, an ex post evaluation is likely to lead to an operator incurring up to two years of losses (which can never be recovered) before the sustainability exemption is applied.
>
> Any operator should be able to apply for derogation from the RLAH regime as soon as it becomes aware of the unsustainability.

Question 69: In the case of an application after the implementation of RLAH, the total period of the *projected* time series data used to assess sustainability should be:

- ( ) no projected time series data should be needed to assess sustainability
- ( ) 6 months
- (●) one year
- ( ) two years
- ( ) three years
- ( ) other (please specify below)

Please explain your response and provide examples:

> See answer to question 68.

There are several methodologies that could be used to assess the sustainability of a domestic charging model. A possible approach would be to (i) estimate the net margin (revenues minus costs) on regulated retail roaming services ('retail roaming margin') following the implementation of RLAH; and, where the latter is negative, (ii) estimate the net margin on domestic services ('domestic margin'); and (iii) compare the domestic margin to the negative retail roaming margin to assess the potential impact on the evolution of the operator's domestic prices (so-called "waterbed effect"), if any.

Question 70: In the case of an application after the implementation of RLAH, please explain on which basis would the operator assess the impact of RLAH on the roaming traffic of its customers (i.e. the price-elasticity of demand for roaming following the elimination of roaming surcharges imposed by RLAH):

- ( ) based on the impact on the demand for roaming of previous rounds of price reductions imposed by the Roaming Regulations
- (●) based on the impact on the demand for roaming from the subscribers of that operator of the introduction of the RLAH obligation only
- ( ) based on the impact on the demand for roaming from the subscribers of all operators in the

market of the introduction of the RLAH

- based on the impact on the demand for domestic services of previous changes in the prices of the operator's domestic tariff plans
- other (please specify below)

Please justify your response and explain how you consider the operator could overcome any difficulties in estimating the impact on demand of the introduction of the RLAH obligation:

Using the operator's actual data from the introduction of RLAH is the most objective method.

4.4. Assessment of sustainability of a domestic charging model under RLAH

Question 71: Do you agree that the most appropriate methodology to assess sustainability would be to compare the 'retail roaming margin' (if negative) and the 'domestic margin'?

- Yes
- No
- don't know

If you have responded 'No', please explain your response and provide an alternative approach:

Question 72: When all operators active in a market are similarly impacted by a structural change potentially affecting their margins on an aspect of their activities, such as for example the introduction of RLAH, it may be argued that these operators may have a greater incentive to adapt their tariffs to compensate for the potential negative margins than if the change was asymmetric (i.e. only affecting one or some of the operators active in the market, or affecting some significantly more than others). In the latter case, any attempt to increase prices by the affected company would be likely to fail when faced by competition from other companies that were not affected, or less affected, by such change of circumstances. However, the ability of companies affected by a symmetric structural change, such as RLAH, to adapt their domestic charging model and "pass on" increases in prices to its customers to compensate for any potential negative retail roaming margin following the implementation of RLAH will also be somewhat limited by other factors. In your opinion, should the limitation to "pass on" an increase in domestic prices to customers to compensate for a potential negative margin from the implementation of RLAH be taken into account when assessing the sustainability of the domestic charging model:

- Yes
- No
- don't know

Please justify your response. If your answer is 'Yes', please explain how this should be taken into account when assessing sustainaability:

Question 73: In light of the level of competition in EU telecommunications markets, and of differences between operators (e.g. in geographic scope of operations, customer base, etc.), if the implementation of RLAH resulted in a negative retail roaming margin for certain operators, what share of this loss would in your view be passed on through price increases in its domestic charging model:

- 100%
- 80-99%
- 60-79%
- 40-59%
- 20-39%
- 1-19%
- 0%

Please explain your response and provide examples, if necessary citing any relevant differences between countries or operators:

```
It is impossible to generalise.
```

Question 74: In your opinion, taking into account your view in Question 72 on the limitations on an operator's ability to pass increases in prices on to its customers to compensate for potential losses from the implementation of RLAH, should an operator's domestic charging model be considered unsustainable if it results in a negative retail roaming margin and the proportion of this negative margin when compared to the domestic margin is at least (in absolute terms):

Proportion = Retail roaming margin / Domestic margin

- 5%
- 10%
- 15%
- 20%
- other (please specify below)

Please explain your response and provide examples. If you consider that a fixed proportion would not adequately reflect variations in objective factors such as high or low domestic prices or margins, consumption levels or pass-on possibilities, please indicate the alternative approach that you would favour:

```
There is no objective test that is relevant.
```

4.5. Estimating the 'retail roaming margin' and the 'domestic margin'

Once the costs of, and revenues from, providing retail roaming services have been calculated using the methodology described above in the two sections 4.1 and 4.2, the retail roaming margin can be calculated as follows:

Retail roaming margin = revenues from retail roaming services - costs of providing retail roaming services

The 'retail roaming margin' can then be compared to the 'domestic margin' according to the methodology established in section 4.4 above. The following questions seek views on how to estimate the 'domestic margin'.

Question 75: There are different methodologies that could be used to estimate the domestic margin. For simplicity, one possible approach would be to use a financial measure from the operator's annual reports. Do you consider that using a financial from the operator's annual reports to estimate the domestic margin would be appropriate?

- ○ Yes
- ◉ No
- ○ don't know

If you have responded 'No', please explain your response and provide an alternative approach to estimate the domestic margin:

```
This approach is not possible when operators are selling multiple products as
explained in the answer to question 63.
```

Question 76: If the domestic margin was estimated using a financial measure from the operator's annual reports, which financial would be the most appropriate?

- ○ EBITDA
- ○ EBIT
- ○ After tax profit
- ◉ Other (please specify below)
- ○ don't know

Please explain your response and provide examples:

```
To the extent that margin comparisons are possible, the cost of capital
associated with different services must be taken into account and this is not
possible to extract from company accounts.
```

Question 77: If the domestic margin was estimated using a financial measure from the operator's annual reports, this financial would already incorporate the roaming margin. In order to avoid double counting, do you agree that the retail roaming margin estimated using the methodology above should be subtracted (if positive) or re-introduced (if negative) from the financial estimate?

- ○ Yes
- ◉ No
- ○ don't know

If you have responded 'No', please explain your response and provide an alternative approach:

> This is theoretically correct. In practice this would mean operators having to undertake a full accounting separation exercise to split revenue, costs and assets between all services that are offered for a service that is now a domestic one, which will render this impracticable.

If any other additional element to the consultation is to be provided, you can upload your file here

Useful links

Roaming Regulation 531/2012 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0531)

Regulation 2015/2120
(http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.310.01.0001.01.ENG&toc=OJ:L:2015:31

Background Documents

background_document.docx (/eusurvey/files/87b4fff0-b3c7-49e8-9dd8-04b3d7bf4176)

Contact

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