Danish Non-Paper 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

Significantly reducing roaming wholesale price caps in the EU is a necessary and logical step on the way to ending roaming retail surcharges on a sustainable basis in the EU.

The Danish Government welcomes the opportunity to comment on the Commission's 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.

Being able to use electronic communication services, including while travelling, is becoming ever more important. The abolition of roaming surcharges is, thus, essential for consumers and businesses in today's European digital economy and society. It is also an important step towards completing a European single market for electronic communications.

Retail price levels, price structures for mobile services and consumption patterns of mobile services vary significantly between Member States. Danish consumers are among those who use the most mobile data in Europe.

Furthermore, there are different travelling patterns of consumers across Europe. There is a general trend of greater travel from Northern Member States to Southern Member States than vice versa, which has typically resulted in operators in the Northern Member States being net buyers of roaming and operators in Southern Member States being net sellers.

Thus, the coming implementation measures to determine a wholesale price cap and fair use limit for the full implementation of the Regulation (EU) 2015/2120 will have a major impact on European operators' roaming businesses and European consumers.

Overall, there is a critical balance between the level of the wholesale price cap and fair use limit. The higher wholesale price cap and fair use limit, the greater the negative effect on the Danish operators' retail businesses will be. This can have an effect on the domestic retail prices and the access to roaming services since Denmark has some of lowest retail prices within the EU. Therefore, the aim must be to find a balance that ensures that consumers have a real opportunity to use mobile services across the EU and at the same time does not unduly entail that the overall profitability of operators is adversely affected.

Application of the fair use limit has to be comprehensible and easily explained in practice.

Wholesale roaming prices

All previous reductions of retail prices have been accompanied by a reduction of wholesale prices. The Danish Government considers this approach to be the most balanced.

A sustainable end to roaming surcharges requires a significant reduction of not only the retail prices that consumers pay but also the wholesale prices that operators pay each other. This was clearly spelled out in recital 40 of the roaming regulation (EU) No 531/2012: "action to reduce the level of retail prices without addressing the level of the wholesale costs associated with the provision of these services could risk disrupting the orderly functioning of the internal market for roaming services and would not allow a higher degree of competition."

Data traffic increasingly drives network costs according to BEREC and data volumes are increasing rapidly. Thus, a substantial reduction of the wholesale price cap for data services is the most important step in abolishing roaming surcharges in a sustainable way.

Domestic retail prices in most Member States are lower than the regulated wholesale price caps. According to data collected by BEREC not only regulated wholesale price caps but also the average wholesale prices that operators actually pay remain higher than domestic retail prices in many markets. Thus, operators are not able to provide roaming at domestic prices (Roam Like At Home) without losing money since they pay a higher wholesale price than they charge consumers at the retail level.

If operators lose money on selling roaming services at domestic prices they will either raise domestic prices (waterbed effect) to compensate for this loss or stop offering roaming services altogether. This effect is of greater magnitude for smaller operators that are not able to negotiate discounts on the wholesale caps, for operators in countries where many customers are frequent travelers and operators with low domestic prices.

The Danish Government finds it important that the wholesale price cap is determined at cost level, so the retail operator does not run an inappropriate risk of not being able to recover its costs when customers have access to RLAH.

At the same time the Danish Government finds it necessary to use a common, objective methodic approach to determine the cost of roaming. The most appropriate approach would be to use a single cost model for the EU based on an efficient operator as it also described in the questionnaire (question 27, answer 1): *"…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)"*.

Furthermore, it is the Danish Government's assessment that – from a transparency view – it would be most appropriate if there is to be determined a wholesale price cap that applies to the entire EU.

It is possible to lower wholesale caps without requiring operators to sell roaming wholesale services at a loss. This is especially true with regards to data services. According to BEREC the current wholesale caps for data are higher than costs. The regulated data cap is 5c€ per MB or more than 50 € per GB. Current domestic retail data offers are a lot cheaper than this in EU Member States.

Wholesale data caps in the Roaming III-regulation were based on the maximum cost in 5 countries, with an additional mark-up (BEREC). Data costs per unit have fallen substantially since the caps were adopted in 2012. The Danish Business Authority (Erhvervsstyrelsen) has developed a cost model that estimates the cost of providing mobile services in Denmark. According to this model the price of providing 1 MB of data

was less than 0.3 eurocent in 2014. If data volumes double (not an unreasonable expectation) the price per MB falls to 0.2 eurocent.

The current wholesale price caps are 5 eurocent per minute, 2 eurocents per SMS and 5 eurocents per MB. The average wholesale prices that operators actually pay were 4 eurocent per minute, 1.3 eurocent per SMS and 1.9 eurocent per MB in the first quarter of 2015 (BEREC benchmark report). So actual wholesale prices (especially for data services) are significantly lower than the regulated price caps which further underlines that the current price caps are set considerably above actual cost.

Fair use policy

On the one hand, consumption patterns across the EU vary significantly. The rules should be able to accommodate consumers with high consumption patterns to ensure that consumers have a real opportunity to use mobile services across the EU to the benefit of European businesses. For this to happen, it is important that the fair use policy is not too restrictive.

On the other hand, a fair use limit should be determined to avoid arbitrage in the form of "permanent roaming" and to ensure that the concrete fair use limit does not unduly entail that the operators overall profitability is adversely affected which could affect the low-priced subscriptions on the market that are typically used by non-travelling consumers. In case of a high fair use limit flat rate subscriptions with unlimited voice minutes or national voice and/or data packages included will generate a loss on all roaming traffic that is within the fair use limit. It is therefore important that the fair use limit is not set higher than what can be considered reasonable for "periodic travel".

Overall, the Danish Government recommends setting a fair use limit that strikes a balance between the above mentioned objectives and ensures that consumers have a real opportunity to use mobile services across the EU and at the same time does not unduly entail that the overall profitability of operators is adversely affected.

In addition, the fair use limit must be understandable for consumers and must be to be handled technically. In other words, a fair use limit per single subscription with a larger number of parameters would be inappropriate.

Sustainability clause

According to regulation (EU) 2015/2120 a roaming provider should, in specific and exceptional circumstances where a roaming provider is not able to recover its overall actual and projected costs of providing regulated retail roaming services from its overall actual and projected revenues from the provision of such services, be able to apply for authorisation to apply a surcharge with a view to ensuring the sustainability of its domestic charging model.

The imposition of a sustainability charge is specifically intended to compensate operators with low mobile rates typically in the form of packages and a negative balance of roaming traffic among other reasons because the national retail price level of mobile traffic is very low compared to the rest of the EU. It is largely a problem in the exchange of traffic with countries with a high number of foreign tourists.

The sustainability clause should therefore ensure that no operator risks having to provide roaming services without being able to recover its cost. A situation where cost recovery is made impossible or administratively difficult would deter the operators from providing roaming services in the first place, especially in their cheapest offerings.

The Danish Government finds it important to involve the operators in the process of developing the mechanism for assessment of the sustainability since the operators have concrete and simple demands to the calculation of costs.

The mechanism for calculating sustainability and the conditions for applying the sustainability clause should be simple and predictable for operators and regulatory authorities alike.