EXPLANATORY MEMORANDUM TO

THE MOBILE ROAMING (EUROPEAN COMMUNITIES) (AMENDMENT) REGULATIONS

2009 No. 1591

1. 1.1 This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations implement Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 ("Roaming II"). Roaming II amends Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC ("the EC Roaming Regulation 2007").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Roaming II was adopted on 18th June 2009, and its provisions will come into force on 1st July 2009. It expires on 30th June 2012. In order to comply with our EU obligations, these regulations must come into force on 1st July 2009. The Department was unable to obtain an official number for the Regulation until June 29th 2009, when it was published in the Official Journal (OJ No. L 167, 29.06.2009, p. 12).

3.2 Because of the circumstances described above there has been a breach of the 21 day convention for laying this statutory instrument before Parliament. A Voluntary Memorandum is attached, outlining in further detail the reasons for this breach.

4. Legislative Context

4.1 Roaming II will come into force on 1 July 2009, amending the EC Roaming Regulation 2007.

4.2 Article 8 of the EC Roaming Regulation 2007 requires dispute resolution procedures to be put in place to cover disputes between different communications providers and between communications providers and their customers. Article 9 of the EC Roaming Regulation 2007 requires each Member State to enforce the provisions of that Regulation by putting in place effective, proportionate and dissuasive penalties.

4.3 The Communications Act 2003 ("the Act") provides the Office of Communications ("Ofcom") with powers to regulate the activities of the telecommunications sector in the

UK. The 2007 Regulations provide OFCOM with the additional powers required for the effective implementation of the EC Roaming Regulation.

4.4 The EC Roaming Regulation 2007 has been amended by Roaming II in respect of the upper cost limit of roaming voice calls made and received, the way that roaming calls are charged for in terms of time, the cost of roaming Short Messaging Services (usually known as "texts") and the wholesale charges for downloaded data while roaming.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The EC Roaming Regulation 2007 resulted from a policy initiative from the Commission and reflected a long period of concern about high roaming charges. The 2007 Regulation contained provision for a short review period and the possible extension of the regulation to SMS and data roaming. The 2007 Regulation attracted considerable Parliamentary and media attention. The extension of the Regulation to text messaging attracted some media attention but nothing like on the same scale as the original instrument.

7.2 The amendments to the EC Roaming Regulation 2007, in the form of Roaming II, were agreed on 18 June 2009 and will come into force on 1 July 2009. The amendments extend the duration and scope of the 2007 Regulation. The fundamental elements of the earlier Regulation remain but these have now been extended to cover the wholesale and retail roaming charges for Short Messaging Services, a requirement on the structure of roaming charges to eliminate the problem of rounding up and the imposition of an upper limit on the wholesale charges allowable for data downloads while roaming. All of these obligations are directly applicable on the operators. The revised obligations on the operators will take effect on 1 July 2009.

7.3 The 2007 Regulations provided for a penalty of up to 10% of turnover of "relevant business" for a particular period to be imposed by OFCOM for breaches of the Regulation (e.g. failure to comply with the maximum wholesale and retail prices). This is based upon the penalty set out in section 97 of the Act, for breaches of general conditions. "Relevant business" was defined as "so much of any business carried on by the notified provider as consists in the provision of terrestrial public mobile telephony services". In both cases the amount of the penalty levied by OFCOM is an amount which is determined by them to be both appropriate and proportionate. To reflect the broader scope of the amended EC Regulation, this statutory instrument changes the definition of relevant business to "the provision of terrestrial public mobile *communications* services". This is the only substantive change to the 2007 Regulations. The 2009 Regulations also update the references to the relevant European law.

7.4 BIS will make a consolidated version of the SI available to the Mobile Network Operators. We doubt that there would be sufficient interest to make one more widely available.

8. Consultation outcome

8.1 Given the short timescale for implementation, we contacted the Mobile Network Operators direct and explained our proposal for changing the penalty regime. One company questioned whether the penalty could be based on separate income streams relating to the different services offered but did not demur from the view of the Department and Ofcom that this approach was not likely to be practicable for all operators and would not impact on the penalty itself which would be decided by Ofcom on the basis of what was appropriate and proportionate to the breach in respect of which it is imposed.

8.2 A consultation on the Commission's proposals to amend the EC Roaming Regulation 2007 was conducted at the end of 2008. The results of this consultation are available on the BIS website.

9. Guidance

9.1 Given the relatively minor changes proposed, the Department does not propose to offer guidance. Ofcom will offer guidance as appropriate on the requirements imposed on operators directly by the amendment to the EC Roaming Regulation 2007.

10. Impact

10.1 The impact on business, charities or voluntary bodies or the public sector as users of mobile services has not been separately calculated. An Impact Assessment on the substance of the amendments to the EC Roaming Regulation contained in Roaming II is attached to this memorandum.

10.2 The impact of this SI to businesses has been considered. It has been determined that there will be no impact to compliant businesses or consumers from implementing the SI. An impact assessment of this Statutory Instrument is therefore not needed.

These Regulations could potentially have an impact to non-compliant businesses as they effectively increase the maximum penalty that can be applied to infringing businesses.

It has been determined that this is not sufficient reason to prepare an impact assessment since:

i) Costs to businesses resulting from non-compliance should not be taken into account when appraising costs and benefits of the statutory instrument.

ii) The criterion of the regulator (Ofcom) to determine the volume of the penalty will not be affected by the instrument. This criterion is based on the principle of proportionality (i.e. imposing a penalty which is proportional to the infringement).

11. Regulating small business

11.1 The Regulation does not exclude small companies but it will not apply to them.

12. Monitoring & review

12.1 The Department will monitor breaches of the Regulation in the normal course of contacts with Ofcom. The EC Regulation 2007, as amended by Roaming II places an obligation on the European Commission to undertake a thorough review of the Regulation and to report to the Council and the Parliament on an interim basis in 2010 and finally in 2011.

13. Contact

Geoff Smith at the Department of Business, Innovation and Skills can answer any queries regarding the instrument.
Tel: 020 7215 2940 or email geoff.smith@berr.gsi.gov.uk

Voluntary Memorandum to the Joint Committee on Statutory Instruments

Re: The Mobile Roaming (European Communities) (Amendment) Regulations 2009

1. The purpose of this memorandum is to explain to the Committee why there has been a breach of the 21 day convention for laying of this statutory instrument before Parliament.

2. These regulations implement Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18th June 2009 amending Regulation (EC) No. 717/2007 and Directive 2002/21/EC ("Roaming II"). The provisions of Roaming II come into effect on 1st July 2009 and will expire on 30th June 2012. So in order to comply with our EU obligations, these regulations must come into force on 1st July 2009.

3. Regulation 717/2007/EC ("the EU Regulation") was partially implemented by the Mobile Roaming (European Communities) Regulations 2007 (SI 2007/1933). The EU Regulation was, of course, as a regulation, directly effective, so we implemented only those parts of it requiring specification of the regulator and the setting up of enforcement provisions. That existing domestic legislation (which does not take advantage of paragraph 1A of Schedule 2 to the European Communities Act 1972) now has to be amended to refer to the amended EU Regulation and to reflect - through a change of definition - the extended scope of the EU Regulation, in order to ensure that the domestic regulator can enforce breaches of obligations which have been extended by Roaming II.

4. These regulations were made on 29th June 2009 and laid before Parliament on 30th June 2009.

5. The Proposal for Roaming II was adopted at first reading by the European Parliament on 22nd April 2009, and formally adopted by the European Council on 18th June 2009. Policy discussions on implementation and consultation started shortly after adoption by the European Parliament with the aim of making these regulations immediately after adoption by the Council.

6. It was not possible for the Department to obtain an official number for the Roaming II Regulation until 29th June, the date on which the Regulation was published in the Official Journal of the European Union. While the Department is aware that it is possible, in exceptional circumstances, to refer to EC Regulations in statutory instruments without use of the official number, the decision was taken to wait until that number was obtained from the Commission before the statutory instrument was made. It was felt that it was particularly important to wait for the official number in this case as the Roaming II Regulation (and therefore its number) is referred to in the substantive clauses of the SI. Delay in obtaining this number has caused a further minor delay in the making of this instrument.

7. These regulations were drafted, subject to final consultation responses, and sent in draft to Peter Davis at the JCSI and Allan Roberts at the House of Lords Merits Committee on 9th and 10th June respectively. The regulations were made substantially in the form sent to the Committees.

Department for Business, Innovation and Skills
29th June 2009

Summary: Intervention & Options		
Department /Agency: **BIS (Department for Business, Innovation and Skills)**	**Title:** **Impact Assessment of Regulation (EC) 544/2009 of the European Parliament and of the Council of 18th June 2009, amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community**	
Stage: Final	**Version:** Final	**Date:** 29 June 2009
Related Publications: EC (2008): Consultation on the Proposal for a Regulation of the European Parliament and of the Council on Roaming on Public Mobile Networks within the Community		

Available to view or download at:

http://www.

Contact for enquiries: Tim Hogan/ Pau Castells **Telephone:** 020 7215 1628

What is the problem under consideration? Why is government intervention necessary?

Analysis by the European Regulators Group (ERG) of the 2007 EU Roaming Regulation, which introduced caps on the wholesale and retail price of voice calls made and received in other Member States, suggested that further regulation is necessary because there is not sufficient competition and innovation to ensure that falling wholesale costs would be reflected in lower retail rates in the absence of regulation. For example, the retail price of voice roaming calls was still at, or very near, the cap in two thirds of Member States, the wholesale and retail price of SMS and data roaming services continued to be high across the EU while the quality of information on the cost of data roaming was poor with many instances of 'bill shock' still being reported.

What are the policy objectives and the intended effects?

The European Commission brought forward proposals to amend the 2007 EU Roaming Regulation. The aim was to deliver a higher level of consumer protection and competition in the EU mobile telecommunications services sector. The UK welcomed the European Commission's proposals to amend the 2007 EU Roaming Regulation and, after consultation with stakeholders, concluded that the proposals should be supported subject to technical amendments to ensure effective transparency of data roaming prices. These amendments were to ensure that the requirements were practical for operators and would provide effective protection to consumers.

What policy options have been considered? Please justify any preferred option.

Regulation has been considered in four different policy areas. These include: 1) extending the time frame for reducing the wholesale and retail price of voice roaming to 2012; 2) introduce price caps on SMS roaming (retail and wholesale) 3) increase transparency of information on data roaming charges to counter the problem of 'bill shock'and 4) prevent abusive pricing practices in data roaming (wholesale only). Within each policy area, both the counterfactual option 1 of doing nothing and preferred option 2 approved by the European Council and Parliament have been considered.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Agreed text of the Regulation calls on the Commission to review the effectiveness of the Regulation and report to the Council and Parliament on an interim basis in 2010 and finally in 2011.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

> ***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

Stephen Carter Date: 29th June 2009

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Summary: Analysis & Evidence

Policy Option: Option 2	**Description: Implementation of the Amendments to the EU Roaming Regulation as proposed by the Commission and as modified by Council and Parliament**

COSTS

ANNUAL COSTS		Description and scale of **key monetised costs** by 'main affected groups' Costs to industry from lower profits as a consequence of voice and SMS price caps.
One-off (Transition)	**Yrs**	
£	3	
Average Annual Cost (excluding one-off)		
£ 22-125 million		**Total Cost** (PV) **£ 64-362 million**

Other **key non-monetised costs** by 'main affected groups' Costs to industry derived from lower profits from data roaming price caps and per second billing itemisation.

BENEFITS

ANNUAL BENEFITS		Description and scale of **key monetised benefits** by 'main affected groups' Cost savings to users of voice,and SMS roaming services as a result of reduction in tariffs. Possibility of productivity gains to operators as they work to generate cost savings through improvements in the efficiency of their business models
One-off	**Yrs**	
£	3	
Average Annual Benefit (excluding one-off)		
£ 348-459 million		**Total Benefit** (PV) **£ 1,000-1,375 million**

Other **key non-monetised benefits** by 'main affected groups' Greater transparency of information about the price of mobile data roaming services reducing the risk of 'bill shock' whereby users pay signficantly more than they would otherwise have chosen to pay.

Key Assumptions/Sensitivities/Risks Assume that there is no increase in competition since these proposals do not address barriers to entry in the wholesale market or make it easier for consumers to switch in the retail market. Estimates of costs and benefits to UK consumers and mobile services industry are sensitive to the assumptions employed for their calculation.

Price Base Year 2007	Time Period Years 3	**Net Benefit Range** (NPV) **£ 638-1,311 million**	**NET BENEFIT** (NPV Best estimate) **£ 975 million**

What is the geographic coverage of the policy/option?	United Kingdom
On what date will the policy be implemented?	1 July 2009
Which organisation(s) will enforce the policy?	
What is the total annual cost of enforcement for these organisations?	£
Does enforcement comply with Hampton principles?	Yes/No
Will implementation go beyond minimum EU requirements?	Yes/No
What is the value of the proposed offsetting measure per year?	£ na
What is the value of changes in greenhouse gas emissions?	£ na

Will the proposal have a significant impact on competition?			Yes	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase	£	Decrease	£	**Net Impact**	**£**

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

In response to concerns over the consistently high prices EU citizens pay to make and receive voice calls while roaming in other Member States and the poor availability of transparent information on the prices charged by operators the European Union adopted in 2007 the Roaming Regulation. This placed caps on the wholesale and retail price which mobile phone operators could charge for voice roaming calls and required them to provide a minimum level of price transparency.

Since then, three benchmark data reports on roaming prices across the EU/EEA have been carried out by the European Regulators Group (ERG), in accordance with the 2007 Regulation[1]. They have noted that while the average prices for roaming voice calls made and received has fallen since the Regulation was adopted, they remain clustered at or near the regulated caps in around two thirds of countries. The average wholesale and retail prices for unregulated SMS roaming services are static at a high level in many parts of the EU. Wholesale and retail data roaming prices are falling significantly, but remain high in many countries. In its July 2008 response to the Commission's public consultation on the review of the functioning of the 2007 Regulation, ERG also expressed concern about consumers' ability to monitor and control their expenditure on data roaming services[2].

Rationale for government intervention

There are two reasons for government intervention in the EU mobile telecommunications sector. Firstly, competition in the EU mobile telecommunications sector is still relatively weak. In the wholesale sub-sector, competition is dampened because there are a limited number of operators and there are high barriers to entry (in the form of licences for the use of the necessary radio spectrum, itself a limited resources). In the retail sub-sector, competition is limited because customers are not particularly well informed by the range and cost of roaming services offered by operators, international calls account for a small proportion of their total mobile phone budget, and customers are often locked into contracts with operators which makes switching in the short-run very difficult and costly.

Consumers suffer as a result of low competition in two ways: higher prices and limited consumer choice. This is because weak competition reduces the incentive for firms to improve the efficiency of their business process, passing on any cost savings to consumers, and also innovate, developing new and better quality services which can be offered to consumers.

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[1] Discussion of the First and Second ERG Benchmark Data Reports in the Commission IA on the proposed amendment to the 2007 Regulation:
http://ec.europa.eu/information_society/activities/roaming/docs/regulation/impact_en.pdf
Third ERG Benchmark Data Report:
http://erg.eu.int/doc/publications/2009/erg_09_01_intern_roaming_rep3_090112.pdf

[2] http://erg.eu.int/doc/publications/erg_08_35rev1_resp_intern_roaming_cons_080729.pdf

A second reason for intervention is that there is also an information asymmetry problem. Consumers do not have transparent information about the range of roaming services offered by different operators and the various tariffs they charge. As a result, consumers may choose those services which do not best serve their needs or face the risk of 'bill shock' whereby they pay considerably more than they would otherwise have wished.

Commission's reform proposals

The European Commission wishes to amend the 2007 Roaming Regulation with a view to delivering a higher level of consumer protection and competition in the EU mobile telecommunications sector as well as a better functioning internal market for mobile voice, data and broadband services. The main elements of its proposals include:

- Extending the downward progression (the 'glide path') for wholesale and retail charges for voice roaming calls by a further three years to 2013 with the wholesale glide path declining more steeply
- Establish wholesale and retail caps for SMS messages
- Set new rules for how voice calls are billed, moving from per-minute to per-second billing, with the possibility of a 30-second minimum charge for wholesale calls and retail calls made
- Set a 'safeguard' wholesale cap for data roaming calls, billed per KB, and establish new transparency requirements and a bill control mechanism for retail data roaming

Scope of the Commission's proposals

The European Commission's impact assessment[3] breaks the mobile telecommunications sector down into three sub-sectors: voice services, SMS and broadband data services. The European Commission's proposals to amend the 2007 Roaming Regulation will have a direct impact on the three sub-sectors.

According to Ofcom figures[4], the number of mobile phone subscriptions has continued to rise steadily over the last few years, rising from some 50 million in 2002 to 73.5m in 2007. Estimated mobile retail revenue in the UK has increased from some £8.7m in 2002 to some £15.1m in 2007. Of this, voice and access accounted for some 75% of total mobile retail revenue with SMS and data revenue accounting for around 20% and 5% respectively. Ofcom state that at the present time, revenue from mobile broadband remains very small relative to other sources of mobile retail revenue. Assuming, a projection of 3 million mobile broadband subscribers over the next few years paying an average of £15m per month, they estimate that revenues of some £540m would be generated, equal to around 3.5% of the £15.1 total mobile retail revenue generated in the UK in 2007.

The Commission's proposals have the potential to affect a large number of people in the UK. First, research for Ofcom by Enders Analysis estimates that today around 49 million people in the UK use a mobile phone. Second, the percentage of adults who use their mobile phone abroad is likely to be much higher than the 20% figure estimated in research carried out for Oftel in 2001. This can be attributed in part to the steady rise in the number of mobile phone subscriptions, which have risen from some 50 million in 2003 to 73.5m in 2007 and in part, technological advances which have reduced the cost of roaming in other Member States and improved the range, quality and speed of mobile phone services in general.[5]

Following consultation with stakeholders, the Government decided to negotiate on the basis that the Commission's proposals were appropriate in scope but that there was some flexibility in the detail and a need to correct the approach in certain areas – such as the detail on the

[3] http://ec.europa.eu/information_society/activities/roaming/docs/regulation/impact_en.pdf
[4] The UK Communications Market 2008, Ofcom.
[5] According to Ofcom, mobile broadband is becoming increasingly popular driven by a continuing falling prices for internet access on mobile phones and technological developments which have improved the usability of the internet via phone, the growth of 3G mobile USB modems or 'dongles' and the rollout of High Speed Packet Access (HSPA) technology which has enabled mobile operators to offer broadband access at headline speeds comparable to lower-end fixed broadband offers.

transparency arrangements for data roaming. In negotiation in the Council and with the Parliament, the ceilings for voice calls and SMS messages were reduced from the Commission's proposals. The UK could accept these changes as they were still within the range of tariffs that the European Regulators' Group had proposed. Changes were also made to the wholesale caps for data roaming so that they declined over the period of operation of the Regulation. Again, this was acceptable as it reflected the likely path of the wholesale market over the period. Significantly, the period of operation of the Regulation was reduced by one year to 2012 from the Commission's original proposal of 2013 and a more stringent requirement was imposed on the Commission to gather evidence and report back to the institutions. This reflected UK policy that this was an exceptional measure and there should not be an assumption built into the Regulation that this approach should continue indefinitely.

Options

Two options are considered in the impact assessment:

Option 1: Do nothing (i.e. keep the status quo)

Option 2: Preferred option: Adopt the amendments to the EU Regulation proposals in the four policy areas where changes have been proposed: voice roaming prices, SMS roaming prices, billing utilisation and data roaming pricing and transparency

The main beneficiaries of these proposals will be consumers roaming in other Member States who will enjoy lower retail tariffs for SMS and voice roaming services. They may also benefit from lower retail data tariffs as a result of the safeguard wholesale cap. However, it is possible that these gains may be offset by increases in mobile phone tariffs elsewhere as operators seek to recoup falling revenues and rebalance their profits.

It is also possible that these proposals may lead to productivity gains for operators in the EU mobile telecommunications sector as the prospect of reduced revenues resulting from lower retail prices provide them with an incentive to improve the efficiency of their business models and reduce costs.

For clarity reasons, costs and benefits for the four policy areas are considered separately.

Policy 1: Voice roaming

- Option 1. Do nothing

This option would entail allowing the EU Roaming Regulation to expire on 30 June 2010.

Analysis by the European Commission[6] suggests that given the structural characteristics of the voice roaming market and the evidence recorded during the regulated period, removing either wholesale or retail price regulation for voice would not be an effective option. There is a significant risk that the underlying lack of competitive pressures in the voice roaming market and the incentive for mobile operators to maximise their roaming revenues would translate into a return to higher retail and wholesale prices for intra-Community roaming if the pricing obligations in the Regulation were to disappear on its expiry in 2010. The ERG considered that, even if providers where not able to raise prices once lowered (i.e. if the prices were 'sticky'), weak competition meant that falling wholesale costs would be unlikely to be passed through to the retail level in the absence of further regulation, giving stagnating prices.

- Option 2. Preferred option: Extend duration of regulation until 2012. Change structure of wholesale and retail regulation for voice with wider gap between wholesale and retail ceilings

[6] http://ec.europa.eu/information_society/activities/roaming/docs/regulation/impact_en.pdf

This option increases the margin available to operators between the wholesale and retail price caps, thereby potentially allowing additional room for price competition to emerge.

The European Commission economic model suggests that, as a direct result of extended regulation, for the first year of the extension (to end June 2011) consumer welfare could be increased by approximately €3.5 and €5.0 billion (depending on the elasticity scenario) over the 2007 pre-regulation base case. Again depending on elasticity assumptions, the change in industry profits could range from an increase of €232 million to a decline of €1.2 billion for the same period.

Assuming that UK consumers' share of these benefits is equivalent to the UK share of the EU-27 population, UK consumers could be expected to benefit by approximately £290-413 million a year[7].

Assuming that the impact of the policy option on UK industry would be proportional to the UK share of EU-27 telecoms industry, the impact on profits to the UK mobile services industry could range from revenue gains of £30 million to revenue losses of £157 million a year[8]

Policy 2. SMS roaming

- Option 1. Do nothing

The option of 'no policy change' would mean not intervening on SMS roaming prices and allowing market forces to drive prices down. Analysis by the ERG and the European Commission indicates that SMS prices are unjustifiably high, at several times the cost of provision, and that they have been relatively stable for some time. As a consequence, it seems quite unlikely that there will be any major market or technological developments which would suggest that SMS roaming prices are likely to fall in the medium term in the absence of regulation.

- Option 2. Preferred option: Wholesale and retail regulation for SMS with retail price ceiling at 11 cents until 2012

This option would set price ceilings at €0.11 for SMS retail prices.

The European Commission economic model suggests in every year of regulation consumer welfare gains between €884 million and €1.243 billion, depending on different modelling scenarios.

The expected drop in industry profits – in the worst-case scenario - would be €168 million, and thus sufficiently outweighed by the expected benefits from regulation.

Assuming that UK consumers' share of these benefits is equivalent to the UK share of the EU-27 population, UK consumers could be expected to benefit by between £73-102 million a year[9].

Assuming that the impact of the policy on UK industry would be proportional to the UK share of the EU-27 telecoms industry, the impact on profits to the UK telecoms industry result in whereas costs are estimated in the region of £22 million annually[10].

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[7] Calculated by assuming a homogeneous distribution of roaming calls across all European citizens. According to Eurostat, UK population represents approximately 12% of total EU-27. Assuming that UK citizens will benefit from 12% of the total benefits and using an exchange rate of 1.45 EUR/GBP (as of Q2'07 to make it comparable to the period of time where the European Commission modelling was carried out), the calculation is the following: €3.5-5 billion x 12% / 1.45 = £290-413 million

[8] Calculated under the assumption that the impact on UK industry is proportional to the relative size of the UK telecoms industry in the EU-27. According to Eurostat (2008), in 2005 the UK telecoms industry represented approximately 19% of the total gross value added by the EU-27 telecoms industry. The calculation is as follows: €232-1200 million x 19% / 1.45 = £30-157 million

[9] Calculated by assuming a homogeneous distribution of roaming calls across all European citizens. According to Eurostat, UK population represents approximately 12% of total EU-27. Assuming that UK citizens will benefit from 12% of the total benefits and using an exchange rate of 1.45 EUR/GBP (as of Q2'07 to make it comparable to the period of time where the European Commission modelling was carried out), the calculation is the following: €0884-1.234 billion x 12% / 1.45 = £73-102 million

[10] Calculated under the assumption that the impact on UK industry is proportional to the relative size of the UK telecoms industry in the EU-27. According to Eurostat (2008), in 2005 the UK telecoms industry represented approximately 19% of the total gross value added by the EU-27 telecoms industry. The calculation is as follows: €168 million x 19% / 1.45 = £22 million

Policy 3. Modified per second billing unitisation

The divergent legal requirements and practices applicable to the billing of roaming calls across the Community can be seen to create different conditions in different Member States, thereby distorting competitive conditions in the single market.

- Option 1. Do nothing

There appears to be little incentive for operators to introduce lower billing intervals for voice roaming services. It has been noted that these roaming billing practices are not in line with general domestic billing practices where competition is more effective. Analysis carried out by the European Commission[11] suggests that this problem will not be resolved in the absence of regulation.

- Option 2. Preferred option: Modified per second billing obligation

In order to permit home providers to continue to include a reasonable set up charge in their retail bills, a modified per second billing obligation is included in the regulation.

Setting a minimum billing period at a level of 30 seconds would serve two purposes. First, it allows operators to recover comfortably the fixed set up. Secondly, because this approach is comfortably above costs it conforms with the principle set out in the current Regulation to allow operators the freedom to compete by differentiating their offerings and adapting their tariff structures thus allowing operators to offer shorter minimum charging periods or even full per second billing.

It may therefore be appropriate to allow a lesser initial charging period at a maximum level of 30 seconds (30+1), to cover the set up costs. Therefore this is the maximum that any operator could impose as a fixed set up charge. Operators are free to impose lower set up charges or indeed to opt for strict per second billing.

Data on the distribution of call length is not available to estimate the duration of calls and this is not expected to become available even in the medium term. Nevertheless, if one where to assume a move to a complete per second billing system, (since 2007), then EU-27 consumers would have made savings of nearly €1 billion for both calls made and received (broken down into €696 million for calls made and €242 million for calls made). This could have a positive impact to UK consumers in the region of £82 million annually[12].

The impact on the industry is mitigated by that fact that a maximum 30 second setup charge will be permitted but impact on profits has not been quantified.

Policy 4. Data roaming

- Option 1. do nothing

In this case the option of ‘no policy change’ would mean no regulatory intervention. According to the European Commission retail prices for data roaming services have declined from €5.81 per MB in Q2 2007 to €3.50 per MB in Q1 2008.

This price trend may therefore suggest that the market should be allowed to develop without regulatory intervention particularly as growth of these services in terms of volumes and revenues is also very much in evidence. Competition from WiFi services may put further pressure on prices for mobile data usage while roaming. Moreover, as more users take-up such services at home, in many cases by subscribing to monthly flat rate fees, the pressure on data roaming prices could continue to grow.

- Option 2. Preferred policy option: Wholesale safeguard cap plus transparency measures for data roaming services.

    1. Price cap

An alternative approach to wholesale regulation is to set a wholesale cap which would eliminate extreme prices which in many cases can exceed €10 per MB.

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[11] http://ec.europa.eu/information_society/activities/roaming/docs/regulation/impact_en.pdf

[12] Calculated by assuming a homogeneous distribution of roaming calls across all European citizens. According to Eurostat, UK population represents approximately 12% of total EU-27. Assuming that UK citizens will benefit from 12% of the total benefits and using an exchange rate of 1.45 EUR/GBP (as of Q2’07 to make it comparable to the period of time where the European Commission modelling was carried out), the calculation is the following: €1 billion x 12% / 1.45 = £82 million

An average ceiling of €1 per MB is not a direct intervention on charges and is sufficiently above some current market offers (the effects of which will not yet have been seen in the ERG data) to avoid disruption of competitive forces and therefore minimises the risks that prices should cluster around the cap. It is also low enough to guard against excessive prices and enable all providers to offer meaningfully lower prices at the retail level. It is anticipated that at current rates of growth the impact of such offers will drive down the average per MB charge to well below the €1 per MB mark. Equally it would eliminate the remaining extreme wholesale charges which currently hinder the development of competition at retail level.

2. Transparency

Two measures could be imposed, namely, the provision of basic price information and the requirement to offer consumers the possibility of choosing a cut-off limit.

The obligation to provide basic price information to customers and the obligation to enable them to specify cut-off limits with warning mechanisms should be sufficient to inform customers of the differences that apply when roaming and also ensure that the problem of 'bill shock' is addressed. Given that the relatively more onerous obligations of including a flat rate offer and real time updating have been discarded, it is considered that the impact on the industry of the remaining two options is limited, particularly in the context of the consumer benefits. The provision of basic price information when roaming is a basic prerequisite for the consumer to be informed. For the cut-off limits, a one year time lag would be allowed to enable market players to develop the necessary systems.

Summary of costs and benefits

Table 1 presents the impacts to UK industry and consumers of the preferred options under each of the four policy areas where proposals have been put forward.

Table 1. Annual costs and benefits

	UK mobile services industry	UK roaming consumers	**Net impact**
Voice roaming	-£157m/£30m	£290m/£413m	£133m/433m
SMS roaming	-£22m	£73m/£102m	£51m/£80m
Transparency	na	£82m	£82m
Data roaming	na	na	na
Total	-£179m/£8m	£445m/£597m	£266/£595m

To obtain the present value of these costs and benefits, impacts have to be applied during the relevant time period (i.e. the period of time when the regulation will be in place) and discount future flows of costs and benefits at the relevant discount rate[13].

Table 2 shows the discounted values over the time frame where the regulation will be in place (it will be in place for the period July 2009- June 2012 after which it will expire). It is important to note that voice roaming costs and benefits have only been applied from July 2010. The reason is that since there is already a regulation in force on voice roaming for the period June 2009-June 2010(EU Roaming Regulation), it is not appropriate to include costs and benefits which have been assessed against the counterfactual option of no regulation[14].

[13] The Green Book (http://www.hm-treasury.gov.uk/d/green_book_complete.pdf) recommends a discount rate of 3.5% when assessing public policies.
[14] This is a conservative assumption: we do not expect any incremental costs or benefits from the changes in the structure of the voice roaming regulation in the period 2009-2010.

From July 2010, the regulation expires and hence from that moment in time it is appropriate to account for voice roaming costs and benefits assessed against a counterfactual option of no regulation.

Table 2. Present value of costs and benefits, £ millions, annual discount rate of 3.5%

	June 2009 - June 2010		June 2010 - June 2011		June 2011 - June 2012	
	Costs	**Benefits**	**Costs**	**Benefits**	**Costs**	**Benefits**
Voice roaming	0	0	0/-151.7	280.19/428.01	0/-146.56	270.72/413.54
SMS roaming	-22	73/102	-21.26	70.53/98.55	-20.54	68.15/95.21
Data roaming	na	na	na	na	na	na
Transparency	na	82	na	79.23	na	76.55
Total	-22	155/184	-21.26/-172.96	429.95/605.79	-20.54/-167.07	415.42/585.3

	June 2009-June 2012		
	Costs	**Benefits**	**Net impact**
Voice roaming	**0/-298.26**	**550.91/841.55**	**252.65/841.55**
SMS roaming	**-63.8**	**211.68/295.76**	**147.88/231.96**
Data roaming	**na**	**na**	**na**
Transparency	**na**	**238**	**238**
Total	**-63.8/-362.06**	**1000.6/1375.3**	**638/1311.5**

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	***Results in Evidence Base?***	***Results annexed?***
Competition Assessment	Yes	Yes
Small Firms Impact Test	Yes	Yes
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annexes

Competition assessment

Paragraph 6.5 of OFT guidance states that, “maximum prices (price ceilings) may act as a focal point for suppliers, with prices drawn to the ceiling, reducing the intensity of price competition between suppliers. Price ceilings may be intended to protect consumers from producers with market power but there may be less restrictive means of delivering this objective. The imposition of market prices may also lead to some suppliers exiting the market, may distort the choice of products supplied and may lead to the imposition of hidden charges to circumvent the price ceiling.”

In the present context, the amendments to the Roaming Regulation are aimed solely at reducing wholesale and retail prices for voice, SMS and data roaming services charged by operators. They do not attempt to address obstacles to competition in the wholesale and retail sub-sectors of the EU mobile telecommunication sector, beyond ensuring that more favourable wholesale rates are available to all providers. As a result, these proposals are unlikely to lead to stronger competition.

Small firms impact test

The voice, SMS and data wholesale caps will enable smaller operators to make more attractive retail offers. The move to per-second billing at wholesale level will also give smaller operators more flexibility particularly to compete at the retail level. Currently, it would not be feasible for such operators to move to per-second billing at the retail level even if they wanted to for competitive reasons since they often have to pay on a per-minute basis at wholesale level.

The Mobile Roaming (European Communities) (Amendment) Regulations 2009

Transposition Notes

REGULATION 544/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services adopted 18th June 2009 and coming into force on 1st July 2009.		
Regulation (EC) No 717/2007 ("Roaming I") introduced an average wholesale price cap that must be met by operators when they procure roaming capacity from one another and a tariff that has to be offered to all roaming customers (the Eurotariff), with maximum rates for incoming and outgoing calls made. It also introduced transparency requirements in relation to retail mobile roaming charges. It gave national regulatory authorities obligations to supervise and enforce the Regulation within their territory and required Member States to put in place dispute resolution measures and to lay down the rules on penalties applicable to infringements of the Regulation. The amendments made by the Regulation adopted on 18th June 2009 and coming into force on 1st July 2009 ("Roaming II") introduce price caps for SMS messages, cap wholesale charges for data downloads and reduce the existing voice call price caps from 1st July 2009. They also introduce new measures which are intended to make it easier for consumers to monitor and control their expenditure on these services. All these measures come into force on 1st July 2009, and expire on 30th June 2012. The Regulation is directly applicable and therefore only those articles which require the Member States to take action require implementation. This table has been prepared by the Department for Business, Innovation and Skills.		
Article 1(1).	Amends the title of the Regulation.	No implementation required.
Article 1(2).	Amends article 1 to expand the subject matter and scope of the Regulation to cover SMS messages and packet switched data communication services as well as voice calls	No implementation required.
Article 1(3)	Adds to article 2 definitions related to SMS messages and data roaming services and amends existing definitions to take account of the expanded subject matter and scope of the Regulation	No implementation required
Article 1(4)	Amends article 3 to provide for further reductions in 2010 and 2011 in the average wholesale price cap that must be met by operators when they procure roaming capacity from one another and amends the way in which to calculate the charge.	No implementation required.
Article 1(5).	Amends article 4 to provide for further reductions in 2010 and 2011 in the Eurotariff and requires billing for the wholesale provision of regulated roaming calls on a per second basis,	No implementation required.
Article 1(6)	Inserts new articles 4a - c which set maximum wholesale charges for	No implementation required.

	regulated roaming SMS messages and lays down how to calculate the charge, requires a maximum Euro-SMS tariff to be offered	
Article 1(7)	Deletes article 5.	No implementation required.
Article 1(8)	Amends article 6 to expand the transparency requirements in relation to retail charges to cover SMS messages.	No implementation required.
Article 1(9)	Inserts new article 6a which introduces transparency and safeguard mechanisms for regulated data roaming services	No implementation required.
Article 1(10)	Amends article 7 to extend the obligations of national regulatory authorities to supervise and enforce the Regulation to match the expanded scope and subject matter of the Regulation.	No implementation required.
Article 1(11)	Amends Article 9 to lay down the dates by when Member States must notify the Commission of their rules on penalties applicable to infringements of the Regulation. Article 9 will apply to infringements of the additional requirements laid down by the Regulation.	Paragraph 2 of the Schedule to the Regulations amends the definition of "relevant business" for the purpose of calculating the maximum amount of the penalty under regulation 4 of the Mobile Roaming (European Communities) Regulations 2007 so as to cover the turnover from the provision of SMS and data downloading roaming services as well as the provision of voice roaming. Regulation 4 of the 2007 Regulations provides that where there is a breach of the EU Mobile Roaming Regulation or regulation 8 of the 2007 Regulations, OFCOM shall have the power to impose a penalty for such breach. Regulation 5 of the 2007 Regulations provides for the amount of the penalty which may be imposed. A penalty of up to 10% of turnover of "relevant business" for a particular period may be imposed by OFCOM for all breaches of the Regulation other than under Article 7(4).
Article 1(12)	Amends Article 11 which provides for review of the Regulation by the EU Commission	No implementation required.
Article 1(13)	Amends article 12 by omitting the date by when notification of the identity of the national regulatory authority to the Commission must be made.	No implementation required.
Article 1(14) .	Amends article 13 which sets the dates for entry into force and expiry.	No implementation required.
Article 2	Amends Directive 2002/21/EC	No implementation required.
Article 3	entry into force.	No implementation required.