



Lawyer Spyros A Pappas examines the EU's roaming charges battle

The Roaming and Content battles: is it all to the consumers' benefit?

Information Society and Media Commissioner, Mrs Viviane Reding, has consecrated herself to the 'roaming battle': Consumers shall not pay high prices for using their mobile phones abroad anymore, is stated at the relative website. It is anticipated that this goal will be complementary to the Lisbon Agenda's goals by enhancing the competitiveness of Europe's industry.

The so-called "roaming regulation" is well under way by now: After the finalisation of the Commission's proposal last July, it is now up to the Members of the European Parliament to vote on the subject. The draft new regulation seeks to regulate the costs of using a mobile phone abroad ("roaming"). Even though the MEPs rejected this idea last May on the grounds that regulation of roaming charges at EU level seemed problematic, widely positive media coverage could very well alter their opinion this time around.

The proposed regulation is a 'child' of Mrs Reding, who is very engaged in this respect: On the one hand she has, up to now, won the external battles against industry players who suggested that overly restrictive regulation will be detrimental to further innovation. On the other hand, she has also won the internal battles against Charlie McCreevy, Commissioner for the Internal Market, Günter Verheugen, in charge of Enterprise and Industry, and Trade Commissioner Peter Mandelson, who were invoking a more business-friendly solution for a successful and rapidly growing sector.

FAR REACHING

The European Regulators' Group (the Member States' regulatory authorities) proposed a flexible regulation, restrained only at wholesale level, which would be adequate to achieve the goals set. However, the proposed regulation is far-reaching, including both wholesale and retail price regulation. From a systematic-legal point of view, this is not coherent with the ratio of the Regulatory Framework for electronic networks and services, which promotes minimal market intervention according to the principle of light-hand regulation.

Furthermore, it is slippery to start setting exceptions from the regulatory framework for e-communications and its principles, one of the main goals of which is to ensure legal certainty for market players and potential new entrants. Once subjected to strict regulation, it is doubtful whether the market will become more streamlined or competitive by itself, despite pre-defined profit margins and pricing policies.

Operators pinpoint several problems related to capping - particularly the retail - charges customers pay, such as for example to receive a call on their mobile phone when roaming abroad. Mobile pricing is not easily manageable. Roaming tariffs often



NEW GENERATION PHONES WILL OFFER MORE

need to be tailored to the needs of specific customer groups. If this regulation scheme pulls through, particularly high costs are bound to incur that will make the provision of mobile services unprofitable in some cases, e.g. service of sparsely populated or mountainous regions. Also, affordable pricing of basic mobile services could be endangered, since revenue loss will most likely affect the operators' cross-subsidy policies.

Despite heavy criticism, the Roaming issue is a top priority on Mrs Reding's agenda. Clearly, it is a bet for the European Commission to buttress its wounded profile. It is a good media story, easily translatable to the people and therefore a golden opportunity not only to implement plan D's delivery promise, but also to 'sell' a service to the citizens.

The issue goes far deeper than that. During a lengthy anti-trust investigation regarding alleged price-rigging between O2 and Vodafone, O2 has recently lodged a complaint to the European Ombudsman on the grounds that the Commission "attempted to conceal evidence on its file, which O2 is entitled to see and which supports O2's defence".

At the same time, the European Parliament's Committee on Industry, Research and Energy, whose Paul Rübing (EPP-ED) will be initiating the roaming issue, began to discuss, on

the 2nd and 3rd of October, the new television broadcasting provisions. These are the most revolutionary ever since the Television without Frontiers directive and will doubtless affect the future media marketplace.

In a nutshell, this incisive legal reform seeks to rearrange regulation schemes so as to capture convergence trends. However, the planned reforms are explosive: It is planned that the regulatory principles relating to broadcast content would be extended to cover any form of audio-visual content. This broad notion covers all transmitted moving pictures, with or without sound, meant to inform, educate or entertain the public.

Regulation would thus be extended to user-generated content such as video blogs, mobile multimedia, online gaming and IP television. Particularly for the latter, it is very doubtful if it should develop in a 'walled garden' environment. Content creators will then be obliged to enter a commercial relationship with distributors and not be able to distribute their content via the open internet. Furthermore, there is not any degree of certainty as to what the actual application of the Directive will be, and whether or how much firms will be affected by it.

Modern telecommunications markets are reshaped by the day. New technologies enable content delivery through traditional telecommunications' tools (e.g. handhelds and smart phones with

video and music applications). Future value chains will probably involve direct competition between providers of audiovisual and telecommunications services, since one of the main converging trends is the one of content and means to deliver it. This is verified by the amount of joint ventures and mergers (e.g. creation of Symbian Limited with participation of Nokia, Panasonic, Samsung, Siemens and Sony Ericsson, withdrawn acquisition of Content Guard by Microsoft and Time Warner, joint venture between Alcatel and Thomson Multimédia).

The European regulatory framework has to provide for sufficient 'breathing room' for these services to find a place in the market and evolve to fit the needs of consumers. Imposing regulatory procedures to new services could risk encroaching upon their speedy and uncomplicated rollout. The more conformity-specific administrative burdens there are, the more likely it is that innovative undertakers (e.g. service providers adding up audiovisual content to their traditional services) will be discouraged to market them within the European Union. Instead, they might opt for a friendlier regulatory regime to market them; e.g. in the US or Asian markets.

A survey initiated by the British Regulatory Authority, Office of Communications (Ofcom), suggests new players will have to struggle to set foot in the marketplace, if the new set of rules comes to force. Moreover, the proportionality of the proposed measures is doubtful, for these new services are, in their nature and consumption patterns, very different from normal broadcasting.

PAYING LESS

The British Association of Online Publishers pointed out the fact that online media is already regulated by means of existing European guidelines, most notably the E-Commerce directive, and national laws, which are sufficient to ensure the goals of protections for minors, regulation of advertising and against incitement to hatred. Hence, it is arguable if the proposed new regulation does not contravene the subsidiarity principle and the simplification objective. This can be added to the rest of the unanswered issues surrounding the Commission's policy in this area.

It seems that, if all goes according to the Commission's plans, mobile customers will soon be paying less when traveling abroad. Will the popularity boost from the roaming affair be potent enough to prevent a meaningful discussion on the audiovisual issues? And what will the net effect of these law-making initiatives add to the consumers' welfare in the long term? The answers to these questions remain to be seen.

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