

## **BEREC Roaming compliance report**

**March 2010**

## Executive Summary

Following the publication of Regulation (EC) No 544/2009 on international roaming of 18 June 2009<sup>1</sup>, the European Regulators' Group (ERG) sent a questionnaire to mobile operators in September 2009 in order to measure compliance with the Regulation. National regulatory authorities (NRAs) are required to monitor and ensure compliance with the Regulation under its Article 7. Following its creation in January 2010, the Body of European Regulators in Electronic Communications (BEREC) has taken over responsibility for this work from ERG.

The questionnaire dealt with the availability of the regulated retail tariffs on 1 July 2009, the provision of tariff information to consumers, the implementation of the regulated wholesale tariffs and the current status of the implementation of future regulation.

Overall there was a high level of compliance with the Regulation. All operators reported full compliance with the regulated retail price caps on 1 July 2009.

A few operators had problems providing their customers with the required tariff information and information on the availability of the 112 emergency services number upon registering with a foreign network by the required date. Most have fulfilled this obligation since then, or are working to do so where they have recently launched.

At the wholesale level, because the regulated tariff is an average cap applicable over the year 30 June 2009 to 29 June 2010, compliance can only be conclusively assessed at the end of that period. However most operators replied that they have already adjusted their wholesale rates to ensure they do not exceed the regulated annual average cap. A small number indicated that they had not adjusted their wholesale tariffs by September 2009, but had taken measures to ensure compliance by the required date.

Regarding the implementation of retail data roaming bill control and voicemail charging obligations for 2010, most operators replied that they are working hard to ensure all systems are in place on time. 26 operators reported that they currently do not charge their customers for the receipt of roaming voicemail messages. The remaining operators indicated they expect to be able to do so by the compliance date of 1 July 2010.

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<sup>1</sup> Regulation (EC) No 544/2009 of the European Parliament and of the Council of 18 June 2009 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 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:167:0012:0023:EN:PDF>

## 1 Background

Regulation (EC) No 544/2009 of 18 June 2009<sup>2</sup> came into force on 1 July 2009. As a result, a number of new obligations applied that required action on the part of the mobile operators within the EU.

In September 2009, ERG members launched a compliance survey into the way that mobile operators have implemented the new requirements and the way they are dealing with the additional requirements that they need to meet in 2010. To this end, ERG members agreed on a standardised questionnaire that each individual NRA sent to its national mobile operators.

This report gives an overview of the results of the 126 questionnaire responses received by ERG members. The first section deals with implementation of the new maximum retail tariffs. This is followed by a section describing the way the mobile operators informed their customers of the new tariffs. The report then gives an overview of the actions taken to comply with the new maximum wholesale caps. The last part of the report takes a look at the steps being taken by operators in order to comply with the additional requirements that will enter into force in 2010.

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## 2 Availability of the new regulated retail tariffs

### 2.1 Voice and SMS roaming retail price caps as of 1 July 2009

The amended Regulation states that as of 1 July 2009 operators are not allowed to charge more than € 0.43 per minute for voice calls made, € 0.19 per minute for voice calls received and € 0.11 per SMS sent (all prices excluding VAT) (operators can offer other, unregulated, retail tariffs alongside). All operators reported full compliance at 1 July 2009<sup>3</sup>.

Out of the 126 responses, 24 operators offered a Eurotariff, Euro-SMS tariff or both, that was below the regulated maximum cap. The majority of these were only slightly below the cap however there were a few that provided a truly better deal.

Regulated tariffs that were lower than the cap were mostly for either making voice calls or for SMS. For calls received, the tariffs were generally not significantly lower than the cap. Also, the lower tariffs were not evenly spread across Europe. Both Sweden and the UK showed a

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<sup>3</sup> The Dutch NRA (OPTA) has recently initiated an investigation into whether an operator overcharged its customers for a finite period after 1 July 2009. The Danish NRA (NITA) found that two operators marginally overcharged their customers due to rounding errors. Both operators are now in compliance.

high number of regulated tariffs that were lower than the cap, although BEREC notes that, for these countries, lower regulated tariffs are likely to be partly due to fluctuations in the national currency's exchange rate against the Euro.

## **2.2 Voice roaming billing units as of 1 July 2009**

The Regulation has mandated that operators are no longer allowed to bill voice calls per minute, as the previous practice of rounding up the call length was identified as a 'hidden charge' for users. The amended Regulation therefore required operators to bill voice calls per second, with the exception of calls made, where operators are allowed to apply a 30 second minimum charge to cover the costs of setting up the call.

Nearly all operators implemented this requirement on time. 13 out of 126 operators replied that they intended to implement it as soon as possible but had not been able to meet the 1 July deadline. In such cases, all of operators said that consumers had been or would be compensated for this. Three operators indicated that they used per second billing without a minimum charge for voice calls made.

## **3 Provision of consumer information**

The vast majority of operators chose to notify their customers of the new regulated SMS and voice roaming tariffs in advance of their implementation on 1 July by sending a text message. Most also indicated that they changed their website to reflect the new tariffs, and BEREC understands this was generally true for operators that did not specifically report this in the questionnaire. For postpaid consumers, 26 operators chose to draw attention to the new tariffs either through information on the bill itself or through a leaflet that was sent to customers together with their monthly invoice. A small number of operators chose to send a separate letter. 15 operators said they issued a press release to call attention to the new tariffs and 3 operators took out an advert in a newspaper.

Additionally, the amended Regulation requires operators to inform their customers, when they first connect to a network in another EU country, about the applicable voice roaming price, SMS roaming price, and the possibility of accessing emergency services by dialling the European emergency number 112 free of charge.

Of the 126 operators that responded to the questionnaire, 23 replied that they were not able to provide the required information on 1 July 2009. At the time of writing, the majority of these 23 have fully complied with the Regulation. Those that are not in compliance are mostly new entrants (MVNOs) that launched after 1 July 2009. BEREC understands that the responsible NRAs are in contact with the operators about compliance. All operators that implemented this requirement on time supplied an example of the text message sent to consumers.

## 4 Compliance with the wholesale caps

In 2009, Article 4 of the Regulation was extended to introduce wholesale caps for SMS and data, as well as voice roaming. In addition, the date by which operators need to comply with the annual changes to the wholesale price caps was moved forward from 30 September to 1 July.

Nearly all MNOs that responded (82) indicated that they changed their wholesale tariffs on 1 July 2009 to comply with the Regulation. The remaining 7 MNOs responded that they had taken steps to ensure full compliance by 30 June 2010.

The remaining respondents were MVNOs, who do not offer wholesale services.

## 5 Status of implementing future obligations

The amended Regulation not only mandates that operators offer consumers regulated voice and SMS tariffs but contains two additional retail obligations that come into force in 2010.

The first of these is that by 1 March 2010 operators must offer their roaming customers the opportunity to opt deliberately and free of charge for a facility that guarantees that, without the customer's explicit consent, the accumulated expenditure for data roaming services during a month does not exceed a certain financial or volume limit. Operators must offer at least one of these limits (the default limit), which must be close to (but not exceed) €50 per monthly billing period (excluding VAT), or the equivalent volume amount.

By 1 July 2010, all consumers who have not previously opted for another limit will be automatically protected by the default limit.

Operators must notify customers who enjoy the protection of a limit when they reach 80% and 100% of the agreed limit. The notification at 100% must inform consumers of the procedure they must follow if they wish to continue using data roaming services.

The final stage of the implementation of this obligation is on 1 November 2010. As of this date, a consumer request to access or to remove a data roaming limit must be acted upon within one working day of receipt.

ERG asked operators what steps they had already taken to fulfil these requirements by 2010. A small number of operators reported having already implemented parts of the system, such as the notification messages. Most however replied that they were still busy implementing systems that would meet the requirements of the Regulation on 1 March 2010. Of these operators, a number also indicated that although they were doing their utmost to implement systems on time they were uncertain whether they would be able to meet the 1 March 2010 deadline, but hope to be in compliance as soon as possible following the 1 March deadline.

The second additional obligation that operators must fulfill in 2010 is the requirement to

ensure that no charge will be levied when a roaming voicemail message is left in the customer's mailbox from 1 July 2010.

26 operators reported that they currently do not charge their customers when they are left voicemail messages<sup>4</sup>.

The remaining operators mostly reported that they are actively working on complying with the Regulation and expect to do so on time. A number of MVNOs responded that they were in contact with their host MNO in order to be able to comply with their obligations.

## **6 Conclusions and Next Steps**

Overall BEREC is satisfied that there is a high level of compliance with the Roaming Regulation, benefitting consumers throughout the EU. BEREC welcomes the steps that operators have taken to comply with the 2010 requirements of the Regulation on time, and strongly encourages all operators to do so. BEREC members are available to provide guidance to operators on complying with the Regulation, and are working together to ensure a consistent approach across the EU.

BEREC will conduct further compliance surveys next year, to verify compliance with the provisions of the Regulation due to enter into force in 2010.

The results of this and future compliance surveys will inform BEREC's input to the European Commission's interim and full reviews, due in June 2010 and 2011 respectively, on the functioning of this Regulation and the future of roaming regulation in general.

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<sup>4</sup> Of these, one operator reported this was only true for prepaid customers, while another reported this was only true for postpaid customers.