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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Executive Summary of the Impact
Assessment Accompanying the document Proposal for a Regulation of the
European Parliament and of the Council on rules for wholesale roaming
markets and amending Regulation (EU) No 531/2012 on roaming on public
communications networks within the Union

Delegations will find attached document SWD(2016) 201 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Executive Summary of the Impact Assessment

Accompanying the document

**Proposal for a Regulation of the European Parliament and of the Council
on rules for wholesale roaming markets and amending Regulation (EU) No 531/2012 on
roaming on public communications networks within the Union**

{ COM(2016) 399 final }
{ SWD(2016) 202 final }

Executive Summary
Impact assessment on Wholesale roaming legislative proposal
A. Need for action
Why? What is the problem being addressed?
<p>The co-legislators agreed on ending retail roaming surcharges for periodic travels in the EU as of 15 June 2017 (RLAH¹ regime imposed by Regulation 531/2012 as amended by Regulation 2015/2120 of 25 November 2015, the 'Roaming Regulation'), on condition that, following a review of the wholesale roaming market in the EU by the Commission, the EU takes appropriate legislative measures on this market in order to enable RLAH from that date. The wholesale roaming review conducted by the Commission shows that national wholesale roaming markets are not well-functioning and that they are expected to remain so under the future RLAH retail obligation. This IA therefore seeks to determine the best option for regulating the wholesale roaming market in the EU in order to enable RLAH in 2017 while maintaining the sustainability of domestic charging models.</p> <p>Affected parties will mainly be EU mobile network operators. The main beneficiaries will be all customers of EU mobile operators using mobile communications services while travelling in the EU.</p>
What is this initiative expected to achieve?
<p>The initiative aims at proposing appropriate measures on the wholesale roaming market to make it compatible with the obligation upon EU mobile operators of providing retail roaming services at domestic prices as of 15 June 2017. In assessing such measures, the Commission has taken into account the need to ensure that roaming providers are able to recover all costs of providing regulated wholesale roaming services, including joint and common costs. The options are hence assessed against the policy objectives set out in the Roaming Regulation: (i) enabling a sustainable abolition of retail roaming surcharges for all, or virtually all, operators in the EU, avoiding distortions on the home markets, (ii) ensuring cost recovery at wholesale level, whilst preserving incentives to invest in visited networks and avoiding distortion of domestic competition in the visited markets.</p>
What is the value added of action at the EU level?
<p>The Roaming Regulation entrusted the Commission with the task to review the wholesale roaming market and make appropriate proposals to enable the abolition of retail roaming surcharges in the EU from 15 June 2017. The abolition of retail roaming surcharges mandated in the Roaming Regulation is conditioned to the adoption and applicability at that date of measures at wholesale level necessary to enable this abolition. Therefore, if no measure were proposed and given the foregoing evidence that the current wholesale market legislative regime is not a sufficient basis for the introduction of RLAH, the obligation laid down in the Roaming Regulation to abolish retail roaming surcharges from 15 June 2017 would not be applicable at that date.</p>
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
<p>Further to implementation implications, the options are assessed based on: country-level estimate of the average cost of RLAH for retail roaming providers compared to their average domestic revenues; sustainability test at operator level; all relevant costs at wholesale level for visited networks by reference to cost estimates, current mobile termination rates' level, and domestic wholesale and retail prices.</p> <p>Four options are considered:</p> <p><i>Option 1-no action at Union level</i> (baseline scenario): RLAH would not be applicable from 15 June 2017 and consumers would continue to pay retail roaming surcharges after that date.</p> <p><i>Option 2-set EU-wide wholesale roaming caps at the current level</i>: RLAH would not be sustainable for at least 20% of the operators in our sample and/or in at least six Member States.</p> <p>Option 3-set EU-wide wholesale roaming cap at a lower level than today: The analysis shows that this option best fulfils the policy objectives.</p> <p><i>Option 4-set country-specific wholesale roaming caps</i>: This option does not significantly improve the sustainability of RLAH at operator level compared to Option 3, while entailing greater risks regarding cost recovery at wholesale level, as well as considerable implementation difficulties.</p>
Who supports which option?
The public consultation shows that operators are divided as to what is the most appropriate regulatory wholesale level

¹ Roam Like at Home

measure to enable sustainable RLAH: certain historic incumbents and operators with a large footprint, and generally operators with large inbound roaming traffic, defend the view that RLAH is sustainable under current wholesale roaming price caps (Option 2), while other operators, in particular smaller ones, mobile virtual network operators, and operators with large outbound roaming traffic argue that wholesale roaming price caps must be significantly lowered in order to enable sustainable RLAH (Option 3). Virtually no support of Option 4 has emerged from the public consultation.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

Under Option 3 (lowered EU-wide wholesale roaming caps), *setting the EU-wide wholesale roaming caps at 4 €/min, 1 €/SMS and 0.85 €/MB* enables sustainable RLAH in the EU, including for operators with less bargaining power, while ensuring the recovery of visited operators' foreseeable costs of providing wholesale roaming services and keeping investment incentives in the visited markets. The cap level under Option 3 also leaves space for competition below the cap, allowing in particular to derive economic advantages from scale and the associated ability to negotiate lower tariffs.

The analysis also shows that allowing the visited and visiting operators to agree together to opt out from the cap regulation in favour of an unregulated contract, e.g. capacity-based pricing or any other contractual form, would bring a positive impact to the wholesale roaming market, and thus is proposed as a complementary measure.

By enabling RLAH from June 2017, Option 3 achieves the significant positive impact of aligning roaming prices to domestic prices for consumers travelling in the EU, as decided by the co-legislator in 2015.

What are the costs of the preferred option (if any, otherwise main ones)?

The preferred option does not create additional administrative or technical costs compared to current regulation applicable to the wholesale roaming market in the EU. By imposing lower wholesale roaming prices to mobile operators, it may in the short term reduce wholesale roaming revenues of operators when they host roaming customers of foreign operators, while reducing at the same time the wholesale costs they incur when they provide retail roaming services to their own customers. However the resulting higher demand for mobile services on travels in the EU, in particular for data, should mitigate and counterbalance both effects to a large extent. Unleashing the development of new usages of connected devices and applications on travels in the EU will in turn trigger considerable new revenues for EU mobile operators, exceeding largely in the medium term those of today's limited EU roaming mobile usage, fully in line with other initiatives under the Commission's DSM Strategy.

How will businesses, SMEs and micro-enterprises be affected?

Smaller mobile network operators and mobile virtual network operators: significant positive impact expected as these operators have more difficulty in having access to favourable wholesale roaming deals. The initiative will enable them to benefit from wholesale roaming prices facilitating their providing of retail roaming services at domestic prices.

Online businesses and start-ups: significant positive impact; usage of their services while roaming in the EU will grow, which means more opportunities for them to provide services to consumers when they travel in the EU. The initiative will promote cross-border use of connected devices/services/mobile apps, favouring innovation.

SMEs: significant positive impact for those having employees travelling in the EU for business (reduced bills).

Will there be significant impacts on national budgets and administrations?

This initiative as such will not impact on national public administrations. National regulatory authorities (NRAs) will monitor and supervise compliance with the Roaming Regulation as amended by Regulation 2015/2120.

Will there be other significant impacts?

No significant impact expected on third countries, international trade or investment. The EU's Roaming Regulation is a legislative instrument focusing on the creation of the EU internal market. Its scope covers intra-EU traffic, when a customer of one EU network operator roams on a network of another EU operator's network. The EU, a World Trade Organisation Member on its own right, is an economic integration within the meaning of Article V GATS and the EU and its Member States thereby benefit from a waiver under that Article. As the EU Roaming Regulation applies to the EU internal market only, there is no discrimination or Most-Favoured-Nation issue if (wholesale and retail) roaming rates for operators within EU differ from those outside the EU.

D. Follow up

When will the policy be reviewed?

The EC is required to report every 2 years as from June 2018. The Roaming Regulation mandates NRAs to monitor and supervise compliance with this Regulation, and BEREC to collect data from NRAs on retail and wholesale charges development (notified to the EC twice a year) and to report on the evolution of wholesale prices.