



# Digicel

## **Digicel Response to the Consultation on the Draft ECTEL Mobile Electronic Communications (Roaming Services) Bill and Regulations**

**December 20, 2016**



We thank you for inviting Digicel to provide its comments on the proposed Regulation of Roaming in ECTEL Member States. Digicel is of course available, and would be happy, to discuss our submission further. Digicel notes that ECTEL has declined to grant a short extension to the response period and we reserve the right to make further submissions and to expand on our position during the comments on comments phase of the consultation process.

The comments as provided herein are not exhaustive and Digicel's decision not to respond to any particular issue(s) raised in the consultation document or any particular issue(s) raised by any party relating to the subject matter generally does not necessarily represent agreement, in whole or in part nor does any position taken by Digicel in this document represent a waiver or concession of any sort of Digicel's rights in any way. Digicel expressly reserves all its rights in this matter generally. This submission should not be considered to be our final position on the subject. If given the opportunity to do so, we may raise further arguments in support of our general position on the proposals made.

Please do not hesitate to refer any questions or remarks that may arise as a result of these comments by Digicel to: -

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## 1. General

Digicel Notes that the structure of the consultation is such that no consultation questions are posed. Instead a copy of a draft Bill and Associated Regulations are provided for comment. In Section 1 of the consultation document ECTEL indicates that the background which informed the draft of the Bill is in two documents<sup>1</sup> neither of which is provided for review or comment. As such respondents are at a significant disadvantage in assessing the proposed legislation and in addressing what appear to be some erroneous conclusions reached by ECTEL in grounding proposed regulation of roaming.

The omission of ECTEL's background research from this consultation severely limits respondents' ability to engage with the issues and the failure to make such information available for review does not accord with Regulatory best practice.

## 2. Comments on Section 1, Introduction

Digicel notes that ECTEL has concluded that a "premium" exists for services consumed when visiting another network within the ECTEL region. In particular ECETL references the premium as being against the cost of an in-country, on net call. Digicel submits that this the incorrect comparator. Calls made while roaming are not made on the same network as the home network. Even where the roamed on network is in part of the same group as the home network the two networks are legally and physically distinct and are in separate sovereign states. A home network deals with a single regulator, has a single licensing regime and single spectrum award, paying a single set of fees for both, in country on-net calls are marketed within the standard in-country advertising and promotion, they do not require separate billing systems. For each of these the equivalent roaming activity is more akin to that associated to making or receiving an off-net call. In this regard it would appear that ECTEL's analysis is flawed and makes no assessment as to whether any premium that does exist is in fact unjustified.

ECTEL makes the assertion that the mere existence of a premium fails to promote fair pricing and competition however it provides no information to support this conclusion.

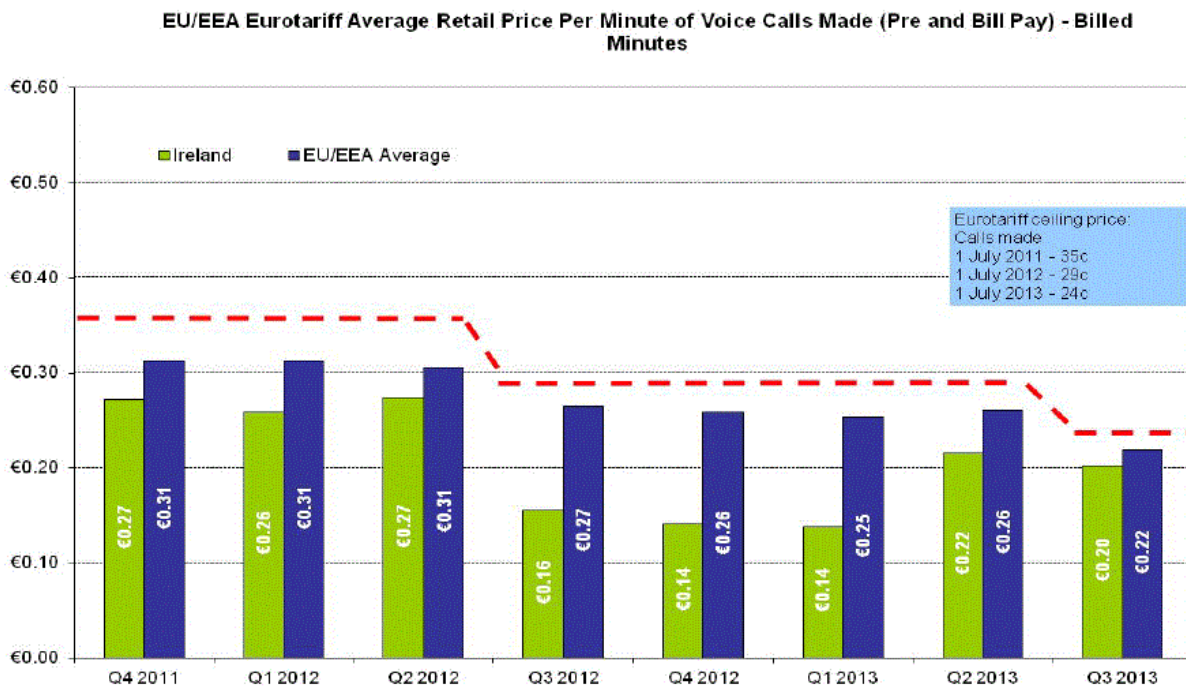
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<sup>1</sup>ECTEL Board Paper: An Assessment of the rates for mobile services in the ECTEL Member States. Presented at the 64th Board Meeting, ECTEL Board Paper: An Assessment of Voice and Data Roaming within the ECTEL Member States



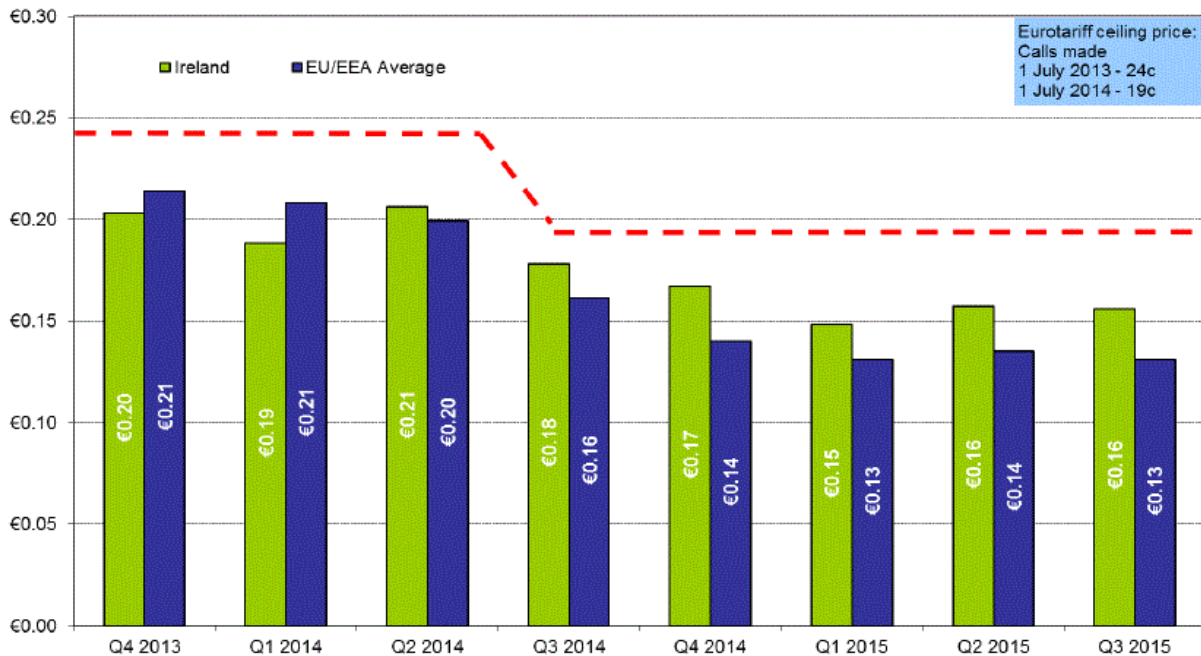
ECTEL characterizes the current level of roaming charges as “prohibitive” but again provides no grounds for reaching this conclusion.

Digicel points out that roaming is an ancillary service to the core mobile service it provides to its customers. Not all of Digicel’s customers travel abroad and when they do not all of them travel within the ECTEL region. Perhaps the most well publicized regulatory intervention in the area of roaming is within the European Union (EU). The roaming regulations in this large regional trade block have evolved over a long period of time and have been accompanied by other developments which have facilitated internal air travel within the block, high levels of internal movement of persons for economic purposes creating additional demand for roaming and by the expansion over this period of the EU member states. Based on data from the Irish Regulator Irish roaming charges have been consistently lower than any EU price control. This indicates that market forces set the level of roaming charges and contrary to ECTEL’s assertion the level of roaming charges is not an inhibitor of competition but a result of it.





EU/EEA Eurotariff Average Retail Price Per Minute of Voice Calls Made (Pre and Bill Pay) - Billed Minutes



The ECTEL member state economies do not have the wider characteristics that supported EU telecoms operators by facilitating increases in volumes of persons travelling (and hence roaming) within the block. This increase in volumes of travelers helped increase overall roaming traffic volumes allowing a volume price trade off.

Absent these wider structural initiatives by ECTEL member state Governments decreases in roaming revenues as a result of the proposed regulatory intervention will have to be offset by price increases elsewhere in operators' portfolios. Essentially those who do not roam (often because they cannot afford to travel) will subsidize the roaming costs of those who can afford to travel.

Digicel suggests that there is explicit provision that operators are permitted to offer alternative retail roaming plans to those mandated under the Bill and Regulations. This will allow for market innovation and competitive differentiation.



### **3. Comments on Section 2.2, Explanatory Note**

#### ***Clause 1***

Noted.

#### ***Clause 2***

See detailed response on draft text

#### ***Clause 3***

The six month implementation period is too short and does not take adequate account of the cost and timescales required to implement notification mechanisms and cap limits. In addition the lack of timelines for the overall process means that operators cannot budget for any revenue impact from the proposed regulations. From a cashflow and capital expenditure financing point of view cash unbudgeted cash shortfalls are likely to result in delayed or abandoned network improvements that would benefit all customers and not just roamers.

#### ***Clause 4***

Makes it mandatory for a licensee to notify a customer when the customer is roaming and include information for the customer on the charges for roaming services. The clause also requires a licensee to make information on roaming services and charges sufficiently available to customers and where there are changes to charges those changes would be brought to the attention of a customer.

#### ***Clause 5***

Noted. Please see our detailed comments on the proposed text of this Clause

#### ***Clause 6***

Noted. However the summary omits to mention the requirement to notify roamers of the emergency access numbers in the visited country. Please see our detailed comments on the proposed text of this Clause.

#### ***Clause 7***

Noted

#### ***Clause 8***

Noted. Please see our detailed comments on the proposed text of this Clause

#### ***Clause 9***

These are important provisions and help balance the benefits to consumers with the need to prevent abuses of the regulation. Please see our detailed comments on the proposed text of this



**Clause 10**

Noted.

**Clause 11**

Noted

**Clause 12**

Noted. Digicel has concerns regarding these provisions. Please see our detailed comments on the proposed text of this Clause

**Clauses 13 and 14**

Noted. Please see our detailed comments on the proposed text of this Clause

**4. Comments on Section 2.4 text of Bill to Provide for the Regulation of Mobile Electronic Communications Roaming Services**

**Clause 1**

No Comments

**Clause 2**

No Comments

**Clause 3**

Paragraph 3(2) – Digicel believes that the indicated 6 month timeframe is inadequate for a number of reasons. These activities include:

- The introduction of multiple tiered usage advice messages.
- Network changes required to facilitate RLYH across all of the 5 ECTEL states
- Network changes required to facilitate a Roaming Billing Cap
- Retail billing system changes associated with introduction of new plan types
- Lack of time to transition from budgeted roaming revenues to alternatives in a manner which minimizes customer and investment impact

**Clause 4**

Noted



## Clause 5

These provisions appear to be only appropriate to post-paid subscriptions. Pre-paid subscriptions are by their nature self-limiting based on the amount of credit in a customer's account. The cost of implementing these superfluous requirements for Pre-paid would be disproportionate and Digicel suggests amending this clause to limit its applicability to post-paid subscriptions.

## Clause 6

There are 6 elements to this Clause

### **Paragraph 6(1) – *notification of emergency service numbers to inbound roamers***

This proposal would cause significant concern. As worded this applies to all inbound roamers not just those from ECTEL states. Standard GSMA rules prevent the visited network from directly communicating with in-bound roamers. Some network modification would be required to support this and modification of roaming agreements would be required to advise correspondent roaming partners of our legal obligation to directly communicate with their customers

### **Paragraph 6(2)(a) *The roamed on network shall not levy retail charges for emergency service access***

Digicel agrees with this aspect of the Clause

### **Paragraph 6(2)(b) *The roamed on network shall not levy wholesale charges for emergency service access***

There appears to be little basis for this requirement. A user's home network would bear the internal network cost of a call to emergency services in the home country. There is no objective reason why it should not bear the external costs caused by its customer while roaming. This is particularly true in the circumstance where ECTEL proposes to regulate the wholesale price.

### **Paragraph 6(3) *The home network shall not levy retail charges for emergency service access while roaming.***

Digicel agrees with this aspect of the Clause.





**Paragraph 6(4) *Wholesale Roaming access to networks for emergency calls absent a roaming agreement.***

Digicel believes that this paragraph is poorly worded. This form of network access should only be required where the roaming customer is unable to register on a network with which its home provider has a roaming agreement. In this case access is not made available to the service provider but to the roaming customer. Digicel suggests that this provision be reworded.

**Paragraph 6(5) *Wholesale Roaming access to networks for emergency calls on a national basis.***

This appears to be totally unrelated to roaming per se and deals with aspects of coverage gaps in the home country. It has no cross border aspects Digicel suggests that this is more appropriately dealt with either in national service licenses or national regulations. In any event Digicel believes that as with paragraph 6(4) that this should be reworded to reflect the fact that it is the end-user who is given access not their service provider.

**Clause 7**

No Comments

**Clause 8**

Digicel has no comments on paragraphs 8(1), 8(2), 8(3) and 8(5). In respect of paragraph 8(4) Digicel submits that this is a form of double regulation as is in effect a retail price control in addition to the retail price controls specified in Clause 5. The proposed formulation of paragraph 8(4) would undermine the proposal to base retail roaming charges on a Roam Like You're At Home model by decoupling the mandate retail prices from a home tariff plan and linking them directly to wholesale roaming prices.

**Clause 9**

Digicel strongly endorses the inclusion of these provisions as being necessary to prevent abuses of the roaming regulation by end users through arbitrage and other mechanisms.

**Clause 10**

Digicel notes the provisions of this Clause. With specific reference to paragraph 10(1)(d) Digicel believes that this is un-necessary and unworkable. Wholesale roaming agreements are based on standard GSMA contracts. The Bill and proposed regulations set out the material commercial



aspects which could potentially be varied in these standard agreements. To this extent there is no role nor necessity for the Commission to deal with wholesale roaming agreements.

#### **Clause 11**

Noted

#### **Clause 12**

Digicel has serious concerns regarding this formulation. On its face it creates a strict liability offence. Equivalent roaming regulations in the EU context also have the following provisions:

*“(2) In proceedings for an offence under paragraph (1) in relation to compliance with Article 6 of the Mobile Phone Roaming Regulation it is a defence to show that—*

*(a) reasonable steps were taken to comply with the relevant obligation, or*

*(b) it was not possible to comply with the relevant obligation.”*

Digicel believes that it is appropriate to add similar provision to the draft Bill.

In addition the above referenced European regulation sets maximum penalties at Eur5,000. In the light of this the proposal that penalties could be 3% of gross turn-over for a summary conviction are excessive and unjustified.

#### **Clause 13**

No Comment

#### **Clause 14**

Digicel notes the provisions of this Clause. We believe that paragraph 14(2) should be amended by making an insertion as follows:

*“...the Minister may on the recommendation of ECTEL following public consultation, make Regulations...”*



## **5. Comments on Section 3 Statutory Instrument -Mobile Electronic Communications (Roaming Services) Regulations**

Digicel wishes to make the following high level comments in regard to the draft text of the Regulation.

### **Clause 4 - Wholesale roaming agreements**

Digicel believes that these provisions are entirely superfluous and fail to take account of the fact that wholesale roaming agreements are based on standard GSMA templates. The proposed provisions add a degree of complexity and regulatory burden which is not justified.

### **Clause 5 Notifications**

Digicel believes that requirements such as 5(c) and 5(d) are unduly burdensome as the nature of SMS means that these requirements are met by the inherent functionality of SMS messages.

### **Clause 6 Billing Cycle caps**

Digicel believes that these provisions are not relevant to pre-paid subscriptions and the wording should reflect this.

We believe that the provisions of paragraph 6(4) are unduly burdensome as they require that this facility be made available via multiple channels which may not currently provide customer support in respect of roaming services

We believe that the provisions of paragraphs 6(5)(a),(b) and (c) are unduly burdensome as they require multiple tiers of notification. We believe that a two stage notification at 80% and 100% should be mandated. If operators wish to offer additional levels of notification then this will be a competitive differentiator.

### **Clause 7 Information to be made available to customers**

Digicel notes that a number of the proposed channels through which the information should be made are incompatible with format specified in Schedule 1



### **Schedule 1 Roaming Services Information Key**

Digicel believes that this format should be reviewed to ensure that it is not un-necessarily detailed.

### **Schedule 2 Wholesale Roaming Pricing Model**

Digicel notes that no specific proposal has been made in respect of any multiplier and believes that a further consultation is necessary on this aspect of the proposed Regulations

### **Schedule 3 Retail Roaming Pricing Model**

Digicel notes that no specific proposal has been made in respect of the exact form of a Roam Like You Are Home model and believes that a further consultation is necessary on this aspect of the proposed Regulations.

### **6. Comments on Section 4 Explanatory note for proposed approach to setting roaming prices in the ECTEL Member States**

Digicel has some concerns regarding the conclusions that ECTEL has drawn based on the data sources it has cited. The ECTEL conclusions and proposals do not appear to take account of the specific state of development of both ECTEL electronic communications sector nor the wider economies of ECTEL contracting States.

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