

international mobile roaming an unresolved problem

Ewan Sutherland



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Complaints

- Excessive prices
- Very complex tariff schemes
- Obscure and missing information
- Diffusion of abuses to new services
- Absence of any effects of competition
- Persistence of all of the above



The issues

- Bundling
- Leveraging of market power across national borders
- Tacit collusion
- Joint dominance
- Refusal to deal
- Competition law versus *ex ante* regulation
- Technology driving market changes



Competition law

- Inter-operator agreements were essential for pan-European services
- However, they violated Article 81 (1) of the EC Treaty
- GSM Association asked for a waiver under Article 81 (3)
- DG Competition approved the Standard Terms for Interoperator Agreements (STIRA) because it reduced the complexity of negotiations
- It required operators to decouple wholesale prices from retail in expectation prices would fall
- Inter Operator Tariffs (IOTs) were higher
- DG Competition then revived the sector inquiry



Sector inquiry

- Launched in July 1999
- Working document in December 2000
- Dawn raids in July 2001
- Draft statements of objections July 2004
- Private hearings in July 2005
- No conclusions ... yet
- Appeals to European Courts could take a further five years



Mergers

- All sorts of mergers approved
- DG Competition appeared very anxious to protect smaller operators lacking a wider geographic footprint
- Only in Vodafone/Mannesmann were roaming commitments made, but never used
- Protection of competitors, rather than competition or consumers sustained roaming



Sector regulation

- Hesitancy to act:
 - mobile market was considered “competitive”
 - operators were European champions
 - action would only benefit “foreigners”
 - some countries have net inflows of money (regulatory capture)
- The market was included in the “new” regulatory framework in 2001 for subsequent analysis by NRAs
- Long consultations on the development of a market definition:
 - heavy operator lobbying
- Repeated delays:
 - transposition of directives
 - analyses of markets
 - concern by DG Competition about the use of joint dominance
 - roaming was left till last



Analyses of the market

- Ficora:
 - no operator had SMP
- Post- og Teletilsynet:
 - no operator had SMP
- l'Autorité de Régulation des Communications Electroniques et des Postes:
 - "Roaming : Bruxelles doit prendre ses responsabilités"
 - failed to identify the causes of the abuse
 - suggested a new economic doctrine of "tight oligopoly" (a decade of appeals to the European courts)
 - suggested regulation as a trans-national market to set wholesale prices



Trans-national markets

- Must be declared by the European Commission under Article 15 (4)
- Must then be analysed by all the relevant NRAs sitting together under Article 16 (5):
 - First they would have to define procedural rules
 - Then agree on how to analyse the market
 - Then agree on the conclusions
 - Finally, adopt any decisions, subject to EC veto
- Any decision would be made severally and not jointly, thus subject to separate appeals in each member state



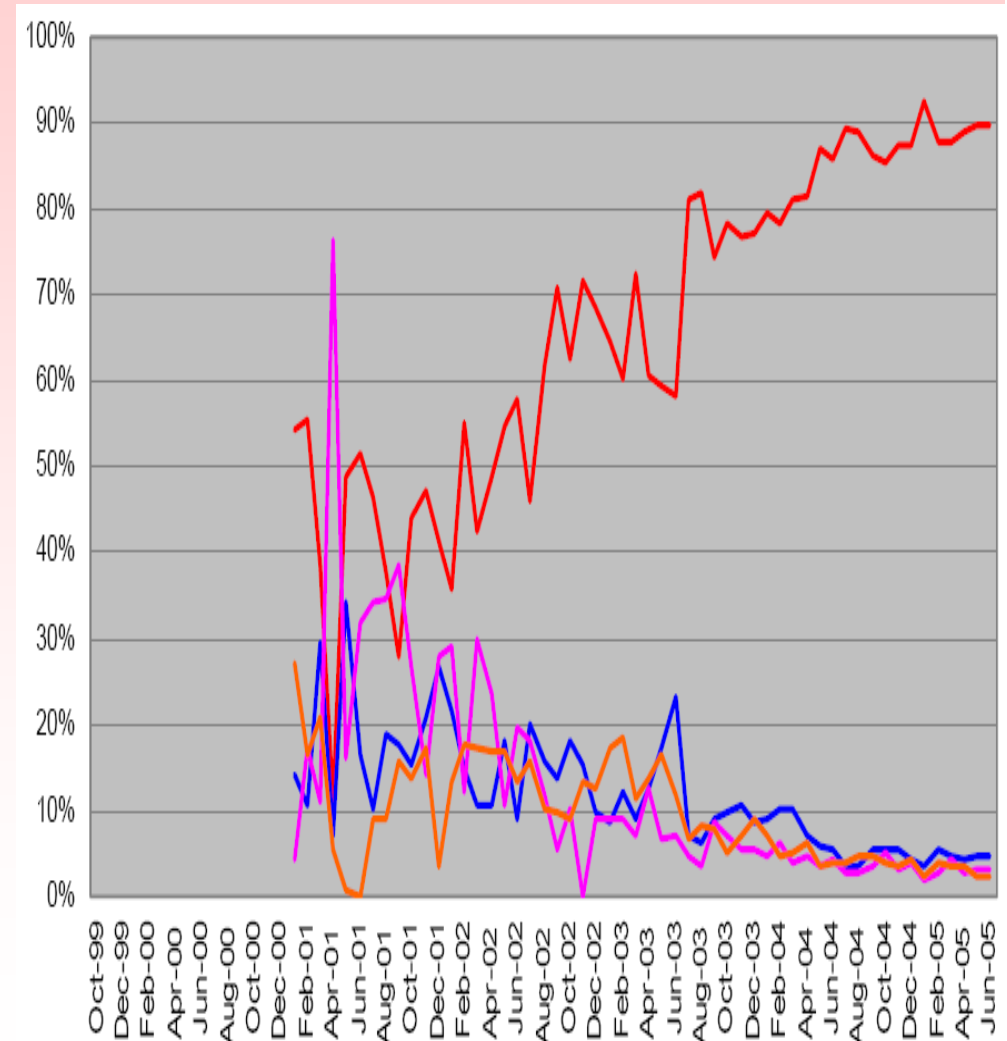
Diffusion of high “surcharges” to

- Pre-paid voice and SMS
- Mobile Internet access
- Aeroplanes
- Value-added services
- Financial payments
- Digital broadcasting



Traffic direction technologies

- Supposedly
 - introduced competition
 - Linked to price reductions (bit not evidence of this)
- Appears to consolidate traffic within larger groups
- 90% of roaming traffic on net
- Appears to make a much less competitive market structure



Price transparency

- A solid legal basis for action to make prices better known to consumers
- Good pre-holiday publicity
- European Commission web site
- NRAs were to follow with web sites
- How could anyone expect this to work?



3R Reding's Roaming Regulation

- It is direct political action outside the regulatory package
- Proposal due in mid-July to include both wholesale and retail regulation, accompanied by a regulatory impact assessment
- Would ensure that the charges for using a mobile phone abroad within the EU are not unjustifiably higher than domestic charges
- Mobile network operators have:
 - vehemently opposed the action
 - questioned everything about it
 - also acted to reduce prices and advertised this extensively
 - even acted collectively to reduce prices in likely violation of Article 81 (1) of the Treaty
- However, the price reductions may not yet be sufficient to avoid regulation
- It appears to cover voice and SMS, but not data



Wholesale only?

- ERG has argued that only wholesale prices need be regulated
- Presupposes operators will pass on the savings
- No evidence in the past of competitive pressure on operators to reduce retail prices
- Absurd to expect it now
- Evidence from regulation of termination rates shows the reluctance to pass on wholesale reductions



A theoretical EC dilemma

- Review of the list of relevant markets long overdue
- Remove the market from the list?
 - but the excessive prices are still there
- Keep the market on the list?
 - but the definition is known not to work
- Find a better definition?
 - wholesale mobile access
 - what if the new definition proves wrong?



Some other ways out?

- Technology neutrality for spectrum:
 - assign 2.0 and 2.5 GHz for mobile services
 - would allow/encourage WiMAX
 - re-licence 900 and 1800 MHz
 - remove GSM obligation
 - allow UMTS, CDMA, TD-SCDMA, WiMAX, etc.
- Encourage Voice over IP:
 - wireless
 - nomadic



Conclusions

- Nobody expected the problem to be intractable
- Mobile operators have clung to roaming revenues for lack of alternative income
- Competition law was found to be too difficult, a common problem in high technology cases
- NRAs found they lacked the tools under the new EU framework and were too busy elsewhere
- The failure to suppress old abuses allowed them to be replicated in new services



Issues

- If roaming is so difficult to describe, then what hope is there for:
 - Next Generation Networks (NGN)
 - Ubiquitous Network Society (UNS)
- Can we, must we, build excess competition into markets from the beginning?
- What are the limits of competition law?
- Do regulators need a “nuclear option”, in case nothing else works?



Thank you

Ewan Sutherland

<http://www.3wan.net/>

3wan [at] 3wan.net

+44 141 416 0666

