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*Mr Georgios LILLIKAS
Chair of the European Affairs Committee
Vouli ton Antiprosopon
CY – 1402 NICOSIA*

*cc. Mr Demetris SYLLOURIS
President of the
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Dear Chair,

The Commission would like to thank the Vouli ton Antiprosopon for its Opinion on the Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) No 531/2012 as regards rules for wholesale roaming markets {COM(2016) 399 final} and the related draft Implementing Act laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment.

The points made in this Opinion are based on the wholesale review legislative proposal presented by the Commission, and a draft of the Implementing Act on fair use policy and sustainability. The final Implementing Act¹ was formally adopted by the Commission on 15 December 2016, and published in the Official Journal of the European Union on 17 December 2016. Before its adoption, the Implementing Act was intensively discussed with all stakeholders and political representatives, and voted by Member States' representatives in the Communications Committee (COCOM), where the government of the Republic of Cyprus is formally represented. For its part, the wholesale review legislative proposal was the subject of a political agreement between the European Parliament and the Presidency of the Council on 31 January 2017, on which a positive orientation was subsequently provided on 8 February 2017 by the Committee of Permanent Representatives (COREPER), where the government of the Republic of Cyprus is also represented.

These proposals form part of a broader package of ambitious measures designed to end retail roaming surcharges for citizens and businesses while on periodic travel in the European Union by 15 June 2017. In this regard, Regulation 2015/2120 of the European Parliament and the Council mandated the Commission to review European wholesale

¹ <https://ec.europa.eu/digital-single-market/en/news/roaming-implementing-regulation>

roaming markets with a view to proposing regulatory measures that would enable the abolition of retail roaming surcharges and allow the introduction of Roam-Like-At-Home (RLAH) in the European Union, while ensuring the recovery of costs of visited operators. Regulation 2015/2120 also requires the Commission to detail a fair use policy and a sustainability mechanism for operators.

The Commission welcomes the constructive feedback of the Vouli ton Antiprosopon and notes its recommendation to (i) include a glide path to the reduction of the wholesale caps; and (ii) include a further transitional period in order to provide time for national service providers to proceed to the necessary preparations in order to avert the possibility of economic losses for mobile services providers.

The Commission has carefully considered the specific issues raised by the Vouli ton Antiprosopon in its Opinion and would like to offer the following observations, grouped by topic.

First, in relation to the Vouli ton Antiprosopon's observation that the proposed caps are lower than actual costs, the Commission would like to note that its proposal is based on a review of the roaming markets, inputs from the Body of European Regulators for Electronic Communications (BEREC) and an impact assessment, taking into account, amongst others, the results of a new cost-model developed by TERA Consultants. The cost model is one of several data inputs that the Commission has used. Other inputs include in particular domestic wholesale mobile access prices, average wholesale roaming prices per country, domestic retail prices and prices of wholesale call termination, all of which, taken together, allow for an in-depth understanding of the diversity of prices and underlying costs across Member States. Based on these inputs and their analysis in its wholesale review report and impact assessment, the Commission proposed several options for reduction of wholesale roaming caps, together with substantial analysis, during the legislative discussions between the European Parliament and the Council. Following the second trilogue, and upon the request of the co-legislators, the Commission services provided additional technical input, as an addendum to the non-paper on technical options for the data glide path, concerning the cost estimates/price projections, in order to further facilitate the discussion on the data glide path and the possible safeguards for a potential derogation system.

The political agreement provides for step by step reduction over five years for data caps decreasing from EUR 7.70 per Gigabyte (as of 15 June 2017) to EUR 6.00 per Gigabyte (as of 1 January 2018), EUR 4.50 per Gigabyte (as of 1 January 2019), EUR 3.50 per Gigabyte (as of 1 January 2020), EUR 3.00 per Gigabyte (as of 1 January 2021) and EUR 2.50 per Gigabyte (as of 1 January 2022).

The Commission is confident that the values of the glide path for data roaming services as agreed, in particular, are a good compromise that is sufficiently evidence-based and will ensure cost recovery for all visited operators, without there being a need for an exceptional wholesale derogation mechanism. Further safeguard is ensured by the fact that the

Commission will conduct a review of the wholesale market by 2019 and provide the co-legislator with an interim report by 2018.

Second, in relation to the observation that the initial draft Implementing Act implied losses from operators before they could apply a surcharge, the Commission would like to note that, following feedback from Member States, including the Government of the Republic of Cyprus, the sustainability percentage (the minimum negative roaming margin that an operator has to face compared to its domestic margin to apply to the National Regulatory Authority for a derogation from the Regulation based on sustainability) has moved from 5% to 3% in the finally approved Implementing Act, further reducing the very low risk of a potential increase in domestic prices due to the RLAH system. In addition, the sustainability derogation no longer requires operators to sustain losses before they can apply to the relevant National Regulatory Authority.

Third, in relation to the potential risk of market distortions due to market arbitrage, the Commission would like to recall that the approved fair use policy is based on a principle of residence or stable links European consumers may have with any EU Member State² and includes a series of provisions to facilitate operators' detection of anomalous usage, thus largely constraining any risk of abuse. The Commission would also like to recall that some operators offering unlimited or very high data allowances for low unit prices might apply some roaming volume limits to such packages.

Fourth, the Commission would like to recall that, in all its calculations, an estimation of the increase in volume usage has been introduced. The growth forecast used in the TERA cost model study is fully explained in the final report³.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Vouli ton Antiprosopon and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Andrus Ansip
Vice-President*

² Presence on the territory of the Member State arising from a full-time and durable employment relationship, including that of frontier workers; from durable contractual relations entailing a similar degree of physical presence of a self-employed person; from participation in full-time recurring courses of study; or from other situations, such as those of posted workers or retired persons, whenever they involve an analogous level of territorial presence.

³ <https://ec.europa.eu/digital-single-market/en/news/commission-publishes-study-cost-providing-wholesale-roaming-services-eu>.