



To the attention of:

Jean-Claude Juncker, President of the European Commission
Frans Timmermans, First Vice-President
Andrus Ansip, Vice-President for the Digital Single Market
Günther H. Oettinger, Commissioner for the Digital Economy and Society

Brussels, 13 September 2016

Re: ETNO and GSMA note on the implementation of the Roaming Fair-Use Policy

Dear President, Vice-Presidents, Commissioner,

We would like to take this opportunity to put forward some observations on the implementation of the roaming provisions of Regulation EU 2015/2120, which is an important element in the proper functioning of Europe's telecoms markets.

In this context, the GSMA and ETNO ask the European Commission to rethink its proposed Fair-Use Policy (FUP). This is an essential part of the implementation of Regulation 2015/2120, which needs to strike a delicate, yet essential, balance between retail prices, wholesale prices and the fair use of roaming services.

The initial proposal, which was withdrawn on Friday 9 September, would have been too complex to implement and unclear for consumers. We believe that a proper and fair functioning of roaming markets is in the interest of all: consumers, as well as companies investing in Europe's digital infrastructure.

The proposed Fair-Use Policy would have been disproportionate and unworkable because of several economic, technical and legal issues. Moreover, it would have undermined legal certainty and risked encouraging abuse practices and market distortions at national level.

We therefore call on the Commission to adopt a new proposal, which is fully consistent with the spirit and letter of Regulation EU 2015/2120, avoids abuses and market distortions, ensures legal certainty, is easier to implement and is understandable for consumers.

For this reason, we have developed relevant background information and proposals, which we hope will be taken into consideration in the process ahead. The proposals can be found in the Annex.

Our Associations and our Members remain fully available to further discuss this important subject and we thank you for your attention.

Mats Granryd
Director General, GSMA

Steven Tas
Executive Board Chairman, ETNO

Annex: ETNO – GSMA Note on the implementation of the Fair-Use Policy



ETNO – GSMA Note on the Implementation of the Fair-Use Policy

The original proposal was not in line with Regulation EU 2015/2120

Regulation EU 2015/2120 mandates that Roam-Like-At-Home (RLAH) be set up by mid-June 2017, while avoiding any distortion on domestic markets.

This means that, in the absence of a single market, RLAH cannot be implemented without appropriate safeguards. Unlimited RLAH would be analogous to allowing all European metro tickets to be used on all European metros. Whilst this sounds attractive, it would not be sustainable given the difference in the respective ticket prices for each country. This is why the European Parliament and the Council of the EU agreed to the implementation of RLAH **subject to** fair-use limits.

The Regulation states that operators are entitled to apply a Fair-Use Policy (FUP) at retail level in order to prevent **abusive or anomalous usage**, such as the use of roaming services for purposes **other than periodic travel**. The now-withdrawn FUP proposal would have increased the risk of 'permanent roaming', which would distort competitive domestic markets and contravene the objectives of the Regulation by forcing non-roaming customers to cross-subsidise those who do use roaming services.

The withdrawn proposal was going far beyond what could reasonably be said to constitute the use of roaming regulated services for periodic travel. Setting a maximum limit at 90 days, for instance, is far above the EU figures in terms of travel patterns or holidays. According to BEREC, "*Eurostat and Eurobarometer data shows that the average number of days spent abroad for citizens of different Member States ranges from less than one day per year in Greece to 27 days per year in Luxembourg*".¹ The Commission stated that the average travel within the EU lasts 12 days, making the theoretical roaming requirement **almost eight times lower** than the 90-days cap considered in the withdrawn proposal.

These figures show that the 30 consecutive days granted to each consumer within the proposal would have already covered 100% of the needs of the vast majority of European citizens. The extension to 90 days would be even more difficult to justify, as it would just open the door to permanent roaming without any additional benefit to the regular EU citizen travelling across Europe.

This is why the withdrawn proposal was not in line with the Connected Continent Regulation. Should the revised proposal be even more generous, the risks associated with permanent roaming and arbitrage would be even higher.

¹ Source: BEREC, December 2014, "International Roaming – Analysis of the Impacts of Roam-Like-At-Home (RLAH) (BoR 14/209 - http://berec.europa.eu/eng/document_register/subject_matter/berec/opinions/4826-international-roaming-analysis-of-the-impacts-of-8220roam-like-at-home8221-rlah).



Technical, legal and economic concerns

The withdrawn proposal would have led to various legal, technical and economic problems and was not fit for purpose. Some of the potential problems identified were as follows:

- 1) The FUP would have required operators to track consumers' travels, to store and to share data over 12 months, which **conflicts with existing national rules** on data protection in several countries. Some Member States do not allow operators to keep consumption data of their customers for more than six months, making it impossible to track the amount of roaming days over the course of a year.
- 2) The proposed FUP would **still have distorted markets**. In Denmark, for example, the maximum length of a contract is six months, so customers would have been able to 'reset' their roaming allowance twice a year.
- 3) According to the withdrawn proposal, people could have started **importing prepaid cards** from Member States where the costs of providing telecom services are lower, and changing them regularly. Under this scenario, pricing in lower-cost Member States would be unsustainable due to SIM cards being permanently used in higher-cost Member States.

Recommendations for the new proposal

We welcome any opportunities to work with the Commission on a fair-use policy that allows for sufficient roaming for European citizens and that is **easy to execute, and effectively prevent arbitrage and distortions on domestic markets**.

To remain in line with the letter and the spirit of the Connected Continent Regulation, we call upon the Commission to develop a new proposal on the FUP based on all available factual evidence about travelling patterns.

The new proposal should strike the right balance between implementing RLAH and avoiding abuses and market distortions. Otherwise, as the Commission stated itself, *network quality and investments in new capacity in some Member States could be affected*.

Moreover, the implementation of RLAH and of the related provisions on the FUP should not lead to a situation in which the majority of consumers cross-subsidize the few who travel the most.

Both the European Parliament and Council have asked the Commission to specify safeguards to avoid abuses in both retail and wholesale roaming markets. Therefore, any proposal needs to adequately take this into account.

The European Commission should also preserve legal certainty, proportionality, and investors' confidence in the EU by making sure that the new proposal will be in line with the policy objectives stated by the Regulation.