

On grounds of the Romanian Parliament Decision no. 37/2017 on designating the President of the National Authority for Management and Regulation in Communications,

On grounds of the Article 11(1), and of the Article 12(1) and (3) of the Government Emergency Ordinance no. 22/2009 on the establishment of The National Authority for Management and Regulation in Communications, approved by the Law no. 113/2010, with the subsequent amendments and completions,

On grounds of the provisions of the Article 6c(2) – (4), and of the Article 6d(5), respectively of the Article 16(1) of the Regulation (EU) no. 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union, with the subsequent amendments and completions,

On grounds of the provisions of the Articles 6 – 10 of the Commission Implementing Regulation (EU) 2016/2286 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,

Having regard to the application submitted by "RCS&RDS" S.A. (RCS&RDS) no. 4929/24.04.2017, registered with The National Authority for Management and Regulation in Communications (ANCOM) under no. SC-12215/25.04.2017, as amended and completed by RCS&RDS' letters no. 20057/30.05.2017 and no. 21328/12.06.2017, registered with ANCOM under no. SC-14793/31.05.2017 and no. SC-15575/12.06.2017, by which RCS&RDS - on grounds of the provisions of the Article 6c(1) of the Regulation (EU) no. 531/2012 - requested ANCOM to authorize the application of a certain surcharge on their customers, in addition to the domestic tariffs, for some regulated roaming services provided within the European Economic Area (SEE),

Having regard the RCS&RDS' aforesaid application complies with the requirements provided within the Articles 6 – 9 of the Commission Implementing Regulation (EU) 2016/2286,

Having regard that, upon the assessment of the RCS&RDS' application, in accordance with the provisions of the Article 6c(3) of the Regulation (EU) no. 531/2012, respectively of the Article 10 of the Commission Implementing Regulation (UE) 2016/2286, ANCOM concluded – on the following 12 months forecasts – the undertaking is unable to recover its costs of providing EEA roaming services to their own customers, under the terms established by the Regulation (EU) no. 531/2012, starting 2017, June 15th.

Having regard that, according to the following 12 months forecasts, the negative net margin for the regulated roaming services within the EEA to be provided by RCS&RDS to their own customers would be \approx % of the mobile services margin to be provided by the undertaking - i.e. EUR \approx , without VAT, as absolute value - if RCS&RDS applied its customers the strictest fair use policy for the regulated roaming services, allowed under the provisions of the Article 6b of the Regulation (EU) no. 531/2012, respectively of the Articles 3 – 5 of the Commission Implementing Regulation (EU) 2016/2286,

Having regard that this negative net margin would undermine RCS&RDS' domestic charging model, and given that there are no other specific circumstances that could significantly diminish such a likelihood,

Having regard that, to the extent such circumstances are met, ANCOM shall – according to the provisions of the Article 6c(2) and (3) of the Regulation (EU) no. 531/2012 – authorize the applicant to levy certain surcharges, in addition to the domestic tariffs, for the regulated roaming services provided to their customers within the EEA, for a 12-month period,

Having regard to the ANCOM requirement – under the provisions of the Article 6d(5), respectively of the Article 16(1) of the Regulation (EU) no. 531/2012 – to strictly monitor and supervise the providers authorised to levy surcharges, in addition to the domestic tariffs, for some regulated roaming services provided to their customers within the EEA,

Having regard to the explanatory document accompanying this decision,

**THE PRESIDENT OF THE NATIONAL AUTHORITY FOR
MANAGEMENT AND REGULATION IN COMMUNICATIONS**

issues this:

DECISION

on the authorisation of "RCS&RDS" S.A. to levy certain surcharges to their own customers, in addition to the domestic tariffs, for a 12-month term, for some of the regulated roaming services provided within the European Economic Area

Article 1. – (1) "RCS&RDS" S.A., hereinafter RCS&RDS, headquartered in Bucharest, 75 Dr. Staicovici, Forum 2000 Building, phase I, 2nd floor, 5th district, unique registration code 5888716, is authorised to levy surcharges on its customers, in addition to the domestic tariffs, for the following regulated roaming services provided to them within the European Economic Area, surcharges that cannot exceed the following caps:

- a) 0.031 Euro/minute, for made calls;
- b) 0.0108 Euro/minute, for received calls, with due regard to the conditions provided in paragraph (2);
- c) 6.37 Euro/GB (0.00637 Euro/MB), for the data roaming usage from the entry into force of this decision till 2017, December 31st;
- d) 4.9 Euro/GB (0.0049 Euro/MB), for the data roaming usage from 2018, January 1st, till the date when this paragraph cease to have effect.

(2) RCS&RDS cannot exceed the surcharge cap for received calls, provided in the Article 6e(1) c) of the Regulation (EU) no. 531/2012 of the European Parliament and of the Council on roaming on public mobile communications networks within the Union, with the subsequent amendments and completions, from the date when it drops below the cap provided in paragraph (1) b).

(3) The caps provided in the paragraph (1) do not include VAT.

(4) RCS&RDS may levy the surcharges provided in paragraph (1) from the first consumption unit provided to their customers in roaming within the European Economic Area.

Article 2. – (1) Subsequent to the application of the surcharge authorised under the provisions of Article 1, RCS&RDS cannot bill, on the overall, more than ∞ Euro, VAT not included.

(2) The actual amount billed by RCS&RDS, after applying the surcharges authorised according to the provisions of the Article 1, must however bear a negative net margin for the regulated roaming services provided to their own customers within the European Economic Area of at least 3% of the mobile services margin provided by RCS&RDS, as defined in the Article 2(2) f) of the Commission Implementing Regulation (EU) no. 2016/2286 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.

Article 3. – (1) For monitoring compliance with the Articles 1 and 2(1), RCS&RDS shall send The National Authority for Management and Regulation in Communications, hereinafter ANCOM, accurately and thoroughly, on a quarterly basis, the following items of information, by regulated roaming services provided to their own customers within the European Economic Area provided in the Article 1(1):

- a) real traffic billed by each month of the reporting quarter;
- b) revenues billed by each month of the reporting quarter.

(2) RCS&RDS must submit data for the first reporting period, according to the paragraph (1), not later than 2017, November 15th, for the period spanning from the entry into force of this decision till 2017, September 30th.

(3) RCS&RDS must report data for the subsequent quarters, according to the paragraph (1), no later than 45 days from the end of each quarter.

Article 4. – For monitoring compliance with the Article 2(2), RCS&RDS must send to ANCOM, no later than 90 days since the provisions of Article 1(1) have ceased, accurately and thoroughly, all the real data forecasted at the time of sending the authorisation application.

Article 5. – RCS&RDS must send the data and information provided under the Articles 3 and 4 in accordance with the provisions of the Decision of the President of The National Authority for Management and Regulation in Communications no. 336/2013 on the providers' means and methods of sending documents, data or information to The National Authority for Management and Regulation in Communications, with the subsequent amendments and completions.

Article 6. – (1) This decision is to be sent to "RCS&RDS" S.A.

(2) The provisions of Article 1(1) cease to have effect at the lapse of 12 months from the entry into force of this decision.

(3) The explanatory memorandum accompanying this decision is part of the said decision.

**PRESIDENT,
Adrian DIȚĂ**

Bucharest, 2017, June 30th.

No. 538.