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RESPONSE OF VATM: BEREC REPORT ON IMPACT OF FIXED-MOBILE SUBSTITUTION IN MARKET DEFINITION

VATM welcomes the opportunity to provide comments on BEREC's Report on the impact of fixed and mobile substitution in market definition published in early December 2011.

BEREC reviewed in detail several options on FMS and furthermore quote criteria that should be defined in case of a fixed-mobile substitution.

VATM agrees that such an analyses should take account of several data, which should relate in particular to national circumstances. As NRAs needs a great amount of flexibility to adjust to the characteristics of national markets, it would seem problematic to derive principles from markets like Finland, where fixed networks play traditionally a minor role (at least for voice service). In our view the use of the SSNIP-test is therefore an important instrument to consider strong competition, supply and demand and consumer behavior.

It seems that BEREC is not inclined to classify fixed and mobile services as substitutes but as complementary services in particular markets. In many countries, substitution of fixed through mobile networks is not clearly observable. The NRAs also have to consider shared medium effects when they look at mobile and fixed networks in the process of defining broadband markets, ex-ante regulation SMP and remedies. This is also confirmed by the critical evaluation of the approach of the Austrian regulatory authority (RTR) concerning the special situation of the Austrian market. VATM agrees with BERECs opinion, that due to their actual different characteristics, their applicability and their use, fixed and mobile services are not interchangeable and therefore belong at present to different markets, as these differences lead to the effect, that consumers differentiate between fixed and mobile offers concerning their purchase activities. We also do not think that NRA should consider FMS in the market definition phase already. If at all, FMS should be considered when defining remedies, since the concept of FMS is fairly new and NRAs would be more flexible to adjust new remedies than to revise a market or SMP definition. Also, the NRA would be more flexible to react to the effects of altered customer behavior due to the deployment of NGA and other innovations.

For this reason, fixed and mobile services should be very carefully considered in direct relation in the “three-criteria test”. Otherwise this could result in a misjudgment in terms of the necessity of regulation.

Concerning the wholesale market BEREC points out the possibility that the integration of companies that are active both on wholesale and also resale level could increase the market pressure towards the SMP operator. In principle, this could be the fact, if one functional separated company is active only at the wholesale level. As in Germany the vertically integrated incumbent Telekom Deutschland possesses of significant market power, this proposal is no solution for the German telecommunication market.

Thus, as a result, applying the SSNIP test could conceivably result in a non foreseeable transfer of market power in favor of the incumbent, as Telekom Deutschland opposed to the wholesale prices would not have to increase or reduce internal prices. As a retail price regulation does not take place and also margin squeeze tests are not carried out effectively, the affects pointed out in the previous section could not be stopped. In consequence, the strong position of the incumbent Telekom Deutschland on the retail market would further exist. From our point of view, there is not enough competition yet to release the incumbent in Germany from regulation in remaining markets. FMS plays a neglectable role on those markets..

Based on the criteria and figures listed by BEREC the VATM therefore understand that BEREC is not in favor for a substitution. VATM would like to support actual this evaluation and supports a strict separation of the respective markets due to the fact, that a significant substitution is not viable at the present in the German market.

Generally VATM welcomes continuous investigations of FMS in the particular markets.

Brussels, 10. February 2012

Im VATM sind rund 100 der im deutschen Markt operativ tätigen Telekommunikations- und Dienstleistungsunternehmen aktiv. Alle stehen im direkten Wettbewerb zum Ex-Monopolisten Deutsche Telekom AG und engagieren sich für mehr Wettbewerb im Telekommunikationsmarkt – zu Gunsten von Innovationen, Investitionen und Beschäftigung. Seit der Marktöffnung im Jahr 1998 haben die Wettbewerber im Festnetz- und Mobilfunkbereich Investitionen in Höhe von rund 48,5 Mrd. € vorgenommen. Unmittelbar sichern die neuen Festnetz- und Mobilfunkunternehmen über 55.500 Arbeitsplätze in Deutschland sowie zusätzlich etwa 50 % der Beschäftigung in den Zulieferbetrieben.