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Body of European Regulators for Electronic Communications (BEREC)

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Consultation on the draft BEREC Guidelines on the Criteria for a Consistent Application of Article 61 (3) EECC

VATM Opinion (without any trade or business secrets)

Dear Mr. Sjöblom,

Dear Sir or Madam,

during the public debriefing of the 43rd BEREC plenary meeting, BEREC announced and published a public consultation on the draft BEREC Guidelines on the Criteria for a Consistent Application of Article 61 (3) EECC.

The Association of the Providers of Telecommunication- and Value-Added-Services (VATM) is grateful for the opportunity and hereby makes the following overall statement on the consultation for its members:

General Considerations

The VATM represents German telecommunications providers with different business models. The common ground between these members is the need for network access. It should be noted that the asymmetrical regulatory approach for companies with SMP has proven itself and must be maintained in order to ensure free market competition. It must be made very clear here that access obligations for companies without SMP should be avoided at all costs. We fear a significant increase in regulation and access obligations in disadvantage of competition and thus also in disadvantage of alternative suppliers. Especially for member states like Germany, where the investment is mainly driven by competitors and FTTB/H expansion of the ex-monopolist is only marginal, the introduction of symmetrical regulation would lead to a drastic deterioration of the general investment climate.

The assessment that a small number of large companies are contributing to the fibre expansion faster than a market situation with many competitors can, through experience with the considerable investments made by alternative operators in Germany not be proven. The paradigm shift associated with symmetric regulation would thus lead to a reduction in the intensity of competition and impede investment in fibre deployment, especially in less populated regions. In this respect, the possibility of imposing obligations on undertakings without SMP under Article 61(3) should be as restrictive as possible.

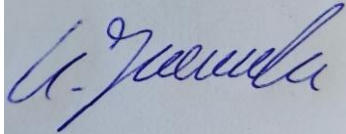
The conditions for exemptions from the imposition of such obligations, as set out in the third subparagraph of Article 61(3), should be adapted accordingly.

In the exceptional case of a finding of regional dominance or any other type of regulatory intervention in the market, the same possibilities for exemption from regulation as for the regulation of SMP must exist. From the perspective of the VATM, it should therefore be avoided at all costs that the dominant company is released from regulation prematurely and to a large extent, thereby worsening the investment opportunities, especially for companies that are already investing massively in the expansion of Gigabit-capable connections. Furthermore, it should at least be clarified, that the existing market analysis procedures are properly applied.

In principle, the VATM supports the application of the three-criteria test to guarantee competition. We are convinced that the existing procedure to define access points should be maintained and should be defined as described in recital 154.

Please note the aspects mentioned above and take them into consideration. If there are any further questions, please do not hesitate to contact us. We will be happy to answer them.

Kind regards,



Kathrin Jaenecke
Head of Brussels Office