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PUBLIC CONSULTATION ON DRAFT BEREC GUIDELINES ON VERY HIGH CAPACITY NETWORKS

Dear Madame, Sir,

1&1 welcomes the opportunity to comment on BEREC's draft guidelines and would like to point out the following aspects.

According to Article 82 of the EECC, BEREC has to publish guidelines on very high capacity networks ("VHCN"). The guidelines should contribute to a consistent application of the EECC, especially to ensure regulatory certainty of the criteria, a network must meet to qualify as VHCN. Particular mention needs to be given to bandwidth, resilience, error-related parameters and latency. Thus, the BEREC guidelines should assist NRAs on a consistent and harmonized application of the definition of very high capacity networks in the EU. NRAs are, therefore, also required to take the utmost account of the Guidelines.

Lack of assessment of wholesale capability

In addition to define the technical QoS criteria, Article 82 mandates BEREC to define within the definition of VHCN requirements of the network architecture. As the EECC provides further options to NRAs, in particular regarding a deregulation but also to make an overall assessment in view of funding measures, we fully support this 'open' wording to provide a classification of a network in the category "VHC".

It is, therefore, necessary that BEREC emphasises the need for access already in the definition of the VHC category. A network that meets the QoS requirements but is not suitable for providing a competitive wholesale offer (e.g. the "old" cable networks) should not be allowed to benefit from the associated (investment) advantages on the VHC category.

Importance of VHC networks for the industrial and service sector.

The draft guidelines only mention in the introduction one time, that VHCs are of crucial importance for companies and traders within the EU. Furthermore, only footnote 19 points out that fibre should not only connect a multi-or single-family house, but it also crucial to connect an office or industrial building.

However, regarding the importance of VHCN for all industrial and service sectors, the analysis should not be limited to the perspective of private users. In order to boost and promote the development of Industry 4.0 in Europe, high-performance networks are required and, therefore, must be expanded as quickly as possible. Here all cost-savings and efficiencies, such as open access regulation, shared use and subsidies must be exploited and supported.

In addition and to realise this objectives, the use of VHCNs must also be considered from a wholesale perspective. Demand is generated by network operators, who mainly address business customers – and under certain circumstances even in combination with own networks. This service is often based on the network of SMP companies (especially incumbents), which means, that the use of VHCN of the incumbents is essential to enable competition with the business market. Thus, this fact must be taken into consideration also for the future.

Therefore, the guidelines should emphasize in addition to the wholesale market of retail customers the wholesale market for business customers. This also means that the definition of a VHCN will play an essential role in view of the market definition which must be taken into account within the SMP regulation.

Clear distinction needed: No common market of mobile and fixed networks

The definition in Article 2 of the EECC does not intend to merge different transmissions, but rather provides a specific definition for both technologies (air interface and fixed network). BEREC, therefore, has to underline that there is no uniform term of a VHCN, but a differentiation between mobile and fixed networks.

Otherwise, the possible conclusion - which will certainly be used by the market players in terms of political and regulatory discussions - would be that a market analysis based on the VHC definition must be anticipated and that mobile networks and fixed networks have to be combined within the VHC area without a further analyses of a substitution. This entails the high risk of significant market distortions, as there is no substitution. This is also reflected in the parameters for criterion 3 compared to criterion 4.

Importance of the definition of VHC networks in the context of funding

It must be clear that within the draft guidelines the intended definition of very high capacity networks is not just a clarification of an undefined legal concept from the EECC, but rather will be a key indicator and benchmark for future funding – and cost reduction initiatives but also for regulation.

In this context, it must also be made clear within the definition that an out-dated technology cannot be included in the scope of the application. In particular it is important to exclude copper infrastructure that could still be regarded as eligible for funding after all. This has not been the case so far.

We will be pleased to answer any further questions that you may have.

Kind regards,



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