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13.04.2020

PUBLIC CONSULTATION ON THE BEREC STRATEGY 2021-2025

1&1 welcomes the opportunity to comment on the Public consultation on the BEREC Strategy 2021-2025 and early call for input on the BEREC WP 2021. 1&1 appreciates that BEREC is offering stakeholders the possibility to contribute to its strategy. 1&1 expresses its explicit support for most of BEREC's proposed topics. Ensuring service and infrastructure competition should be the top priority and the overriding principle. Please find below some additional comments:

SPECTRUM SCARCITY

Spectrum for mobile use is a scarce resource, i.e. demand exceeds the available spectrum. For this reason, an auction is so far the used method for an optimal allocation. However, in view of the forthcoming allocation of spectrum for a broad coverage below 1 GHz, it is foreseeable that the situation will get worse as the availability of spectrum packages is not sufficient for all network operators:

- It is already clear that the spectrum available in Germany will not be sufficient for the mobile network operators.
- Politics and NRAs have to think about alternative solutions to ensure that all market participants are able to cover their sufficient demand in order to make sure that the objectives of profitability and competition can be fulfilled, in particular by:
 - the procedure must not come at the cost of new entrants who entered into the market on the premise that they will be able to bring more competition to a market which was dominated by only a few providers.
 - Comparable spectrum resources among competitors are necessary to create fair competition.

- Within the scope of the national implementation of the EECC, BEREC should ensure that the national legislator will respect and fulfil its obligation and responsibility to enforce competitive safeguards. Therefore BEREC should establish guidelines to ensure a harmonized European application.
- To ensure the market entry of a new player, the imposition of mandatory national roaming is essential; the same is true regarding the harmonisation of spectrum usage to avoid shortage of spectrum during the allocation of spectrum, only because a part of the entire spectrum is available for an allocation.

PASSIV ACCESS

1&1 supports a consistent regulatory application of the EECC. While the Code focuses on incentives for investment in new Very High Capacity (VHC) networks, access to building facilities of market-leading companies, as provided in Articles 72 and 73 EECC, significantly accelerates the expansion of VHC infrastructures by competitors. We understand that this would also include the former monopolist's structural facilities and passive infrastructure, most of which were built before liberalisation and which have been further expanded and modernised in recent years as a result of regulatory (Vectoring!) and political decisions (subsidy programmes from which in particular the incumbent has been able to benefit). This includes both access to the classic passive infrastructure such as ducts, cable ducts, distribution frames, masts, collocation rooms, piles, etc. as well access to the cable infrastructure and unswitched fibre optics. After the national implementation, competitors must be able to use this infrastructure to be able to expand their own infrastructure at regulated conditions. This also serves to accelerate the 5G expansion. For this purpose, countless masts must be connected with fibre optics.

We particularly also see a need for improvement in clear and binding guidelines in order to shorten the approval procedures (2 months offer period, 4 months + possibly a further 2 months decision period in dispute settlement proceedings with the Federal Network Agency) and several grounds for refusal in the future, thus promoting a fast broadband expansion and fully integrating the existing infrastructure of the SMP operator into the planning process by competitors.

AID FOR INTERPRETATION TO DETERMINE FEES FOR THE COPPER INFRASTRUCTURE

In order to promote the deployment of VHC networks (FTTB/H), the guidelines should be further developed with regard to the assessment of the copper infrastructure. The essential objective must be an assessment of the old copper networks at a residual value, while the replacement value only should apply to FTTB/H networks. Current approaches tend to continue to overestimate the value of existing networks, so there is no incentive to accelerate investment in modern networks.

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

Kind regards,

A handwritten signature in black ink, appearing to read 'S. Jorns'.

Sebastian Jorns
Expert Regulatory Affairs

A handwritten signature in blue ink, appearing to read 'M. Hattermann'.

Michael Hattermann
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