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Public consultation on draft BEREC Guide to the BEREC 5G Radar

Dear Madame, Sir,

1&1 welcomes the opportunity to provide input on the draft BEREC Guide to the BEREC 5G Radar. We appreciate BEREC's role in supporting the 5G deployment and fully agree with BEREC's view that 5G has a strategic priority to promote competition. Furthermore consistency with the EU regulatory framework is needed. A fast and competitive deployment of 5G is of vital importance. As Europe has committed itself to become a leading market for 5G, an essential part of this strategy is the provision of sustainable and competitive 5G gigabit networks. But this requires a competitive market without market entry barriers. Therefore the introduction of a new instrument can contribute to fully capture and structure regulatory aspects of 5G deployment.

We believe that Europe can globally only compete successful when effective competition in 5G is ensured and the market is open for new market players and is not dominated by just a few large companies dividing the market among themselves. Therefore regulatory practice must take into account this development in order to ensure the widest possible access for competitors and to prevent an even more oligopolistic character. Thus the role of regulation in enabling the 5G ecosystem which we understand to imply a pro-competitive approach. In our view the 5G radar is especially in accordance with the EECC.

In order to stimulate competition and thus accelerate 5G roll-out in Europe, it is essential that related measures are addressed as soon as possible. It is therefore of great concern to us that topics such as national roaming or infrastructure sharing are given priority

Against this background, we would like to comment as follows:**5. New bottlenecks, dominance and monopolies:**

The deployment of 5G networks requires the availability of a sufficient amount of harmonised spectrum. Today, there is no functioning competition in many countries on the mobile market where only a few operators dominate the market. Against the background of the development of 5G networks and scarce

spectrum resources, there is a high risk of further market concentration and bottlenecks within 5G. Where competition remains insufficient, ex ante regulation is needed to further promote effective competition. We therefore consider that it is more relevant than ever to prevent and remove bottlenecks. If Europe enters the 5G era with an insufficient level of potential drivers network effects can be the results. Thus wholesale access to networks will be more essential than ever. Issues of potential monopolies, dominance and bottlenecks have been highlighted from BEREC in different context. Mobile infrastructure sharing plays a key role regarding 5G deployment in terms of cost implications and how to manage the transition process.

We therefore believe that BEREC should closely monitor the developments within the EU member states. To the extent that the course of 5G deployment is now being set, we consider the BEREC timing of 2022 to be too late. The measure should start in 2021.

8. Network slicing and 5G wholesale markets

In order to give new impetus and strengthen competition a forward-looking, pro-competitive regulatory framework is crucial to establish a fair and competitive market. The 5G radar should therefore be used to minimise legal uncertainties. BEREC can help to develop positions to support regulators, especially by addressing clear advice in order to ensure planning and investment security for all market participants. This is particularly important for new market entrants - but also for service providers and virtual mobile network operators.

Wholesale access to networks will be crucial to enable competition. We are of the opinion that BEREC should examine the functioning of wholesale markets, as the wholesale dimension is suitable to correct market malfunctioning. Co-operations and the sharing of infrastructure are essential possibilities to optimize the network use. Practice shows that in mobile communications in many countries the use of parallel networks is not always economically possible. This will become even more true within 5G, because gigabit speeds require dense networks with many small radio cells. While a parallel and multiple expansion also devours enormous resources and burdens the public area, we are convinced that the business model of mobile network operators must change and must be adapted towards more and closer cooperation between operators. There are already good examples within Europe (e.g. Italy and Spain), but also in the leading 5G countries, especially South Korea, where infrastructure sharing and coordinated expansion to avoid unnecessary duplication.

The 5G network expansion starts now. Therefore, the rules regarding cooperation must be defined immediately. It should also be considered that an efficient result can be achieved if cooperation is forced.

15. Roaming: New requirements for national roaming

Many countries are facing the challenge of ensuring sufficient competition in their mobile communications markets to provide extensive coverage and competitive prices. Some countries already have proved that national roaming enables new mobile network operators to enter the market - with positive effects for customers. Nevertheless, as it took many years to build up the existing mobile networks, new entrants must take one step at a time. National roaming is a crucial basis for the network expansion of a new entrant. To provide better coverage, especially in rural areas, end customers must be able to use the network of another provider if their own provider does not offer network coverage. For network operators, it should therefore be obligatory to provide national roaming (including the existing 3G and 4G networks) to ensure an efficient use of limited resources, to avoid supply gaps and to promote competition by interconnecting networks. As a sufficient and stable network coverage must be guaranteed at all times, only an agreement on the (paid) shared use of one of the existing networks provides the necessary planning security for own investments – in particular with regard to the costly and time-consuming acquisition of thousands of antenna sites and the construction of the corresponding mobile radio stations. Also in context of the transposition of the requirements of the EECC, benchmarks and recommendations on national roaming (similar to BERECs work on international roaming) would be welcomed.

As national roaming has a positive impact on the rollout of 5G, we are concerned that the intended timeframe of 2023 will be too late. National roaming is a special form of cooperation which new entrants urgently need, but which can also be absolutely necessary to achieve an optimal result, especially in regions which are difficult to access. As the planning and roll-out of 5G is now starting, the rules of cooperation must also be defined immediately.

16. Roaming: New requirements for international roaming

The forthcoming review of the Roaming regulation is an important milestone. The level of wholesale roaming charges is a key determinant of the intensity of competition. We therefore appreciate BEREC's benchmarking, transparency and comparability work regarding international roaming. This work needs to continue in full, as these surveys are of utmost importance and allow a comprehensive comparison of the EU member states and help to understand competition dynamics and concerns. The research BEREC carried out clearly showed that especially MVNOs, smaller operators and newcomers are substantially affected by the implementation of the RLAH regime. The BEREC Opinion on the functioning of the roaming market acknowledges that *“the situation is more*

complex for MVNOs and resellers where RLAH to a certain extent seems to have negatively impacted them. Since MVNOs have no radio network over which to offer connectivity to inbound roamers (therefore no possibility to balance traffic), and in general limited resources for managing direct wholesale roaming, most of them are dependent on some form of resale access. The lack of negotiation power due to size (and less traffic volume) and, for some of the MVNOs, the dependency on the host MNOs make it challenging to achieve discounts or better rates than the regulated caps”.

In this context it is evident that that especially the wholesale data roaming caps set in EU Regulation do not correspond to the costs incurred by large Mobile Network Operators, as these costs are revealed by the retail prices practiced by the large Mobile Network Operators.

We therefore call on BEREC to push towards much lower wholesale prices and more competition to ensure a level playing field in the roaming wholesale markets.

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