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Vienna, 23.06.2022

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**Subject: Contribution to the public consultation on the draft BEREC guidelines on the application of Article 3 of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (Wholesale Roaming Guidelines)**

E-Mail: PC\_Wholesale\_GLS@berec.europa.eu

Dear Sir or Madam,

spusu thanks you for the opportunity to take part within the public consultation on the on the draft BEREC guidelines on the application of Article 3 of Regulation (EU) 2022/612 of 6 April 2022 on roaming on public communications networks within the Union (Wholesale Roaming Guidelines)

For more than five years now, with more than 400,000 SIM cards in circulation and a customer growth rate of about five percent per month, the mobile phone brand spusu of Mass Response Service GmbH has been a fixed factor on the Austrian market with its simple, humane, and fair mobile phone offer. Regional value creation is firmly rooted at spusu: As a sustainably growing mobile phone provider, spusu is always creating new and highly qualified jobs, and no service or development work is outsourced, but everything is developed in-house and in Austria - a unique selling point among mobile phone providers on the Austrian market, just like the ownership structure, which has no foreign holdings but is entirely in Austrian hands.

**Ad Guideline 3. Reasonable requests, ad Guideline 5. Refusal of requests and ad Guideline 6. Prioritisation of requests**

In practice, the unwillingness of large MNOs to enter roaming contracts with smaller MNOs or MVNOs is often a major obstacle to wholesale roaming access.

With invoking Art 3 (1) that only "reasonable requests" must be complied with, requests by large MNOs are often rejected or considerably subordinated. Guideline 3 still does not provide a clear definition of what is meant by reasonable requests. Here, a further clarification should take place in Guideline 3 as to what is meant by "reasonable requests". In Guideline 6 should be stated that a

prioritisation may not be permitted for these reasons to put a stop to this practice by large MNOs. Furthermore, Guideline 3 and Guideline 5 contradict each other. Guideline 5 states that requests may not be rejected for economic reasons. In Guideline 3, though, a possible non-reasonable request is described as one that will not cover costs in the foreseeable future, i.e. it is indeed based on economic reasons for which a request may subsequently be rejected.

#### **Ad Guideline 44. Timing issues**

In practice, the submission of a draft agreement is often delayed by unnecessary requirements, such as the obligation to submit numerous documents (e.g., companies balance sheet) until a draft agreement is sent.

The submission of such documents should not be necessary, and this should be stated accordingly in Guideline 44. The criteria that must be met before a draft contract can be submitted should be more clearly defined.

#### **ad Guideline 47. Negotiation time**

The time limits set out in Art 3 (5) contain a central weakness in that it does not provide for a time limit for the conclusion of the contract itself. The conclusion of the contract and thus the granting of wholesale roaming access can be deliberately delayed indefinitely on the grounds of disagreements in the contract negotiations. In Guideline 47 a reasonable time limit should be set for the conclusion of a contract after making available a draft of the roaming agreement, which is already based on a reference offer.

spusu asks for consideration of the above comments, concerns and suggestions.

Kind regards

