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**To: BEREC**  
[IP-IC-Consultation@distro.berec.europa.eu](mailto:IP-IC-Consultation@distro.berec.europa.eu)

**Attn: BEREC BoR**

**Ref: Draft report on IP Interconnection**

Dear BEREC Team,

The underwritten National Association of ISPs in Romania (ANISP – Asociația Națională a Internet Service Providerilor din Romania), registered according the Romanian law on associations and foundations, registry no. 4/2022/PJ, VAT code RO13679664, legally represented by Mr. Adrian Popa (president), hereby presents you the following feedback to the public consultation on the draft BEREC Report on the IP Interconnection ecosystem<sup>1</sup>

The proposed draft report<sup>2</sup> seems generally appropriate, however it also seems to fail in pointing some aspects which are of high importance for our Association as well as for several other partners we have discussed such aspects with. The partners we refer to are other associations and electronic communication services providers – especially the kind named "IAS" (Internet Access Service) providers within the discussed draft report.

Namely, the provisional report focuses on the relationship between IAS and CAP (Content Application Providers) but does not detect the particularities of certain European markets, in which one IAS provider came to dominate categorically. Such example is Digi (formerly RCS-RDS) in Romania. In Romania's case, we already have a long history of signaling to various Romanian relevant authorities that the free market fails to provide a healthy environment.

Thus, according to the latest report published by the local NRE (ANCOM)<sup>3</sup> in Romania the dominant IAS reached more than 70% of the fixed broadband services market, in terms of number of connections - and more than 73%, in terms of traffic.

This IAS provider behaves independently, refusing entering fair IP interconnection agreements. They only sell global IP ports at prices around 3x (three times) higher than the usual wholesale offer of the large global IP transit providers. On the contrary, a fair interconnection assumes:

- (a) tariffs lower than those for the global IP transit;
- (b) reciprocity in paying for traffic exchange services.

<sup>1</sup> <https://www.berec.europa.eu/en/public-consultations/ongoing-public-consultations-and-calls-for-inputs/public-consultation-on-the-draft-berec-report-on-the-ip-interconnection-ecosystem>

<sup>2</sup> <https://berec.europa.eu/en/document-categories/berec/reports/draft-berec-report-on-the-ip-interconnection-ecosystem>

<sup>3</sup> <https://sscpds.ancom.ro/en/communications/rapoarte-statistice>

At the time we addressed BEREC in the 21<sup>st</sup> of April, 2020 this IAS provider was at 50% market share. Now they are at more than 70% market share. This sudden increase is also helped by using the sheer size of its network as a walled garden, as a market entry barrier.

The same issue was repeatedly addressed to the local regulator (ANCOM) but no remedy was adopted, on grounds that (A) the European Commission tends to remove *ex ante* market regulations, as well as (B) based on a previous ruling of the European Commission on a "similar" IP interconnection case (see below).

It is our strong opinion that IP interconnection (peering) **must** be regulated in such cases, in the same manner voice services were regulated. The Internet has a far greater importance now in our lives than it ever was the importance of the simple voice service.

Indeed, IP interconnection regulation was already examined by the EC in 2009-2011 (when the Polish NRA UKE regulated the IP interconnection of the Polish incumbent<sup>4</sup>. At that epoch EC rejected peering regulation, as "transit" was considered to be a fair substitute for direct interconnection (peering).

However, the Internet based applications that we use today are far more sensitive to latency and to end-to-end QoS. We are no longer in the FTP era. All communication services migrated over IP. Applications like videoconferencing, IoT, telemedicine, remote assistance needs (quasi) real time communications. As the draft report repeatedly mentions - "... *BEREC observes increasing importance of latency and bandwidth in recent years, where transit is less of a substitute to peering*".

Thus, it is our strong opinion the 2010 decisions must be reconsidered. If not, it is only a matter of time until a crisis will prove it<sup>5</sup>, while the people in charge will candidly affirm "we didn't know...".

That is why we kindly ask BEREC to discuss this issue with Romania's ANCOM and consequently add to the report (i) a case study based on Digi's behavior; and (ii) a recommendation to issue ex-ante regulations for such cases when a free-market failure to ensure a fair competition is proven by indicators such as disproportionate market share, lack of cooperation, independent behavior.

We remain at your disposal for any questions. We are eager to collaborate with BEREC and any relevant stakeholder to address and solve the above-mentioned issues in a timely manner.

Sincerely yours,

**The National Association of Internet Service Providers in Romania**

Adrian Popa, President

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<sup>4</sup> [https://ec.europa.eu/competition/antitrust/cases/dec\\_docs/39525/39525\\_1916\\_7.pdf](https://ec.europa.eu/competition/antitrust/cases/dec_docs/39525/39525_1916_7.pdf)

<sup>5</sup> symptoms were revealed including while intensively using teleconferencing – during the Covid19 pandemics. Lack of (or improperly dimensioned) IP interconnections caused interruptions, the traffic being routed thru long international transit links back and forth - instead of being swiftly exchanged locally.