

**BEREC Opinion on
Phase II investigation
pursuant to Article 32 of Directive (EU) 2018/1972 of 11 December
2018 establishing the European Electronic Communications Code –
notifications procedure:**

Case RO/2026/2623

**Market for wholesale local access provided at a fixed
location in Romania**

March 2026

Table of Contents

1. Executive summary	3
2. Introduction	3
3. Background	4
Previous notifications	4
Current notification and the Commission's serious doubts	5
4. Assessment of the serious doubts	8
5. Conclusions.....	23

1. Executive summary

On 5 January 2026, the European Commission [hereinafter: the Commission] registered a notification from the Autoritatea Națională pentru Administrare și Reglementare în Comunicații (hereinafter: ANCOM), concerning the Romanian market for wholesale local access provided at a fixed location.

The draft market analysis notified by ANCOM concerns the wholesale local access market for fixed locations in Romania. Since 2015, this market was found to be competitive and consequently not subject to *ex ante* regulation.

Under the current notification, ANCOM defines 4 separate geographic markets (A1, A2, B1 and B2) and finds that the market for wholesale local access provided at a fixed location in Romania in Market A1 can no longer be considered competitive, in a forward-looking analysis. ANCOM therefore proposes to impose *ex ante* regulation on the operator DIGI Romania S.A (hereinafter: DIGI).

The Romanian market is characterized by low prices and high quality of service and costs of deployment are relatively low, due to effective access to available physical infrastructure. DIGI has deployed fibre almost ubiquitously in Romania as an alternative operator and has overtaken the incumbent operator. Specifically in the Market A1, this operator enjoys a market share of 97%.

On 4 February 2026, the Commission sent a serious doubts letter opening a phase II investigation pursuant to Article 32 of Directive (EU) 2018/1972 establishing the European Electronic Communications Code (EECC). The Commission has serious doubts about the compatibility of ANCOM's proposed wholesale regulation of the Romanian wholesale local access market with EU law, particularly the objectives of promoting investment, innovation, and the internal market.

On the basis of the economic and legal analysis set out in this Opinion, BEREC considers that the Commission's serious doubts are not justified.

2. Introduction

On 5 January 2026, the Commission registered a notification from ANCOM, concerning the Romanian market for wholesale local access provided at a fixed location. The Commission sent a request for information (RFI) to ANCOM on 12 January 2026 and 16 January 2026 and received replies on 15 January 2026 and 21 January 2026, respectively. Subsequently, a third RFI was sent on 22 January 2026 and ANCOM provided its reply on 23 January 2026. The Commission initiated a phase II investigation, pursuant to Article 32 EECC, with a serious doubts letter on 4/2/2026. In accordance with the BEREC rules of procedure, the Working Group (WG) was established immediately after that date with the mandate to prepare an independent BEREC opinion on the justification of the Commission's serious doubts on the case.

On 10 February 2026, in accordance with Article 32 of Directive (EU) 2018/1972, BEREC established a dedicated Working Group (WG) with the mandate to prepare an

Opinion concerning the justification of the Commission's serious doubts in the aforementioned case.

On 13 February 2026, the WG held a virtual Kick-off meeting. On 18 February 2026, the WG held two virtual meetings. One meeting included interviews with relevant colleagues from ANCOM, and the other included interviews with relevant colleagues from the Commission. WG sent an additional request for information to ANCOM on 27 February 2026 and ANCOM provided its reply on the same day. The objective of the WG was to reach a clear conclusion on whether the Commission's serious doubts are justified. The WG finalised its draft Opinion on 3 March 2026, with a final Opinion presented and adopted by a majority of the BEREC Board of Regulators on 4 March 2026. This Opinion is now issued by BEREC in accordance with Article 32 (5) of Directive (EU) 2018/1972.

3. Background

Previous notifications

In 2015 (cases RO/2015/1804 and RO/2015/1805), ANCOM withdrew all the remedies previously imposed on the market for wholesale local access provided at a fixed location. The market for wholesale local access provided at a fixed location in Romania was notified again in 2020 and assessed by the Commission under case RO/2020/2275.

In that assessment, ANCOM confirmed its 2015 finding that the retail market for fixed broadband internet access services continued to be competitive and therefore did not consider it necessary to proceed further to define the relevant wholesale market.

At that time, ANCOM defined the relevant retail product market as the market for the provision of fixed broadband internet access services. This market comprised the supply of broadband internet access services over copper, coaxial cable, UTP/FTP cable, optical fibre and wireless technologies, irrespective of contention ratios or transmission speeds, provided to end-users – both businesses and natural persons – at fixed locations. ANCOM considered that internet access services provided at a fixed location should be included in the relevant product market regardless of transmission speed.

As regards the geographic scope, ANCOM considered the market to be national.

ANCOM concluded that no operator, either individually or jointly, held significant market power in the retail broadband market. The Commission commented on the need for a more granular assessment of competition, and on ANCOM's duty to closely monitor future market developments.

Current notification and the Commission's serious doubts

Current notification

ANCOM conducted a review of the Romanian retail market for high-speed broadband internet access services. The authority notes that Romania benefits from extensive FTTP coverage and high broadband uptake, despite comparatively low digital literacy and significant socio-economic disparities, particularly in rural areas. DIGI has rapidly expanded its fibre network, achieving near-national coverage and substantial retail market penetration.

For the purposes of the retail market definition, ANCOM identifies the relevant product market as asymmetric high-speed broadband services (≥ 100 Mbps) provided at a fixed location via fibre or cable networks. The geographic market is assessed at the level of municipalities, excluding those subject to State-aid interventions. Municipalities are grouped into four markets (A1, A2, B1, B2) based on DIGI's coverage and competitive conditions.

Following its competitive assessment, ANCOM concludes that Market A1 (comprising DIGI-covered municipalities exhibiting non-competitive characteristics) is non-competitive, with DIGI holding significant market power. The authority identifies risks of limited consumer choice and potential excessive pricing, warranting further analysis at the wholesale level.

The remaining markets (A2, B1, and B2) are found to be competitive. This also includes municipalities with local monopolies (market B1), where ANCOM concludes that DIGI's demonstrated capacity for rapid expansion and the proximity of its existing network constitute credible potential competition sufficient to constrain this market power. Consequently, these markets do not require wholesale-level regulatory intervention.

ANCOM begins its wholesale-level assessment by examining the physical infrastructure market, as it constitutes the most upstream input relevant to the retail market in which competition concerns were identified. The authority observes that an increasing number of local public authorities in Romania have initiated projects granting open and non-discriminatory access to their physical infrastructure.

With respect to commercially provided access, ANCOM notes that most fixed operators own their own infrastructure and typically grant reciprocal access on commercial terms. Orange Romania S.A. (hereinafter: Orange) operates the largest nationwide network of ducts and poles, while DIGI has also developed extensive physical infrastructure. ANCOM finds that the access tariffs applied by Orange and DIGI are broadly comparable.

At the regulatory level, Romania has transposed the Broadband Cost Reduction Directive and adopted a comprehensive legal framework facilitating access to physical infrastructure for network deployment. ANCOM has further adopted regulatory decisions establishing indicative tariffs for access to poles and certain road-related

infrastructure.

On the basis of these findings, ANCOM concludes that the physical infrastructure access market operates effectively under commercial conditions and does not warrant definition as a separate market subject to *ex ante* regulation.

ANCOM therefore identifies the relevant wholesale market as the market for local access provided at a fixed location, including physical or virtual (VULA) access to fibre local loops, FTTB, and FTTC/FTTN networks, including self-supply. Co-location, backhaul services, and access to sewage infrastructure are excluded from the product scope. The geographic scope of the wholesale market corresponds to Market A1, the non-competitive retail market previously identified.

Accordingly, the relevant market under assessment is the wholesale local access market at a fixed location in Market A1.

ANCOM's assessment of significant market power (SMP) in the wholesale market for local access services in Market A1 is closely linked to its earlier findings at the retail level. The authority relies on several established SMP criteria, including market share, barriers to entry and expansion, absence of potential competition, instances of access refusal, and the lack of countervailing buyer power due to the absence of alternative retail operators.

ANCOM considers that the competitive risks identified at the retail level—namely the likelihood that DIGI could remain the sole retail operator in Market A1 and set prices above competitive levels—remain pertinent throughout the review period. The authority also notes that end-users in most of Market A1 effectively face a single retail provider, resulting in a lack of consumer choice.

Regarding access refusals, ANCOM recalls that competitors submitted requests for wholesale access to DIGI, which were not acted upon. No further steps were taken by the requesting operators, and the matter was not escalated to dispute resolution before the national regulatory authority, most likely in anticipation of the outcome from the market analysis. ANCOM identifies potential downside to competitive conditions, which it considers may deteriorate further, with a risk of market exit by other operators. Such an outcome would constitute an irreversible harm to competition that cannot be adequately addressed through ex-post competition law alone.

On this basis, ANCOM concludes that DIGI's refusal to provide wholesale access, combined with the risk of excessive pricing for wholesale local access services, justifies the imposition of *ex ante* regulatory obligations. Accordingly, ANCOM proposes to designate DIGI as having significant market power in the wholesale market for local access provided at a fixed location in Market A1.

To address the identified competition concerns, ANCOM proposes a set of regulatory remedies, including:

- an access obligation, encompassing good-faith negotiation and covering access

to the local loop, virtual access (VULA), associated facilities, and ancillary services;

- a non-discrimination obligation;
- a transparency obligation, including publication of a reference offer; and
- price control, requiring DIGI to provide regulated access services at fair and reasonable prices.

These remedies are intended to safeguard effective competition and prevent the emergence of retail-level harm in the non-competitive Market A1.

Commission's serious doubts

The Commission has serious doubts about the compatibility of ANCOM's proposed wholesale regulation of the Romanian wholesale local access market with EU law, particularly the objectives of promoting investment, innovation, and the internal market.

While fixed telecom markets typically face high entry barriers due to the cost of physical infrastructure, the Commission finds that in Romania these barriers are significantly reduced. Access to passive infrastructure (ducts and poles) is widely available on a commercial and symmetric basis, supported by updated legislation, indicative tariffs, public initiatives, and, in some areas, state aid. Major operators already use each other's infrastructure, and nationwide operators (DIGI, Orange, Vodafone) have broad access that lowers barriers to entry.

The Commission considers that DIGI's high market share is insufficient on its own to justify *ex ante* regulation, given reduced entry barriers, overlapping networks, and the presence of infrastructure competition since broadband deregulation in 2015. Coverage is high (99% population), much of it achieved without SMP-based regulation, and other operators are already active in around 20% of the defined Market A1.

According to the Commission, DIGI's rapid expansion reflects aggressive and sustained investment in fibre networks rather than regulatory or structural advantages. DIGI has invested more intensively than larger multinational competitors, despite lacking comparable financial scale. The Commission questions whether regulating such an investor-driven outcome could deter future investments, especially in remote and less attractive areas, contrary to EU policy goals.

Socio-economic factors (rural population, low income, lower digital demand) help explain limited competition in some areas and constrain the ability of any operator to exercise market power. DIGI's low and largely uniform retail prices, including social tariffs, and stable prices over time further weaken concerns about dominance. Competition law could address any abusive conduct if it arose.

Finally, the Commission notes limited evidence that competitors genuinely sought access to DIGI's network or that commercial negotiations were exhausted before regulation was proposed. No operator formally requested regulatory intervention to facilitate access agreements.

4. Assessment of the serious doubts

On 4 February 2026, the Commission sent a serious doubts letter opening a phase II investigation under Article 32 EECC. This section will address each of the serious doubts raised by the Commission, followed by a summary of ANCOM's position and finally BEREC's opinion on the Commission's doubts.

First reason,

Concerns of the Commission

The Commission does not contest the presence of high barriers to entry into the fixed market and says that these are especially high for new market entrants. However, the Commission expresses the view that barriers at wholesale level in the Romanian market *'are likely to be significantly reduced given the availability of access to passive infrastructure at lower costs'*, whilst also referring to ANCOM's statements in the Explanatory Memorandum¹ that physical infrastructure access (PIA) is functioning properly on a commercial basis and with the support of State Aid or public funds in certain areas. This, according to the Commission, is further supported by the current legal framework for symmetric PIA access, which ensures non-discrimination access conditions and setting indicative tariffs for certain types of infrastructure.

The Commission adds that *'In particular, DIGI combines utilisation of its own physical infrastructure with using access to poles of other operators based on commercial agreements.'* and that *'Another operator, Orange Romania S.A., controls the largest ducts and poles networks in Romania and could have used (and could still use) such network for the deployment of fiber including in the areas of Market A1.'*

The Commission also calls on ANCOM to consider alternatives to the proposed SMP-based remedies, i.e. remedies already imposed access on symmetric basis, which according to the Commission could facilitate market entry in the short or mid-term perspective.

The Commission also considers that DIGI's market share, despite being very high, is not sufficient on its own to give rise to competition concerns in a market where barriers to entry could be considered as significantly reduced and have remained so for a considerable period of time. According to the Commission, the existence of overlapping networks, as well as the emergence and presence of infrastructure competition since 2015 across the country (citing DIGI's quick expansion with respect to the latter) provides evidence that there are no significant barriers to entry.

ANCOM's views

ANCOM does not contest the Commission's characterisation of the access to PIA in Romania as a whole or the importance that it plays in the rollout of VHCNs, which it

¹ EXPLANATORY STATEMENT to the measures of the National Authority for Management and Regulation in Communications identifying, analysing and regulating the relevant market for local access services at a fixed location

has clearly outlined in its Explanatory Memorandum. However, ANCOM's central message is that while PIA is necessary and available, it is not sufficient on its own to guarantee effective competition everywhere. Its granular geographic assessment identifies a large area, Market A1, where DIGI persistently built very high shares and where network overlap by other operators is limited, despite the availability of PIA and the symmetric-access toolbox.

In ANCOM's view, the presence of alternatives in Market A1 is sparse and narrow. Out of 5,895 localities in Market A1, in 4,455 (76%) DIGI is the only high-speed fixed network. Only 1,318 (22%) have two providers and a mere 122 (2%) have three or more. Even in those two-provider localities, DIGI typically holds >70% share, so the second network is present but exerts weak competitive pressure. At the aggregate Market A1 level, ANCOM reports nearly 97% market share for DIGI (with Orange around 1–2%), which illustrates how small the rivals' footprint and customer base are across the zone.

Geography and economics reinforce that narrowness. Market A1 is dominated by small, low-density localities where the combination of economies of scale for DIGI, sunk civil-works costs, and modest demand makes it uneconomic for a second (or third) network to match DIGI's coverage. ANCOM states that PIA is necessary and available but not sufficient. Even with access to ducts/poles/roads, the economics often do not translate into effective entry or expansion, which is why it designates DIGI as SMP in Market A1 and imposes targeted wholesale obligations there.

At national level, ANCOM acknowledges the broad improvements since deregulation in 2015 — very high VHCN coverage, overlapping networks in much of the country and among the lowest retail prices in the EU — but it emphasises that pockets of dominance remain, which justify targeted regulation in Market A1 and no SMP elsewhere.

They also note that DIGI combines its own infrastructure with commercial pole access from others, while Orange controls the largest ducts/poles, which is useful, but not sufficient to support market entry, given the enduring economics of scale, sunk costs and demand patterns that still shape entry incentives. In short, Romania's PIA framework materially reduces barriers, yet ANCOM deems selective *ex ante* remedies necessary where competition has not emerged, specifically in Market A1. ANCOM does not propose *ex ante* remedies where competition has emerged across the rest of Romania's national territory beyond the confines of Market A1.

BEREC's Assessment

BEREC agrees with the Commission's view on the importance and benefits arising from a well-functioning market for PIA in the roll-out of VHCNs, and notes that ANCOM acknowledges the availability of access to physical infrastructure through multiple means (commercial, regulatory and state funded), supporting nationwide fibre coverage in Romania, which is amongst the countries with the highest reach on a national scale across the EU.

BEREC considers that while PIA is a necessary condition for infrastructure-based competition in the rollout of VHCNs, it alone is not a sufficient condition for such competition. The information and data presented by ANCOM during the Phase II

investigation seem to support this view. The business case for roll-out of multiple networks to any location is subject to several factors, in addition to PIA, such as the number and density of potential customers and the overall cost to serve them. The rural nature, low density and low purchasing power of residents in Market A1 alongside DIGI's first-mover advantage reduces the business case for multiple networks to invest in the municipalities of Market A1.

ANCOM's notified draft measure and replies to the Commission's serious doubts letter and Phase II investigation provide sufficient evidence that the predominantly rural parts included in Market A1 at retail level will not attract alternative fibre investments to an extent that could lead to the emergence of effectively competitive retail broadband markets during the relevant review period.

Contrary to the Commission's view, BEREC sees the very high market share of DIGI in Market A1 as a clear indication of competition concerns, which has increased from 86% in 2018 to nearly 97% in Market A1 in 2023. BEREC does not share the Commission's view on the conditions of competition in Market A1 and the arguments that ANCOM may have put too much emphasis on national trends that are not representative of this sub-geographic market.

BEREC also notes ANCOM's legitimate interest to take into account incentives for efficient investment and access conditions, in the interest of end users, also in Market A1, which ANCOM determined as a non-competitive area. In light of the very limited economic prospects for a competitive deployment to emerge in Market A1, in the short or medium term, BEREC is of the opinion that ANCOM provided a reasoned justification in the notified draft measure to impose fibre access that could allow the emergence of a sustainable competitive market at retail level.

Finally, as regards the significance of market shares, BEREC recalls that market shares can provide a useful first indication of market power and that very large market shares – in excess of 50% - are evidence of a dominant position, save in exceptional circumstances which do not characterise the current assessment. Moreover, the higher the market share and the more stable the market position, the more weight the market share holds in an analysis.²

BEREC does not contest that, in principle, market shares may not in themselves be sufficient to give rise to competition concerns. However, the SMP guidelines suggest that a market share of >50% is to be considered very large (though potentially insufficient) and that stability of the market position or factors such as recent loss of market share may be important factors to consider. In BEREC's view, this means that the closer a market share is to the relevant threshold, the more important other considerations become. In the relevant Romanian Market A1, DIGI's market share is close to 100%, having increased by about 10 percentage points between 2018 and 2023. In addition, BEREC notes that ANCOM considered other criteria listed in the SMP guidelines, such as barriers to entry and absence of potential competition, which are addressed in more detail further down in this document.

For the reasons stated above, BEREC does not share the Commission's concerns

² European Commission Guidelines on market analysis and the assessment of significant market power under the EU regulatory framework for electronic communications networks and services (SMP Guidelines), Point 54 f. OJ C 159/1 of 7.5.2018.

outlined in reason one.

Second reason

Concerns of the Commission

Romania's broadband market features three nationwide operators, alongside several smaller ISPs, all with access to extensive physical infrastructure that substantially reduces barriers to entry across municipalities. High speed internet coverage reaches 99% of the population, and more than three quarters can choose between at least two providers, achieved without SMP based regulation. Within Market A1, which includes 5,895 largely rural municipalities, 1,318 are served by two retail operators and 122 by three or more, indicating that competitors to DIGI already operate in around 20% of the market and could expand further, exerting competitive pressure even in areas where DIGI is currently the sole provider.

The Commission notes that while ANCOM considers DIGI's nationwide expansion strategy sufficient to ensure competitive pressure in Market B1, it does not apply the same reasoning to other large operators, such as Orange and Vodafone, despite their presence adjacent to Market A1. In view of this, the Commission considers further investigation necessary, together with ANCOM and BEREC, to verify whether the barriers to entry cited for Market A1 truly prevent competitive entry and to assess whether other nationwide operators could realistically overcome these barriers and apply additional competitive constraints.

ANCOM views

ANCOM identifies significant structural and economic barriers to entry in Market A1, largely driven by the very high sunk costs associated with deploying fibre or other high-capacity access networks in thousands of small, sparsely populated rural municipalities. Many Market A1 municipalities have very low population density, on average 783 people and 299 households³, making the commercial case for rolling out parallel infrastructure extremely weak. High fixed costs, long investment recovery periods, and limited revenue potential significantly deter new entrants.

A second major barrier is the strong economies of scale and scope enjoyed by DIGI, the dominant operator. DIGI's control of large contiguous fibre footprints (which already covers 85% of municipalities and 92% of addresses nationwide), vertical integration, and convergent service offerings allow it to operate at substantially lower unit costs than any potential entrant. Its retail prices, among the lowest in the EU, further reduce the ability of other providers to profitably enter or expand in Market A1. Competitors face higher per user costs and limited ability to attract enough customers to achieve scale, especially given end users' limited ability or willingness to switch. These scale advantages have contributed to DIGI's exceptionally high and increasing market share, nearly 97% in Market A1, which reinforces incumbency advantages and deters competitive rollout.

Third, ANCOM highlights insufficient potential competition and the limited competitive pressure from nearby or adjacent networks. Although national operators such as

³ By contrast, Area A2 has an average of 2,879 people and 1,137 households. Area B1 has, on average, 375 people and 143 households.

Orange and Vodafone operate in adjacent areas, ANCOM finds no realistic prospect of expansion into most Market A1 municipalities within the analysis horizon. The combination of low demand, high investment requirements, and DIGI's entrenched presence renders entry commercially unattractive. Even where PIA is technically available (e.g., poles, ducts, public projects), these measures do not materially change the economic calculus for operators considering rural expansion. As a result, a large proportion of Market A1 municipalities remain single provider areas, with 4,455 municipalities served exclusively by DIGI.

Finally, ANCOM finds that countervailing buyer power (CBP) is virtually absent. End users in Market A1 typically have only one available supplier, limiting their ability to discipline prices or service quality through switching. This lack of alternatives increases the risk of abusive practices such as discriminatory or excessive pricing, refusal to supply, or unreasonable access conditions at the wholesale level. Taken together, these structural, economic, and demand side barriers are the basis of ANCOM's conclusion that Market A1 is not competitive and requires *ex ante* wholesale regulation to prevent market foreclosure and protect end user interests.

BEREC's Assessment

BEREC disagrees with the Commission's second concern, which suggests that the nationwide presence of three operators and broad PIA indicate low entry barriers in Market A1. The evidence presented by ANCOM shows that in Area A1 DIGI's market share has increased from 86% in 2018 to over 96% in 2023, and that DIGI operates as the sole retail provider in 4,455 of the 5,895 municipalities comprising this market. These developments occurred over a prolonged period of deregulation. However, they do not necessarily suggest a contestable market, but more likely the consolidation of a structurally dominant position. Had PIA availability been sufficient to stimulate entry, BEREC would have expected at least one other national operator to achieve meaningful penetration in market A1. The fact that neither Orange nor Vodafone expanded into Market A1 despite nationwide infrastructure access supports ANCOM's view.

Furthermore, BEREC considers that access to PIA, while necessary for lowering deployment costs, is insufficient in and of itself to ensure sustainable infrastructure-based competition in Market A1. The Explanatory Memorandum clearly demonstrates that A1 municipalities exhibit very high structural and economic barriers. Low population density, low incomes, limited digital literacy, and low device penetration significantly limit the expected revenue base. These conditions render fibre deployment commercially unattractive for late entrants, even when ducts, poles, and right-of-way access are available. DIGI's entrenched first-mover advantage, built through early, large-scale FTTH deployment and exceptionally high investment intensity, has allowed it to internalise economies of scale and density in a way that competitors cannot replicate at reasonable cost. PIA reduces civil-works costs, but it does not correct fundamental deficits in expected demand, nor does it alter the economic reality that duplicating DIGI's footprint in these municipalities would likely fail to generate a positive business case.

BEREC notes that the behaviour of Orange and Vodafone themselves provides strong empirical evidence of the high entry barriers in Market A1. Both operators reduced their fixed-network investments between 2018 and 2023, while DIGI alone pursued aggressive fibre rollout. If Market A1 genuinely offered low entry barriers, these

operators, far larger internationally than DIGI, would have seized the opportunity to expand. Their absence from Market A1 is thus best explained not by strategic disinterest, but by the lack of commercial viability of infrastructure deployment in these municipalities, even with PIA access. Accordingly, BEREC concludes that PIA access does not eliminate the structural constraints that characterise Market A1 and cannot alone generate material competitive pressure.

Finally, BEREC does not agree with the Commission's view that, just as DIGI acts as a significant potential competitor to each single-supplier operator in the 24 municipalities of Market B1, Orange and Vodafone could exert a comparable constraint in Market A1. DIGI has provided credible evidence that it will pursue its strategy of nationwide network expansion irrespective of existing competition or the economic, geographic, or socio-demographic characteristics of individual municipalities. ANCOM has also established that all 24 municipalities in Market B1 lie within the established reach of DIGI's existing network. By contrast, Orange and Vodafone have not demonstrated a similar level of ambition in their network rollout. Accordingly, BEREC considers that the symmetry of potential competitive pressure observed in Market B1 does not exist in Market A1.

Given these considerations, BEREC disagrees with the Commission's second reason and considers that the evidence supports ANCOM's assessment that Market A1 remains structurally non-contestable without appropriate regulatory safeguards.

Third reason

Concerns of the Commission

The Commission notes that in the absence of *ex ante* regulation DIGI expanded rapidly in the Romanian broadband market through sustained and aggressive investment in high-capacity fibre infrastructure. It increased both coverage and its customer base, gaining significant market share. Despite lacking the scale and capital-market reach of larger multinational competitors such as Orange and Vodafone, DIGI outperformed them in fixed network investment and market growth.

The Commission is of the opinion that no operator had an unfair advantage or faced greater entry barriers when networks were deployed in Market A1. Market outcomes reflect each operator's own investment decisions and business strategies in the absence of asymmetric regulatory intervention.

The Commission questions whether imposing regulation on a company that has continuously and aggressively invested - including in less economically attractive, remote areas - would have a chilling effect on future investments, especially in remote areas. The Commission is concerned that such a potential chilling effect on investments would be contrary to the objectives outlined in Article 3 of the EECC.

The Commission also considers that, current patterns in market share, network coverage, and investment can be interpreted in different ways. The Commission therefore calls for further investigation to determine whether the market for wholesale local access in Romania exhibits high barriers to entry that would prevent market entry and justify the imposition of wholesale regulation.

ANCOM views

According to ANCOM, DIGI has achieved important efficiencies and synergies in its exploitation of the fixed network. Initially a fixed provider, DIGI expanded into the mobile market, after establishing a substantial fixed client base. Today this operator is horizontally present with significant operations in all the electronic communications market segments (fixed, mobile and TV). Orange and Vodafone began as mobile providers and had to expand their operations into the fixed segment, by acquiring Telekom Romania Communications and UPC respectively, in order to effectively compete as convergent operators in the market.

In addition, as ANCOM explained, DIGI has a very important customer base (including business customers), which determines significant economies of scale and scope for its operations. Moreover, DIGI enjoys a high degree of countervailing buyer power—particularly in relation to content providers—which neither Orange nor Vodafone is able to replicate⁴.

In ANCOM's view, taking into account that the Market A1 is predominantly rural, incentives to invest in high-capacity networks are low. When a large provider is already present in a locality with a well-developed access network and has a significant customer portfolio, it becomes economically difficult to develop a parallel network to enter a new market (especially in rural areas). In order to build a parallel network, the entrant needs to make significant investments without reasonable assurance that it will attract enough users to fully recover its costs. This is a major economic barrier, especially in areas where demand is already being met.

ANCOM confirms that the timing of fiber-investments was crucial: once a first-mover deployed infrastructure in greenfield areas and connected previously unserved customers, effective entry became extremely difficult. Additionally, the recent economic context and the overall economic situation moving forward seem less likely to support future expansion – higher interest rates (capital access is becoming more difficult), higher inflation, population's propensity to spend is lowering etc.⁵.

Another major obstacle is the price pressure exerted by DIGI, which is able to offer more competitive prices due to economies of scale, enabled by its extensive network and loyal customer base. In such a situation, new competitors that need to build access networks would be forced to offer more attractive tariffs in order to enter the market, which significantly reduces the return on investment.

Orange and Vodafone both state that they do not have economic space to expand their fixed networks into these areas because expected returns are too low and DIGI's competitive pressure is too strong. They further explain that, given DIGI's very low tariff

⁴ DIGI also holds high market share in terms of subscribers in providing TV retransmission service, which gives him stronger bargaining power when negotiating with TV content providers. This means they can enjoy the volume discounts for acquiring the rights to retransmit TV channels, thus resulting in lower costs per subscriber.

⁵ Both Orange and Vodafone explained that they did not further expand their fixed networks for the provision of mass market services because of: the difficult economic context, the new fiscal measures applicable as of 2024, as well as the high volume of investments needed in order to expand the FTTP network through own financial means only; the incapacity of competing with DIGI, considering its high market share in the fixed broadband segment (72% nationally, as of the end of 2024).

plans, they would not be able to compete using services provided over their own access networks.

Furthermore, Orange mentioned that they need significantly more users in their network in order to be able to recover the investments already made, this being one of the reasons why they need access to DIGI's network to approach clients that are not within their reach currently. To date they have limited their expansion of their fiber network to profitable areas, and there is no indication that this approach will be altered going forward without any change to the current regulatory framework, particularly in light of the market's natural movement towards saturation. Orange has explicitly manifested its interest in buying wholesale access services from DIGI in Market A1, considering that this intermediary step could create the necessary conditions to resume fiber investments at scale. Additionally, Vodafone raised the point of lack of capillarity⁶ needed to attract clients in their own network, explaining that several of their business clients do not actually use fixed broadband services from Vodafone because their network is not able to supply all their point of presence with best-effort services.

ANCOM considers that DIGI has successfully deployed a nationwide fiber network, but argues that the fact that other operators have not undertaken similar investments cannot be an argument for not preventing foreseeable competition problems as a result of only one provider remaining in the market. The fact that this operator is labelled as alternative to the incumbent is immaterial for its ability to behave, to an appreciable extent, independent of the rest of the market participants.

Therefore, in ANCOM's view, Market A1 is characterised by the absence of potential competition resulting from the existence of high structural/economic barriers to entry.

BEREC's Assessment

Even though DIGI is not the historical incumbent in Romania, this operator was able to deploy fibre infrastructure with its own investments as a first-mover in greenfield areas and establish its nation-wide presence. Therefore, it could be concluded that initially there were not apparent entry barriers in Market A1. However, at present, DIGI's first-mover advantage (including the advantage of its presence in adjacent or related markets – TV retransmission, TV content) leaves no foreseeable room for the development of infrastructure-based competition in Market A1, meaning that without regulatory intervention other operators could not compete in retail market. Deploying a second parallel network in Market A1 is not economically feasible, due to low population density and low expected returns. Other operators are unlikely to deploy fibre networks, as they are not willing to roll out fibre where they lack a viable business case to recover the investment because DIGI's presence and competitive pressure is too strong. Perhaps the cost of investment from the second entrant would not differ significantly from the first investment (DIGI), but the potential gains are much lower because DIGI has already reached many consumers.

In response to queries from the BEREC, ANCOM explained that, besides investing in new infrastructure, DIGI invested through acquisition by buying small operators that were part of the market and sequentially upgraded the network to FTTP. These acquisitions have allowed DIGI to capture those consumers and upgraded them to

⁶ i.e. the access network does not have enough coverage to deliver services to large business customers who need to connect multiple geographically dispersed locations.

FTTP. Such strategy may show, that running two parallel networks is not a realistic option on Market A1 even in case that one network is FTTH and the other is not. It is even less realistic to expect a business case for two fibre networks in a majority of municipalities in Market A1.

BEREC considers it appropriate for the Commission to give due consideration to the potential effects of regulatory intervention on incentives for investment in fibre deployment. However, if the market is proven to lack effective competition, the need for regulation may also apply to newly built fiber networks.⁷ In the Romanian case, the assessment confirms that there are high economic barriers to entry and that the market is not competitive; regulatory intervention is warranted. In addition, granting access to DIGI's network could increase DIGI's fibre network utilisation and penetration of high-capacity connections in Market A1. It may also provide intermediary step for other operators to resume their fiber investments.

While Article 3 of the EECR indeed highlights the importance of promoting investment in very high-capacity networks, it simultaneously requires NRAs i.a.:

- to promote competition in electronic communications networks and services, including effective and sustainable competition in retail and wholesale markets and
- to contribute to the protection of end users, including ensuring choice, affordability, and high-quality connectivity.

Where these objectives conflict, the regulator must balance and assess which risk is greater for the long-term functioning of the market.

In the case of market foreclosure, end users are exposed to higher long-term risks of reduced choice, stagnating innovation and the absence of competitive pressure on price and quality. Ultimately, this could lead to reducing the further potential for investment. Therefore, BEREC believes that in this case, and without prejudice to other cases, ANCOM's proposal is tailored to the problem identified in the market.

For the reasons stated above, in conclusion, BEREC does not share the Commission's concerns that regulating DIGI in A1 market would have a chilling effect on future investments in particular in remote areas.

BEREC is therefore of the opinion that ANCOM has provided sufficient evidence that the market for wholesale local access in Romania exhibits high barriers to entry that would prevent market entry and justify the imposition of wholesale regulation.

Fourth reason

Concerns of the Commission

The Commission notes that infrastructure competition between operators in Romania has led to a situation where approximately 24% of the population have access to the services of only one provider of high-speed broadband services.⁸ According to the

⁷ Which is also the case in Denmark, see case DK/2021/2346

⁸ BEREC notes that 24% of the total Romanian population lives in areas included in Market A1, but that, as opposed to what the Commission says, they may have access to more than one provider of high-quality

Commission, the socio-economic economic characteristics of some areas in Romania (low density of population, low demand and low willingness to pay from end-users) may explain the lack of both services and infrastructure competition occurring in those areas. When a first mover has already entered the market, these areas may lack attractiveness for other operators. ANCOM identified local areas with currently only one operator supplying high-speed internet services within markets A1 and B1.

However, the Commission understands that ANCOM considers that the same socio-economic factors limiting the attractiveness of some areas also limit the market power that an operator (whether it is DIGI or others) would be able to exercise in the areas where it is the sole supplier.

The Commission recalls that in this context, DIGI offers the lowest retail prices for broadband services in Romania and has developed special retail offers partially targeted at tackling the constraints that rural population may face. The Commission notes that despite this differentiation in DIGI's offers, the tariffs are not differentiated at a geographic level *per se*. According to the Commission, this uniformity of the offers at the national level prevents DIGI from exploiting the excessive market power it may hold in some areas given that it is under some competitive pressure in different areas and that its prices are set at national level. The Commission adds that during the last 10 years, DIGI's prices have remained stable and did not increase. The Commission therefore questions whether DIGI would be able to act independently of both its competitors and the retail consumers.

Moreover, the Commission notes that competition law could be suitable to tackle any potential abusive conduct and concludes that further investigation is needed.

ANCOM views

ANCOM's view on the competitive situation on the relevant markets in Market A1 is that DIGI is able to behave independently from its (potential) competitors and from retail consumers. It considers that the company has significant market power on the retail market for asymmetric high-speed broadband access services at fixed locations for all municipalities in the Market A1 except for one. ANCOM took into account DIGI's high and stable market shares over time, the presence of high economic and technical barriers to entry and a lack of potential competition, combined with a lack of countervailing buyer power in the above previously mentioned municipalities, which account for roughly 24% of the national population.⁹ According to ANCOM, there is a risk that the provider abuses its market power in these municipalities by increasing retail prices, to the detriment of a significant proportion of the population, thus justifying intervention from the regulator. ANCOM is of the opinion that access needs to be granted to allow for entry and mitigate the threat that DIGI Romania S.A.'s market power poses in Market area A1.

ANCOM's analysis first focuses on the market shares and the degree of market concentration and shows that DIGI is the market leader in all the municipalities included in Market A1. Its market share in terms of number of subscriptions jumped from 86% in 2018 to 96.6% mid-2023, with the second largest provider in these terms being Orange

broadband services. ANCOM clarified to BEREC that, the total of the addresses in Market A1 which are exclusively covered by DIGI account for 23% of the total Romanian population.

⁹ See Section 2.4.2 I. of the Explanatory Memorandum.

with a share of roughly 2%.¹⁰ ANCOM also states that in roughly 76% of the municipalities of Market A1, DIGI Romania S.A. is the sole supplier with a network and that for the remaining municipalities, even though the company has competitors, it consistently has market shares above 50%. ANCOM also relies on this to conclude that an overwhelming proportion of end-users does not have alternatives for DIGI's offerings, and therefore lacks the power to counterbalance the company's alleged excessive market power as they do not have the choice between several suppliers.

ANCOM considers that while the development of high-speed internet access services has been facilitated by economies of scale and of scope in urban areas, as well as the lack of an obligation to locate networks underground until 2011. However, ANCOM argues that rural areas could not currently provide the same context for facilitated deployment and that multiple access network would not be sustainable. Given that the vast majority (roughly 99%) of the municipalities in Market A1 are rural, ANCOM considers that in those places where DIGI is the sole supplier of high-speed internet services or the market leader, the technical and economic barriers are such that no other supplier in the proximity can enter the market and threaten DIGI's market position within the timeframe of the market analysis.

BEREC's Assessment

BEREC notes that in 76% of the municipalities of Market A1, end-users currently only have a single potential provider high-speed internet access services: DIGI. They are, as of now, *de facto* captive of the market, while the rest of area A1 have alternatives but still subject to DIGI's high market shares as a dominant operator. BEREC also acknowledges that Market A1 is mostly rural, with the implications that both ANCOM and the Commission recognize and agree on – relatively low density of population, relatively low demand for digital services etc.

BEREC disagrees with the Commission that ANCOM states that socio-economic factors coming from the rural nature of areas in both Market A1 and area B1 may limit the market power of a sole operator supplying broadband services. BEREC rather understands that, according to ANCOM, in localities in area B1 where there is only a single retail and network operator present (i) it generally has low level of addresses covered, which limits its "first-mover" advantage and improves the attractiveness of the area for an entrant and (ii) DIGI has managed to expand its high-speed network and overcome significant obstacles (rivers, highways, railways...) to build points of presence no further than 20km to the above mentioned localities and plans to maintain this dynamic. This leads ANCOM to conclude that entry from DIGI (or others) during the time horizon of the analysis is likely, or at least that the dominant operators in B1 localities are exposed to a credible threat of entry. BEREC finds ANCOM's conclusions reasonable and it is possible that it did not identify similar patterns (low coverage leaving room for entry, Orange or Vodafone close points of presence...) for Market A1 localities with DIGI as the sole provider of high-speed internet access services. However, BEREC wishes that what justifies the different regulatory approaches was more clearly expressed and thinks it may require further analysis.

BEREC notes that both ANCOM and the Commission acknowledge that DIGI Romania S.A.'s commercial strategy, whether in terms of fibre network roll-out or retail pricing, has benefitted Romanian end-users as a whole. Its offers, including its "social tariffs",

¹⁰ ANCOM also provides markets shares in terms of revenues, which exhibit a similar distribution.

are recognized as having contributed to the high penetration of fibre networks in the Romanian market.

BEREC however disagrees with the Commission about the fact that the current pricing from DIGI confirms that it cannot act independently from both its competitors and consumers and that it would prevent it from later increasing its retail prices. Firstly, considering that a significant proportion of the Romanian population in Market A1 is virtually captive to DIGI's offerings and that successful entry from another competitor is unlikely to immediately follow a hypothetical price increase, BEREC believes that DIGI's price setting decision, despite being made at the national level, would account for its favorable market position in Market A1. Secondly, BEREC notes that DIGI has already proposed differentiated offers (e.g. "social tariffs") which, according to ANCOM, do not necessarily stem from competitive pressure but are rather a way to accommodate for the lower willingness-to-pay of some Romanian end-users. This shows that DIGI has already engaged in price differentiation practices (which can and likely did benefit consumers), and that it should not be assumed that their offers will remain uniform at the geographic level for sure. Finally, the fact that DIGI's prices remained stable over time does not offer sufficient guarantees that there will not be future price increases, nor does it show that they were at the competitive level.

Considering arguments provided by both ANCOM and the Commission, BEREC evaluates that the competitive situation in Market A1 is such that consumers may credibly be exposed to price increases and that the threat of potential entry following such decision from DIGI would remain limited during the time horizon of the analysis. As for the suitability of competition law, BEREC notes that indeed, there could be regulatory tools other than *ex ante* intervention to prevent market distortions, such as *ex post* measures to be taken by the Competition Authority or where urgency is required, triggering interim measures according the basis of Article 32(10) of EECC or Article 5 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. However, since these different tools are available only after damage on the market has occurred, BEREC concurs with ANCOM, that there is a non-neglectable risk that the harm to competitors and end-users may be irreversible.

Fifth reason

Concerns of the Commission

The Commission reminds in its serious doubts letter that the EECC requires NRAs to take into account the competitive dynamics of the market and possible commercial agreements before deciding to regulate *ex ante*. The Commission analysed the evidence provided by ANCOM concerning requests of operators to get access to DIGI networks and concluded that DIGI refusal to supply is limited since the requests have been short and generic and were not followed through. The Commission considers that since the operators in Romania were able to negotiate access for services other than the ones subject to this analysis, the readiness and interest of the operators to negotiate commercial agreements is questionable.

Moreover, the Commission retains that in this context none of the operators requested regulatory intervention to facilitate the reaching of a commercial agreement before ANCOM's decision to regulate this market.

ANCOM views

ANCOM's perspective on the most suitable measure to tackle a potential future market failure is that imposing *ex ante* regulation would accomplish the desired result in the most 'effective' manner, in the absence of access granted on commercial terms.

ANCOM notes that operators requested general access from DIGI Romania S.A. at wholesale national level, requests that were left unanswered by DIGI. Furthermore, ANCOM notes that no specific access to fixed local points was requested but concludes that a lack of response for the two submitted requests for access at wholesale national level are indicative of the future behavior of DIGI in other potential negotiations. Upon further information requests from the Commission and the WG, ANCOM reiterates that the only concrete requests were the letters of Vodafone and Orange dated 20th of January 2023 and 10th of May 2022, respectively. ANCOM further infers from the Council Meeting organized by ANCOM, at which the representatives of all three providers were present, that parties might have had other informal discussions on this topic for which neither ANCOM nor the parties can provide records of.

Therefore, ANCOM believes that mandating network access for the dominant provider is the right approach to foster effective competition in Market A1, as market forces alone have not proven strong enough to prevent potential anti-competitive behavior by DIGI.

BEREC's Assessment

BEREC notes that ANCOM and the Commission agree, that as of now, there is no end-user harm found, services are available even in rural areas, prices are stable and affordable and the quality of services is high. However, ANCOM concerns are related to possible future problems.

The competitive dynamics of the market during the period show the following trends:

- i) declining of investments in fixed networks, while investments in mobile networks remain relatively stable.
- ii) further market concentration fueled by increasing market share of DIGI Romania while other national competitors' market shares are declining and small operators are disappearing either due to bankruptcy/market exits or due to acquisitions.
- iii) prices remain stable
- iv) the quality of the products and speed are high
- v) there is no commercial agreement for the access to mass market wholesale products (fibre unbundling, VULA, bitstream access), nor any known negotiations which may lead to such agreement(s)

BEREC notes that some factors are emerging in the market that could potentially lead to a reduction in competitive pressure in the medium term, such as declining investments and the continued growth of the largest operator's market share. These factors may result in the remaining competitors no longer being able to provide an effective response to possible changes in the market strategy of the leading operator, such as price increases, and may not be able to provide innovative services. in Market A1. In such case, the access to wholesale products for mass market is an effective tool for bridging

the gap.

On the other hand, BEREC takes note of the communication between DIGI, Vodafone and Orange and recalls in particular that it is phrased in general terms and it lacks a follow up from either one of the parties. BEREC agrees with the Commission that although DIGI ignored the two requests, none of the applicants attempted to pursue negotiations through additional formal means and therefore this indicates a limited interest to pursue commercial agreements. BEREC emphasizes also that ANCOM's understanding that potential discussions took place between the operators on this matter, cannot lead to inferring serious interest in negotiating an agreement for any of the parties in the absence of further escalation or complaints filed either *inter alia* with DIGI or with the Competition Council and/or ANCOM.

ANCOM retained also the declarations of Orange and Vodafone stating that their preferred approach was waiting for ANCOM's adoption of *ex ante* regulation. In this regard, BEREC notes that a waiting time of two years has elapsed from the last generic request of the parties to access the wholesale market. In this timespan the operators have chosen to informally communicate with ANCOM on this matter, without further recorded communication with DIGI and without a formal proceeding by ANCOM and/or the Competition Council. BEREC emphasises that the ANCOM's ongoing market analysis may have reduced the incentives for the potential access seekers to pursue negotiating, but at the same time increased the incentives on DIGI to respond to the previous requests, or, at the very least, to signal their willingness to engage in potential negotiations with access seekers, in order to avoid *ex ante* regulation. BEREC observes that after becoming aware of ANCOM's proposed *ex ante* measures DIGI did not forward any offer to negotiate access.

In regard of the other actions that ANCOM could take in the event that the operators signal in informal discussion with ANCOM that a market problem arises, BEREC notes that in line with its functioning regulation and competence, ANCOM can facilitate meetings between the parties in order to incentivize negotiations under the oversight of the NRA.

BEREC partially agrees with the Commission that the refusal of access from DIGI may not be sufficiently characterized well enough. On the other hand, BEREC acknowledges that the potential implementation of regulation may have reduced the incentives of the access seekers to go beyond their short and generic requests. BEREC also notes access seekers did not demonstrate persistent engagement with DIGI nor the regulator to pursue access. Yet, BEREC notes that despite DIGI's incentives to avoid potential regulation, it did not engage in the negotiation process which might suggest that they would not be willing to grant access even upon stronger requests. BEREC concludes that the current elements available on the commercial exchanges between operators do not allow to reach a clear conclusion on the likelihood for an agreement to be reached nor that access was very clearly refused. It is worth noting that current market dynamics steadily increases risk of potential abuse of market power not being effectively responded, neither by other competitors' actions, neither by *ex post* regulatory intervention in timely manner.

Additional comments on the reasoning of the European Commission in its conclusion

In the conclusion of its serious doubts letter, the Commission states that it has serious doubts as to the compatibility of the notified draft measures related to the imposition of wholesale regulation on the market for wholesale local access in Market A1 in Romania with Union law and the objectives listed in Article 3 of EECC, in particular the promotion of efficient investment and innovation in new and enhanced infrastructures (Article 3(4)(d)).

BEREC notes that this is the sole issue the Commission raises with respect to draft measures' alleged incompatibility with EU law.

BEREC disagrees with that legal assessment.

1. BEREC considers that the Commission does not take into account that the draft measure might also have pro-investment effects. Indeed, the possibility for third operators to gain access in Market A1 may allow those operators to reach a sufficient customer base within Market A1 (or parts of that area), which would allow them to deploy their network to this area, making use of the available physical infrastructure. Therefore, BEREC considers that, at the very least, the Commission should have further investigated the potential pro-investment effects of the draft measure.
2. BEREC considers that even if one were to agree that the draft measure would ultimately not primarily aim at promoting investment and innovation (Article 3 (4)d EECC), BEREC considers that this would not mean that the measure was incompatible with EU law. As explained in more detail above, Article 3 (4) EECC tasks NRAs to pursue all of the objectives of Article 3, including promoting investment and innovation (Article 3(4)d EECC), but also promoting competition in the provision of electronic communications networks (Article 3 (2)b EECC), promote the interest of citizens by enabling i.a. choice on the basis of effective competition (Article 3 (2) d) and others. BEREC considers that for a draft measure to be incompatible with EU law with respect to pursuing regulatory objectives, it is insufficient for the Commission to argue that the measure may not give sufficient weight to one particular objective, but that it is necessary for the Commission to find that the NRA could not come to its conclusion in light of all objectives that have to be considered, while being mindful of the NRAs' margin of discretion within the confines of the EECC. Ultimately BEREC considers that ANCOM's proposal to impose regulation in Market A1 does not violate EU law as it remains within the NRAs' margin of discretion.

5. Conclusions

Taken together, BEREC considers that the reasons provided by the Commission do not justify the finding that ANCOM's draft measure would be incompatible with EU law.

While it is true deployment costs in Romania are comparatively low due to widely available PIA, the Romanian data clearly show that PIA alone has not generated meaningful competitive entry in A1 municipalities. To the contrary, ANCOM's proposed regulatory intervention is both proportionate and justified. Across all reasons, the evidence demonstrates that DIGI's position in A1 has evolved into a *de facto* monopoly, with market shares of nearly 97% in 2023 and thousands of municipalities served exclusively by a single operator. Instead, high structural barriers — low density, low income, limited demand, and significant first mover advantages — continue to make parallel fibre deployment economically unviable for alternative operators, even in case of significant price increases of DIGI.

BEREC also finds no convincing basis for the Commission's view that current low prices and good service quality remove the need for regulatory action. The absence of effective competitive pressure, declining investments from other operators, and the lack of commercial wholesale agreements signal a potential risk of future market foreclosure, where DIGI could exercise market power to the detriment of end users. Moreover, competition law and *ex post* tools cannot prevent such harm in a timely or effective manner in the presence of such extreme market concentration. However, BEREC would like to emphasise that the lack of action and the scarce official communication between all operators, in order to negotiate and conclude commercial agreements, including the ones assumed to show economic interest in entering the market, as well as towards ANCOM, could have been better assessed by ANCOM.

Moreover, BEREC reiterates that it is insufficient for the Commission to argue that the measure may not give sufficient weight to one particular objective without a holistic assessment taking into account the weight attributed to other objectives. BEREC considers that it would have been necessary for the Commission to find that the NRA could not have come to its conclusion in light of all objectives that have to be considered, while being mindful of the NRAs' margin of discretion within the confines of the EECC.

For these reasons, BEREC concludes that ANCOM has provided sufficient evidence that Market A1 is not effectively competitive and that *ex ante* wholesale regulation is necessary to safeguard long term consumer welfare, ensure sustainable competition, and support efficient investment. Accordingly, BEREC does not share the Commission's concerns and considers ANCOM's regulatory approach both reasonable and targeted to the specific structural problems identified.

BEREC is accordingly of the view that the reservations arising from the Commission's Serious Doubts are insufficient to justify the withdrawal or amendment of the Draft Measure.