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2nd public consultation on a revised draft Recommendation on regulated access to Next Generation Access networks

Ladies and Gentlemen,

With reference to the Commission's 2nd public consultation on a revised draft Recommendation on regulated access to Next Generation Access networks, the Austrian Association of Alternative Telecommunications Operators (VAT) welcomes the opportunity to provide a statement.

Our association represents the interests of the major alternative telecommunication operators in Austria. Our members provide fixed and mobile services, also in the broadband sector. Colt Telecom Austria GmbH, Hutchison 3G Austria GmbH, Orange Austria Telecommunication GmbH, Tele2 Telecommunication GmbH, T-Mobile Austria GmbH and Verizon Austria GmbH are represented by us.

We would like to underline that our association fully supports and shares the point of view expressed in the response submitted by ECTA, the European Competitive Telecommunications Association.

Above all, we would like to emphasize in particular, that the Commission's rules on co-investment in fibre infrastructure allow the incumbent to discriminate among its competitors. Any differentiation in terms and conditions of identical services offered to competitors or "partners" will have a negative impact on competition as the incumbent is free to pick its favourites and to drop the others.

As such behaviour of a dominant operator would be clearly considered to be anti-competitive and as such regulation would not be in line with Art. 82 of the Treaty we speak out for these rules¹ to be withdrawn from the recommendation. Competition and the principle of non-discrimination must be preserved and remedies should only be lifted after a competitive market analysis has shown a competitive environment. A co-investment deal itself is no warrant for competition as (national or regional) duopolys will consequently emerge.

Further, the migration process is of particular interest to the Austrian operators and should be closely supervised by the NRA as the possibilities of the abuse of a dominant position are various. As a matter of fact, the alternative operators risk to have their infrastructure depreciated if the migration process ends too soon. We therefore have the opinion that the migration period should be extended to 10 years in order to avoid in any case stranded investments by ANOs.

Secondly, the migration process must not be formally declared finished before a market analysis has been made by NRA where every case has been evaluated specifically and where NRA has proven that the investments in infrastructure of the alternative operators are not stranded. Only if such decision of the NRA became binding and final, the migration process can be declared to be finished in a region.

We thank for the opportunity to give this statement and kindly ask to take our statement into account in the consultation procedure.

Kind regards,

VAT – AUSTRIAN ASSOCIATION OF ALTERNATIVE TELECOMMUNICATIONS OPERATORS

Ute Rabussay

¹ in particular articles 23, 24, 37-38, Annex III (1)