Position Paper on the Connectivity Package of the European Commission

On 14.09.2016 the European Commission submitted:

- a Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on **Connectivity for a Competitive Digital Single Market** - towards a European Gigabit Society COM (2016) 587 final
- a proposal for a Directive of the European Parliament and the Council establishing the **European Electronic Communications Code (Recast)** COM (2016) 590 final (EECC),
- a proposal for a Regulation of the European Parliament and of the Council establishing the **Body of European Regulators for Electronic Communications** (BEREC) COM (2016) 591 final
- a Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: **"5G for Europe: An action plan"** COM (2016) 588 final,
- as well as a proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1316/2013 and (EU) No 283/2014 as regards the **promotion of internet connectivity in local communities** COM (2016) 589 final

We would like to take this opportunity to comment.

(I) General remarks

We explicitly welcome the European Commission's stated intention to replace outdated copper networks and to focus on the new requirements of the gigabit society. We are convinced that providing ubiquitous gigabit-ready infrastructures to companies, households and public institutions is a prerequisite for the successful digitalisation of the economy and society. Against this background, however, we see the need to anchor the objective of establishing a far reaching gigabit-ready infrastructure even more firmly in the Code so that national regulatory authorities can use this to orientate themselves when making decisions in the future.

In order to facilitate the move to a gigabit society, a revision of the European legal framework and the corresponding national regulations is necessary. In this respect, we welcome the Commission's proposal to update the telecommunications framework and to merge the existing four directives into a single code. However, this does not require any paradigm shift. Rather, it is important to carefully examine which regulatory principles and instruments have proven their worth and should be maintained and which ones should be adapted or deleted.

We would like to emphasise, at this point, that from the point of view of the VATM, both the **promotion of competition** as the best means of generating investment, innovation and quality, and the **principle of market-orientated regulation**, i.e. SMP regulation, must not be jeopardised. The VATM expressly insists that these basic principles of the legal framework must also be adhered to in the future and that these must not be undermined by less effective corrective measures.

(II) Communication on "Connectivity for a Competitive Digital Single Market" COM (2016) 587

We welcome the objective set out in the EU Commission notification to create a gigabit society (page 1). To achieve this goal, high capacity networks must be built within the next ten years which actually deliver gigabit bandwidths to the end user. For fixed network, these are fibre optic networks that extend into buildings (FTTB) or households (FTTH) as well as cable networks (HFC) based on the new transmission standard DOCSIS 3.1; for mobile networks this will be achieved through fifth generation (5G) networks. All of these technological solutions, including mobile communications, require infrastructures based on fibre networks. Defining a concrete, ambitious **infrastructure goal** is the most important political driver for large-scale deployment of gigabit-ready infrastructures. Copper networks should be a thing of the past. The focus of the modernisation of these networks or in new buildings must therefore clearly be on FTTB / FTTH and 5G infrastructures.

We share the view of the Commission that it is particularly important to provide all main socio-economic drivers, such as schools, authorities and highly digitized enterprises, access to extremely high – gigabit – connectivity by 2025. This can be an important building block to increase demand for VHC networks. However, we also see the need to deploy comprehensive gigabit connections as far as possible to private households and all businesses. This is necessary to both facilitate participation in an ever more digitalised society in order to avoid a digital divide between urban and rural environments, and to preserve the competitiveness of the multitude of companies and branch offices which are mostly outside of commercial areas. The demand for gigabit connected networks is reflected in the current development of applications such as autonomous driving, agriculture 4.0, the increasing importance of the home office and, in particular the increasing need for care of the elderly with regard to demographic

change. In addition, the expected number of small-scale 5G radio cell sites will also require an extensive glass fibre roll-out.

Against this background, we believe that the goal of the Commission to connect **all private households with a minimum of 100 Mbit/s** by the year 2025 is insufficient. Rather, the goal of a far reaching gigabit-ready infrastructure should be clearly stipulated. In this context, we would like to point out that bandwidths of 100 Mbit/s are also far behind the bandwidths already available on FTTB/H and HFC networks and the bandwidth expected by DOCIS 3.1. In its recitals (13) as well as in its objective definition (Article 3 (2) in conjunction with Article 2 (2)), the Commission correctly recognized the need for significantly higher quality for future services and the latency, jitter, and packet loss required for such applications. FTTC-based connections will, in the opinion of all experts, no longer be able to meet these requirements in the medium term, i.e. in the next 5 to 10 years. In order to fulfil the already foreseeable needs, fibre networks (FTTB/H, HFC and 5G) must be built in the coming years. We therefore ask the Commission to alter its infrastructure objective and to opt for extensive, gigabit-ready networks.

For professional communications in industry and the service sector, a seamless, shared fixed and wireless infrastructure is required. The basis for this is a comprehensive fibre network. The VATM therefore agrees that the strategic aim of the Commission to connect all urban areas and national transport hubs to 5G is a good starting point.

(III) European Code of Electronic Communications COM (2016) 590 final in conjunction with BEREC COM (2016) 591 final regulation and 5G Action Plan COM (2016) 588 final

1. The new connectivity objective (Article 3 (2) (a) EECC)

Keeping in mind the necessity of extensive network coverage with gigabit-ready connections, the new objective of Article 3 (2) a) to promote access to, and take-up of, very high capacity data connections, both fixed and mobile by all Union citizens and businesses (connectivity objective) is judged positively by the VATM. The resulting definition of high-capacity networks (VHC networks, Article 2 (2)) is based on a fully or largely fibre-based communications network and refers to **essential characteristics** of gigabit networks such as resilience and latency. The VATM sees this as **a clear commitment to gigabit-ready networks** but misses

a stronger reflection of this commitment in the code so that future regulatory practice can be consistently orientated towards this.

In this context, we would like to point out that, although we welcome the new connectivity objective, there should be no secondary goals in the legal framework, but only **equal-ranking goals**. In particular, the promotion of infrastructure and service competition with its resulting investments must not become secondary to the promotion of VHC networks. After all, competition is the best instrument to incentivise maximum investment and innovative services of alternative operators, as wells as incumbents. A successfully competitive market is therefore of crucial importance for the further deployment of gigabit networks. A corresponding note can be found in the recitals (23); an explicit clarification in Article 3 would nevertheless be desirable.

In addition, connectivity needs to be viewed more broadly from the perspective of citizens and businesses. The competition-induced supply of future services, qualities and, above all, the additional services essential for business customers, especially security, availability, and services particular to companies such as hosting or providing connectivity to branch systems from one supplier, make it clear that **competition and the selection of service providers on the networks** will be drivers for the demand for high bandwidths and thus for real connectivity.

2. Institutional design (Articles 5, 6, 8, 33 (5), (c) EECC and BEREC regulation COM (2016) 591 final)

The VATM sees as positive, the objective of further strengthening **the independence of national regulators** (Articles 5, 6 and 8). In order to translate this objective, which is particularly important in the German market, into reality, the open selection procedure of the BNetzA presidency, which is practised in other countries, must be discussed as well as fixed employment periods of, for example, seven years or an extension which is largely independent of political circumstances.

Further measures could also be envisaged in the Code, which would further strengthen the independence of the regulator from economic and political interests. To this end, the member states could be given the option of designating the regulatory authority as a wholly independent authority to the extent that this is consistent with the respective constitutional princi-

ples. At the very least, the Code should provide that the member state concerned should not have supervisory powers over the national regulator, and at the same time be a shareholder of the market leaders.

We have reservations about the Commission's proposal to set up a **European agency** (COM (2016) 591). From our point of view, BEREC has proved itself both in terms of its organisational structure and as an important conflict arbitrator. On the other hand, by creating a European agency, we see a risk that the independence of the national regulator would be weakened, regulation made more complicated and bureaucratic hurdles increased. Consequently, the proposal to place two members of the Commission to the Board of Directors of the European agency is also seen critically, as the independence of BEREC would no longer be guaranteed.

We are open to the proposal in Article 33 (5) to establish a **veto right** for BEREC. This could significantly strengthen the independence of the national regulator from national influences, which could prove useful in particular with regard to existing shares that the government holds on the incumbent.

3. Frequency policy and the 5G action plan (Articles 38-54 EECC and COM (588) final)

We warmly welcome the Commission's consideration of the **provision of frequencies** for the European 5G deployment across Europe. Additional frequencies are crucial for a fast 5G rollout, in particular the expansion of the 1,500 MHz band and the range 3.6-3.8 GHz for providing large channel bandwidths as well as the identification of spectrum in the so-called millimetre range (above 20 GHz).

The successful introduction of 5G requires a forward-looking and coordinated frequency policy across Europe, which ensures the availability of additional frequencies in the future. We welcome the possibilities for harmonising the frequency bands, since they allow additional economies of scale and planning security for mobile service providers. Particularly from the German perspective, however, it is important to ensure that first-mover benefits are still possible in the member states. We also expressly welcome the "pay when available" provision of Article 42 (3). As payment is only due when the awarded frequencies are available, companies can save substantial capital commitment costs. Overall, fair competition conditions for

all market players must also be ensured in the mobile market. With regard to increasingly convergent networks and the provision of attractive services for the customers, this applies not only to the MNOs, but also to the relationship with MVNOs and providers for fixed network.

4. Access regulation (Articles 65, 59, 70, 71, 74 EECC)

In order to promote infrastructure competition and the deployment of very high-capacity networks throughout the Union, the Commission is pursuing the approach **of improving the conditions for businesses willing to invest** (in particular through improved access to passive infrastructures), whilst the regulatory environment **for access seekers is deteriorating**. According to the ideas of the Commission, it will primarily be market-dominating companies who will be favoured by decreased regulatory obligations, while corresponding incentives for smaller companies are lacking. We are extremely critical of this. The continued claim by incumbents that regulation presents a constraint to investment is demonstrably false. In Germany, it was precisely the regulatory decisions which led to the expansion of both market-dominant companies and their competitors (e.g. TAL regulation and Vectoring I). From the point of view of the VATM, it is therefore essential to avoid any hasty and extensive deregulation to the benefit of the incumbents, as this would worsen the investment opportunities of those companies already investing heavily in the deployment of gigabit-ready networks.

- **Market analysis procedure (Article 65 EECC)**

The VATM supports, in principal, the **application of the three-criteria test** to secure competition, but warns vigorously against the negative consequences of the exceptions to the SMP regulation contained in the Commission proposal. We are convinced that the existing access regulation must also be maintained with regard to VHC networks, which are incentivised by co-investment models.

In this context, it is not clear to the VATM how a reduction in the intensity of competition, which would be primarily the result of the proposed co-investment model, should create additional incentives for investment in new networks.

The VATM welcomes the extension of the former three-year market analysis cycles to five years and the reduction of the possibility of an extension from three years to one year (Article 65 (5)), as regulation would become more stable and predictable. At the same time, planning certainty depends not only on the duration of the validity, but often rather on the question of which conditions apply, content-wise or with regard to possibly changed circumstances, for a market analysis to be carried out. In this case, the inclusion of concrete application examples would lead to more legal certainty. Last but not least, we are very concerned about the

Commission's proposal to assess **market failure solely based on retail markets**. Rather, we believe it is imperative to also include the level of wholesale markets in the assessment of market failures, as effective access regulation of the SMP companies is the central key to guaranteeing sustainable competition in the retail market.

- **Symmetrical regulation (Article 59 EECC)**

In Article 59 (1), the EU Commission stipulates symmetrical access obligation with regard to in-house wiring. From the point of view of the VATM, this rule, at least in Germany, is not practicable, since the in-house infrastructures are usually owned by the homeowners and the national regulatory authority cannot easily interfere with their property.

The VATM above all has a critical view of the expansion of the **symmetrical regulation** proposed by the Commission **(Articles 59 (2) and (3))**. It is not yet clear from the wording which circumstances are specifically covered by this provision. We fear there will be a significant expansion of regulation and access obligations to the detriment of competition, and thus also to the detriment of the alternative providers who are the drivers of infrastructure competition. Especially for member countries such as Germany, where the majority of investments are borne by competitors and where FTTB/H deployment of the former monopolist is marginal, the introduction of symmetrical regulation would lead to a drastic deterioration in the overall investment climate. The assumption that a few large companies would roll out fibre faster than a number of competing operators cannot be accepted in light of the experience of the considerable investments made by regional operators in Germany. The **paradigm shift associated** with symmetrical regulation would thus lead to a reduction in competitive intensity and prevent the investments needed in fibre, especially in sparsely populated regions. For the time being it should be observed in which way the EU Cost Reduction Directive, which already contains additional measures for symmetrical regulation, will impact the German market before considering the introduction of further elements of symmetrical regulation within the Code.

The VATM is of the opinion that, under Article 59 (3), it should be more clearly stated that these regulations only apply to mobile network operators. Currently, this is only indicated through the recitals (144).

- **Access to civil infrastructure / prioritisation of remedies (Article 70 und 71 EECC)**

In principle, the VATM welcomes the EU Commission's proposal to oblige **SMP operators to allow access to its civil engineering** (Article 70). In this context, we would like to emphasize that **access obligations must always be limited to SMP operators.** In addition, technical and commercial access conditions should be subject to effective regulation. Otherwise, for example, too high access costs could also render the access claim commercially unviable.

In order to strengthen infrastructure competition, the Commission stipulates that general access obligations should only be considered if obligations with regard to civil engineering alone are insufficient (Article 71). There is a risk that this measure will at least formally increase the burden of justification of the national regulatory authorities regarding additional access obligations. Consequently, the room for manoeuvre by the national regulators to promote broadband expansion would in effect be weakened.

In addition, the Commission's proposal bestows particular importance on the access to passive infrastructure. Experience in different member states, such as Spain and Portugal, has shown that such an access obligation can significantly accelerate the competitive deployment of gigabit infrastructures. The VATM notes, however, that, due to the diverse market situations in the member states, alternative important wholesale products, such as physical and virtual access, should not take second place, and therefore advocates the equal status of wholesale products. Access rights of any kind must under no circumstances be dependent on yet vaguely defined co-investment models.

- **Deregulation and co-investment (Article 74 EECC)**

The inclusion of **co-investment models in the Code** is welcome in principle, but should not lead to **"regulatory holidays" for incumbents** and the displacement of alternative operators. The shared use of new network elements by a market-leading network owner and access seeker can be linked to a larger risk sharing compared to conventional access products and can also be a permanent basis for competition, but need not be. The VATM points out that this is very much dependent on the member state and the particular arrangements of the co-investment. An EU-wide promotion of this model is not necessarily effective, especially since there are no specific criteria for defining a genuine co-investment model. In addition,

from the point of view of the VATM, publication of the co-investment offer alone is insufficient. On the contrary, a written agreement is required. There is also the risk that this approach will greatly strengthen the incumbent's position in the market, as announcements of incremental upgrades of its network could permanently disrupt long-term and medium-term investment as well as product sales strategies, thus in effect blocking the regulator. The VATM therefore proposes that appropriate co-investment arrangements should only be taken into account as an additional aspect in the exercise of the regulation measurement and only if new pure VHC networks are in fact established. Any interim steps will only lead to a lock-in of all operators providing end-user services hitherto dependent on access services of the incumbent which leaves them no scope to use other, better networks. In this respect, consideration of co-investment should only be possible if VHC networks are being built.

5. Mapping (Article 22 EECC)

In order to better take account of the specific geographic conditions in their areas, national regulatory authorities are to be required to carry out surveys on the state of broadband networks and investment plans. The VATM is sceptical about the proposed survey and the related objective. A comprehensive forecast covering three years (Article 22 (2)) is not possible for companies that wish deploy additional regions on the basis of customer demand and/or advances in installation technology. Furthermore, the anticipated sanctioning for a failure to provide information is extremely questionable (Article 22 (4)). A self-financing dynamic deployment, which depends in particular on customer demand and installation technology and cannot therefore be planned three years in advance, would be obstructed. As a result, it is necessary to differentiate between: (a) the sanctioning of an inaccurate notification of deployment, which is then not carried out; and (b) the non-sanctioning of the missing notification of a possibly occurring private (self-financing) deployment. In addition, it must be borne in mind that the transmission of network information and their disclosure is a not insignificant security risk. Even now fibre routes are one of the most important backbones of our economy, which must be protected. Furthermore, the Commission proposes to use the geographic survey in Article 22 for the SMP regulation laid down in Article 62 (3). The possibility of deregulation granted in this way is counterproductive and does not contribute to the goal of the Code to widely deploy gigabit networks.

6. Flexibility of pricing for SMP companies (Article 72 EECC)

The Commission proposes to give operators with significant market power some **flexibility in pricing**. It is questionable why special rules should be contrary to the three-criteria test. **Wholesale prices must be subject to ex-ante regulation**. An ex-ante regulation is understandably more demanding on the company to be regulated than would be the case for ex-post regulation. In particular, extensive cost documents must be submitted for the approval of the prices in order to regularly check the factors influencing the payment.

7. Regulating OTT providers and consumer protection proposals (Article 2, 40, 92-102 EECC)

We see it as positive that the Commission is seeking to strengthen the regulation of OTTs in the areas of **data protection and security** and has already identified the fields of interoperability and emergency call features as further areas of action. It is also welcome that the EU Commission has in principle chosen to take a defining approach and extended the concept of electronic communications services to internet-based communications services (Article 2(4)). However, it is precisely in the most relevant case group of number-independent interpersonal communication services that there is a lack of **absolute clarity** as to which services will be included here in the future. In addition, it appears to be inappropriate that particularly relevant consumer protection requirements in the area of transparency and dispute settlement are not to be extended to these widespread communications services. In view of the further tightening of **sector-specific consumer protection**, it is feared that there will be an increase rather than a decrease in the imbalance in regulation.

In this context, transparency and network neutrality in the business customer segment must not lead to a situation where individual service and quality offers are made more difficult, contrary to the consumer's interest, or are tied to obstructive conditions. A **simplification of consumer protection** is therefore desirable.

In order to establish a **level playing field between telecommunication companies** and OTTs offering telecommunication-like services, further negotiations should be carried out to see whether OTTs should be subject to the same reasonable regulations as "conventional" telecommunications providers. In particular, it is important to examine whether the distinction between number-based and number-independent interpersonal communication services can

be a reliable control with regard to data and consumer protection. The issue of access regulation must not be confused with these topics.

Against this background, the VATM considers a **development-oriented structure for the classification of the OTT communication services** to be suitable. BEREC could be assigned the task of creating, through appropriate measures, an adaptable basis for OTT classification by way of using.

Furthermore, we believe that the revision of the **definition of "electronic communications services"** should also include a review of the need for the existing sector-specific consumer and data protection rules, with the aim of reducing superfluous regulation and transferring it, where appropriate, into general consumer protection law. However, within the EECC proposals, this is done only in a very limited way. Instead, a large number of additional obligations are being considered.

In particular, we take a critical view of the proposal to in future effectively exclude the possibility of implicitly extending the **contract duration (Article 98 (2))** by automatically allowing consumer, after the expiration of the initial period to terminate the contract at any time with a one month period of notice. Against the background of the fact that offers in Germany are already available without a minimum contract term in the market, this raises the question as to whether it is necessary, especially considering that a ban on tacit extension would mean that smaller providers lose an important competitive advantage. Longer contracts improve the basis for calculation and increase planning security, which means providers can offer more attractive offers to the customer. At the same time, the market can offer short-term contracts or even contracts without a fixed duration, enabling the customer to choose freely. Also, the proposal to subject all elements of **bundle packages (Article 100 (1))** to the terms of termination and change of supplier in future means a considerable interference with the contractual and product design of the companies concerned, which in some cases would lead to inadequate results.

8. Universal services (Article 79-82)

We are very critical of the proposals for the reorganization of the universal service obligations, as considerable planning uncertainties and unforeseeable cost-borne risks are a threat to European network operators. According to the ideas of the Commission, in future the sub-

ject of the universal service obligation should no longer be the comprehensive availability of functional internet access, but the duty to offer "affordable broadband access" to every customer requesting it. In addition, it is envisaged that the burdens resulting from the universal service obligation will no longer be financed by means of a sectoral contribution by network operators, but from public funds where the burden is deemed unreasonable. The basic **cost-sharing by the member states** is, from our point of view, appropriate and very welcome. However, it is doubtful that they will agree to carry this possibly substantial burden in their financial budgets, so it is likely that sectoral contribution will remain in place.

In addition, a great number of uncertainties arise as a result of the system change: This concerns on the one hand the question of which requirements are to be placed on the unreasonable threshold, i.e. when a network operator can refuse an offer to a customer. On the other hand, we are sceptical about the fact that the definition of what "affordable broadband access" actually entails, is left to the member states to decide. There is the danger of an ever-widening range of services according to political opportunities, without taking into account the actual demand or economic usefulness. In this context, it also remains unclear whether, despite the envisaged change to the system – the shift away from a consideration of the infrastructure towards an obligation to contract – a concrete expansion obligation may arise where the scope of services laid down by a member state cannot be provided due to the nature of the network.

In the opinion of the VATM, the successful model of **market-driven broadband deployment** in Germany should not be restricted by inappropriate design of the basic broadband supply which is orientated towards universal services. In particular with regard to the supply obligations already issued to the mobile operators in the context of the frequency allocation procedures, it is questionable whether extended universal service obligations, which can only ever be a tool for a minimum supply, are really necessary.

9. Directories and directory enquiry services

Along with the modernisation of universal service regulations, the Commission proposes the removal of directory enquiry services and directories from universal services. Neither the definition of an affordable universal service (Article 79) nor the definition of the availability of the universal service (Article 81) mentions the right of participants of publicly accessible telephone services to be included in the publicly available directory. It is only when the need for

other services, such as information services, is adequately demonstrated in view of national circumstances, that national regulators can ensure the availability or affordability of these services (Article 82). In addition, Article 104 (2) expresses a departure from the obligation of access to information services, which is now to be placed at the discretion of the national authority.

To this day it is not sure that participants have sufficient access to information about national and international participants and institutions, through alternative products. **Access to participant data through competitors** is still the basis for the fact that the necessary accessibility of important institutions and participants can be requested by a normatively anchored database. Only when it has been determined and ensured that the access to this information is guaranteed by other media in the same way, is it justified to consider a **scaling down of access obligation** to the corresponding national subscriber data for directory enquiry services and telephone directories. These secure substitute products are not apparent even in the medium term.

All in all, these new proposals lead to a high degree of uncertainty among the companies concerned, who see this as an enormous threat to their businesses. The VATM therefore calls for the existing system to be maintained and to retain access to subscriber data in its current form

10. Extending the must-carry obligations (Article 106)

Must-carry obligations for the transmission of specified radio and television broadcast channels and services in electronic communications networks, as may be imposed by member states on the basis of Article 31 of the Universal Service Directive (Article 106), are increasingly unjustified. As a result of digitisation and the growing range of transmission capacity, content offers, and competition among platforms, there are no more bottlenecks in the transmission of content. Market conditions in the media sector have changed considerably. While broadcasting companies can choose from a variety of transmission paths, the platforms now depend on the broadcasters because they need to offer the necessary variety of legally available content.

This **imbalance of power** at the expense of infrastructure operators is increasing, as individual broadcasters are given a dominant market position by a must-carry status, which allows

them to implement terms that are not customary in the market. If European legislature continues to stipulate the possibility of must-carry obligations, these have to be to supplemented by a concrete obligation to compensate. Providers who are granted privileges in platform allocation should have to pay the transport services of the infrastructure manager appropriately. In this case, the Commission's proposal falls short and needs to be adjusted in the course of the further legislative process.

Instead, the Commission even envisages the extension of the must-carry obligations to include "data for networked television services and electronic programmers", such as **HbbTV** (Article 106(1) EECC). This is an attempt to provide the must-carry broadcasters with another competitive advantage for their auxiliary services which are not directly linked to the broadcast signal, by indirectly giving them more control over the capacity of a third-party infrastructure.

The VATM strongly rejects this. The HbbTV signal is not an integral part of the broadcast signal but a data stream associated with the broadcast signal with its own services (e.g. text offerings or on-demand services). The data to be transported by the network operator allows the viewer to access extensive services from the Internet additionally without direct reference to the linear signal. Therefore, the HbbTV signal does not belong to the transport stream of the broadcast signal neither technically nor in terms of content, and so it is not justified to grant a privilege by legal obligation. In addition, data services such as HbbTV for the network operator are not capacity-neutral. Unlike a simple and capacity-neutral link (such as a hyperlink), the HbbTV technical standard occupies additional, and basically unlimited, capacity for so-called data carousels. This allows the privileged provider to significantly expand the bandwidth of the linear broadcast signal unilaterally, which inevitably occupy significant amounts of the operator's network capacity.

Should an expansion of the must-carry obligation result, contrary to the above-mentioned legal and economic concerns on the aforementioned data services, this must at least be underpinned by a mutual obligation to contract. The network operator and the broadcasters needs to ensure efficient network management and a high-quality TV signal to the end customer by contractual agreements as it is common practice with broadcasters which are not privileged by must carry privileges.

(IV) Proposal on the promotion of internet connectivity in local communities - WiFi4EU

The VATM welcomes the initiative and thus the targeted promotion of the deployment of public WLAN networks. Temporary usage possibilities can significantly increase the attractiveness of public or private hotspots and contribute considerably to the promotion of tourism and business. These limited resources must therefore be effectively targeted in particularly disadvantaged regions.

The VATM points out, however, that access regulation should be made in such a way that the **profitability of important fixed- or mobile network deployment projects** is not jeopardised. In general, the use of public tax funds must not lead to the depreciation of private investment.

(V) Instruments for financing a gigabit society

In order to meet the demands of a gigabit society, financial support from the EU is needed. The measures already initiated are an important step. The proposed **European broadband fund** (p. 14, COM (2016) 587), which is intended to bring private and public investment together, can also contribute to the urgently needed investment volume if it is not the market leaders alone who benefit most from this but mainly those enterprises who have already proved that they have accelerated FTTB/H deployment. As agreed with scientific institutions such as the WIK, the VATM believes that a subsidy of around **10 billion euros** within a ten-year period is necessary for deployments in Germany. The needs of the economy must be taken into account and the following principles followed:

- **Focusing on gigabit infrastructures** (FTTH/B, cable fiber and 5G) instead of intermediate solutions like fibre to the curb (FTTC), Vectoring or G.fast
- Targeted promotion of the **connection of mobile radio masts with fibre** ("5G preparation")
- Targeted support for the **connection of industrial parks with fibre connections**
- Stronger support for the **deployment of passive infrastructure** (especially ducts) and

- Integration of these elements into **cross-community operating models** and allocation of more financial resources for such models

- **Penalising of overbuild** or "retrospective" (according to market-detection procedures) removal of municipalities from the subsidies by market-dominated companies

Anti-competitive effects of broadband promotion in the form of a disproportionate distribution of subsidies to the former monopoly companies and thus a further stabilisation of their dominant position with regards to infrastructure must be avoided. This also applies, and most importantly, to a possible **adaptation of the Broadband Cost Reduction Directive** (so-called broadband guidelines) to the new infrastructure or connectivity objectives of the EU Commission. It must take greater account of the practical implications of funding on the conditions of competition in the member states and should be interlinked with the (infrastructure) competitive objective of sector-specific regulation. In addition, a **devaluation of private-sector investments** must be effectively excluded so that a partial or unintentional or "radiating" subsidised over-expansion of efficient existing network infrastructures is also avoided.

It will also be important to create **comprehensive visibility of the funded infrastructures** in order to enable interested parties to benefit from the open access obligation in the case of funded infrastructures. To this end, these infrastructures should be identified separately in the national broadband directories in the member states (e.g. the BNetzA Infrastrukturatlas), and should be made fully transparent to all parties entitled to access them.

Conclusion

The negotiations now need to focus on the formulation of the new rules in such a way that the deployment of gigabit infrastructures is promoted in a **competitive, forward-looking and innovative market**. A paradigm shift in access regulation should be avoided at all costs, in order to avoid planning uncertainties, especially among the alternative operators who are willing to invest in the deployment of gigabit connections. The delaying tactics of existing providers, which still heavily rely on copper connections, would otherwise be further supported. The guiding principle for the connectivity package should be to positively highlight those regulatory instruments which promote the development of VHC connections and create long-term legal certainty for potential investors. In particular, it must be borne in mind that the **EU Cost Reduction Directive**, which has just been transferred into national law, contains rules

for the promotion of broadband deployment, the effects of which are to be awaited before further regulations are adopted to the detriment of competition. **Sustainable and reliable promotion of competition** through politics, but also through independent regulators, is the best possible investment stimulus. Germany and Europe need rules that help all investors invest sustainably in the telecommunications market - and in particular in the widest possible coverage with gigabit connections. **Competition for and on the networks**, is and remains essential so that citizens and businesses can use the services as and when they wish.

Based on the respective discussion level, both at the national as well as at the European level, the VATM reserves the right to comment again on the connectivity package as part of a dynamic process.

Brussels, 22.12.2016