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– By e-mail to sprk@sprk.gov.lv –

23 September 2021

Hearing on the Consultation Document on General Authorisation and Registration Rules in the Electronic Communications Sector

Dear Sir or Madam,

Thank you very much for the invitation to the hearing on the "Consultation Document on General Authorisation and Registration Rules in the Electronic Communications Sector" (hereinafter "Consultation Document").

As we are unfortunately unable to attend the hearing in person, we would like to make a statement in this way and hope that it will be taken into account in the discussion on the Consultation Document.

We would like to refer in particular to the SPRK's explanations of the VTKE's comments under point 5:

"The Regulator supports the proposal to set the service boundary of the electronic communications service at the same point as the point of connection to the electronic communications network, which is the boundary point of the electronic communications network, provided that the end-user and the electronic communications undertaking do not agree otherwise."

The Regulator does not support the definition of an electronic communications network connection point as a passive point, as according to paragraph 49 of the BEREC Guidelines BoR(20)46 of 5 March 2020 (hereinafter – BEREC Guidelines BoR (20)46), it is possible for an electronic communications undertaking to place its equipment on the premises of the end-user if it is objectively technologically necessary to provide an electronic communications service (see also paragraph 16 of the draft Rules). In this case, the equipment of the electronic communications undertaking is part of the public electronic communications network. Consequently, the point of connection to the electronic communications network is not passive. The end-user is free to choose which end-user equipment to use, except where it is objectively technologically necessary for the provision of the electronic communications service for the electronic communications undertaking to place its equipment on the end-user's premises."

We interpret the statements of the SPRK in such a way that it is of the opinion that end-users should in principle have the possibility of free choice of terminal equipment. At the same time, however, there should be the possibility for network operators to have sovereignty over the device on their customers' broadband connection and to be able to prescribe the use of a certain device to their customers in a binding manner if this would be objectively technologically necessary.

- **The right to free choice of telecommunications terminal equipment enshrined in European law must be consistently implemented in the Latvian market.**

The right of end-users to use terminal equipment of their choice at their broadband connection is already explicitly laid down in European law (cf. Art. 3(1) Regulation (EU) 2015/2120) and should also be consistently implemented in practice in the Latvian market.

We consider the possibility for end-users to freely choose the terminal device on their broadband connection to be extremely important in order to counteract the disadvantages of so-called "obligatory routers". Why we consider the free choice of terminal equipment to be important is explained in more detail in the statement we have submitted in the context of the consultation on the draft General Authorisation and Registration Rules in the Electronic Communications Sector; we would like to refer to this document at this point.

- **The network termination point must be determined consistently by the national regulatory authority (and not the network operators).**

"Obligatory routers" are possible because the network operators' definition of the network termination point commonly deviates from the localisation of the network termination point at what is "point A" in the BEREC Guidelines BoR (20)46 ("connection socket to the line").¹

Art. 61 (7) of the European Electronic Communications Code (Directive (EU) 2018/1972, EECC) explicitly states that in order to arrive at a "consistent definition" of the location of the network termination point, the national regulatory authorities - and not the network operators - are given competence and responsibility in this regard. This is to prevent network operators from arbitrarily determining the network termination point exclusively according to their own interests.

In order to take account of the requirements of EECC as well as the BEREC Guidelines BoR (20)46 and in order to achieve the goal of a completely free choice of terminal equipment, a precise definition of the network termination point should be made by the SPRK in order to eliminate any room for interpretation by market participants.

¹ The BEREC Guidelines BoR (20)46 provide for a network termination point at "point A" as a rule (cf. "49." of the BEREC Guidelines BoR (20)46) because only in this case the terminal equipment is not part of the public network under the sovereignty of the network operator. Deviations from this are possible, but their objective technological necessity must be explained to the regulatory authority.

Only an unambiguous definition of the network termination point as "point A" creates clarity for end-users, network operators and terminal equipment manufacturers, restores the free choice of terminal equipment that is intended by European regulation (Art. 3(1) of Regulation (EU) 2015/2120) in Latvia and prevents uncertainty as well as market fragmentation.

With the transfer of the competence to decide on the technological necessity of whether a terminal device is part of the private home network of the end-user or part of the public network under the sovereignty of the provider to the network operators, the "consistent definition" of the network termination point demanded by the EECC is not taken into account at all. On the contrary, there is still a real danger of fragmentation of the market and the connection situation as well as of a continuation of "obligatory routers" due to the arbitrary declaration of "objective technological necessities", which may differ from network operator to network operator. The consumers suffer most from this as they will continue to not be able to freely decide on the terminal device at their broadband connection in the future.

- **The objectivity and validity of objective technological necessities for deviations from a network termination point at "point A" put forward by network operators must be verified by the national regulatory authority as a neutral body.**

Should there be a need for exceptions to a network termination point at "point A", it is in our view absolutely necessary, in the sense of objectivity, that the national regulatory authority as a neutral body analyses the objective technological necessities put forward by network operators. That is to ensure that the argumentation is objective and that there is indeed a need for the network operator to have control over the device at the broadband connection of its customer (cf. 56. of BEREC Guidelines BoR (20)46). All other market participants concerned should also be consulted in this regard.

The national regulatory authorities in Finland, Germany, Italy and recently also the Netherlands have already defined the network termination point for all connection technologies (fibre, cable and DSL) consistently at the "connection socket to the line" ("point A"). Here, end-users have the option of connecting and using a terminal device of their choice at their broadband connection. There do not seem to have been any objective technological necessities that would have spoken against this. And practical experience from markets where there is already a free choice of telecommunication terminal devices (e.g. Finland, Germany or Italy) shows very clearly that a network termination point at "point A" can be implemented for all access technologies without any problems.

Summary

In accordance with the European Electronic Communications Code and the BEREC Guidelines BoR (20)46, the national regulatory authority in Latvia should also define the network termination point (at "point A"). Exceptions to this should only be granted by the SPRK after prior, thorough review of the objectivity and actual justification of technological necessities.



From a procedural point of view, it should be ensured that the justification for the exception from the rule – the network termination point at “point A” - is not analysed after the introduction of a product (excluding products existing at the time of the adoption of these rules), but in advance. This is the only way to prevent network operators from creating facts that can only be reversed retroactively with great effort.

At this point it should be noted explicitly that the definition of the network termination point at "point A" and the restoration of free choice of telecommunications terminal equipment, respectively, is only to restore the *free choice* of end-users. End-users who wish to use their own terminal device on their broadband connection should be given the opportunity to do so. All other end-users should continue to be able to be provided with a terminal device by their network operator. The network operators will therefore continue to have the option of offering their customers a terminal device (for rent or purchase).

We are happy to be available for further information or an exchange of views. Please do not hesitate to contact us.

Yours sincerely

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