

eir

**Response to the public consultation on the draft BEREC Guidelines on
Very High Capacity Networks**

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eir welcomes the opportunity to comment on BEREC's draft Guidelines on Very High Capacity Networks.

RESPONSE TO CONSULTATION

General remarks

1. Europe's digital economy has approached a critical juncture for the delivery of very high-speed broadband or very high-capacity networks (VHCNs). In this context, the regulatory regime, and in particular the Guidelines produced by BEREC, will play a crucial role in creating an environment conducive to the rollout of such networks.
2. The availability and take-up of VHC connectivity have been elevated to core objectives of the EU regulatory framework for the telecoms sector. To this end the revised rules aim to provide incentives for both incumbents and other operators to make economically viable investments in high capacity networks.
3. However, it is important to remember that, wherever possible, regulators should ensure that their rules are technology neutral, thereby reflecting the phenomenon of convergence between electronic communications networks and services. In a fast moving market with rapid technological change, the risk of regulatory error is high, making non-technologically neutral regulation inherently riskier.
4. In fact, Recital 13 of the European Electronic Communications Code (EECC) recognises that in considering the definition of a VHCN and *"[i]n accordance with the principle of technology neutrality, other technologies and transmission media should not be excluded, where they compare with that baseline scenario in terms of their capabilities"*. eir acknowledges that the current formulation of the criteria goes some way towards addressing this but considers that there remains an inherent risk that some wireless networks will be excluded based on their current design and without due consideration of their potential capability.
5. eir is also concerned that the criteria as currently designed may have implications for the thresholds determined for public interventions in the provision of connectivity and thereby create added risks of market distortion.
6. We would therefore request that BEREC take into consideration the following elements.

Network capability

7. With particular regard to criterion 4 and in order to establish that a network provides equivalent performance to that of a wireless network with fibre roll out up to the base station, BEREC has determined a number of performance thresholds. However, eir considers that there are a number of additional factors that need to be considered.
8. In our experience, end user QoS under normal peak load conditions has very little to do with fibre to the base station, once the backhaul connection is of higher bandwidth than the air interface. Depending on the mobile technology used to provide end-user services and the type of deployment i.e. rural or urban and the differing demands placed on networks as a result, the use of wireless backhaul may be more economic.
9. In addition, the geographic footprint of the base station and the performance of the cell edges will also have an effect on the end-user experience. We are therefore concerned that BEREC's performance thresholds may have overestimated the achievable end-user QoS due to its focus on deployment of fibre to the base station alone and thereby its approach fails to encourage efficient investment.

Consequences for deployment

10. While BEREC notes that the Guidelines are relevant for the consideration of a network as a VHCN or otherwise in the context of the EECC, they "*should not be interpreted as a view on the appropriateness of such consideration as a criterion for any other policy instrument, including public funding*", However, eir considers that the two may be inextricably linked, in particular with regard to Article 22 of the Code.
11. Article 22 imposes the obligation for Member States to carry out a survey of the current geographic reach of broadband and establishes that such a survey may include a forecast of the reach of broadband networks for a period determined by the relevant authority, including VHCN and significant upgrades or extensions of networks to at least 100 Mbps download speeds.
12. In determining the allocation of public funds for the deployment of electronic communications networks and the design of national broadband plans, member states are required to take into account the results of the geographical survey and of any subsequent designated areas.



13. It is therefore extremely likely that national authorities will have reference to the Guidelines in their determinations on the appropriateness or otherwise of public interventions in the broadband market and that large discrepancies between the performance thresholds identified by BEREC and those referenced in the Code could result in distorting market signals and crowding out private investment