EUROPEAN
COMMISSION

Brussels, XXX
[…](2023) XXX draft

ANNEX 4

ANNEX

to the

Commission Recommendation

on the regulatory promotion of Gigabit connectivity

ANNEX IV

Long-term access pricing and volume discounts as referred to in point 61 of the Recommendation.

Criteria to assess long-term access pricing for VHCN deployments, in particular FTTH

(1) Access prices adjusted for risk based on long-term access may vary depending on the period over which access commitments are made. Long-term access contracts may be priced at a lower level per access line than short-term access contracts. Long-term access prices should only reflect the reduction of risk for the investor and therefore should not be lower than the ~~**cost-oriented**~~ price to which no higher risk premium reflecting the systematic risk of the investment is added. Under long-term contracts, entrants would acquire full control of physical assets, which would also give them the possibility to engage in secondary trading. Short-term contracts would be available without long commitments and would therefore normally be priced higher per access line, with access prices reflecting the benefit to the access seeker in terms of greater flexibility.

(2) There is a risk, however, that the SMP operator would abuse the long-term access pricing over time by selling its retail services at an insufficient margin compared to its regulated wholesale price (since it would charge its own downstream retail arm lower long-term commitment prices), thereby foreclosing the market. Furthermore, alternative providers with smaller customer bases and unclear business perspectives face higher levels of risk. These providers may be unable to commit to purchasing over a long period, and may therefore have to stagger their investments and purchase regulated access at a later stage.

(3) For those reasons, long-term access pricing should be acceptable only if NRAs ensure that ~~**both**~~ all the following conditions are met:

(a) long-term ~~**commitment**~~ access prices only reflect the reduction of risk for the investor; and

(b) over an appropriate timeframe there is a sufficient margin between wholesale and retail prices to allow for market entry by an efficient competitor in the downstream market.

~~(b)~~(c) **the long-term access prices do not foreclose economically efficient alternative investment by other network operators (infrastructure competition) that are either investing or creditably demonstrating a concrete plan to timely invest in VHC networks.**

Criteria to assess volume discounts in case of VHCN, in particular FTTH, deployments

(4) Access prices adjusted for risk based on volume discounts reflect the fact that investment risk decreases with the total number of fibre loops already sold in a given area. Investment risk is closely tied to the number of fibre loops which remain unused. The higher the share of used fibre loops, the lower the risk. Access prices could therefore vary depending on the volume purchased. A single level of discount should be authorised, available at a uniform price per line to all qualifying operators. NRAs should identify the volume of lines which need to be purchased in order to get access to such volume discount, taking into account the estimated minimum operating scale for an access seeker to compete efficiently in the market and the need to maintain a market structure with a sufficient number of qualifying operators to ensure effective competition. The volume discount should only reflect the reduction of risk for the investor and therefore should not result in access prices that are lower than the ~~**cost-oriented**~~ price to which no higher risk premium reflecting the systematic risk of the investment is added. Considering that the risk premium should normally decrease following the overall increase in met retail and wholesale demand, the volume discount should also

decrease accordingly and may no longer be justified once <u>**net**</u> retail and wholesale demand are at high levels.

(5) A volume discount should only be accepted by NRAs if all of the following conditions are met:

(a) a single volume discount is calculated per area as appropriately sized by the NRA taking account of national circumstances and network architecture, and applies equally to all access seekers who, in the area concerned, are willing to purchase at least the volume of lines giving access to the discount; and

(b) the volume discount only reflects the reduction of risk for the investor; and

(c) over an appropriate timeframe there is a sufficient margin between wholesale and retail prices to allow for market entry by an efficient competitor.

d) the volume discount does not foreclose economically efficient alternative investment by other network operators (infrastructure competition) that are either investing or credibly demonstrating a concrete plan to timely invest in VHC networks.