10 July 2025

Statement on BEREC Draft Guidelines on access to in-building infrastructure in accordance with Article 11(6) of the Gigabit Infrastructure Act

Preliminary remark

The regulations governing the making and accessibility of in-house infrastructure will set the course for the coming years, influencing product and provider diversity, open access, access rights, and competition for decades to come.

Against this background, disputes have been ongoing in Germany for years regarding access to in-house cabling, as well as the installation of such cabling and the consent of building owners. Unresolved legal issues, such as who owns the in-house cabling or empty conduits, how tenants can enforce their claims against building owners, or whether housing associations can charge fees for the use of in-house networks, are causing disputes.

From the perspective of alternative network operators, and thus from the perspective of 1&1, it is crucial that the expansion of in-house cabling does not evolve into a further obstacle to competition. There is a fear that situations will arise in which the first company to expand in-house cabling subsequently denies access, restricts competition, and creates small-scale regional or local monopoly structures. Furthermore, the expansion of fiber optic in-house cabling, which is considered necessary from a social and economic perspective, must not lead to it being seen as a new business model, with small customs houses being set up in every building, so to speak, which would not only make the services, offers, and products of network operators more expensive, but could also exclude them entirely or in part.

With this in mind, it is also crucial that the expansion of the in-house infrastructure is carried out in such a way that, on the one hand, the empty conduit infrastructure is expanded to such an extent that there is sufficient space for access requests and, on the other hand, a sufficient number of fibers are laid directly to enable provider and product competition. Laying a single fiber optic cable per subscriber connection is not sufficient. An additional fiber is necessary for redundancy reasons; connections for smart meters and similar devices, which are already foreseeable today, may also require their own fibers. However, since a 3-fiber cable is not available as standard on the market, at least a 4-fiber cable must be used. Additional requirements may apply for business customers. The installation of four fibers is the industry consensus and part of the BMDV's recommendation for the expansion of in-house infrastructure pursuant to Art. 10 (4) GIA. Moreover, installing at least four fibers enables seamless access by an additional network operator in the future, thereby strengthening infrastructure-based competition. In a liberalized market environment, sustainable infrastructure competition can only be ensured if buildings are not monopolistically tied to a “single fiber”. Four fibers create the physical conditions for parallel network usage by multiple providers without the need for costly retrofitting or additional civil works.

1&1 Versatel Deutschland GmbH, Wanheimer Straße 90, 40468 Düsseldorf
Vorsitzender des Aufsichtsrats: Friedrich Joussen
Geschäftsführer: Frank Rosenberger (Vorsitzender), Dr. Martin Fischer, Thomas Heyder, Guido Mannshausen, Dr. Borislav Tadić, Ahmet Yayan
Sitz der Gesellschaft: Düsseldorf, Amtsgericht: Düsseldorf HRB 68270
Commerzbank AG Konto 404633001 BLZ 300 400 00, IBAN DE22300400000404633001, BIC COBADEFFXXX

Such a deployment standard should therefore not be limited to new constructions and major renovations under Article 10(4) GIA, but should also apply to existing buildings where fiber rollout takes place. Otherwise, a structural imbalance would arise: while new buildings would have to be equipped in a competition-friendly manner, the existing stock would remain underregulated and locked into “single-fiber” topologies—with negative consequences for open access and end-user choice. To enable sustainable and non-discriminatory infrastructure competition, fiber deployments outside the formal scope of Article 10 GIA should also be mandatorily tied to the technical minimum standard of four fibers.

Below are our comments and proposed amendments to the regulations proposed in the draft.

Regarding the Executive Summary, Section 3

Section 3 states that BEREC recommends that the use of in-building physical infrastructure should generally remain free of charge for the building owner if he is the owner of the in-building physical infrastructure.
It remains unclear what use by the building owner is being referred to here and why BEREC sees a risk that the building owner would have to pay for in-house physical infrastructure even though they own it themselves. In our opinion, this is not clarified in the subsequent explanations either and therefore needs to be specified in more detail or, if no longer relevant, deleted.

Regarding the executive summary, section 4

Section 4 states that shared use would have an impact on the investments of the first provider and that fair and reasonable prices in such cases should not erode the reasonable advantage of the first provider.
Here, as in the following remarks, BEREC's view remains unclear as to what the advantage of the first mover is, on what grounds it should be maintained, and to what extent.

From 1&1's point of view, BEREC is therefore not sufficiently critical of the frequently put forward argument that the “first-mover advantage” must not be jeopardized, as otherwise no expansion would take place. However, this cannot be accepted for several reasons, as the premise itself is incorrect. As long as there is a need for secure and fast fiber optic in-house cabling and corresponding demand, it will be installed. Furthermore, it would be misleading if the protection of the first developer were to be at the expense of provider and product diversity and thus ultimately at the expense of competition and end customers.

The individually understandable desire of the initial builder for protection from competition must not become the benchmark for further fiber optic in-house expansion through the BEREC guidelines. This is because these guidelines would both slow down competitive economic development and ultimately be detrimental to the telecommunications regulation objectives listed in the EECC and GIA. Section 4 should therefore be amended or deleted accordingly.

Regarding the Executive Summary, section 5

Section 5 states that access to the physical infrastructure inside buildings should generally be free of charge, which 1&1 expressly welcomes.

However, we find the second half of the sentence unclear, which states that BEREC considers it better to consider access to the fiber optics themselves first, if available, so as not to hinder investment.
The type of access to the fiber optics referred to remains unclear. This could conceivably refer to access to dark fiber or bitstream, for example. In addition to the lack of clarity in these statements, we also consider it worthy of criticism that this would introduce a system of prioritization.
1&1, on the other hand, advocates that access options should generally be open and freely selectable by the access requester within the scope of suitability.

Regarding the Executive Summary, Section 8

Section 8 states that the resolution of a dispute within one month requires that the party requesting resolution provide all necessary information at the outset of the dispute.
1&1 also considers it necessary to resolve disputes as quickly as possible, but points out that practice and numerous proceedings before the dispute resolution body have shown that applicants often do not have all the relevant information at their disposal, but are dependent on further information from the access providers. However, such necessary information is often not available at all beforehand, is sometimes not provided upon request, is incomplete or inaccurate, and thus delays the access request, often unintentionally on the part of the access provider. It is therefore urgently necessary to place greater responsibility on access providers as the parties who naturally have all the information at their disposal.

Regarding 2.1 Definitions, paragraph 18

In section 18, BEREC states that it adopts all definitions contained in Article 2 of the EECC and Article 2 of the GIA.
1&1 welcomes this approach, as it ensures that consistent definitions are used and avoids difficulties in interpretation.

Regarding 2.2 Identification of boundaries regarding the in-building physical infrastructure, section 20

Section 20 states that, in accordance with Recital 49 of the GIA, the access point may be located inside or outside the multi-dwelling building. We agree with this, and it will also be reflected in the association's recommendation, which is currently being used in Germany to assist the BMDV/BMDS in implementing the requirements of Article 10(4) GIA.

Re 2.2 Identification of boundaries regarding the in-building physical infrastructure, sections 23 and 25

Section 23 states that accessibility generally requires an accessible and manageable distribution facility that enables a connection to be established between the access seeker's network and the existing physical infrastructure within the building.
We welcome these statements, as they are crucial for ensuring competition and diversity of providers and products.

The supplementary explicit reference in paragraph 25 is also important here, stating that all work relating to access to, and use of in-building physical infrastructure should be carried out in such a way that access for other potential operators is not unduly restricted. It would be welcome if the guideline did not stop at a recommendation here but made this a clear requirement.

Regarding 2.2 Identification of boundaries regarding the in-building physical infrastructure, section 26

We share the expectations outlined in section 26 that the obligations in Art. 10 (1) and (2) GIA are likely to increase the availability of fiber-optic-capable in-building infrastructures.

It remains unclear what is meant by the statement in the second sentence, according to which this could lead to changes in the usual ownership structures of in-building physical infrastructure. This is not discussed or explained further in the following. As in Germany, ownership issues are likely to be regulated by civil law in the other member states as well. In Germany, at least, the legal issues surrounding the ownership of installed infrastructure are partly disputed.

From 1&1's point of view, the only decisive factor in this matter is that the empty conduit infrastructure will remain free to use. It is important to avoid a situation where small “customs houses” are built on every apartment building in the future, thereby slowing down and preventing access and competition.

Regarding 2.4 Access to the in-building physical infrastructure, section 30

In section 30, the draft guidelines state that Member States may lay down detailed requirements for the administrative aspects of applications for access to in-house infrastructure. We agree with the aim of facilitating and simplifying the agreement of access conditions to existing physical infrastructure within a building. This could reduce conflicts in dispute resolution proceedings, some of which also concern formal procedural requirements.

It should be noted, however, that the access seeker naturally has less and less valid information at its disposal than the access provider. This information disadvantage often cannot be compensated for or made up for by information claims and requests and must

therefore not be borne by the access seeker. On the contrary, due to its information advantage, the access provider must be held to a much greater obligation to facilitate an agreement.

Regarding 2.4 Access to the in-building physical infrastructure, section 32

Section 32 recommends that Member States set internal milestones in connection with the access request procedure, “which should not exceed one month.” 1&1 welcomes this recommendation. These internal milestones allow the period between the access request and, if an agreement has not been reached or an offer has not even been submitted, to be structured as stringently and sensibly as possible. Otherwise, this period often passes without anything happening, without the parties coming any closer to granting access.

We would only suggest clarifying the draft guidelines by adding “in total” to make it clear that the overall duration of the procedure must not be extended:

> “… it is advisable to identify internal milestones related to the access request process, which should not last longer than one month in total.”

Regarding 2.5 Price related terms and conditions for access to the in-building physical infrastructure, sections 42, 43

We welcome BEREC's view in section 42 that access to infrastructure should be granted to all access seekers free of charge. As already mentioned, it is crucial for the complete rollout of fiber optic infrastructure to homes (FttH) that no additional and new barriers to access and fees arise, which would hinder the rollout not only economically, but also administratively and in practice.

At the end of section 43, the draft guidelines contain further comments on an exemption clause, according to which cost reimbursements may still be made “in very specific circumstances.” This contradicts the general concern and opinion expressed by BEREC in section 42, according to which access to in-house infrastructure should generally be free of charge, precisely because of the important expansion targets. Furthermore, it remains unclear what should be considered “very specific circumstances.” Such circumstances are neither specified nor identifiable.
We therefore advocate the deletion of these exceptions.

Regarding 2.5 Price related terms and conditions for access to the in-building physical infrastructure, section 48

Section 48 states that co-location using in-house infrastructure could have an impact on the investments made by the first provider. It goes on to say that in such cases, fair and reasonable prices “should not reduce or unduly deplete a first mover advantage.”

This “first mover advantage” is repeatedly cited in political discussions, with the argument that it is intended to protect investments. However, it is not investments that need protection, at least not in the sense of a regulatory guarantee of returns. The only thing that needs protection is competition, which is jeopardized by such efforts to guarantee returns for the “first mover.” Such protection, which is foreign to a free, competitive market economy, should therefore be rejected and should not be included in the guidelines.
We therefore advocate deleting this passage.

Regarding 2.8 Reasonableness, section 56

Section 56 letter a. sets out when the owner of in-building physical infrastructure may refuse access. It states:

> “the placement of VHCN elements in the in-building physical infrastructure is not possible for duly justified technical reasons, in particular due to the infrastructure obstruction, occupancy or reservation of the in-building physical infrastructure”

It is not clear what such technical reasons might be or what could be considered an obstruction of the infrastructure. It is completely unclear what the listed “reservation” refers to.

The following letters b. to e. list further grounds for refusal, which are based on the list of grounds for refusal for shared use. However, such grounds for refusal of access requests for in-house infrastructure are not provided for in the GIA and therefore may not be introduced via BEREC guidelines.

This applies in particular to letter e., which is not only unclear in its interpretation, but also gives rise to fears that it is intended to introduce a reason for rejection that would enable the infrastructure provider to reject the access applicant by referring to a bitstream offer. This would completely undermine the access to in-house infrastructure enshrined in the GIA.
The grounds for refusal listed in letters (a) to (e) should therefore be rejected in their entirety and deleted.

Regarding 3.2 Evaluated criteria to consider during the processing of dispute procedures, section 73

In paragraph 73, the draft guidelines set out principles for the dispute resolution procedure, such as any necessary extensions to the procedure due to a lack of sufficient information or the application of preclusion rules. These rules, which are familiar from national procedural regulations in administrative law, are also applied in Germany by the dispute resolution body of the Federal Network Agency (BK11).

Regarding 3.3 Aspects to be considered when taking a decision within the scope of Article 11 of the GIA?, section 78

Section 78 states: “It is not just the reasonableness for the respondent that needs to be checked, but rather the interests of the applicant must also be taken into account.”
As access seekers, we strongly support this. It is the only way to ensure provider and product diversity for the benefit of end users as the network continues to expand.

Regarding 3.4 Procedure to be followed in the handling of disputes, section 79

Section 79 of the draft guidelines states that “the possibility of an optional informal mechanism designed to aid in the dispute can be helpful to all parties involved...”. We understand this to mean that the time between the access request and the expiry of the deadline for submitting an offer should be used for negotiations. This is exactly what is planned in Germany and is also required by the dispute resolution body of the Federal Network Agency. We therefore welcome this approach.

Regarding 3.4 Procedure to be followed in the handling of disputes, sections 80, 81, 82

Sections 80 and 81 of the draft guidelines contain interesting proposals for improving the flow of information in the run-up to dispute resolution. We support these approaches for making the most efficient use of the tight deadlines. However, it is questionable whether they can be implemented in practice and whether the Federal Network Agency is willing to set up such a contact point for informal information gathering.

On the other hand, the high degree of formalization of the procedure described in section 82 could be counterproductive in terms of the completeness of the information, as any incompleteness could be to the detriment of the applicant. However, the applicant does not have all the information at its disposal, unlike the respondent and the access provider, which is only natural. The practice of dispute resolution procedures shows that it is only under massive pressure from the dispute resolution body that the necessary information is provided by the respondents and access providers. This is information that the applicants were unable to obtain despite consulting national registers and submitting requests for information.
We are therefore opposed to excessive formalization.

About Versatel

1&1 Versatel is a B2B-specialist for fiber gigabit connections and is one of the leading telecommunications providers of data, Internet and voice services in Germany. The company is part of the 1&1 group and a wholly owned subsidiary of the listed United Internet AG. With over 65,000 km length of line 1&1 Versatel operates one of the biggest and most powerful fiber networks in Germany - it is available in over 350 cities. Based on its powerful infrastructure, its wide product portfolio and the consistent focus on B2B customers, 1&1 Versatel offers solutions for customers of all sizes. 1&1 Versatel drives the nationwide expansion of the fiber network in Germany.

Contact

[redacted]
[redacted]@united-internet.de | [redacted]
Otto-Ostrowski-Straße 7, D- 10249 Berlin

[redacted]
[redacted]@1und1.net | [redacted]
Wanheimer Straße 90, D- 40468 Düsseldorf

[redacted]
[redacted]@1und1.net | +[redacted]
Wanheimer Straße 90, D- 40468 Düsseldorf

[redacted]
[redacted]@1und1.de | [redacted]
Rue de Trèves 49, B-1040 Brüssel

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