

Contribution by CETIN a.s. in public consultation on the
BEREC Guidelines on the coordination of civil works
according to Article 5 (6) of the Gigabit Infrastructure Act

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CETIN a.s. ("CETIN") is wholesale provider of fixed and mobile infrastructure services in the Czech Republic operating the country's largest infrastructure and largest fibre network. We welcome the opportunity to provide our comments on the draft Guidelines on the coordination of civil works according to Article 5 (6) of the Gigabit Infrastructure Act ("Guidelines").

On Section 2 – apportioning the costs associated with the coordination of civil works

The Guidelines are not very specific in regards to the apportioning of costs in two very different coordination scenarios: utility/ electronic communications network ("ECN") and ECN/ECN. Only a passing mention is given to this in paragraphs 32 and 33, while respective examples in Annex 1 do not differentiate between these scenarios at all. In effect, the Guidelines appear quite technically focused but missing the point that coordination of civil works in the ECN/ECN scenario may have significant effects on the business case for deployment. Further elaboration may be needed on which method is more suitable, generally, in which scenarios and what the effects of the chosen method may be on the first deployer's business case and the market.

In paragraph 34, the Guidelines refer to a situation involving state aid for civil works. Given that coordination is mandated under set conditions for publicly financed projects, this scenario is particularly important. It should be acknowledged that state aid programs involving civil works, incl. for instance subsidized ECN deployment programs, may contain the obligation to coordinate and detailed instructions on the apportioning of costs already. These are binding on the state aid beneficiary performing civil works.

Paragraph 34 also states that "it might be necessary to examine the apportionment of public aid, and its distribution among the parties." It is our understanding that state aid cannot be passed on / distributed to any other coordinating party as this would be both uneconomical from the point of view of the provider of the state aid, and potentially have market distorting effects outside of the approved (and notified, if applicable) state aid program. We deem appropriate that the apportioning of costs in a coordinated deployment is based on the full cost of the civil works (before state aid) and state aid may be claimed only for the part of costs actually borne by the beneficiary.

On section 3 – criteria that dispute settlement bodies should follow

Paragraph 41 asserts that the earlier information on planned civil works is available, the more coordination may be facilitated, and the number of disputes may be reduced. We contest this assertion as questionable. In our experience, the earlier in the timeline of a planned civil works, the less accuracy there is on their scope and actual realization. Less accurate information on planned civil works could potentially even increase the number of disputes.

In paragraph 63 and 70, seemingly contradictory guidelines are being given on when dispute proceedings may be initiated. Whereas paragraph 70 aims to ensure that all necessary information is provided upfront by the party submitting for a dispute before the dispute is

“received”, paragraph 63 acknowledges that the one month deadline may be extended if not all necessary information is submitted at the start. In our view, the dispute proceedings should not be initiated until the necessary information is collected from the party requesting coordination in order to avoid speculative submissions and delays on account of the dispute proceedings (which may trigger potential damages claim by the first deployer).

In paragraph 65, potential information to be requested is listed. We would like to emphasize that fact finding by the dispute resolution body should follow the principle of economy of proceedings and only information necessary for the decision should be requested. An example of unnecessary information is the amount of public funds employed in the civil works concerned. The obligation to coordinate stands irrespective of the amount and the actual amount may not be even known to the first deployer at the time (state aid may be refunded only after all expenses for the project are assessed).

We fully agree that the claimant should provide the specific evidence that the request is reasonable as stated in paragraph 73.

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