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To the attention of: Body of European Regulators for Electronic Communications (BEREC)

Subject: ASOTEM Contributions to the Public Consultation on BEREC's Draft Guidelines on the Coordination of Civil Works in accordance with Article 5(6) of the Gigabit Infrastructure Act.

Madrid, Spain – 10- 07 - 2025

The *Asociación de Operadores de Telecomunicaciones Empresariales* (hereinafter, ASOTEM) is a Spanish association registered on 22 May 2015 in the National Register of Associations, Section 1, No. 607,771. Its purpose is the representation, management, and defense of the rights and interests of its members as operators of telecommunications or electronic communications services, with the aim of pursuing common objectives, including:

"1) Participation in regulatory and competition matters: To promote a regulatory framework open to competition through concrete actions and proposals, particularly by acting against activities or behaviors that may restrict, hinder, or obstruct—either directly or indirectly—the effective competition in the markets in which the members operate."

The Gigabit Infrastructure Act (GIA), which entered into force on 11 May 2024, replaces the previous Broadband Cost Reduction Directive (BCRD) adopted in 2014. Its main objective is to facilitate and stimulate the efficient deployment of Very High Capacity Networks (VHCNs), enabling such infrastructure to be developed more swiftly and at a lower cost. This adoption responds to the growing need for faster, more reliable, and data-intensive connectivity, aligning with the EU's strategic Gigabit connectivity goals for 2030.

Article 5(6) of the GIA entrusts the Body of European Regulators for Electronic Communications (BEREC) with the task of preparing, by 12 November 2025, specific guidelines addressing three key aspects:
i) the criteria for the fair distribution of costs related to the coordination of civil works;

ii) the principles governing the actions of national dispute resolution bodies; and iii) the criteria to be applied to ensure sufficient infrastructure capacity to meet reasonable and foreseeable needs in cases where coordination of civil works is denied.

In this context, and within the framework of the public consultation process opened to gather input on the development of the guidelines provided for in Article 5(6) of the Gigabit Infrastructure Act (GIA), ASOTEM, acting within the established timeframe and procedures for submitting comments, hereby presents the following considerations and observations.

These comments aim to contribute to the development of a balanced, transparent, and technically robust regulatory framework that facilitates the effective coordination of civil works, fosters a competitive and open environment, and ensures equitable access to the physical infrastructure necessary for the deployment of Very High Capacity Networks (VHCNs).

3.1 Transparency and Oversight in Shared Costs

The rigorous and well-documented determination of common costs arising from coordinated civil works is a fundamental pillar for ensuring the economic and financial viability of VHCN deployments. It is also essential for preserving operational fairness among participating entities and promoting efficient use of shared physical infrastructure. In this context, BEREC's guidelines should not be limited to general guiding principles but must clearly establish binding regulatory obligations regarding transparency, cost traceability, and verification—especially in environments involving multiple operators with differing technical and financial capabilities.

ASOTEM considers it indispensable for the guidelines to make mandatory the detailed and documented breakdown of all components of the actual execution budget for coordinated civil works. This breakdown should include all technical cost items: trench opening and closing, installation of manholes and ducts, signage, machinery, waste management, technical supervision, health and safety coordination, administrative fees, building permits, technical studies, and any other indirect cost related to project planning, execution, or oversight. Each item must be justified with reasonable unit prices aligned with official construction cost databases, market indices, or reference tariffs used in public or private sectors.

As stated in the draft BEREC guidelines, shared costs may include not only those directly attributable to each operator, but also a more complex category of "shared or common costs" such as general construction costs, project management expenses, permits, site supervision, planning, transport, or documentation handling. These costs, which cannot be easily assigned directly, must be allocated using objective and traceable methodologies. In this regard, BEREC considers several technical allocation models, including equal sharing (50/50), proportional sharing based on installed or used capacity within the trench, hypothetical standalone cost (Shapley value), or distribution by cross-sectional area occupied. While this methodological flexibility may be useful in diverse contexts, its application must be based on verifiable criteria and cannot be unilaterally determined by one of the parties.

Therefore, ASOTEM proposes that all coordinated civil works projects be required to include a standardized "economic annex" in the technical project file. This annex should contain:

(i) a complete and detailed list of budget items;
(ii) the proposed cost-sharing formula, including its technical variables and quantitative justification;
(iii) allocation coefficients for each operator; and
(iv) comparative cost scenarios for individual vs. coordinated deployment.

This tool will allow for transparent ex ante evaluation by participating operators and will serve as a basis for validating the proportionality of costs before the competent authority.

Traceability should extend throughout the entire project lifecycle, requiring the promoter of the civil works to maintain and provide complete technical and accounting documentation: approved budgets, any modifications, actual measurements, final certifications, and settlements. This documentation must be accessible to both participating operators and supervisory or dispute resolution bodies (DRBs), with the possibility of external audits. In this respect, it is essential that the guidelines explicitly provide for cost control and review mechanisms in cases where there are indications of overbilling, disproportionate cost allocation, or the strategic use of coordination to impose unbalanced conditions.

In the event of a dispute between parties regarding the reasonableness or proportionality of shared costs, an economic-technical review procedure should be available. This procedure must have suspensive effect over the contested charges, provide a decision within a short period (not exceeding 30 days), and produce binding outcomes. The process must safeguard the interests of the affected operator, particularly in cases where the project promoter holds a dominant position or de facto control over the economic terms.

Ultimately, transparency in shared costs cannot be treated as a mere formal requirement—it is a structural condition for preserving effective competition in VHCN deployment, avoiding information asymmetries between actors, and ensuring that coordination—as a guiding principle of the GIA—results in tangible and verifiable benefits for all stakeholders within the digital ecosystem.

3.2 Future Capacity Reservation in Cases of Denied Coordination: Ensuring Potential Access and Deployment Continuity

Article 5(6)(c) of the Gigabit Infrastructure Act (GIA) expressly states that the guidelines to be developed by BEREC shall include:
"(...) criteria to ensure sufficient capacity to meet reasonably foreseeable future needs in cases where coordination of civil works is denied (...)".
This mandatory provision aims to ensure that exceptional situations in which coordination is not permitted do not compromise future access by other operators to the resulting physical infrastructure, nor create structural barriers to the efficient deployment of Very High Capacity Networks (VHCNs).

From a technical and public interest perspective, this obligation addresses a clear need: to maintain the scalability of deployed infrastructure, avoid unnecessary duplications, and preserve a competitive environment that remains open to reasonable third-party access. Installing additional passive capacity when coordination is not authorized not only optimizes the use of public space and reduces future costs, but also guarantees that the right of access remains available, even if it cannot be exercised simultaneously.

However, the current draft BEREC guidelines under consultation address this issue inadequately. Although Section 3.3 acknowledges that Member States may establish exceptions to coordination on grounds such as national security, protection of critical infrastructure, or the minor scale of the works, it fails to develop the operational criteria

required to comply with Article 5(6) of the GIA. In particular, no concrete obligation is established to provide for additional technical capacity, nor are there procedures specified to guarantee its availability and future access by third-party operators.

From ASOTEM's perspective, this omission may lead to a fragmented or incomplete interpretation of the European regulatory framework, with potentially harmful effects on competition, economic efficiency, and technological neutrality. Therefore, we consider it essential for the guidelines to incorporate the following binding measures:

a) Mandatory technical provision for additional capacity:
In any civil works project where coordination is justifiably denied, provision must be made for the installation of a minimum amount of surplus passive infrastructure—such as additional ducts, spare conduits, or oversized manholes—sufficient to meet reasonably foreseeable future needs of other operators. This obligation should be proportionate to the type, scope, and location of the project, as well as to local market conditions and the specific urban or rural environment.

b) Registration and traceability of reserved capacity:
All additional passive infrastructure installed for future use must be registered in the relevant Single Information Point, including exact location, technical specifications, available capacity, ownership, and access conditions. This information must be kept up to date and be accessible to all authorized operators, in accordance with the principles of transparency and non-discrimination established in Article 5(2) of the GIA: *"they shall meet any reasonable written request to coordinate those civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCNs or associated facilities."*

c) Future access under objective and verifiable conditions:
The guidelines must establish that reserved technical capacity shall be subject to access conditions that are objective, technically justified, and publicly available. Operators must be able to submit formal access requests, to which the infrastructure owner must respond within a reasonable timeframe. Denials should only be permitted on the basis of documented technical reasons. All such requests and responses should be subject to oversight by the national regulatory authority or, if applicable, to resolution by the Dispute Resolution Body (DRB).

d) Prevention of strategic use of exceptions:
It is essential for the guidelines to clarify that systematic recourse to coordination exceptions cannot be used as a mechanism to restrict access to infrastructure or to circumvent the obligations of third-party openness. National authorities must be granted powers to intervene where abusive or distortive use of such exceptional regimes is detected.

3.3 Strengthening Dispute Resolution Mechanisms

ASOTEM believes that one of the key elements to ensure the effectiveness of the civil works coordination model set out in Article 5 of the Gigabit Infrastructure Act (GIA) is the proper functioning of Dispute Resolution Bodies (DRBs). These bodies—typically national regulatory authorities or specialized units within them—are responsible for resolving conflicts that may arise between operators in relation to coordination obligations, access, or cost sharing within the framework of Very High Capacity Network (VHCN) deployments.

In this regard, we consider it a priority that the BEREC guidelines reinforce the structural impartiality, procedural efficiency, and technical capability of these bodies. It is essential that disputes do not become a source of operational blockage or an indirect pathway for consolidating dominance or unequal access. Therefore, we propose that a set of common principles and minimum operational standards be established at the European level for DRBs, regardless of the organizational structure adopted by each Member State.

Firstly, the guidelines should establish that DRBs operate in accordance with the principles of equal treatment, objectivity, and procedural fairness, ensuring that all parties—regardless of their size or operational capacity—can exercise their rights on equal footing throughout the process. In cases where there are evident disparities in technical, economic, or legal resources between parties, DRBs should implement, while respecting the principle of equality, procedural balancing measures to ensure that the process is not distorted by structural advantages. Such measures could include the proportional relaxation of certain formal requirements, deadlines, or documentation burdens, without altering the substance of the rights involved or granting undue privileges.

Secondly, the speed and efficiency of the dispute resolution procedure must be reinforced. As established in Article 13(1)(c) of the GIA, DRBs must issue a decision within a maximum of one month from the receipt of the complete documentation. To this end, the guidelines should include recommendations for streamlined case handling, based on objective technical criteria, without prejudice to the right of parties to present well-substantiated arguments.

Finally, ASOTEM emphasizes the importance of ensuring that DRB decisions are public, accessible, and standardized. Rulings should be properly reasoned, written in clear and technical language, and published on a centralized platform, preferably through the national single information point, with general consultation and reuse possible as precedent in similar cases. Furthermore, it is essential that such decisions be made available at least in the official languages of the relevant Member State, and in a format compatible with European interoperability standards.

Therefore,

WE REQUEST that the Body of European Regulators for Electronic Communications (BEREC) accept and admit this submission, and consider the present comments as formally submitted within the framework of the public consultation procedure on the draft Guidelines on the coordination of civil works in accordance with Article 5(6) of the Gigabit Infrastructure Act (GIA).

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President of ASOTEM

Firmado por ***8072** JUAN ARBERAS (R: ****1448*) el día 11/07/2025 con un certificado emitido por AC Representación