

Subject: Public consultation on the draft BEREC Guidelines on access to in-building infrastructure according to Art.11(6) of the Gigabit Infrastructure Act – contribution of Open Fiber S.p.A.

The purpose of this consultation is for Body of European Regulators for Electronic Communications (“BEREC”) to solicit feedback from stakeholder regarding the guidelines *“on the terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, and the criteria that the national dispute settlement bodies should follow when settling disputes”* that it had developed in response to the assignment received from the co-legislators pursuant to Article 11(6) of the Gigabit Infrastructure Act¹ (“GIA”).

Open Fiber S.p.A. (“OF”) supports GIA’s objective of enhancing the efficiency of the utilization of in-building physical infrastructure and eliminating technical and economical obstacles to facilitate effective access to network infrastructure.

For Open Fiber, it is crucial that the guidelines include explicitly defined terms. That is why OF is of the opinion that it is highly beneficial for the guidelines to clearly define each element of “physical infrastructure” such as *“any element of a network that is intended to host other elements of a network without becoming an active element of the network itself”*. In this manner, the definition is structured to include all the elements necessary for the network (e.g. junction boxes or aerial lead-in) as OF was expecting.

Following this, OF is pleased to note that BEREC has clarified the following points in the guidelines:

- i. on the one hand, BEREC has maintained that the use of the in-building physical infrastructure should typically remain free of charge if it is owned by the building owner. With the exception of very specific circumstances, in which Member State can decide to allow the costs must be determined in accordance with specific criteria and principles;
- ii. on the other hand, in the opinion of BEREC if the in-building physical infrastructure was installed and is owned by an electronic communication network operator (“ECN

¹ Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU.

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operator”) its access may be rewarded; however, any pricing should be fair and reasonable and supported by empirical evidence.

Furthermore, it is valuable that BEREC has prioritised the speed and transparency of the access dispute resolution process.

In any case, Open Fiber is of the opinion that this is an appropriate place to attempt to further clarify certain aspects that are crucial for the effective implementation of GIA’s objectives.

I. Access to the in-building physical infrastructure

According to the draft BEREC guidelines (**point 25**) *“any work regarding access to and the use of in-building physical infrastructure should be carried out in a manner which **does not unduly restrict access to other potential operators** wishing to access that infrastructure in the future, so as to prevent potential lock-in effects”*. In complying with the underlying principle that *“it is important that **existing in-building physical infrastructure is used where it is available**”* (**point 29**), BEREC considers that *“Member States may also apply under national law open access, which **allows the same physical network infrastructure to be used by multiple providers** delivering services to end-users, making the requirements for access to the physical infrastructure **unnecessary**”* and that *“the administrative aspects of the requests **should facilitate and simplify the agreement of access conditions to existing physical infrastructure within a building**”* (**point 30**).

In this regard OF proposes that the principles that should govern access to physical infrastructure be further clarified and unambiguous by ensuring that an ECN operator cannot prevent or condition access to pre-existing in-building physical infrastructure owned by the building owner, in accordance with the draft BEREC guidelines. No operator should have exclusive rights of access to the in-building infrastructure owned by the building owner. Furthermore, it should be specified that any past exclusive use of in-building spaces cannot be transformed into an exclusive right of access to the in-building infrastructure by an operator (typically the former incumbent) that limits access to another ECN operator. In particular, the access by a ECN operator to the vertical infrastructure of the building (i.e., where fibre cables run up to the individual apartments/end users) cannot be prevented or subject to more difficult/expensive conditions. For example this is something that we experienced in Italy in relation to the access to fiber optic “junction box” made by the former incumbent operator blocking other operators’ access to the vertical infrastructure. This is creating significant delay in the deployment and activation of new clients requiring FTTH connections.

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In this instance, it is imperative that the ECN operator grants access at no cost, as it does not fall within the case referred to in point ii. above.

This is in accordance with the aforementioned principle, where the use of the in-building physical infrastructure should typically remain free of charge if it is owned by the building owner and also in complying with the aim that “*networks can be rolled out faster and at a lower cost*”.

II. Removal of obsolete infrastructure elements or obsolete equipment

Given that “*access should be granted until the capacity of the in-building physical infrastructure is fully utilised, unless there are objective and provable reasons not to grant such access*” (**point 36**) and that “*where an ECN operator is the owner of the fibre-ready in-building physical infrastructure (i.e. an ECN operator has installed the infrastructure) or is the holder of a right to use that infrastructure, **other operators should have reasonable opportunities to access** it as long as there is sufficient space available*” (**point 37**), should be taken into account that network elements, such as obsolete cables that are occasionally no longer in use, can saturate the physical in-building infrastructure's capacity to facilitate multiple operator access.

In this particular circumstance, in the opinion of OF the provisions of GIA recital (53) (as referenced in **point 39** of the draft BEREC guidelines) should be implemented. Accordingly to GIA recital “*the undertakings providing, or authorised to provide, public electronic communications networks **should, to the extent possible, remove the elements of their network, such as obsolete cables, equipment, and restore the affected area upon termination of the contract with the subscriber***”.

OF finds it extremely beneficial that BEREC, in referencing recital (53) of GIA, addressed the “end-of-life” of network elements. Nevertheless, it would be appropriate to specify that the reference to “end-of-life” (**point 39**) should be declined in accordance with the two primary scenarios: **i)** at the user’s request for activation of a FTTH service; **ii)** during the cabling phase with a determination of infrastructure saturation.

It is also of extreme significance to specify that the removal of network elements that have reached “end-of-life” is made for free and in reasonable time (particularly when the owner of the in-building physical infrastructure is the building owner), in accordance with the principles that guided the drafting of these guidelines.

This would make the principles of access that were previously mentioned genuinely effective.

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We reaffirm our dedication to collaborating in order to achieve the objectives of GIA as outlined in the draft BEREC guidelines. It is our aspiration that OF's proposed clarifications will be incorporated.

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