

BREKO Position Paper on the BEREC Guidelines on the coordination of civil works according to Article 5(6) of the Gigabit Infrastructure Act

Article 5(6) of the Gigabit Infrastructure Act (GIA) mandates BEREC to develop Guidelines that support the effective implementation of civil works coordination across the EU. These Guidelines are intended to provide clarity on three key aspects: the apportioning of costs associated with coordination, the criteria for dispute resolution, and the conditions under which sufficient capacity must be ensured if coordination is refused. While the draft Guidelines offer a structured framework for these objectives, several practical and competitive concerns remain unaddressed. In the following position BREKO outlines critical challenges related to the operational feasibility of coordination, the risks posed by asymmetric market dynamics—particularly in the presence of Significant Market Power (SMP)—and the implications of early disclosure obligations in competitive environments.

Operational and Competitive Challenges of Civil Works Coordination

While the coordination of civil works is a key objective of the GIA, it must be acknowledged that such coordination is, in practice, often highly complex, time-consuming, and cost-intensive. This is particularly true when it involves operators from different sectors—such as energy and telecommunications—who typically follow divergent rollout strategies, planning cycles, and technical standards. Even within the same sector, coordination can be hindered by differing internal processes, supplier dependencies, and project management approaches. Nevertheless, it is worth noting that in constellations where a cooperation with utility providers or public sector bodies can be realized, no competition concerns arise. On the contrary, where coordination works effectively, it can generate synergies and support efficient network deployment.

As a result, coordination efforts can significantly slow down deployment timelines—especially in cases where civil works are subject to strict time constraints due to limited availability of construction resources, seasonal restrictions, or permit deadlines. In such contexts, the added complexity of aligning with another operator can jeopardize the timely execution of planned rollouts.

This challenge is further exacerbated by the dispute settlement mechanism foreseen in Article 13 of the GIA. While the regulation prescribes a one-month deadline for dispute resolution, experience from other dispute resolution processes shows that National Regulatory Authorities (NRAs) usually require significantly more time to process and resolve such cases. This discrepancy between regulatory ambition and administrative capacity introduces additional uncertainty and delay into deployment planning.

In addition, the obligation under Article 6 GIA to make information on planned civil works available up to six months in advance poses a serious risk in competitive markets. When an SMP operator is actively pursuing strategic overbuilds, early disclosure of project plans can lead to pre-emptive duplication and market foreclosure. This undermines the business case for smaller operators and distorts competition.

We therefore call on BEREC to acknowledge the operational burden and time sensitivity of civil works coordination, reassess the feasibility of the one-month dispute resolution deadline in light of NRA capacities and reevaluate the timing and scope of disclosure obligations in competitive markets.

Insufficient Consideration of SMP Risks in Telco-Telco Coordination

While Article 5 GIA was designed to facilitate the coordination of civil works between operators and owners of physical infrastructure—including utility companies and public sector bodies—the current draft of the BEREC Guidelines places disproportionate emphasis on coordination between telecommunications operators. This is evident in the detailed cost-sharing methodologies and trench-sharing formulas, which implicitly assume symmetric relationships between parties.

However, this framing overlooks a critical and increasingly relevant scenario: coordination between telecom operators where one party holds Significant Market Power (SMP). In such cases, the obligation to provide duct access or coordinate civil works can be strategically misused by the SMP operator to engage in network duplication destroying the first mover's business case, customer lock-in through long-term commitment models, and ultimately market foreclosure. These risks are not merely theoretical—they are already materializing in practice.

While the Guidelines rightly emphasize principles such as proportionality and fair cost distribution, they fall short in addressing the competitive imbalance that arises in asymmetric market constellations. The risk is not only financial but structural, threatening the viability of smaller operators and undermining infrastructure-based competition.

We therefore urge BEREC to reaffirm that the primary focus of Article 5 GIA should be on coordination with non-telecom infrastructure owners, explicitly address the competitive risks posed by SMP operators in telco-telco coordination scenarios and clarify that proportionality must be assessed not only in terms of physical infrastructure but also in light of market power and competitive dynamics. In order to also address this problem in case where a refusal of coordination of civil works is made, it should be clarified that a general Open Access offer is a sufficient alternative – not necessarily duct access.

Conclusion

To ensure that the GIA delivers on its intended goals without undermining competition or delaying deployment, BEREC must take a more nuanced approach in its Guidelines. This includes acknowledging the operational realities of coordination especially risks of strategic misuse by dominant market players and reassessing procedural timelines. Only by addressing these challenges can the Guidelines support a fair, efficient, and future-proof rollout of gigabit infrastructure across Europe.

BREKO is registered in the lobby register (R002215) for the representation of interests vis-à-vis the German Bundestag and the Federal Government and in the European transparency register (028570718529-43) for the representation of interests vis-à-vis the EU institutions.