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Vodafone Submission to BEREC Consultation on Draft Guidelines on Article 11 (6) of the GIA

We welcome the opportunity to contribute to BEREC's public consultation on its *Guidelines on the access to in-building infrastructure according to Article 11(6) of the Gigabit Infrastructure Act*. We appreciate BEREC's efforts to provide clarity and guidance on the implementation of Article 11, which is of significant importance for the development of competitive and future-proof digital infrastructure in Europe.

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Overall, BEREC's approach fits the to the challenges we experienced in our footprint when it comes to gigabit infrastructure (Vodafone operates in Czech Republic, Germany, Greece, Ireland, Netherlands, Portugal and Romania). However, we believe that certain aspects of the draft guidelines require further clarification and adjustment to fully achieve the objectives of the GIA and to ensure a balanced framework for all stakeholders.

Section two of the Guidelines on terms and conditions of access to in-building physical infrastructure, including the application of fair and reasonable terms and conditions, provides several recommendations which Vodafone generally supports. Where the in-building physical infrastructure is owned by an electronic communications network (ECN) operator, BEREC rightfully suggests that any pricing should be evidence-based, for example being based on invoices (sec. 2.5). However, Vodafone would like to stress that such co-use charges should provide incentives for deploying infrastructure – even for smaller ECN whose business case will typically be based co-use than and own use – without being prohibitive for access seekers.

BEREC considers that, where suitable, sharing fibre rather than in-building physical infrastructure can be good practice in many situations. Vodafone notes that in practice, bitstream as an active access product is and probably will be more relevant than access to dark fibre which in fact is preferrable to passive infrastructure access resulting in overbuilt in-house networks.

BEREC further considers that taking into account the obligations under Articles 10 (1) and (2) GIA changes in the usual ownership of the in-building physical infrastructure and wiring are to be expected (sec. 2.2). Vodafone underlines that the question of ownership is a matter of national law which is outside the regulatory scope of the GIA and will probably show different results in the different Member States.

BEREC notes that where the physical infrastructure was installed at cost and is owned by an ECN operator, this infrastructure will typically already host fibre wiring (sec. 2.5). Any co-deployment using that infrastructure could impact the investment made by the first mover. In such cases, fair and reasonable prices should not reduce or unduly deplete a first mover advantage. Vodafone welcomes this approach and considers it positive, as incentives for network expansion should be set in a way that can benefit different type of ECN operators and not only the incumbent.

As general note, Vodafone wants to highlight the large impact the GIA can have on competition and the absolute need that all gigabit networks are treated equally when GIA is implemented. In particular, upgraded DOCSIS/HFC networks are Gigabit-proof and thus able to deliver Gigabit connectivity within the meaning of the 2030 Digital Decade Targets. Competition should therefore not be curtailed. Consumers should be able to continue choosing different types of gigabit-capable broadband connections and it should therefore be ensured that the implementation of GIA provisions on in-building wiring do not affect competition from upgraded HFC/DOCSIS networks. We want to highlight the technology neutral implementation of technical specifications according to Art. 10 (4) GIA in Romania as positive example here. However, in these guidelines we miss an explicit reference to Recital 50 of the GIA and the right of building owners to equip the building with in-building wiring in addition to fibre. The principle of technology neutrality is a key element of the current regulatory framework and BEREC should in these guidelines expand on the option enshrined in recital 50 of the GIA by referring to existing use cases in some Member States.

Conclusion

In summary, Vodafone supports the general direction of the BEREC Guidelines on Article 11(6) GIA and welcomes the focus on fair, reasonable, and non-discriminatory access to in-building physical infrastructure. However, Vodafone emphasizes that co-use charges must incentivize investments without being prohibitive to access seekers, that active access products such as bitstream are of practical relevance, and that ownership issues will differ as they fall under national law. The approach to first mover advantage and cost recovery is positive and should be maintained to ensure continued incentives for network deployment.