

To BEREC

Via email [GIA\\_GL\\_art5@distro.berec.europa.eu](mailto:GIA_GL_art5@distro.berec.europa.eu)

Milan, 11 July 2025

Re: Consultation on BEREC Guidelines on access to in-building infrastructure according to Art.11(6) of the Gigabit Infrastructure Act.

DIGI Italy S.r.l. (herein also referred to as "Digi") is a company operating in the electronic communications sector, offering mobile and fixed ultra-broadband fibre optic network services. It is part of the DIGI Communications group, which has a significant presence in the European Union (particularly in Romania, Spain, Portugal and Italy). The company is developing and building its own infrastructure in Italy, installing FTTB/H fibre optic electronic communications networks and systems in order to provide related retail services.

Based on our experience, please find below our contribution and comment on the Draft BEREC Guidelines on access to in-building infrastructure according to Art.11(6) of the Gigabit Infrastructure Act (BoR (25) 84).

Comment to Parr. 28, 35, 36

In many cases the actual ownership of the physical infrastructure between the building owner and an ECN operator is unclear or uncertain. The ownership of the inbuilding infrastructure in favour of the building owner should be considered the default option when there is no proof the ECN operator is the owner.

## Comment to Parr. 37, 47, 48, 51, 52

In order to encourage investment and in the same time not discourage infrastructure competition, the application of the right of refusal due to the existence of available dark fibre should take into account (i) the age of civil infrastructure and its depreciation, (ii) the level of saturation and the level of return on investment already achieved by the ECN operator, (iii) the actual substitutability, both in technical terms and in terms of price, between on one hand the offer of dark fiber by the ECN operator owning the physical infrastructure and, on the other hand, the network segment that would be built by the access seeker.

On general terms, the right to refuse access based on the availability of dark fiber should be uphold only when is the ECN operator is owner of the fibre-ready in-building physical infrastructure and not when it's just a holder of a right to use that infrastructure (in par. 37 this is unclear).

Furthermore, when access concerns associated facilities within the building, such as corrugated conduits, which an ECN operator installed occupying the entire already existing physical infrastructure initially available in the building, it must be considered that the refusal to grant access to the physical infrastructure justified on the possibility of purchasing dark fibre would constitute a pre-emption activity not worth of protection in case there is space within the corrugated conduit.

## Comment to Par. 39

If a request for access is placed and the physical infrastructure is occupied by obsolete cables, the removal of the elements of network, such as obsolete cables or obsolete equipment, that have reached 'end of life' and restoration the affected area to its previous state should be considered a duty. Wording in par. 39 sounds too soft under this respect.

## Comment to Par. 84

As long as it is recognized by national law, the DSB should have the power to request documents and technical and factual clarifications and in general to gather from the parties the elements that are needed to assess the situation. Smaller players are often in a weaker position to obtain documentation and information in the absence of an order of the authority or without being able to call into discussion the possibility to request such an order.

DIGI ITALY S.R.L