Deutsche Glasfaser

BEREC-Guidelines on coordination of civil works according to Article 5(6) of GIA

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. We welcome the efforts to provide clarity and structure. As one of the largest FTTH operators rolling out FTTH in rural and suburban areas of Germany we recognise the importance of efficient, cost-effective network deployment. These guidelines are intended to enhance rollout speed, but may have unintended yet severe negative consequences on speed of deployment as well as corresponding investment incentives.

Coordination yielding delay

One important aspect of the sharing of civil infrastructures concerns an issue not elaborated in these guidelines. Co-ordination can cause significant delays in industrialized and process-oriented FTTH deployment schemes, either unintentionally or not. SMP operators may be able to use the coordination mechanisms to cause these delays with strategic intent.

It is our experience that where coordination of civil works is invited – especially in area-wide FTTH access network deployment, significant delays inevitably ensue. This is particularly so when operators from different sectors — such as energy, water, sewer or telecommunications are involved, as these operators follow divergent rollout strategies, planning cycles, and deployment standards (location and depth of infrastructure. The coordination expenses incurred can undermine deployment processes and timeframes and therefore the commercial rationale of such deployments in the first place. It needs to be emphasized that underground construction works have limited availabilities, strict deadlines, and a finite number of human resources. Any delay may lead to further delays in upcoming projects. In such an environment, the added complexity of aligning with another operator can jeopardize the timely execution of pre-planned deployments with severe knock-on effects on downstream projects.

A very focussed and streamlined dispute resolution process may mitigate these effects, but BEREC should also consider means to eliminate these delays or step away from too much coordination. There is a particular reason and experience to worry that SMP operators may misuse coordination provisions to delay or (threaten to) duplicate competitive deployments, thereby negating any first-mover advantages by private investment. The BEREC guidelines should provide a structured, principle-based approach to coordinating civil works for gigabit infrastructure, aiming to ensure fair cost-sharing, efficient dispute resolution, preservation of investment incentives for private investors and future-proof network capacity

Deutsche Glasfaser Holding GmbH
Kontakt: Am Kuhm 31, 46325 Borken · www.deutsche-glasfaser.de · Service-Nr. 02861 890 600
Geschäftsführer: Andreas Pfisterer, Anna Dimitrova, Pascal Koster, Christian Liversidge Duer, Ruben Queimano, Roman Schachtsiek
Sitz der Gesellschaft: Gronau **Amtsgericht:** Coesfeld HRB 14044 **USt-IdNr.** DE283703813
Bankverbindung: Landesbank Hessen-Thüringen Girozentrale · IBAN: DE76 5005 0000 1111 2220 95 · BIC: HELADEFF

Impact of SMP and Risks in Telco-to-Telco coordination

The current draft of places disproportionate emphasis on coordination between telecommunications operators. This is evident in the detailed cost-sharing methodologies and calculation formulas, which implicitly assume symmetric relationships between parties. BEREC emanates from the view that two telecommunications operators negotiate civil work coordination on a similar competitive level. In this context, BEREC misses the dynamic in a coordination situation, where an alternative fiber operator is the first mover and the SMP operator is second mover. Here, the chance of misuse of coordination rules on civil works is high, as the SMP operator could strategically delay or – threaten to - duplicate competitive deployments and negate any first-mover advantages by the altnet/private investor.
Such behavior will strengthen the position of the SMP operator in the market and neatly ties in with behaviour experienced in the German market (strategic (partly) FTTH overbuild resp. announcement of overbuild). If the SMP operator has – still on copper - a large retail customer base and wholesale customers locked-in through long-term commitment models, such threats are not only credible but also effective. Coordination measures furthering this behaviour by SMP operators with have negative consequences for private investment in fibre networks.

It is understandable that BEREC sees potential for cost reductions regarding construction works, but they fall short in addressing the competitive imbalance that arises in asymmetric market constellations. They have to be balanced against the impact of delays in tightly integrated construction processes.

In the same manner, we are quite concerned about the proposal to share planned civil works 6 months in advance. This is far removed from any practical experience in FTTH rollout scenarios. In addition, such a requirement will give other competing operators, especially the SMP operator, sufficient and timely information to pursue actions designed to negate first-mover advantages or to threaten with strategic deployment. BEREC ignores the fact that especially SMP operators may misuse the information to destroy the business case of the first mover by announcing their own rollout or delaying the altnet rollout by pursuing coordination (and therefore reducing the cost of its strategic overbuild strategy). When an SMP operator is actively pursuing strategic overbuilds, early disclosure of project plans can lead to pre-emptive announcement duplication and market foreclosure.

The primary focus of Article 5 GIA should be on coordination with non-telecom infrastructure owners. BEREC has to explicitly address the competitive risks posed by SMP operators in telco-to-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.

Dispute and Refusal

In case of conflicts, BEREC refers to dispute settlement processes as well as possibilities to refuse coordinated civil work.

Regarding the refusals, we have to acknowledge that BEREC is going too far. Refusals need to be in place to secure first movers the preservation of their business case and to secure that a SMP operator does not undermine future investments of altnets – specifically taking into

account the larger retail and wholesale market share. As the first mover usually has open access wholesale products available, even the SMP operator will easily be able to serve its remaining copper-based customers with new fibre products. From this point of view, it would be enough for BEREC to refer to availability of (active) wholesale access products with sufficient capacity.

Any requirement to deploy additional duct capacity or bears the problem of such investments, as the respective coordination seeker may withdraw from its request once the attempt to delay the original deployment failed. In addition, such additional capacity offers an inexpensive way for the SMP operator to duplicate the altnet access network and reduce the remaining penetration potential for the altnet. As this market scenario is real in Germany, all German altnets and their trade associations have fought to keep the possible recourse to an active wholesale product (bitstream) in the GIA.

The same problem occurs in the case of the definition of future needs in terms of the identified materiel concept. It must be avoided that network operators have to deploy massively over-dimensioned duct and fiber infrastructure in a certain area, which either reduces the commercial viability of the project itself through higher CAPEX or potentially lowers expected revenues.

Regarding dispute settlement processes, the time frame of one month seems indicate a desire to process the case quickly. However, our own experience in other dispute settlement procedures indicates that the NRAs need a lot longer to solve requests than prescribed by law. This discrepancy between regulatory ambition and administrative capacity introduces additional uncertainty and delay into deployment planning.

We therefore urge 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.

Coordination Orientation

We want to reiterate our view that BEREC should predominantly take a look to solve coordination request between network operators of different branches (energy, telco etc.) Although these coordinations have their own challenges, as mentioned above, such joint roll-out processes of different sectors seem to be less problematic, as no competitive problems should arise. In Telco-to-telco coordination, competition issues overshadow and negate any coordination benefits.

Conclusion

To ensure that GIA delivers on its intended goals without undermining competition or delaying deployment, BEREC must take a more nuanced approach in its interpretation of GIA. This includes acknowledging the operational realities of coordination, especially risks of strategic misuse by SMP operators and reassessing procedural timelines. Only by recognizing these difficulties can the guidelines support a fair, efficient, and future-proof rollout of FTTH infrastructure across Europe.