Connect Europe

Connect Europe's Response to BEREC's Draft Guidelines on GIA Article 5(6) and Article 11(6)

Introduction

Modernizing in-building networks with fiber optics is crucial for the digital and economic development of the EU. FTTH infrastructures can meet future connectivity needs because they significantly reduce the power consumption of telecommunications networks and offer not only future-proof downlink bandwidths but also high uplink bandwidths, high reliability as well as low latency and latency fluctuations.

1. **Guidance on access to infrastructure owned by non-operators helpful**

We would like to express our support for the differentiated approach adopted in the draft guidelines with regard to the ownership of in-building physical infrastructure. This distinction between ECN operators and non-ECN entities (e.g. building owners or managers) is both principled and practical. BEREC's recommendation that access to in-building infrastructure owned by non-ECN entities be provided **free of charge** is fully aligned with the overarching goals of the Gigabit Infrastructure Act: reducing deployment costs, accelerating VHCN rollout for operators.

We would like to highlight the key advantages of this approach:

- **Cost efficiency**: Free access to non-ECN owners eliminates unnecessary negotiation and transaction costs, accelerating time-to-market for broadband offers and reducing consumer prices.
- **Property value and benefit for tenants and buyers**: Fibre-ready buildings are more attractive to tenants and buyers. Access benefits not only network operators but also increases the digital readiness and economic potential of residential and commercial properties.
- We therefore strongly endorse BEREC's recommendation that free access by non-ECN owners remains the **default rule** and cost recovery by non-ECN owners be permitted only in **very limited, clearly defined circumstances**.

To preserve legal certainty and protect the integrity of the GIA's objectives, we propose the following refinements to the guidelines regarding when cost recovery may be permitted by non-ECN owners:

- **Limit cost recovery to proven and documented incremental costs**: Any allowed charges should reflect **actual, demonstrable costs** directly incurred in enabling access, excluding the investment into the infrastructure.
- **Benchmarks**: Where Member States choose to permit compensation, they should publish **benchmark prices** to avoid arbitrary charges and provide clarity to all parties.

2. **Approaches which help to foster faster agreements on access and faster dispute resolution highly appreciated**

We welcome the inclusion of an optional procedure prior to the initiation of formal dispute resolution and would like to offer the following observations and recommendations.

We **strongly support** the idea of a structured **optional conciliation or mediation phase**, as this may contribute meaningfully to:

- **Facilitating mutual understanding** between access seekers and holders of rights to in-building physical infrastructure.
- **Resolving disagreements at an early stage**, avoiding the need for formal legal intervention;

- Ensuring that all relevant facts and documents are available **before the start of formal proceedings**, improving the quality and speed of decisions when needed.
- The proposal that DSBs could act as **informal contact points** or facilitators during this pre-dispute phase—by clarifying procedures, gathering preliminary information, and helping define the issues—is particularly helpful. This guidance role can often de-escalate disagreements and promote **faster resolutions**.

While we recognise the value of such optional mechanisms, we also wish to **express a clear concern**: the optional pre-dispute procedure must **not become a vehicle for delaying dispute settlement**.

Specifically:

- **Timeliness is essential**: The GIA rightly sets out tight timelines (e.g. one month for dispute resolution) to reflect the urgency of VHCN rollout. Optional mechanisms must not undermine this by creating **unstructured or undefined pre-negotiation periods**.
- **Optional must remain truly optional**: Parties should never be **required** to engage in informal conciliation before initiating a formal dispute. If a party believes that negotiations have broken down, they should be entitled to proceed **without delay** to the formal dispute process.
- **Clear boundaries and expectations**: If informal pre-dispute steps are used, the **start and end** of this period should be clearly documented. Any time spent in the optional phase must not be used to **justify extensions to formal dispute timelines** unless explicitly agreed by both parties or clearly warranted under GIA Article 13(2).
- **Avoiding strategic misuse**: There should be **procedural safeguards** to prevent the misuse of informal steps to stall proceedings, such as unresponsiveness by one party under the guise of continued "dialogue."

To ensure that the optional procedure enhances rather than hinders the dispute resolution framework, we recommend:

- DSBs provide **clear guidance** on what optional mediation entails, including indicative time limits (e.g. 7–10 working days);
- A **fast-track route** to formal dispute resolution if the informal route proves unproductive or one party is uncooperative;