ecta RESPONSE

TO THE PUBLIC CONSULTATION BY THE EUROPEAN COMMISSION

ON THE

REVIEW OF THE BROADBAND COST REDUCTION DIRECTIVE

02 MARCH 2021

1. **In your opinion, to what extent can widespread high quality connectivity play a role in the response to the COVID-19 crisis and the economic recovery?**

   The COVID-19 crisis has underscored that high-quality (bidirectional) connectivity to homes, business premises, the public sector, antenna sites (including small cells), etc. is more essential than ever. It has also shown that quality (including uptime and repair times) of connections is increasingly of crucial importance, including for home schooling and home working, digitized businesses and organizations, etc. The increased need for connectivity for home schooling and working, and increased digitization of the economy and the public sector, will continue during and after the economic recovery.

   ecta represents challenger companies, which must innovate and invest to earn their place on markets which are typically dominated by incumbent electronic communications operators. Our members, active on business-to-consumer (B2C), business-to-business (B2B), and business-to-business-to-consumer (B2B2C) markets, are driving the development of an accessible Gigabit society, by offering more fit-for-purpose products and services, and better value for money. They stand for significant investments in very high capacity networks (hereafter 'VHCN'). Indeed, while the companies represented by ecta are comparatively smaller, the capex to revenue ratio of several of our major members has systematically been multiple of that of the incumbent electronic communications operators.

2. **To what extent is it appropriate to apply measures at European Union level to facilitate and incentivise the roll-out of high-speed electronic communications networks?**

   ecta considers that measures at the European Union level are necessary to facilitate and incentivize the roll-out of VHCNs, by all types of operators, in a pro-competitive manner.

   The review of the Broadband Cost Reduction Directive (hereafter 'BCRD') is one piece of the puzzle for further facilitating roll-out, given that, in many Member States, there are doubts that the BCRD has so far materially 'moved the needle' in terms of incentivizing roll-out.

   A reform is needed, to make the BCRD more fit-for-purpose, including by ensuring that challenger operators' serious concerns with the application of the BCRD are adequately addressed. ecta has tangible proposals for improving the BCRD and making it more consistent with the European Electronic Communications Code (hereafter 'EECC').

   All ecta members deploying networks readily agree that coordination of civil works (Article 5 of the BCRD), permits to build VHCNs (Article 7 of the BCRD), dispute-resolution (throughout BCRD) and information provision (throughout BCRD) are areas in which major improvement remains possible and necessary, and that only EU-level intervention will enable these processes to be properly streamlined and speeded-up. This is the case because nearly all Member States maintain a myriad of often local procedures, often lacking transparency, often requiring paper-based applications for permits, often requiring multiple (up to 7) different permits for the same project, often with uncertain and uncoordinated timelines and outcomes, which the BCRD has not harmonized. Indeed, a case

can be made to find that the BCRD has barely had harmonizing effect, and has created major legal uncertainty in several instances, notably where it comes to access to existing physical infrastructure (Article 3 of the BCRD) and related dispute resolution.

ecta takes the position that the focus areas in reviewing the BCRD should, first and foremost, be as follows:

a) Reducing administrative burdens placed upon network roll-out, by:

   i. specifying exemptions from permit-granting requirements;
   ii. improving permit-granting procedures and related rules (including the terms and conditions contained in permits);
   iii. instituting a unequivocal 'one-stop-shop' for permits (and preferably a single fully empowered authority) covering all legislation/regulation/authorities in a Member State that affect permitting for network roll-out (insofar as this speeds up and does not slow down permit granting);
   iv. reducing/removing fees levied by public authorities, and
   v. digitizing the entire information chain.

b) Promoting less costly deployment techniques for fixed and mobile/wireless networks, such as micro-trenching, façade build and antenna mounting (for both fixed and radio networks).

c) Making information about existing infrastructure, and long-term infrastructure renewal plans (including of public authorities and non-telecom utilities), readily available in databases, through functioning digitized Single Information Points.

d) Extending the access obligations to public authorities' land/buildings/infrastructure and to the associated bodies and companies controlled by public authorities.

e) Improving dispute-resolution procedures: ecta considers that the European Commission should issue procedural guidance on all steps of dispute-resolution proceedings, to ensure that it becomes an effective form of recourse in all Member States.

f) With regard to access obligations to the civil engineering infrastructure of electronic communications network operators, the revised text of the BCRD should ensure that its provisions in no case are implemented by Member States (in national legislation) or by national regulatory authorities (through market analysis proceedings) as a substitute for essential elements of the EECC. This could be achieved by making the BCRD's current Recital 12 more explicit, stipulating that the regime constituted by articles 63-74 of the EECC always prevails over the BCRD regime, thereby preventing inappropriate removal of the essential asymmetric

regulatory regime. Dispute-resolution proceedings conducted in application of the BCRD relating to electronic communications physical infrastructure (especially Articles 3(4) and 3(5) of the BCRD) should also explicitly be subject to the primacy of the provisions of articles 63-74 of the EECC over the BCRD.

More broadly, ecta wishes to emphasize that the European Commission, other EU institutions and Member States' governments should take into account that roll-out of VHCNs is not only a supply-driven matter, but that the demand side matters as well. Whilst market development over the past decade, and the COVID-19 crisis, have underscored that there is widespread customer demand for VHCN, and supply has increased considerably, policy should not be focused solely on incentivizing roll-out directly, or focused on incentivizing companies which hold Significant Market Power (hereafter 'SMP') through regulatory concessions, to the detriment of competition.

ecta is on record in stating that it is competition from newcomers and challengers that drives new network roll-out, by those newcomers and challengers investing directly themselves, and by the competitive impetus their investments create for incumbent electronic communications operators to respond to the challenges posed. The COVID-19 crisis has not changed this analysis, and ecta therefore calls upon the European Commission to espouse pro-competitive measures.

3. **In your opinion, what benefits could be obtained from the coordination of civil works for the joint deployment of networks (telecommunications, electricity, gas, roads)?**

ecta members report that coordination of civil works occurs in the field, but that: (i) smooth negotiation of agreements and execution of the works varies strongly depending on the parties involved, (ii) synergies with non-telecommunications civil works are often limited, and (iii) guaranteeing simple permit-granting procedures is critical for successful coordination of works (i.e. coordination should result in accelerating the commencement and execution works, not slow them down).

The main benefit is cost sharing. Such benefit clearly exists where it comes to coordination of the construction of electronic communications networks and roadworks (although roadworks are also a major cause of problems and costs, requiring frequent re-building of telecommunications ducts and cables, often at operators' costs). Cases of coordination with non-telecom utilities exist, but are often problematic.

Benefits from coordination of electronic communications construction works with utilities are difficult to achieve. Nevertheless, it is particularly important to ensure coordination, especially for the connection of new locations such as new buildings, new business parks, new build areas in cities and towns, mobile/wireless antenna sites for 5G, etc. where synergies can be achieved, since the same locations need fibre and electric power and other utility infrastructure. Synergies with non-telecom utilities are complicated by the fact that type/timeframes of deployment differ (e.g. size of areas built, depth of trenches, locations of trenches and building entries, etc., and because subsequent requirements for Service

Level Guarantees while the network is in operation differ. Both electronic communications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other.

ecta members are unanimous in finding that the most relevant civil works coordination scenario must be with the electronic communications network operator with SMP, followed by the less prevalent scenario in which multiple alternative telecommunications networks are being built (this occurs in particular in the geographical areas with the densest concentration of demand, including business districts in cities and in some business parks). These scenarios are where costs can effectively be shared. Cost apportionment agreements and procedures have often already been in place for these telecommunications-specific scenarios for decades prior to the BCRD.

4. **Besides public funding, what role should public administrations –at different levels– play to facilitate the deployment of electronic communications networks?**

First and foremost, public administrations at all levels, from the most local governmental entity, national regulatory authority or other competent authority, to the government, and indeed the European institutions, need to ensure that they avoid taking measures that (accidentally or intentionally) unduly favour particular companies over others, and especially the incumbent electronic communications operators over challenger operators. Attention is also needed to ensure that there is no discrimination in favour of government bodies that operate in the electronic communications sector, and state-owned and municipality-owned utility companies or equivalent organizations, which may be able to benefit from more favourable treatment, notably in terms of permit granting (e.g. tacit approval, approval outside any explicit legal framework, framework agreements).

Beyond that, it is clear from the perspective of ecta members that permit granting procedures (Article 7 of the BCRD) is the area in which there is the greatest necessity to make progress, because there remains a myriad of often local procedures, often lacking transparency, often requiring paper-based applications for permits, often with uncertain timelines and outcomes, which the BCRD has not harmonized.

In addition, several ecta members, operating in different Member States, report that they face not only telecom-specific permit requirements, but also other compliance and permitting obligations when they wish to deploy fixed or mobile networks. For example, with regard to mobile, in Poland, the construction of a mobile base station site involves permitting under: (i) civil construction law, (ii) environmental planning law, (iii) spatial planning law, (iv) telecommunications law, and (v) local spatial planning rules, which in some cases are non-compliant with national law. Those laws are administered by different authorities/bodies, which implies that – in practice – multiple permits must be obtained. Radio communications installations are also subject to environmental impact assessment procedures, public consultations, and Electromagnetic Field Compatibility requirements (in some cases at lower levels than recommended by the WHO and ICNIRP). Taken together, this means that there is a major administrative burden, which is only in part addressed by

the BCRD as it currently stands, because the BCRD does not readily cover the non-telecom permits which must also be obtained by operators wishing to roll out networks. There is a clear necessity for a revision of the BCRD in this regard, to require an unequivocal 'one-stop-shop' (and preferably a single fully empowered authority) covering all legislation/regulation/authorities in a Member State that affect permitting for network roll-out.

5. **To what extent has the Broadband Cost Reduction Directive been effective to achieve its general objective of reducing the cost for high-speed electronic communications networks deployment?**

Despite the BCRD having been transposed into national law (albeit often reluctantly on the part of national governments, and often poorly and belatedly), reliance on the provisions of the BCRD is quasi-non-existent in practice in many Member States where ecta members are active (irrespective of whether the BCRD transposition is faithful or not to the letter and spirit of the directive). More positive experience in Italy is discussed specifically below.

This does not necessarily mean that there are serious problems in those Member States, it tends rather to mean that the application of the BCRD has not materially 'moved the needle'.

This can be the case, for instance, because: (i) electronic communications network operators do not often seek access to non-telecom utilities' civil infrastructure given its limited suitability (including poor quality and difficulty to conduct repairs), (ii) they have the ability to access the most suitable infrastructure, that of the SMP operator, in application of a market analysis decision under the electronic communications framework, (iii) coordination of works and cost apportionment was already a well-established practice that did not need changing, and (iv) permitting rules were not materially modified, etc. In addition, application of the BCRD and the absence of sufficient guidance in the BCRD and in national transposition legislation has led to interpretation problems and major legal and regulatory uncertainty, notably as a result of the SMP operator demanding to gain access to the newly built civil infrastructure of challenger operators, and initiating related dispute-resolution proceedings. Germany is a case in point. Clearly, this is not the scenario the BCRD was originally conceived for; it was in the first instance a directive intended to facilitate access to non-telecom utility infrastructure and to reduce restrictions and fragmentation in permitting processes.

More generally, disputes in application of national transposition of the BCRD have led to major questions and soul-searching, lengthy proceedings, often exceeding the deadlines, and leaving remaining uncertainties, even after disputes were resolved.

Most problematically, some national regulatory authorities (e.g. in Denmark and Sweden) have decided to remove obligations for civil engineering infrastructure access previously imposed on the SMP operators via the market analysis procedure of the electronic communications framework, on account of the existence of the BCRD as transposed in the national law of their Member State. ecta considers this to represent worst-practice,

because the application of the BCRD in such Member States has resulted in undermining a solid ex-ante asymmetric regime, which consists of the imposition on operators found to have SMP, and results in clear obligations of cost-orientation, non-discrimination and transparency. The consequence of the actions of these national regulatory authorities was to replace this solid asymmetric regime by an – at best – ambivalent symmetric regime, in which wholesale access terms and conditions are unclear (due to the inferior standard of "fair and reasonable terms and conditions"), non-discrimination is not guaranteed (meaning that an operator can prefer itself, or prefer a specific third party, while discriminating others), and ex-post decisions can alter access terms and conditions in unpredictable ways.

Practical experience demonstrates that the removal of SMP-based regulation of electronic communications civil engineering infrastructure (asymmetric regulation) in some Member States, on account of the existence of measures transposing the BCRD in those Member States (symmetric regulation applicable without duly taking into account differences in market positions of operators) has failed in terms of promoting the deployment of VHCNs and as well in terms of reinforcing infrastructure competition. ecta therefore advocates that, where it concerns electronic communications civil engineering infrastructure, complementarity should be ensured between the SMP regime of the EECC and the BCRD regime. Specifically, the relevant market analyses in application of the EECC should be conducted by national regulatory authorities without a pre-conception that the BCRD regime would already have 'solved' civil engineering access restrictions. ecta's position is that, with regard to access obligations to the civil engineering infrastructure of electronic communications network operators, the revised text of the BCRD should ensure that its provisions in no case are implemented by Member States (in national legislation) or by national regulatory authorities (through market analysis proceedings) as a substitute for essential elements of the EECC. This could be achieved by making the BCRD's current Recital 12 more explicit, stipulating that the regime constituted by articles 63-74 of the EECC always prevails over the BCRD regime, thereby preventing inappropriate removal of the essential asymmetric regulatory regime.

6. To what extent has the Broadband Cost Reduction Directive been effective to achieve its operational objectives?

ecta wishes to emphasize that the tick boxes of the questionnaire should have distinguished between coordination of works and access to non-telecom utility infrastructure, which is often ill-suited, and coordination and access to telecom infrastructure (the infrastructure of the SMP operator being the most suitable, and already governed by the electronic communications framework).

Increased access to existing non-telecom utility infrastructure:

ecta considers it doubtful that the application of the BCRD has led to materially increased access to existing non-telecom utility civil infrastructure. There has been little access to such non-telecom utility infrastructure for VHCN roll-out, before and after the implementation

of the BCRD, because such infrastructure is often unsuitable for hosting electronic communications networks. Electricity networks are relevant, especially to connect new buildings/sites/masts, and may become more relevant in the future for fibre roll-out on poles in rural areas. Roadworks are relevant, but were already subject to coordination requirements in Member States well before the adoption of the BCRD.

Increased access to existing telecom infrastructure:

ecta highlights that access to existing telecom infrastructures in application of the BCRD has been in some specific cases problematic due to interpretation problems. ecta emphasizes that the application of the BCRD has in some instances worsened conditions for access to existing electronic communications civil engineering infrastructure and caused legal uncertainty on the conditions for access to such infrastructure by challenger operators. This is the case because:

(i) The BCRD's provisions on access to public communications networks (Article 2(1) and related) run parallel to provisions on access to civil engineering infrastructure in the electronic communications framework (now in the EECC), but they are very different. In specific instances, e.g. where the national regulatory authority took a decision to remove obligations on SMP operators on account of the presence of the BCRD regime, it directly replaced the detailed and specific ex-ante regime contained in the electronic communications framework with the unspecific and mostly ex-post regime of the BCRD. More generally, the existence of the BCRD regime entails risks of casting doubt over whether SMP-based regulation of civil engineering infrastructure will continue in the medium term. The advantage of the ex-ante asymmetric regulation regime is that it resulted in clear obligations on SMP operators who possess the most suitable civil engineering infrastructure to grant access to that infrastructure on cost-oriented, non-discriminatory and transparent terms and conditions – see also our response to Q5 above. The disadvantage of the BCRD regime is that it does not provide for clear terms and conditions, and is administered mostly on an ex-post basis through dispute resolutions, where the standard of 'fair and reasonable terms and conditions including on pricing' needs to be interpreted on a case-by-case basis.

(ii) The BCRD's provisions on access resulted in SMP operators in electronic communications misusing the BCRD regime to demand access to the newly built infrastructure of challenger operators, which is clearly not what the directive was intended for. Such access requests were in some cases intended to disrupt and undermine the business case of challenger operators, by SMP operators creating a threat of immediately over-building the fibre footprint of the challengers, possibly by utilizing the challenger's assets. A particularly disturbing phenomenon occurred where the SMP operators previously did not invest in fibre roll-out and even received State aid for modest upgrades of their copper-based networks, and then used the BCRD regime to seek access to challenger operators' new networks. In Germany, the legislator introduced a supplementary reason for refusing an access request in application of the BCRD's national transposition, precisely designed to cover the specific case of intended overbuild of a new network.

Note: In particular cases (e.g. Italy, Decree-law n° 33/2016) access to existing telecom infrastructure has improved as a result of the transposition of the BCRD, because measures have been carefully conceived as complementary with asymmetric obligations imposed on the SMP operator in electronic communications markets (rather than running in parallel or being duplicative as is the case elsewhere). As indicated below in this response, Italy has further improved its national legislation subsequent to the transposition of the BCRD, going beyond, notably on permitting-related matters including tacit approval and permit-granting timeframes. This deserves attention as it provides potential inspiration for the review of the BCRD.

Reinforced coordination of civil works with non-telecom utilities:

ecta considers it doubtful that coordination of construction works with non-telecom utilities has materially increased in application of the BCRD. This is notably the case because coordination with gas and water utilities is complicated, and it is unclear that material benefits can be achieved. In particular, gas and water utilities have different types/timeframes of deployment (e.g. size of areas built, depth of trenches, locations of trenches and building entries, etc.). Also, subsequent requirements for Service Level Guarantees while the network is in operation differ between electronic communications operators and non-telecoms utilities. Both electronic communications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other.

Reinforced coordination of civil works with other telecommunications operators:

ecta considers it doubtful that coordination of electronic communications construction works with other electronic communications operators has changed in application of the BCRD. Cost apportionment agreements and procedures have often already been in place for these scenarios for decades.

There are, however, some cases (e.g. Germany) where the implementation of the BCRD has led to new disputes and dispute-resolutions in this field. It is not likely that these have reinforced coordination of civil works to any significant extent so far.

Reduction of time and cost for permit granting:

As was indicated in response to Q5 above, reliance on the provisions of the BCRD is quasi-non-existent in practice in many Member States where ecta members are active (irrespective of whether the BCRD transposition being faithful or not to the letter and spirit of the directive). Permitting rules were not materially modified. More positive legislative developments in Italy on permit granting timeframes are discussed specifically hereunder.

ecta does wish to highlight recent positive legislative developments in Italy, which we briefly describe below, since it may provide useful inspiration for the review of the BCRD. Legislative Decree n. 33/2016, in combination with asymmetric ex-ante regulation which has remained fully in effect, has proven very useful: access obligations are addressed to all undertakings providing a physical infrastructure (including energy and other non-telecom utilities) and comprise all physical infrastructures' elements (ducts, masts, etc.). In

September 2020, the Italian Parliament passed an additional law containing simplification measures to boost the national economy by promoting the roll-out of new infrastructures (Legislative Decree n. 76/2020)[1].

The 2020 legislation covers issues such as digitalization of permit applications, green economy, environmental protection, ultra-broadband and the development of emerging technologies.

With particular regard to Ultra Broadband Networks (Article 38), measures introduced by the legislation aim to speed up works on network infrastructures, providing for simplified authorization procedures for excavation, installation and maintenance of fibre networks and radio-electric communication systems. These legislative measures modify the pre-existent version of the Italian National Electronic Communications Code (articles 86, 87, 88 …) and other laws on related issues (e.g. environment acts).

The following are the pillars of the 2020 legislation:

- Exemption from urbanistic rules in case of optical fibre network roll out;

- Self-certification of the operator in case of modification of radio-electric profile declared in the original authorization; the Administration should approve the modification within 30 days;

- Possibility to implement temporary mobile networks (e.g. in case of extraordinary events) for 120 days by submitting a simplified request to the local competent administration. Prior notice is limited to 30 days and "silent approval" applies. Possibility to derogate from the ordinary procedure where the activity of the temporary network is limited to 7 days (or less).

- The operator's application to obtain the authorization for excavation and civil works is now valid towards all the administrations involved ("single submission" mechanism) and the simplified approval system provided by art. 87bis of the Italian law (originally introduced for UMTS) applies. This simplified system is based on: i) submission of a simple declaration that the activity has started; ii) 30-days deadline for the Administration to express its opinion; iii) silent approval.

- The time needed to obtain the authorization to roll out a network on existing infrastructures is reduced to 8 days; the same time limit also applies when state property (included ports, etc.) crossing is involved.

Whilst fundamentally welcome and promising, unfortunately, the lack of streamlined and coordinated administrative procedures by local public administrations is slowing down and

[1] https://www.gazzettaufficiale.it/eli/id/2020/09/14/20A04921/sg

jeopardizing the concrete application of the new legislation. In rural areas, the permitting procedure for the deployment of ultra-broadband networks may still take 250 days on average, with 6 permits from different entities required. In the Rome-Capital area, the average may still be up to 120 days (but with cases exceeding 200 days), with 5 permits from different entities required. For mobile/wireless sites, permitting may still reach 210 days, with 7 different permits required.

It also needs to be pointed out that modifications to law-decree 33/2016 (transposition of the BCRD) introduced by law-decree 76/2020 – on simplified submission of cartographic documents and permits for road and sidewalk excavations – are having limited impact, notably because these rules have not tackled the weakest points of this legislation (especially lack of cooperation by utilities and lack of completeness of the infrastructure database).

7. **As regards the efficiency of the Broadband Cost Reduction Directive and its implementing measures, if you compare the costs of implementation and of compliance borne by your organisation with the benefits accrued, how do you rate the cost-benefit ratio at scale 1 to 5 (1=costs significantly exceed benefits, 5= benefits significantly exceed costs)?**

ecta takes a dim view of the efficiency of the BCRD, as is explained in responses to Q2-Q6 above. The BCRD does not appear to have appreciably 'moved the needle' in many Member States. For example, in terms of improving coordination of civil works (Article 5) and permit granting (Article 7), it has barely (with some promising exceptions such as Italy) changed the situation. For access to the civil infrastructure of non-telecom utilities (Article 3), fact is that this infrastructure is rarely suitable. Inadequate application of the BCRD has, in some cases, resulted in deterioration of the conditions for access to the relevant civil engineering infrastructure of the SMP operator under the electronic communications framework. In addition, it has led to unexpected access requests from the SMP operators in electronic communications to the newly built infrastructure of challenger operators, which surely was not the purpose of the directive. More generally, it has led to disputes with often unclear or unsatisfactory outcomes.

8. **Could you give an estimate of annual direct costs/savings for your organisation in applying the Broadband Cost Reduction Directive? Please indicate, if possible, the cause of these costs/savings.**

9. **As regards the relevance of the Broadband Cost Reduction Directive, to what extent has this legislation at EU level facilitated and incentivised the roll-out of electronic communications networks through the following means?**

ecta wishes to emphasize that the tick boxes of the questionnaire should have distinguished between coordination of works and access to non-telecom utility

infrastructure, which is often ill-suited, and coordination and access to telecom infrastructure (the infrastructure of the SMP operator being the most suitable, and already governed by the electronic communications framework). ecta also wishes to indicate that relevance can be qualified as positive or negative.

Overall, ecta takes a dim view of the relevance of the BCRD. It does not appear to have appreciably 'moved the needle' in many Member States (with some promising exceptions such as Italy), and where it did have relevance, it seems to have resulted in some cases in damage to the challenger operators represented by ecta.

The answer given to this Q9 is therefore 'neutral' or 'relevant/positive' or 'relevant/negative', depending notably on whether it concerns non-telecom utility infrastructure or electronic communications infrastructure, and giving an appreciation of the effects of the BCRD. Some points are clarified below. Further detail is contained in responses to Q2-Q7 above

Access to existing physical infrastructure and related transparency measures for non-telecom utility infrastructure:

Neutral: ecta considers it doubtful that the application of the BCRD has led to materially increased access to existing non-telecom utility civil infrastructure. There has been little access to utility infrastructure for VHCN roll-out, both before and after the implementation of the BCRD, because such infrastructure is often unsuitable.

Increased access to existing telecom infrastructure:

Neutral: ecta emphasizes that incorrect interpretation and application of the BCRD in some Member States (e.g. through market analyses conducted by national regulatory authorities) has worsened conditions for access to existing electronic communications civil engineering infrastructure in those Member States. This is the case because: (i) it duplicated and indeed undermined the ex-ante regime in place in application of the regulatory framework for electronic communications, and (ii) it resulted in SMP operators in electronic communications misusing the BCRD regime to demand access to the newly built infrastructure of challenger operators, which is clearly not what the directive was intended for. Remarks on the experience in Italy, with positive legislative developments, are provided above and below in this response.

Coordination of civil works with non-telecom utilities and related transparency:

Neutral: ecta considers it doubtful coordination of electronic communications construction works with non-telecom utilities has materially increased in application of the BCRD. This is notably the case because such coordination is complicated, and it is unclear that material benefits can be achieved.

Coordination of civil works with other telecommunications operators and related transparency:

Neutral: ecta considers it doubtful coordination of telecommunications construction works with other electronic communications operators has materially changed in application of

the BCRD. Such coordination was already well established before the entry into force of the BCRD.

Permit granting procedures:

Neutral: ecta considers that permitting rules were not materially modified in many Member States as a result of BCRD transposition.

In-building physical infrastructure and related access measures:

Relevant/Positive: ecta considers that some progress was made in ensuring that suitable in-building infrastructure became available, and it appears that access to in-building infrastructure is the subject of dispute-resolution proceedings resulting in access obligations placed on building owners. In Italy for example, the connection to in-building fibre wiring put in place by building owners remains a problem. This could be solved by requiring building owners to install ducts and letting operators deploy their fibre in these ducts themselves. More generally, further progress is clearly possible relating to in-building wiring.

Competent bodies and other horizontal provisions:

Relevant/Negative: ecta considers that the BCRD has in several cases resulted in increasing rather than reducing the number of authorities/bodies that operators have to interact with, and it is a rare exception to see one-stop-shop permitting put in place, resulting in a situation in which operators must interact with up to 7 different authorities to obtain a permit. For example, the Single Information Point, while in principle welcome, is in some cases operated by another entity than the national regulatory authority for electronic communications, and offers limited added informational value, thus adding a layer of complexity.

10. To what extent is the Broadband Cost Reduction Directive coherent with other EU policies?, in particular with:

The BCRD instituted a regime for access to electronic communications civil infrastructure which – in part – runs parallel with the useful provisions of the 2009 electronic communications framework (now replaced by the EECC), including Recommendation 2010/572/EU on Regulated Access to Next Generation Access Networks[2].

The 2009 framework was grounded in the notion that the position of SMP of electronic communications operators needs to be addressed by asymmetric regulatory obligations. In application thereof, national regulatory authorities were empowered to require SMP operators to open their civil engineering infrastructure to challenger operators, and the 2010 EC Recommendation correctly places emphasis on ensuring that operators designated with SMP provide access to their civil engineering infrastructure on an equivalence basis, and on cost-oriented and transparent terms including the requirement to publish a reference offer (Points 12-17 and Annexes I and II). This Recommendation also

[2] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:251:0035:0048:EN:PDF

provides for a requirement on SMP operators to install spare capacity and the creation of a database of available civil infrastructure and its technical characteristics and capacity.

ecta is of the view that the BCRD's access provisions were logically intended to be focused on non-telecom utility infrastructure, given that specific rules for civil engineering infrastructure access in electronic communications already existed. Instead, the BCRD instituted – in part– a parallel regime for the civil engineering infrastructure that underlies electronic communications networks, with lower standards in terms of the access obligation (including grounds for refusing access only subject to ex-post scrutiny), as regards the terms and conditions for access (with fair and reasonable pricing only subject to ex-post scrutiny), and which lacks non-discrimination obligations. Some Member States' national legislation failed to underline the complementary nature of the electronic communications and BCRD regimes, and some national regulatory authorities (e.g. in Denmark and Sweden) took decisions which led to the application of the 2009 framework being substituted in part by the BCRD, removing SMP obligations for civil engineering access on dominant operators. In these cases, this resulted in creating legal and regulatory uncertainty, and indeed in some cases clearly lowering the standard of regulation of dominant undertakings in the electronic communications sector. Given that the BCRD's access to civil infrastructure provisions enable access to be refused on the grounds of the availability of viable alternative means of wholesale physical network infrastructure (Article 3 (f) BCRD), legal and regulatory certainty was reduced in those Member States where symmetric (and mostly ex-post) symmetric regulation under the BCRD was not carefully articulated with asymmetric ex-ante regulation under the 2009 electronic communications framework. The 2018 EECC (which not yet been transposed by the overwhelming majority of Member States) entails risks, if not properly articulated in national transposition with the BCRD, of further exacerbating the situation, given that it creates potential carve-outs from the asymmetric regime, and adds a new symmetric regulatory regime (Article 61(3) EECC) for physical access to networks.

ecta's position is that, with regard to access obligations to the civil engineering infrastructure of electronic communications network operators, the revised text of the BCRD should ensure that its provisions in no case are implemented by Member States (in national legislation) or by national regulatory authorities (through market analysis proceedings) as a substitute for essential elements of the EECC. This could be achieved by making the BCRD's current Recital 12 more explicit, stipulating that the regime constituted by articles 63-74 of the EECC always prevails over the BCRD regime, thereby preventing inappropriate removal of one regulation in favour of another, which would be detrimental for infrastructure-based competition. Dispute-resolution proceedings conducted in application of the BCRD relating to electronic communications physical infrastructure (especially Articles 3(4) and 3(5) of the BCRD) should also explicitly be subject to the primacy of the provisions of articles 63-74 of the EECC over the BCRD.

Aside from this, there are definitional issues in need of being made coherent between the EECC and the BCRD. These are addressed further in this response.

11. As regards the EU added value of the Broadband Cost Reduction Directive, to what extent is the harmonisation brought by the Directive beneficial compared to individual national measures?

As is indicated above, ecta considers that BCRD has – at best – not materially 'moved the needle' in many Member States (although there are positive exceptions as for instance Italy), and – at worst – damaged the interests of some challenger electronic communications operators represented by ecta.

It has not eased doing business across the EU in any material way, and therefore has not resulted in economies of scale for companies with operations in multiple EU countries.

ecta also is of the view that it would be far-fetched to claim that administrative procedures have become simple and efficient in any Member State on account of the BCRD, even though there are relevant positive exceptions.

Regulatory stability and legal certainty has been reduced for challenger operators, in that they: (i) are less sure that they can access the civil engineering infrastructure of SMP operators in electronic communications on appropriate terms (ex-ante regulated access, cost-orientation, non-discrimination, and transparency in the form of a reference offer approved by the regulator containing technical specifications and wholesale charges), and (ii) face access requests in some Member States from the SMP operators to their newly-built infrastructure, which certainly was not the intention of the BCRD. It should also be noted that challenger operators do not have the same human and financial resources as the SMP operators to deal with access requests, especially requests from SMP operators intended to destabilize their business plans and threatening overbuild. The BCRD has in some cases turned the world on its head, creating opportunities for dominant undertakings to strengthen their position, rather than rendering network access more easy for all operators.

ecta takes the position that the focus areas in reviewing the BCRD should, first and foremost, be as follows:

g) Reducing administrative burdens placed upon network roll-out, by:

vi. specifying exemptions from permit-granting requirements;
vii. improving permit-granting procedures and related rules (including the terms and conditions contained in permits);
viii. instituting a unequivocal 'one-stop-shop' for permits (and preferably a single fully empowered authority) covering all legislation/regulation/authorities in a Member State that affect permitting for network roll-out (insofar as this speeds up and does not slow down permit granting);
ix. reducing/removing fees levied by public authorities, and
x. digitizing the entire information chain.

h) Promoting less costly deployment techniques for fixed and mobile/wireless networks, such as micro-trenching, façade build and antenna mounting (for both fixed and radio networks).

i) Making information about existing infrastructure, and long-term infrastructure renewal plans (including of public authorities and non-telecom utilities), readily available in databases, through functioning digitized Single Information Points.

j) Extending the access obligations to public authorities' land/buildings/infrastructure and to the associated bodies and companies controlled by public authorities.

k) Improving dispute-resolution procedures: ecta considers that the European Commission should issue procedural guidance on all steps of dispute-resolution proceedings, to ensure that it becomes an effective form of recourse in all Member States.

l) With regard to access obligations to the civil engineering infrastructure of electronic communications network operators, the revised text of the BCRD should ensure that its provisions in no case are implemented by Member States (in national legislation) or by national regulatory authorities (through market analysis proceedings) as a substitute for essential elements of the EECC. This could be achieved by making the BCRD's current Recital 12 more explicit, stipulating that the regime constituted by articles 63-74 of the EECC always prevails over the BCRD regime, thereby preventing inappropriate removal of the essential asymmetric regulatory regime. Dispute-resolution proceedings conducted in application of the BCRD relating to electronic communications physical infrastructure (especially Articles 3(4) and 3(5) of the BCRD) should also explicitly be subject to the primacy of the provisions of articles 63-74 of the EECC over the BCRD.

12. In your experience, to what extent do the following aspects influence the timely and efficient deployment of electronic communications networks?

Permit-granting procedures:

Very Significantly/Negatively: Permit granting procedures are the most important regulatory bottleneck to the timely and efficient roll-out of electronic communications networks (fixed and mobile). This concerns not only the procedures and timeframes for application and granting of permits, the number of different authorities from which permits must be obtained in parallel (see also our response to Q4 above), but also the type of works and installations permitted.

ecta considers that the BCRD review should enable and indeed require authorities to permit alternative deployment techniques (e.g. façade build, lesser depth build and micro-

trenching, etc.) and to make use of all public sector assets (e.g. municipal land, buildings and infrastructure). This is especially important to enable ubiquitous fibre and fixed wireless access roll-out.

Permit-granting fees:

Very Significantly/Negatively: Fees associated with permit granting (and related fees, for surveying, mapping, and re-construction/re-pavement) vary widely between and within Member States. There have also been cases in which municipal and other authorities ask for non-monetary contributions in the context of initiating permit-granting.

ecta considers that the BCRD review should require authorities to make permits free of charge where possible, and if not, subject to cost-based processes (i.e. only accounting for the time/resources engaged by the permit-granting authority). The same should apply for reconstructions/re-pavement ordered by, or performed on behalf of, the public authority. Also, where there are economies of scale and scope in permit-granting (e.g. when a group of related permits is necessary for a project), these economies should be reflected in any applicable permit-granting fees.

Information about on-going or planned civil works:

Significantly/Potentially Positively: If information on non-telecoms utilities' multi-annual infrastructure renewal plans were made available, it might be possible to coordinate plans and works more effectively with electronic communications network roll-out. Information about ongoing works is welcome but likely to only allow tactical decisions, not strategic planning of infrastructure roll-out.

Coordination of civil works and other co-investment or joint roll-out mechanisms:

Significantly/Potentially Positively: Coordination of civil works, when information is made available sufficiently in advance, can contribute positively, in terms of improving timeliness and efficiency. The same is valid for co-investment and other joint roll-out mechanisms in principle. However, ecta draws attention to the fact that operators do not have identical plans, in terms of geographical areas to be served, the types of customers to be served, etc. Policy-makers and regulators, at all levels, must ensure that the competitive dimension is not ignored or cast aside. All operators need to be enabled to participate, with respect of their scale and plans, in co-investment and joint roll-out. The review of the BCRD should not lead to favouring some operators over others.

Information about existing physical infrastructures and other elements and facilities suitable to install network elements (combined answer):

Significantly/Potentially Positively: ecta believes that there is significant progress to be made to address lack of information about existing infrastructure and facilities. There are Member States (e.g. Italy) where a single database has been created but its implementation is still in progress, and there are others where there are problems with the most important utilities and the SMP operator in electronic communications resisting the inclusion of their infrastructure (e.g. Austria and Greece). Electronic communications operators are hindered in their plans to access other networks' existing physical infrastructure because of the lack

of information regarding such available infrastructures. In Greece, for example, electronic communications operators are merely facing the cost of mapping and exporting data as per the specifications, without any return, since the national infrastructure registry still contains only details about the telecom infrastructure and not that of other network providers. It is thus essential to ensure that adequate mapping is available to third parties via a timely and complete registry of the existing infrastructures available.

In addition, it is clear that including information about other ('non-network') types of infrastructure and facilities, including buildings, is relevant for more timely and efficient roll-out of both fixed and wireless electronic communications networks. In particular for mobile and fixed-wireless access, access to land/buildings/infrastructure/facilities of public authorities could be a point for major improvement going forward. The review of the BCRD could be a vector of improvement in this regard.

Access to existing physical infrastructures of electronic communications networks:

Very Significantly/Positively (but not in application of the BCRD): It is clear that the civil engineering infrastructure of the SMP operators in electronic communications is the most relevant and most appropriate to access with a view to timely and efficient deployment. Indeed, it is often is the only suitable existing infrastructure. However, and as indicated above, such access is already governed by the regulatory framework for electronic communications. The review of the BCRD needs to restore a coherent regime for access to electronic communications civil engineering infrastructure, ensuring the complementarity of the EECC and the BCRD (see ecta's proposals outlined above).

Access to existing physical infrastructures of electricity supply networks:

Moderately Significantly/Positively: Electricity utilities are relevant, especially for the connection of new locations (e.g. new buildings, new business parks, new build areas in cities and towns, mobile/wireless antenna sites for 5G, etc.) where synergies can be achieved, since the same locations need fibre and electric power. Electricity networks may become more relevant in the future for fibre roll-out on poles in rural areas, and perhaps also for hosting wireless network equipment. Today, there is some use of electricity poles and related infrastructure in France, Portugal and Ireland, and there are concerns about the conditions (restrictions of number of cables) and pricing (wholesale charge structure) for such access. Progress on making access to electricity supply infrastructure more readily usable would be welcome.

Given that electricity last-mile networks are monopolies in all cases, ecta considers it appropriate that access to such networks would be granted on non-discriminatory and transparent terms and with a methodology to set access charges, taking inspiration from the regime applied to SMP operators in the electronic communications framework.

Access to existing physical infrastructures of other supply networks (e.g. water, heat, gas supply, sewerage):

Less Significantly/Positively: As is indicated above in response to Q6, water and gas supply networks are rarely suitable for electronic communications network roll-out, because of the

different characteristics of these networks, and different requirements in terms of Service Level Guarantees and repair procedures. Both electronic communications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other. There are rare cases in which sewerage networks are used to support electronic communications infrastructure. In Germany in particular, there are successful examples of this. Installation in sewage pipes may be the only option in inner cities, especially for gap closures and especially when the surfaces must not be damaged. In Paris, sewers (of unique size) are used to build city rings and connections to both business and residential buildings, but there have been serious concerns about the fees demanded by the municipal authority for placing and maintaining fibre in the sewers, there are requirements to use pre-approved contractors to work in the sewers, etc. ecta also urges caution about overly optimistic expectations of widespread use of sewerage networks to connect residential premises.

Given that all the non-telecom utility networks addressed by this point are monopolies (certainly in the access network segment), ecta considers it appropriate that access to such infrastructure would be granted on cost-oriented, non-discriminatory, and transparent terms, taking inspiration from the regime applied to SMP operators in the electronic communications framework.

Access to other elements and facilities suitable to install network elements:

Moderately Significantly/Positively: As is indicated above, ecta considers that the BCRD review should enable and indeed require authorities to permit alternative deployment techniques (e.g. façade build, lesser depth build and micro-trenching, etc.) and to make use of all public sector assets (e.g. municipal land, buildings and infrastructure). This is especially important to enable ubiquitous fibre and fixed wireless access roll-out.

Access to in-building physical infrastructures:

Very Significantly/Positively: ecta considers that access to in-building infrastructure is an absolute necessity for residential fibre roll-out, and is always a de-facto monopoly or duopoly, thus justifying access obligations, cost-orientation, and transparency.

The case of non-residential buildings deserves specific attention. Operators focused on business-to-business markets need to ensure business-grade Quality of Service on an end-to-end basis, and enter into Service Level Guarantees with their customers up to the point of delivery of their services, which often is a technical room in a non-residential building. Extending their own cables to this technical room is common practice, can be relatively inexpensive, and ensures Quality of Service. After the transposition of the BCRD, some operators have faced refusals from building owners to extend their networks to the technical room, and demands from building owners to pay fees for the use of (not always adequate) in-building cabling. This is considered a dysfunction of the regime instituted in application of the BCRD. Use of in-building cabling should be a right, but not an obligation, especially in case cabling to a technical room can readily be deployed without major disruption to the business demanding high-end connectivity.

13. **Do any of the aspects referred to in the previous question particularly affect deployment of networks depending on the type of area* or the access technologies**?. If so, please explain how and why?**

ecta's responses to Q12 above address the specificities of consumer (B2C) and business (B2B) markets, highlight aspects that relate specifically to fibre-rollout and fixed-wireless access, and mention alternative deployment techniques for fibre (façade build, lesser depth build and micro-trenching).

14. **Do you consider that any of the definitions in the current Directive should be reviewed and/or that additional definitions should be provided for to clarify concepts used in existing provisions? Please explain your response:**

Yes.

The term 'network operator' in Article 2(1) is too narrow, and is interpreted as excluding the land/buildings/non-network infrastructure of public authorities, and the bodies and companies they control. The BCRD should be broadened to encompass these important elements in order to promote roll-out of networks (both fixed and mobile). Therefore, the term 'network operator' should be removed.

Article 2(3) should be amended to bring it into line with the EECC, for instance its definition of 'very high capacity network' in its Article 2(2). There may be a case for using a more generic and technology-neutral definition given that the definition of 'very high capacity network' may become outdated over time, and it does not appear essential for the BCRD to refer to specific connectivity technologies/parameters.

15. **Do you consider that the current scope of the Broadband Cost Reduction Directive, – by reference to high-speed networks of above 30 Mbps- remains appropriate, in particular taking into account the 2025 Gigabit strategic connectivity objectives (Towards a European Gigabit Society - COM(2016)587) and the new objective of promoting connectivity and access to, and take-up of very high capacity networks in the European Electronic Communications Code? Please explain your response:**

No.

The reference to high-speed networks of above 30 Mbps is out of date.

The same will happen over time if the reference is changed '100 Mbps downlink speed upgradeable to Gigabit' (a target focused on downstream speed and internet-specific parameters) and if a reference to 5G is included, as 5G will, in time, be superseded by ulterior generations of mobile/wireless standards.

There may therefore be a case for not specifying specific connectivity speeds/parameters/technologies/standards in the BCRD, to avoid it becoming outdated over time.

16. Please provide an estimation of the percentage that costs linked to physical infrastructure represent in relation to the overall costs of deployment of fixed and mobile/wireless networks for your organisation.

17. With respect to access to existing physical infrastructure, to what extent have the following factors led to a more costly or lengthy network deployment?

ecta wishes to emphasize that the tick boxes of the questionnaire should have distinguished between: (i) access to existing physical infrastructure of non-telecom utility networks, (iii) access to existing public transport infrastructure, and (iii) access to the existing physical infrastructure of electronic communications networks. There would also have been a good case to include an additional point (iv) on access to land/buildings/infrastructure controlled by public authorities and bodies.

This response is structured in accordance with categories A to D that ecta puts forward.

A. Access to the existing physical infrastructure of non-telecom utility networks

Lack of availability of suitable physical infrastructure:

Very significantly: The infrastructure of non-telecom utilities, especially water and gas networks, is rarely suitable for the roll-out of electronic communications networks, because of the different characteristics of these networks, and different requirements in terms of Service Level Guarantees and repair procedures. Both telecommunications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other. Electric utilities are often reluctant to share infrastructure, invoking critical infrastructure security considerations, the load of cables on poles, etc. There are also concerns that electricity utilities are seeking excessive remuneration for access, whilst they are for all intents and purposes monopoly access networks. ecta considers that especially electricity utilities should be subject to access obligations, non-discrimination and transparency requirements, and a methodology to set access charges.

Lack of information on existing physical infrastructure:

Significantly: The multi-annual infrastructure renewal plans of non-telecom utilities are not readily available to potential access seekers. ecta considers that this could be remedied by more explicit provisions in a revised BCRD. There are also regular problems while constructing infrastructure resulting from inadequate documentation of non-telecom utility networks.

Difficulty to agree on terms and conditions of access with owner:

Significantly: The manner in which the BCRD has instituted the access regime encourages non-telecom utilities to first look for reasons to deny access (Article 3(3) of the BCRD), and then to come up with procedures and pricing approaches that discourage access. Their proposed procedures for maintenance and repair can be particularly problematic (e.g. giving priority to themselves and only allowing the electronic communications provider to start work when they have finished their own). As a consequence, the Quality of Service and Service Level Guarantees that electronic communications providers want to offer (and in some cases have to offer) cannot be met. Overall, the BCRD creates an environment in which non-telecom utilities can adopt a deny-delay-degrade approach, and ask fees that are not consistent with the business plans of electronic communications providers. It is therefore not a surprise that access to non-telecom utility networks is relatively rare. ecta considers that, given that most non-telecom utilities are essentially monopolies (certainly in the access network segment), explicit access obligations, non-discrimination and transparency requirements and a methodology to set access charges should be applied.

Slow/ineffective dispute-resolution process:

Significantly: Few authorities in charge of dispute-resolution between access seekers and non-telecom utilities have instituted dispute-resolution procedures that can be considered effective and timely. There are only a handful of Member States in which dispute-resolution proceedings can be considered to be effective, whereas in other Member States, dispute-resolution proceedings are inadequately framed procedurally, are subject to 'stop clock' moments which lead to 'start-stop-start-stop' proceedings that far exceed the expected timeframes. ecta considers that the European Commission should issue procedural guidance on all steps of dispute-resolution proceedings, to ensure that it becomes an effective form of recourse in all Member States.

B. Access to the existing transport infrastructure

Lack of availability of suitable physical infrastructure:

Moderately significantly: Transport services, including railways, roads, ports and airports, control relevant infrastructure for the deployment of electronic communications networks, but are particularly prone to withhold information and refuse access (see comments below).

Lack of information on existing physical infrastructure:

Significantly: The multi-annual infrastructure renewal plans of transport services are not readily available to potential access seekers. ecta considers that this could be remedied by more explicit provisions in a revised BCRD. There are also regular problems while constructing infrastructure resulting from inadequate documentation.

Difficulty to agree on terms and conditions of access with owner:

Significantly: The manner in which the BCRD has instituted the access regime encourages transport services, including railways, roads, ports and airports, to look for reasons to deny access (Article 3(3) of the BCRD). Some, such as large underground transport routes (tunnels, metros), and large campus sites (airports in particular), have sought to conclude

(sometimes) exclusive agreements with specific electronic communications operators against large remunerations, or have even created their own telecommunications operators to which they have sought to grant exclusive or special rights, or forms of preference, for the provision of electronic communications services on their sites (e.g. Aéroports de Paris, Schiphol Airport). This is particularly problematic where large campus sites are concerned, which house large buildings where multinational companies and organizations have established offices, warehouses and other logistics infrastructure, and cannot be (adequately) served by the operator of their choice. In some cases, the entities formed by, or appointed by, the transport organizations provide wholesale access to electronic communications service providers, but not on fit-for-purpose terms, and not at prices that reflect a competitive market. For example, they withhold access to civil engineering infrastructure and physical infrastructure, refuse to provide dark fibre, and require operators to take active managed transmission services. Similar problems occur with the site locations for mobile/wireless antennas and transmitters on the territory controlled by underground transport organizations, airport authorities, etc.

C. Access to the land/buildings/infrastructure controlled by public authorities/bodies

Land/buildings/infrastructure controlled by public authorities and bodies is in some cases deemed to be exempt from the provisions of the BCRD, sometimes resulting in situations similar to those described above, making roll-out of electronic communications networks more costly or lengthy, as terms need to be agreed without a regulatory backstop, access is (constructively) denied, and unreasonable terms and conditions are applied, including in terms of the pricing of access, and various forms of taxation.

ecta considers that the BCRD should be extended to explicitly cover all assets (land/buildings/infrastructure/other elements) controlled by public authorities and all bodies they control or exercise influence over, including municipal bodies and companies.

D. Access to the existing physical infrastructure of electronic communications networks

Lack of availability of suitable physical infrastructure:

Significantly: Whilst the civil engineering infrastructure of the SMP operators on electronic communications markets is generally widespread and constitutes the most suitable infrastructure for electronic communications network deployment (by themselves and by challenger operators obtaining access to it), it is not ubiquitous. Nevertheless, the provisions of the EECC should be fully applied, to ensure that SMP operators, in particular the incumbent telecommunications operators, are required to provide access, and do so effectively on cost-oriented, non-discriminatory (equivalence of input), and transparent terms (including the publication of a reference offer).

Lack of information on existing physical infrastructure:

Significantly: Despite regulatory intervention in application of the regulatory framework for electronic communications, there remain important information asymmetries between

the SMP operators and challenger operators seeking access to the civil engineering infrastructure of SMP operators. This arises especially due to poor quality of maps, poor documentation of duct capacity that is in use, and denial of equivalent access to databases of addresses/customer locations, resulting in faults in matching customer addresses with technical connection information, causing problems with installation and repair of fibre networks. In addition, some SMP operators use untransparent rules/processes to pre-fill ducts, or to reserve spare capacity for their future use, thereby denying challenger operators the ability to access civil engineering infrastructure on equivalent terms. Specific attention to these issues is necessary on the part of the European Commission in application of the EECC (e.g. through the review of the Access Recommendations) and on the part of national regulatory authorities (in market analysis decisions and in their follow-up).

Difficulty to agree on terms and conditions of access with owner:

Significantly: Despite regulatory intervention in application of the regulatory framework for electronic communications, there remain important cases in which SMP operators refuse (or constructively refuse) access to challenger operators. For example, ecta is aware that some of its members have been denied access on the basis of their intended use of civil engineering infrastructure access (e.g. to serve business customers, to realize mobile backhaul), on the grounds of alleged lack of spare capacity/reservation of capacity for future use, or on the basis that their requested volumes would be too small. Specific attention to these issues is necessary on the part of the European Commission in application of the EECC (e.g. through the review of the Access Recommendations) and on the part of national regulatory authorities (in market analysis decisions and in their follow-up).

Slow/ineffective dispute-resolution process:

Significantly: Challenger operators have had to resort to dispute-resolution, despite the existence of clear SMP-based regulatory obligations, simply to be able to exercise the rights stemming from the applicable regulatory framework and SMP obligations in electronic communications. There are only a handful of Member States in which dispute-resolution proceedings can be considered to be effective, whereas in other Member States, dispute-resolution proceedings are inadequately framed procedurally and are subject to 'stop clock' moments which lead to 'start-stop-start-stop' proceedings that far exceed the expected timeframes. Also, several national regulatory authorities discourage operators from engaging in dispute resolution proceedings. There are also cases where dispute-resolution is oriented towards finding a middle ground, which is often an unsatisfactory outcome for the challenger operator, as its demands are not met in full. ecta considers that the European Commission should issue procedural guidance on all steps of dispute resolution proceedings, to ensure that it becomes an effective form of recourse in all Member States.

Other:

Significantly: Complex ordering procedures for access to civil engineering infrastructure of SMP operators in electronic communications can result in effectively denying access. Penalties for errors in ordering procedures can dissuade access requests.

18. **Do you consider that the obligations to meet reasonable requests for access under fair and reasonable terms and conditions, including pricing (Article 3(2) of the Broadband Cost Reduction Directive), are appropriate to ensure effective and proportionate access to different types of existing physical infrastructure?**

ecta considers that the concept of "fair and reasonable terms and conditions" is insufficiently precise, and that it leads to complex disputes – which are resolved differently in different Member States, leading to unpredictable outcomes and dis-harmonization rather than harmonization.

Specifically as regards civil engineering infrastructure owned by electronic communications operators, ecta is of the view that the BCRD's access obligations, which are subject to "fair and reasonable terms and conditions", should never apply to electronic communications network providers found to hold SMP. This is the case because access to such networks is already more adequately governed by the electronic communications framework, in particular the obligations that can be placed on operators found to hold SMP to provide access to their civil engineering infrastructure on cost-oriented, non-discriminatory (equivalence of input) and transparent conditions, including the publication of a reference offer. ecta's position is that the review of the BCRD needs to restore a coherent regime for access to electronic communications civil engineering infrastructure. Our proposal is as follows: With regard to access obligations on electronic communications network operators, the EU-level legislation should ensure the complementarity of the EECC and the BCRD, in order to guarantee operators with the full range of accesses to civil infrastructures and avoid the removal of one regulation in favour of another, which would be detrimental for infrastructure-based competition.

Access obligations on providers of electronic communications networks should be limited in the BCRD to elements that are not available through the EECC.

As regards non-discrimination, the concept of "fair and reasonable terms and conditions" does not appear to require internal-external non-discrimination between the operator's self-supply, and the operator's provision of facilities and services to third parties. This is clearly inappropriate where it comes to regulating SMP operators in electronic communications.

With regard to pricing aspects, it is widely understood that the concept of "fair and reasonable terms and conditions" contained in the BCRD was intended to be more favourable to the access provider than a standard of cost-orientation, because the target of the BCRD was not the SMP operators in the electronic communications sector, which were understood to be subject to separate specific SMP-based ex-ante regulation. Thus, it is important that the concept of "fair and reasonable" terms should be preserved for non SMP

telecom operators and that cost orientation is applied only to SMP operators in electronic communications and to non-telecom utilities that are in a monopoly situation.

Experience with the BCRD is highly variable between Member States, has been a cause of major uncertainty, including for alternative operators investing in their own networks (incl. civil engineering infrastructure). Alternative operators, including recent investors in FttB/H, have been faced with access requests emanating from SMP operators, which was not the intent of the BCRD, with national regulatory authorities imposing cost-oriented access, despite the BCRD not actually requiring cost-orientation. Some national regulatory authorities (e.g. in Denmark and Sweden) have also lifted SMP regulation regarding civil engineering access on SMP operators. This was never the intention. Experience with the BCRD, especially in some Member States where it has not appropriately been rendered coherent with the electronic communications framework, has been that it is turning the world on its head, with obligations placed on challengers whilst weakening obligations placed on dominant operators, with very negative consequences for alternative operators, including those that massively invest in their own civil engineering infrastructure and other network elements.

Given that non-telecom utilities in most cases have monopoly control over their access network, it appears appropriate to subject them to access obligations, non-discrimination, cost-orientation and transparency requirements, reflecting their market positions.

19. **Has the principle of 'fair and reasonable terms and conditions' for access to physical infrastructure under Article 3 of the Broadband Cost Reduction Directive been applied effectively (with respect to the outcome) and efficiently (with respect to the time taken) by dispute resolution bodies?**

    As stated in response to Q18 above, ecta considers that the concept of "fair and reasonable terms and conditions" is insufficiently precise, and leads to complex disputes – which are resolved differently in different Member States, leading to unpredictable outcomes and dis-harmonization rather than harmonization. It is therefore neither effectively applied (with respect to the outcome) not efficiently applied (with regard to the time taken to resolve disputes).

    National rules and outcomes of dispute resolution proceedings have led to different pricing outcomes, in situations that are similar. Different costing methodologies are applied, etc. Disputes have often taken long to resolve, and the resolution of some disputes has remained incomplete. The procedures for dispute-resolution are not sufficiently clear in many Member States, and companies are hesitant to initiate dispute resolution proceedings, because the outcome thereof is highly unpredictable.

    ecta recommends that the national regulatory authority in charge of electronic communications should be the dispute-resolution body in all cases. ecta also suggests that the concept of "fair and reasonable terms and conditions" is preserved for non SMP

telecommunication operators only and that the EC provides operators with solid guidance on its interpretation at EU level.

20. **Do you consider that the criteria provided in Article 3 of the Broadband Cost Reduction Directive for refusing access to existing physical infrastructure are appropriate?**

Technical suitability:

Appropriate: Whilst this criterion is appropriate in principle, given that some non-telecom utility infrastructure will indeed be unsuitable to host electronic communications networks, EU-wide guidance is nevertheless needed to address suitable non-telecom utility infrastructure to avoid 'gaming' the system by utilities controlling suitable infrastructure.

Availability of space:

Appropriate: Whilst this criterion is appropriate in principle, experience in electronic communications markets has shown that SMP operators are reserving space for future use, or even pre-filling ducts with cables, to avert having to grant access to third parties. Challenger operators have found that there is lack of transparency regarding principles for reserving space, and pre-filling of ducts, which in practice amounts to benefiting the SMP operators. EU-wide guidelines are needed to achieve a common set of practices, that supports the objectives of the BCRD rather than defeats them. That being said, ecta reiterates its position that access obligations on providers of electronic communications networks should be limited in the BCRD to elements that are not available through the EECC.

Safety and public health concerns:

Neutral: Whilst it is possible that safety and public health concerns could be invoked, ecta is sceptical that such concerns cannot be removed by instituting adequate access and maintenance procedures. Nevertheless, attention is needed to ensure that such procedures do not amount to constructive refusal to supply.

Integrity and security:

Appropriate: Whilst this criterion is appropriate in principle, given that integrity and security is relevant for all infrastructure, and some infrastructure is critical, EU-wide guidance is needed to avoid 'gaming' the system, resulting in (constructive) refusal to supply.

Risk of serious interferences:

Neutral: Whilst it is possible that serious interferences could occur, ecta is sceptical that such concerns are valid for fibre-based networks in particular. A process of assessment, in which all parties are able to express their position, may be suitable to assess and address such risks.

Availability of alternative means:

No opinion: ecta elected to tick 'no opinion', because many factors are involved. Where the availability of alternative means is invoked, there should be an assessment of suitability in terms of timing of availability, Quality of Service including maintenance and repair, ability for the access taker to innovate and differentiate its services, pricing, etc. ecta has stated above that the most suitable civil infrastructure is that of the SMP operator in electronic communications, which is in many cases present, and in most cases is regulated.

21. **Based on your experience, how relevant have been the current provisions on high-speed-ready in-building physical infrastructure as provided in the Broadband Cost Reduction Directive in facilitating the deployment of electronic communications networks?**

ecta considers that access to in-building infrastructure is an absolute necessity for residential fibre roll-out, and that the provisions of the BCRD have proven useful in this regard, especially as they concern building owners.

The case of non-residential buildings deserves specific attention. Operators focused on business-to-business markets need to ensure business-grade Quality of Service on an end-to-end basis, and enter into Service Level Guarantees with their customers up to the point of delivery of their services, which often is a technical room in a non-residential building. Extending their own cables to this technical room is common practice, can be relatively inexpensive, and ensures Quality of Service. After the transposition of the BCRD, some operators have faced refusals from building owners to extend their networks to the technical room, and demands from building owners to pay fees for the use of (not always adequate) in-building cabling. This is considered a dysfunction of the regime instituted in application of the BCRD. Use of in-building cable should be a right, but not an obligation, especially in case cabling to a technical room can readily be deployed without major disruption to the business demanding high-end connectivity.

22. **To what extent would the availability and access to neutral host infrastructures* facilitate the deployment of electronic communications networks?. Please explain your response and whether neutral host infrastructures could particularly affect deployment of networks depending on the type of area (urban / suburban / rural, business parks, communication routes) or access technology (wired / wireless).**

ecta members are increasingly familiar with the concept of neutral host infrastructures, from managing mobile communications in large indoor locations (which has been the case for many years), and increasingly from mobile/wireless tower assets being run by independent companies. A recent development is that fibre assets are also being transferred and run by independent companies.

It is crucial to ensure that reliance upon neutral host infrastructures is a voluntary choice of the operators, irrespective of the location and geography, and not something forced upon them by regulatory or other means, which would likely lead to monopoly rents. Experience

with certain locations, e.g. underground metros and airport sites, raises serious concerns about abuse of exclusive and special rights, or undue preference (see also our response to Q17 above).

23. Please provide an estimation of the percentage that costs linked to physical infrastructure represent in relation to the overall costs of deployment of fixed and mobile/wireless networks for your organisation.

24. To what extent is it relevant for the deployment of electronic communications networks to coordinate civil works with the following types of networks?

Electronic communications networks:

Very Relevant: By far the most prevalent form of civil works coordination is with the SMP operator in the electronic communications sector. In second instance, it is with other providers of electronic communications networks. This is valid for both fixed and mobile/wireless networks.

Gas and water networks:

Less relevant: Benefits from coordination of telecommunications construction works with gas and water utilities are very difficult to achieve. This is the case because the type/timeframes of deployment differ (e.g. size of areas built, depth of trenches, locations of trenches and building entries, etc.), and because subsequent requirements for Service Level Guarantees while the network is in operation differ. Both telecommunications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other. Some coordination of civil works is evidently necessary in case of faults in gas and water networks that damage electronic communications networks.

There are some exceptions that are of interest, where portions of gas and water and electronic communications network backbones were subject to coordination of works for long stretches. See for example the so-called Leidingenstraat in The Netherlands, which hosts various infrastructures (gas, water, liquids, electronic communications), notably on the 75km stretch between the Ports of Rotterdam in The Netherlands and Antwerp in Belgium, but also elsewhere in The Netherlands: https://lsned.nl/de-toekomst-ligt-onder-ons/facts-figures/ In France and Germany as well, there have been cases of use of water evacuation/sewage networks, for example in Paris (which has uniquely large sewers which are used for city rings and for building accesses, even to residential buildings), and in larger German cities, where fibre for city rings was laid in sewers. It must be emphasized that all the use cases listed in this paragraph started well before the adoption and implementation of the BCRD.

Electricity networks:

Moderately relevant: Benefits from coordination of electronic communications construction works with electric utilities are difficult to achieve, especially in the access network. This is the case because the type/timeframes of deployment differ (e.g. size of areas built, depth of trenches, locations of trenches and building entries, etc., and because subsequent requirements for Service Level Guarantees while the network is in operation differ. Both telecommunications operators and utility companies are concerned about being held back in deployment and in repairing networks because of the presence of the other. It is possible that as mobile/wireless cells get smaller in the future, more opportunities and need for coordination may arise. Coordination of civil works is also evidently necessary in case of faults in electricity networks that damage electronic communications networks.

Heating networks:

Less relevant: Heating networks are not very prevalent in the EU. We have no experience with coordination of civil works with heating networks (neither build nor repair).

Transport networks:

Very relevant: Roadworks are definitely a case in point where coordination and joint construction occurs, also when operators of electronic communications networks have to re-route/re-build their networks as a result of roadworks, and have to do so in the same timeframe as non-telecom utilities. Whilst railway infrastructure is used, we are not aware of cases of coordination during the build phase; this is more a case of coordination when railway crossings need to be built, or when railway infrastructure is modified. As indicated above, underground metros and airports have in several cases proven problematic, with the relevant authorities and their companies seeking to keep all infrastructure development under their sole control or subject to exclusive and special rights granted to preferred parties.

25. Which factors (for example, mismatch of timing –planning and/or execution-, work techniques, interest in an area), have made coordination of civil works for the deployment of electronic communications networks difficult?

Please refer to our response to Q24 above, in the section on gas and water networks.

26. To what extent has the obligation to meet requests for coordination of civil works financed by public means been appropriate? Please explain your answer, including whether improvements could be made in regard to the apportioning of costs.

27. Do you consider that the obligation referred to in the previous question should be extended to civil works not financed by public means, or that new measures should be taken in regard to coordination of civil works, with a view to avoiding duplication ("dig once" principle), thereby increasing the efficiency of network deployment and reducing its environmental impact? Please explain your answer:

ecta considers that coordination of civil works is already a requirement in nearly all circumstances, and thus sees limited value in taking new measures at EU level in this regard.

It must be emphasized that coordination of civil works and a "dig once" principle are two entirely different matters, because "dig once" implies moratoria on civil works after works have been completed. ecta is concerned that imposing a "dig once" principle could result in hampering rather than promoting the roll-out of electronic communications networks, as operators may have to wait for a period of several years before being permitted to roll out the civil engineering infrastructure required to deploy the best quality networks.

28. In your opinion, to what extent would the availability, through the single information point, of constantly updated information concerning the elements listed in the table be relevant to facilitate network deployment?

Ideally, information on all elements listed should eventually be accessible through a genuine Single Information Point (hereafter 'SIP').

ecta places emphasis on three points:

(i) There is a need for multi-annual infrastructure renewal plans of non-telecom utilities and public authorities to become much more available, for example through SIPs covering entire Member States.

(ii) One of the most useful enhancements of the BRCD would be to unequivocally make land/buildings/infrastructure belonging to public authorities and the bodies/organizations/companies they control subject to information, coordination and access requirements.

(iii) The situation of underground metros, other tunnels, and especially airport sites deserves particular scrutiny, as ecta members have faced difficulties obtaining information, been refused authorizations to construct their own infrastructure, been refused access or faced unreasonable terms and conditions for access to civil infrastructure and even dark fibre in those locations.

29. What minimum information concerning physical infrastructures should be available to operators seeking to deploy electronic communications networks, beyond that specified in Article 4(1) of the Broadband Cost Reduction Directive? You can select multiple answers.

ecta considers both georeferenced information and information on spare capacity to be eminently relevant.

Experience in electronic communications markets has shown that SMP operators are reserving space for future use, or even pre-filling ducts with cables, to avert having to grant access to third parties. Challenger operators have found that there is lack of transparency

regarding principles for reserving space, and pre-filling of ducts, which in practice amounts to benefiting the SMP operators. EU-wide guidelines are needed to achieve a common set of practices, that supports the objectives of the BCRD rather than defeats them.

Furthermore, in some Member States, such as Italy, in addition to the problems related to the permit granting procedure necessary to obtain central and local administrative authorizations, there is also the difficulty of finding available sites to install the network due to the limits on electromagnetic emissions (which are lower in Italy (6 V/m vs 61 V/m) than in all other European countries and without any differentiation among frequency bands). In this regard it could be justified to modify Article 4 of the BCRD - *Transparency concerning physical infrastructure*, introducing the obligation for Member States to require public sector bodies to make available information concerning EMF levels for the sites present within the territory they administer (e.g. saturation levels). This information should be made available to operators via the single information point or through the introduction of a registry indicating the critical sites where the limits of electromagnetic emissions are exceeded (or are close to being exceeded) and those sites that are still available.

30. What would be, in your opinion, the best mechanism for ensuring the most appropriate and efficient access to relevant information regarding existing physical infrastructure and planned civil works?

Ideally, information on all planned civil works (including multi-annual infrastructure renewal plans, planned reconstructions of roads and other infrastructures and information on spare capacities in networks) and on all available infrastructure, should eventually be accessible through a genuine SIP.

31. In your opinion, how could the different administrative levels in a Member State (national, regional, local) collaborate to maximise transparency as regards information on existing physical infrastructures and planned civil works (for example, providing a common platform, defining standards, collecting and validating information)?

Through the creation of a single, common IT platform, with Application Programming Interfaces, enabling the upload of information, updating information, and the viewing/download of information.

32. To what extent do the following factors affect the complexity and length of permit-granting procedures to deploy or upgrade electronic communications networks?

The answer to each of these points is Very Significantly.

ecta members have faced all of these factors negatively affecting the complexity and length of permit-granting procedures.

Permit granting procedures are the most important regulatory bottleneck to the timely and efficient roll-out of electronic communications networks (fixed and mobile). This concerns not only the procedures and timeframes for application and granting of permits, the number of different authorities from which permits must be obtained in parallel (see also our response to Q4 above), but also the type of works and installations permitted.

For the category 'Other', ecta raises the topic of fees associated with permit granting. These fees (and related fees, for surveying, mapping, and re-construction/re-pavement) vary widely between and within Member States. There have also been cases in which municipal and other authorities ask for non-monetary contributions in the context of initiating permit-granting.

ecta considers that the BCRD review should require authorities to make permits free of charge if possible, and if not, subject to cost-based processes (i.e. only accounting for the time/resources engaged by the permit-granting authority). The same should apply for costs of reconstructions/re-pavement levied by public authorities. In The Netherlands, the permitting fees are already required to be cost based. However, for deploying to a typical B2B customer premises (125m of new build) the permitting fee applied by municipalities between EUR 42 and EUR 1842, just for delivering the permit[3]. Also, where there are economies of scale and scope in permit-granting (e.g. when a group of related permits is necessary for a project), these economies should be reflected in any applicable permit-granting fees.

33. To what extent would the following measures streamline the procedures to grant the necessary permits to roll-out electronic communications networks?

The answer to each of these points is Very Significantly.

ecta members consider all of these factors as potential very significant improvements to the permit-granting procedures.

Allowing operators to submit applications by electronic means is common practice in several Member States, and should be generalized.

A single entry point (one stop shop) is welcome in principle, but it needs to be ensured that it does not result in materially slowing down permit-granting procedures.

Achieving an integrated permit granting procedure that encompasses all different procedures of each of the competent authorities involved, is of utmost importance. As indicated in response to Q4, the need to file for multiple permits, with different authorities, which have different and sometimes conflicting positions and do not coordinate among each-other, is a major problem that needs to be resolved once and for all. ecta considers

[3] https://www.rijksoverheid.nl/documenten/rapporten/2018/03/09/inventarisatie-gemeentelijk-beleid-telecomnetwerken

that a revised BCRD must thus go beyond harmonizing rules for the permits that are specific to electronic communications, and encompass all associated permits required from operators.

Centralization of the competence for all permits in one authority in a Member State seems difficult to imagine at this stage, but – if it were realistic – it would be welcome. ecta understands from the European Commission's workshop on the review of the BCRD that one Member State has achieved it. It would be useful to better understand how this was achieved, and how satisfactory the outcome is from the operator perspective.

ecta also considers that there is a good case for harmonizing the contents of permits as well as the permit-granting procedures at Member State level and indeed at EU level. A permit should be a limitative objective set of terms, which need not differ from municipality to municipality and indeed not from country to country, apart from references to the applicable legislation. The European Commission could envisage issuing Guidelines, or a template, setting out the contents of a permit, and the procedural steps for permit granting. ecta recognizes that there will be special cases, e.g. for specific environmental situations, cultural monuments, etc. but these are objectifiable cases, which need not be left entirely to case-by-case determination by local authorities.

By way of example, on 22 December 1997, the French Ministère de l'équipement, des transports et du logement issued a 'Circular Letter' to all Prefects, setting out the terms and conditions for rights-of-way permits for telecommunications networks, mentioning various types of infrastructure, sharing rules, etc. Subsequently, a cap was placed on the fees authorities are entitled to levy for use of the public domain, again distinguishing various types of public domain. Whilst this has now largely been superseded, the notion that a ministry or other authority can issue binding guidance on how municipalities and other public bodies deal with permit applications, represents worthwhile good practice, that could inform the review of the BCRD.

34. Would simplified permit procedures (such as no need to obtain a permit or permit exemption, tacit approval in the event that a certain deadline is exceeded, prior-communication accompanied by ex-post verifications only, etc) be appropriate to facilitate certain types of network deployment (e.g. technological upgrades, low impact installations, etc)?

Yes.

ecta explicitly welcomes each of the forms of simplification suggested. There is an opportunity for a revised BCRD to specify in which cases there is no objectively justified need for permit-granting (no need to obtain a permit, or permit exemption), and tacit approval is appropriate in the event that a deadline is exceeded. One could add (as suggested in the EC Workshop on the review of the BCRD), that if an authority does not react to a permit application within X working days with requests for clarification or additions to the request, the information supplied is deemed to be complete.

The revised BCRD or an Annex could contain a list of circumstances in which the exemptions must be applied, unless justified arguments apply to the contrary (justifications to be provided in writing by the permit-granting authority).

The provisions of Article 57 EECC on deployment and operation of small-area wireless access points could serve as inspiration for the revised BCRD explicitly exempting minor works, antenna upgrades, low-impact new installations, individual building connections, etc. from any individual town planning permit or other individual prior permits. The European Commission could, by means of implementing acts, specify the physical and technical characteristics of works/installations to be exempted.

In a similar vein, the revised BCRD could conceivably incorporate provisions on Electromagnetic Field Radiation (EMF), for instance to align EMF limits applied at national level on WHO and ICNIRP (International Commission on Non-Ionising Radiation Protection) limits.

Moreover, in some Member States, an additional environmental impact assessment procedure based on Directive 2011/92 is imposed on the masts, further delaying the granting of permits. When revising the BCRD, the European Commission should look at this aspect so that harmonization of the timing of permit granting becomes genuinely effective.

35. In your view, are there specific obstacles to the joint roll-out of electronic communications networks and to different forms of network sharing (e.g. sharing of passive or active elements of a network)?

Whether roll-out is individual or joint (e.g. sharing of passive or active elements or the subject of co-investment agreements) should not influence the permit-granting procedures or exemptions.

ecta draws attention to the fact that operators do not have identical plans, in terms of geographical areas to be served, the types of customers to be served, etc. and that joint roll-out and/or co-investment may be possible for some operators, but not for others. Policy-makers and regulators, at all levels, must ensure that the competitive dimension is not cast aside. The permit-granting procedures should not be used to favour some forms of roll-out over others.

36. Do you consider that the deployment and/or operation of electronic communications networks can have a negative impact on the environment, in particular due to emissions of CO2 and other greenhouse gases?

The impact is moderately significant, is being mitigated, and needs to be seen in conjunction with the positive contribution that electronic communications is making to greening the economy, the public sector, and the European society at large.

Please also refer to our response to Q37 below.

37. What are the factors that determine the environmental impact resulting from the deployment of electronic communications networks?

The electronic communications sector is conscious of the CO2 impact of its activities. Energy consumption is an important cost for all network operators and service providers, therefore all operators have an interest to minimize it. Some network topologies and deployment techniques can help reduce energy consumption and improve efficiency, of the network itself, and of equipment connected to it.

As regards fixed networks, the transition from copper to fibre will in particular reduce consumption in the connectivity part of the network. To take advantage of the energy savings made possible by fibre, the transition needs to be organized in a manner which fully involves all operators, i.e. both the network owner and operators taking wholesale access, on a fully non-discriminatory basis, subject to direct supervision by the national regulatory authority. Once a non-discriminatory transition path is established and agreed, switch-off of the copper network becomes justified, and will avoid the maintenance of energy-intensive equipment for a progressively shrinking number of users.

With regard to mobile networks, 5G will allow for lower power consumption thanks to its increased efficiency. Given that mobile data usage will increase over time, it is preferable to absorb this increase using 5G rather than 4G or earlier mobile standards.

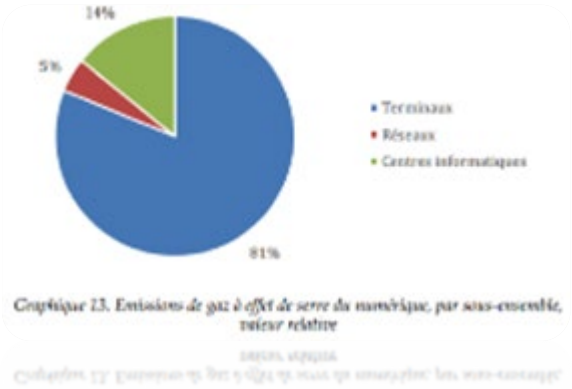
Moreover, sharing of both fixed and mobile infrastructure will enable operators to further improve the efficiency of their deployments. Passive sharing in particular can help to considerably reduce energy consumption, by avoiding unnecessary duplication of energy-consuming network elements and associated elements, while maintaining incentives for operators to differentiate their services to compete vigorously for customers.

With the massive digitization of all sectors of the EU economy, looking at the electronic communications sector on a stand-alone basis does not make sense. One has to look at the positive contribution the sector will bring to all other sectors (including the public sector).

Terminal equipment and other equipment located at end-user premises is responsible for substantial energy consumption. Some equipment (e.g. set-top boxes) is configured to avoid fully powering off (by internalizing the power supply or power cord (e.g. printers)). This should change to allow the easy unplugging overnight or the installation of a timer on the electrical outlet.

38. What are the factors that most contribute to greenhouse gas emissions resulting from the operation of electronic communications networks (without considering end-user equipment)?

According to a 2020 Report of the French Senate (information mission on the environmental footprint of digital technology[4]), terminal equipment accounts for 81% of the greenhouse gas emissions from digital technology at this time.



Graphique 13. Emissions de gaz à effet de serre du numérique, par sous-ensemble, valeur relative

The Report usefully clarifies that the environmental impact of producing terminal equipment is far greater than that of the use of terminal equipment.

39. What could be appropriate criteria to qualify network deployment projects as 'environmentally sustainable', already before such deployments have started?

ecta does not believe that it would be appropriate to declare network deployment projects 'environmentally sustainable' before works are conducted and the network is brought into commercial operation, because there are many factors involved, during construction, and afterwards during operation. For example, a network that is built in a specific way, could require more or less repairs ('truck rolls') afterward.

ecta is particularly concerned by the suggestion in the questionnaire that active and passive sharing could potentially be considered as distinguishing factors, perhaps implicitly indicating a preference for active sharing. The European Commission should be careful not to lose sight of the benefits of passive access and sharing, in terms of enhancing competition and thus safeguarding end-user interests to the maximum extent, and in resulting in more independent networks and thus in more resilient networks.

The same holds true for the potential distinguishing factor that a network is deployed with coordinated civil works. This entails risks of ignoring, or even penalizing, network operators building specific high capacity and high-reliability networks to serve socio-economic drivers, business customers and public services.

A more useful area of enquiry, which is excluded from the questionnaire at Q38, is the energy profile and performance of terminal and other end-user equipment.

[4] Rapport d'information n° 555 (2019-2020) de MM. Guillaume CHEVROLLIER et Jean-Michel HOULLEGATTE, fait au nom de la commission de l'aménagement du territoire et du développement durable, déposé le 24 juin 2020: http://www.senat.fr/rap/r19-555/r19-555_mono.html

40. Which type of positive incentives can foster the deployment of electronic communications networks which have a reduced environmental footprint?

ecta wishes to caution explicitly against potentially providing advantages (regulatory, permit-granting, monetary, and indeed any other) to certain companies based on the criteria listed, as this may reward the wrong types of networks, deteriorate competition, and discriminate against particular companies whose initiatives have other intrinsic merits. The very existence of many of ecta's members results from the liberalization and pro-competitive initiatives taken by the European Commission since the year 1990.

41. In your opinion, to what extent is the dispute settlement system provided in the Broadband Cost Reduction Directive appropriate, concerning:

ecta's response is 'Not Appropriate' for all elements listed.

There are only a handful of Member States in which dispute-resolution proceedings can be considered to be effective, whereas in other Member States, dispute-resolution proceedings are inadequately framed procedurally, are subject to 'stop clock' moments which lead to 'start-stop-start-stop' proceedings that far exceed the expected timeframes.

ecta considers that the European Commission should issue procedural guidance on all steps of dispute-resolution proceedings, to ensure that it becomes an effective form of recourse in all Member States.

42. In case you consider it not appropriate at all or not appropriate, what are the main reasons?

ecta's answer is Very Relevant for all reasons listed.

ecta has commented above on the duration of dispute resolution (response to Q41) and in considerable detail on the problems with the concept of "fair and reasonable terms". Clearly, dispute resolution should be free of charge in all cases.

Other reasons are the reluctance of the dispute-settlement body to take cases, and the lack of predictability on the outcome of dispute settlements (also given the unclear concept of "fair and reasonable") which discourages operators from initiating disputes.

43. In your view, how relevant are the following measures to guarantee a satisfactory dispute resolution process:

ecta has low confidence in imposing penalties on a dispute resolution body; the State fining itself is not a guarantee to achieve a more effective process. Holding dispute resolution bodies to account, however, can be effective. For instance, it would be worthwhile for the European Commission to issue a periodic report on the performance of dispute resolution

bodies, and on the substance of their decisions. This would highlight where performance is good, and how this is achieved, and could lead to more harmonization in processes and decisions in the longer run. It is important not to entrust the reporting to the dispute resolution bodies themselves, as they will refrain from criticizing one-another.

As stated above (response to Q3), cost apportionment agreements and procedures have often already been in place for electronic communications networks for decades. The focus should therefore be on non-telecom utility networks.

Clearly, guaranteeing a free process is entirely justified.

In addition, ecta considers that there is a good case for harmonizing the dispute resolution process itself at EU level, given that there is no objective reason for the procedural aspects of a dispute resolution process to differ significantly between Member States. Guidance on each step of the process (including timers) could usefully be included as an Annex to the BCRD. It is also important for the dispute resolution processes, and all steps and timers, to be published in advance, so that operators can have confidence in the way the disputes they initiate will be handled by the dispute settlement body. Note: There is probably also a case for harmonizing dispute resolution processes more broadly, at least with those under the EECC, and possibly on a wider cross-sectoral basis.

As indicated above, ecta advocates that the national regulatory authority in charge of electronic communications is designated as the dispute-settlement body in all cases. This is necessary in particular to ensure that the objective of promotion of VHCN roll-out is kept at the core of the decision-making process, rather than the narrow (economic) interests of a non-telecom utility or public authority.

44. In your view, how useful are the national rules on penalties applicable to infringement of the obligations provided in the Broadband Cost Reduction Directive?

45. In case you reply that the national penalty mechanism is not useful at all or not useful, the reasons are:

46. In your opinion, how appropriate has been the choice of a Directive as a legal instrument to regulate the measures to reduce the cost of deploying electronic communications networks?

No opinion.

47. In your opinion, what would be the most appropriate legal instrument when reviewing the Broadband Cost Reduction Directive?

No opinion at this time. ecta can only opine on the choice of legal instrument once it has been able to review the exact text of a draft of envisaged legislation.

ecta takes this opportunity to make the general point that good administrative practice requires that consultations of the European Commission not only take the form of a questionnaire such as this one (as extensive as it may be) and through consultants' interviews and reports, but that stakeholders must be afforded the opportunity to review and comment on the exact text of a draft, before the proposal is officially made to the co-legislators.

48. Final comments

This ecta response should be read in conjunction with the answers to the tick boxes in the questionnaire.

For further information, clarification or discussion, please contact Mr. Luc Hindryckx, ecta Director General.