

# Draft BEREC Guidelines on the Criteria for a Consistent Application of Article 61(3) EECC

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Body of European Regulators  
for Electronic Communications

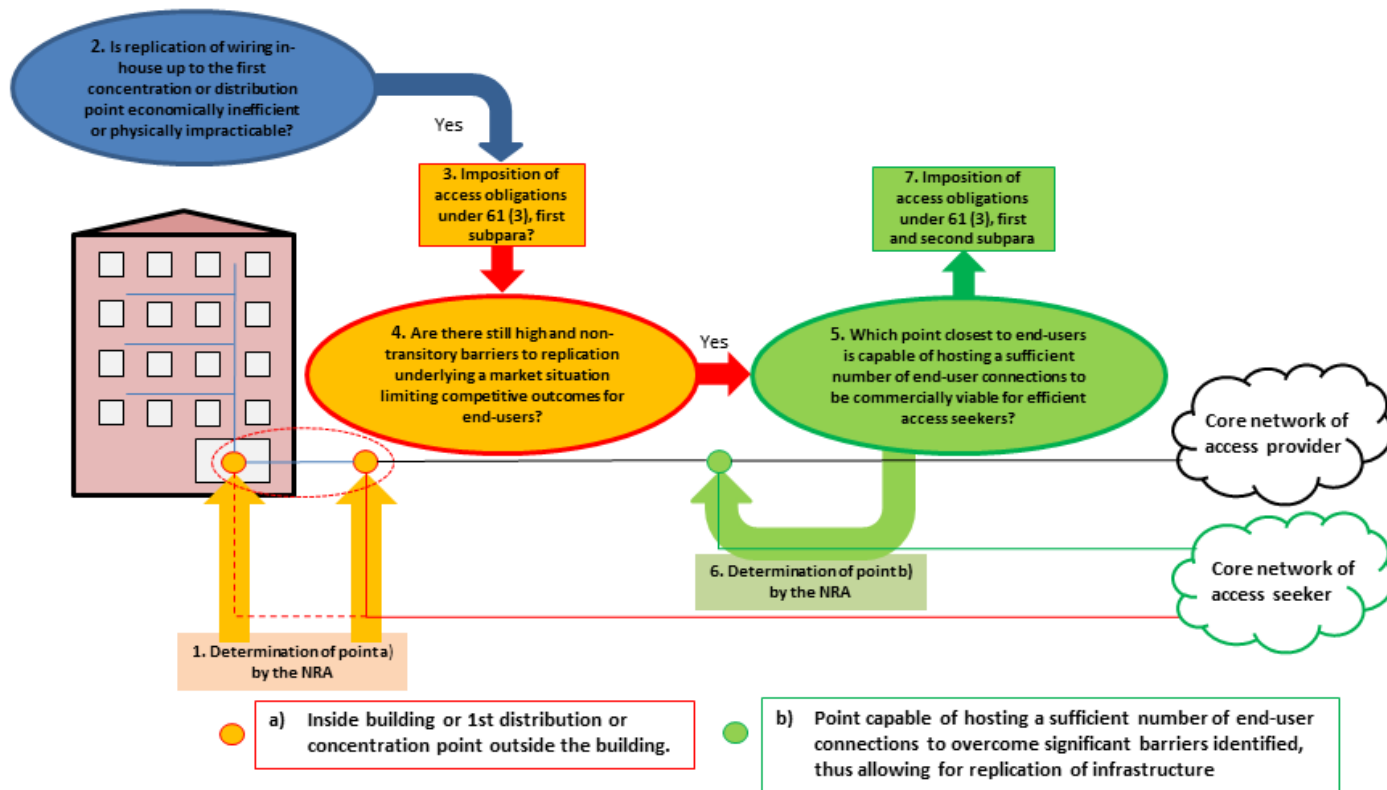
**BEREC**

- The BEREC Guidelines on Art. 61(3) EECC
  - Define criteria on key aspects of the EECC's clarified, extended and amended provision on symmetric access regulation
  - Provide guidance on how the criteria need to be applied
  - Shall be published by 21 December 2020
- 16 June 2019: Initial call for stakeholder input
  - Submissions by 18 stakeholders
  - Analyzed and taken into account during the drafting procedure

## Overview Art. 61(3) EECC (“symmetric regulation”) I

- Access to non-replicable infrastructure in order to
  - promote sustainable competition in the interest of end-users,
  - promote connectivity and efficient investment, in particular in very high capacity networks
  
- Art 61(3) subparagraph 1 EECC
  - Access up to the first concentration or distribution point
  - Providers of electronic communication networks or owners of infrastructure
  
- Art 61(3) subparagraph 2 EECC
  - Access to a “point beyond” the first concentration or distribution point
  - Providers of electronic communication networks
  
- Art 61(3) subparagraph 3 EECC
  - Exemption for providers of VHCN, in particular wholesale-only providers (a)
  - Exemption for new, in particular small local network deployments, where obligation would compromise the financial viability (b)
  
- Art 61(3) subparagraph 4 EECC
  - Obligations may be imposed on publicly funded VHCN by way of derogation from Art. 61(3) subparagraph 4 (a) EECC
  
- Art 61(3) subparagraph 5 EECC
  - BEREC Guidelines

# Overview Art. 61(3) EECC (“symmetric regulation”) II



— Infrastructure to roll out (replicate) for access seeker, if access occurs at the first distribution point

— Network operators infrastructure from point a) upwards

— Infrastructure to roll out (replicate) for access seeker, if access occurs at the point beyond the first concentration or distribution point

— Inhouse wiring, cables, associated facilities and infrastructure up to the first concentration or distribution point

## Criteria set out in the draft Art. 61(3) guidelines (1)

**The Guidelines define the criteria for key aspects/ legal concepts:**

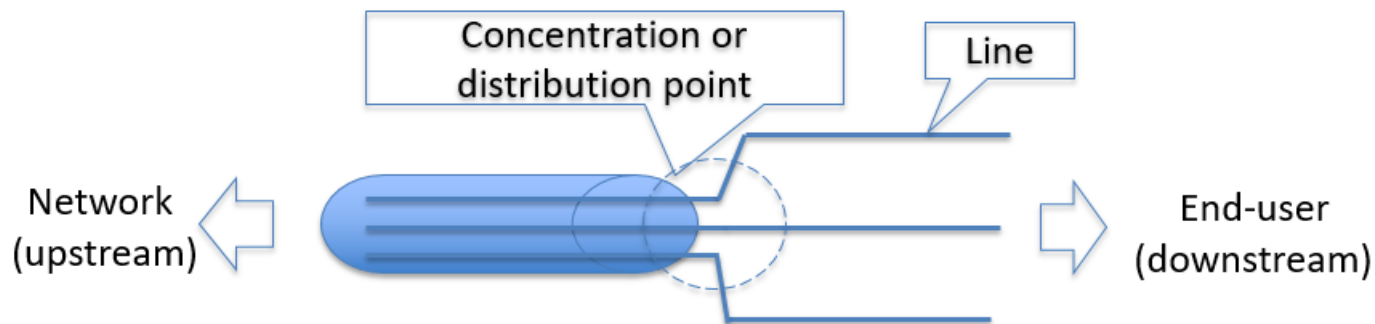
- **The first concentration or distribution point (item a)**
- **High and non-transitory economic or physical barriers to replication (item e)**
- **The “Point beyond” (item b)**
- **Network deployments considered to be “new” (item c)**
- **Network deployments considered to be “small” (item d)**

## The first concentration or distribution point (item a) I

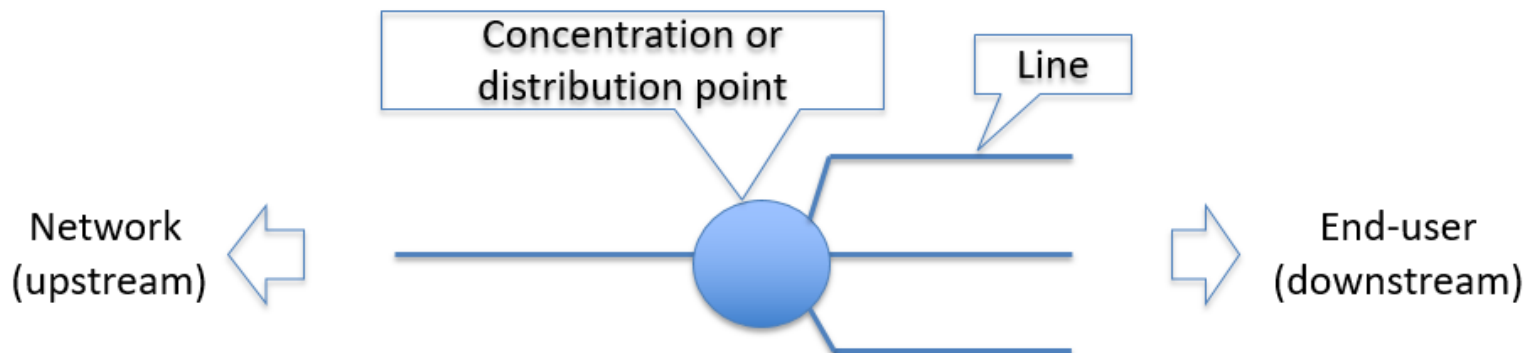
- **The first concentration or distribution point**
  - The Terms concentration and distribution point are used interchangeably
  - Definition is technologically neutral; including traffic or line aggregation
  - Is the first point closest to the end-user that is accessible or can be made accessible without unreasonable effort:
    - Entails a dedicated facility for concentration or distribution of network cables, that can be accessed on a regular basis
    - Entail a network infrastructure that can be unbundled without unreasonable effort by the access seeker
  - Located at the building or first subsequent point outside a building
  - May exceptionally be determined on the grounds of active or virtual accessibility, where no points reasonably close to the end-user are suitable for physical unbundling

## The first concentration or distribution point (item a) II

- Without traffic aggregation:



- With traffic aggregation:

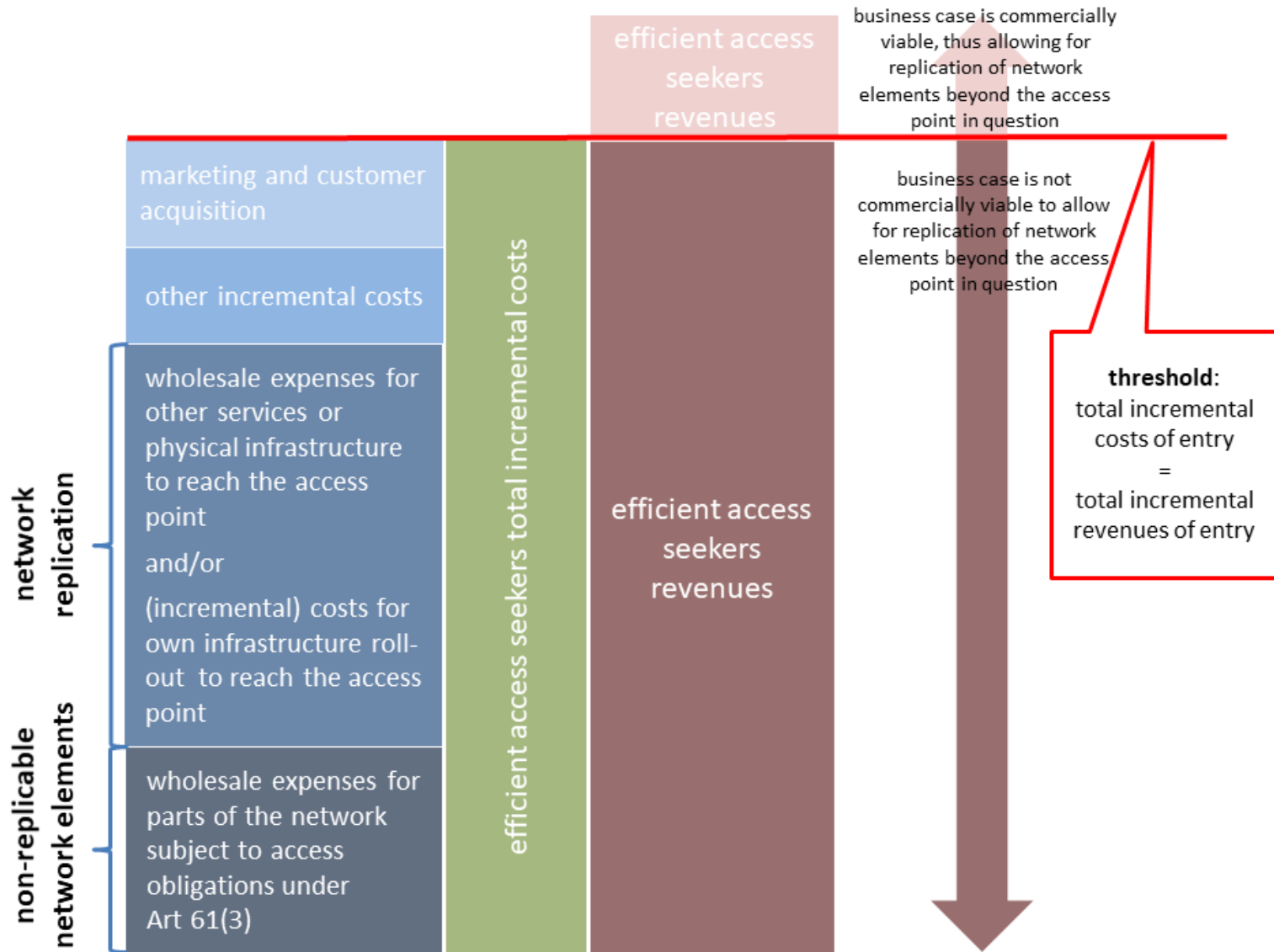


## Barriers to replication (item e) I

- **High and non-transitory economic or physical barriers to replication (item e)**
  - Entail obstacles which create a level of risk that deter efficient network operators from network replication
  - Economic or physical barriers are non-transitory if they are unlikely to disappear or significantly diminish in the short term
  - An interdependency between physical and economic barriers is often observable
  - **High economic barriers**
    - Include significant costs, especially sunk costs associated with civil infrastructure works
    - Are likely to be present if the prospect of cost recovery is low
  - **High physical barriers**
    - Include technical, legal or administrative requirements and restrictions
    - Impossibility to gain physical access to buildings or soil



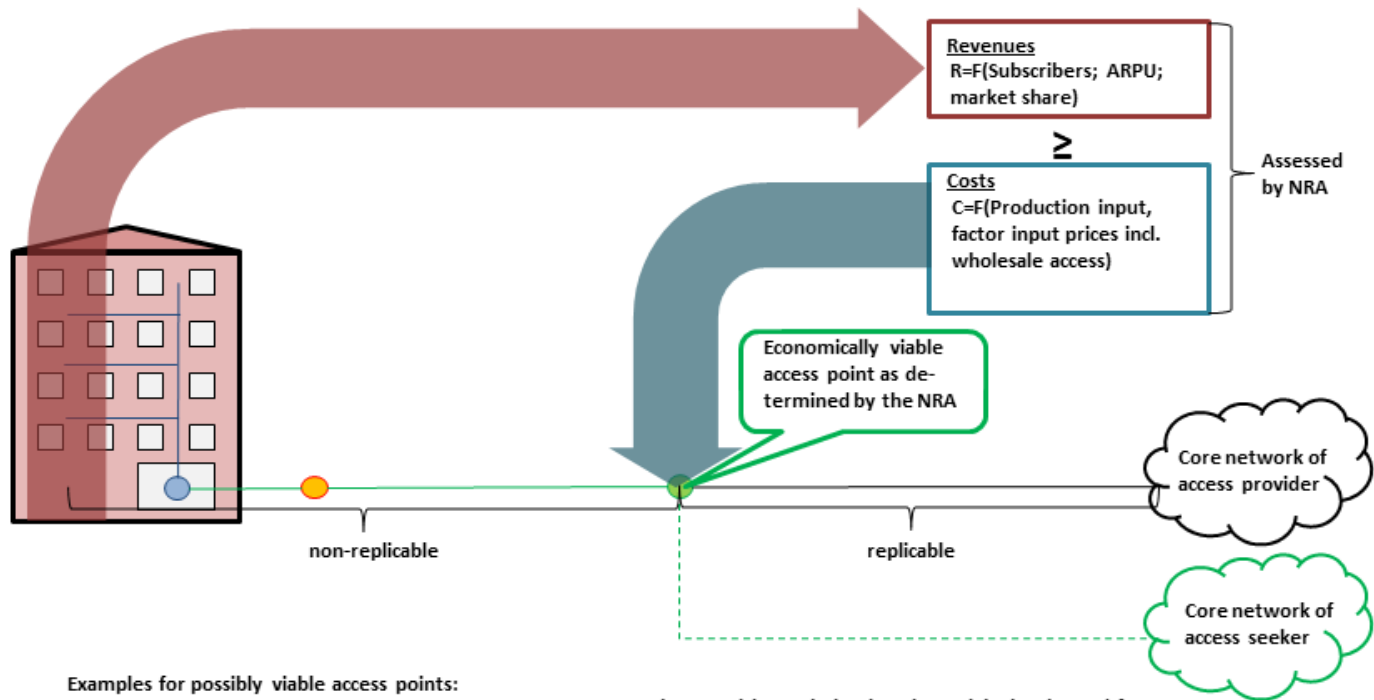
# Overcoming barriers to replication



## The “Point beyond” (item b) I

- **The “Point beyond” (item b)**
  - Is defined as the first subsequent point closest to the end-user
    - Providing for a commercially viable business case to attain sufficient revenues that at least equal the expected incremental costs of the network deployment
    - Is accessible for the purpose imposing access to physical network infrastructure or allows for network hand-over and if necessary collocation for the purpose of active or virtual access
    - Allows the access seeker to overcome the high and non-transitory barriers to replication identified
  - May differ between network-clusters, if segmentation of a networks into clusters is appropriate, e.g. because of differences in population density

# The “Point beyond” (item b) II



**Examples for possibly viable access points:**

- Access point in the building (if FCDP is located inside the building)
- Access point close to the building (if FCDP is located outside of the building)
- Access point further away from the building („access point beyond“)

- Inhouse-wiring: wholesale prices might be charged for use
- ECN subject to access seekers' request: wholesale price usually has to be paid
- - - Access seekers infrastructure (own or leased infrastructure)

## Network deployments considered to be “new” (item c)

- **Network deployments considered to be “new” (item c)**
  - Aims to preserve a first mover advantage where required
  - Is limited to networks that were recently deployed
  - Recently deployed means that service provision to customers started no longer than five years ago
  - Normally does not include upgrades of existing networks, unless investments in physical infrastructure, e.g. new ducts and wiring, are significant and if the take-up or market share of the network is expected to be limited, thus requiring a first mover advantage.

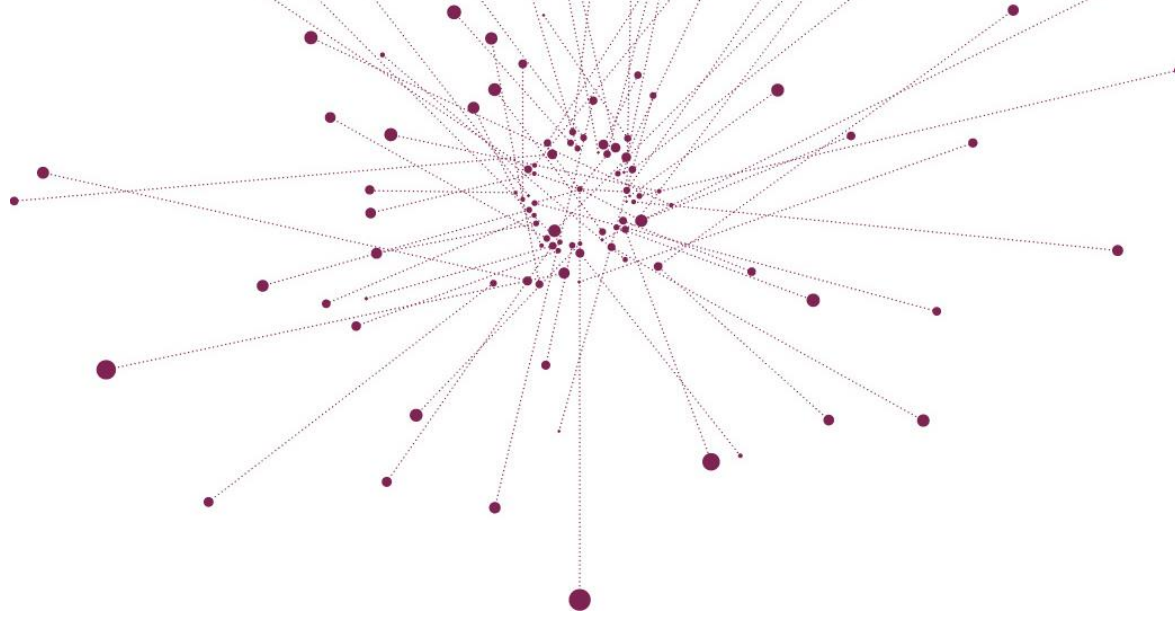
## Network deployments considered to be “small” (item d)

- **Network deployments considered to be “small” (item d)**
  - Aims to protect new network deployments in particular by e.g. small municipal operators, co-operative end-user built networks and new entrants in the market
  - Only includes projects carried out by undertakings not active in the whole or a major part of the broadband market
  - Only includes projects carried out by undertakings of limited size
  - Size of the undertaking should be measured relative to the total turnover and/or total number of active or passive connections in the broadband market
  - As a presumption includes projects carried out by undertakings which have less than 500 potential end-user connected to their network

### Next steps

- Public consultation will be open until 31 July 2020
- Final adoption of the Guidelines is foreseen for BoR Plenary 4 2020

### Any Questions?



Thank you!

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