VANTAGE TOWERS

# Draft BEREC Work Programme 2025: Public Consultation feedback of Vantage Towers

*Vantage Towers AG is one of Europe's largest and most geographically diversified tower companies (TowerCos), with over 86,000 sites across 10 countries. The company is headquartered in Germany.*

*Vantage Towers operates the passive infrastructure of mobile and other radio networks such as ground-based and rooftop towers for 4G and 5G networks. By renting space on its towers to mobile and other operators, Vantage Towers is pursuing an infrastructure-sharing model which lowers investment requirements, thereby easing the roll-out of mobile networks, including in rural areas and for transport corridors while fostering competition and having a positive impact on sustainability.*

Vantage Towers, a key stakeholder in the deployment of mobile telecommunications towers across Europe, would like to thank BEREC for the opportunity to contribute to this important public consultation on the Draft Work Programme for 2025. As a Tower Company, we play a pivotal role in deploying and operating the passive infrastructure that supports mobile networks, enabling connectivity for millions of European end-users.

Each year, we invest millions of euros in the deployment of mobile networks across our European markets, enabling high-quality and reliable connectivity to reach urban, suburban, and rural areas alike. Our input, particularly regarding the deployment of mobile infrastructure, is aimed at contributing to shape a regulatory environment that fosters robust and widespread connectivity. We hope that our suggestions and insights on specific programme items will support BEREC in ensuring that European citizens and businesses alike can benefit from enhanced network coverage, security, and quality, which are essential components of Europe's digital transformation.

**Section 1.5: BEREC Input to European Commission's Guidance on Article 3 of the Gigabit Infrastructure Act**

We appreciate BEREC's collaboration with the European Commission in developing guidance for Article 3 of the Gigabit Infrastructure Act (GIA). As a Tower Company, we emphasise the importance of creating a regulatory framework that supports fast and cost-efficient network rollouts, promotes the sharing of physical infrastructure while acknowledging the need to maintain investment incentives and acknowledge existing commercial agreements between operators and infrastructure providers, particularly in the case of providers of associated facilities. In the following we highlight aspects that are in our view instrumental properties of such an effective framework.

*Maintaining a clear distinction between "fair and reasonable" access conditions (Art.3.2 GIA) and SMP price regulation*

SMP price regulation is designed to establish prices that allow an access seeker to compete with the SMP-operator in the same retail market at equal costs per subscriber (cost-equalisation). Hence, this type of pricing provision usually focuses on the cost of the access provision, it is one of the strongest forms of market interventions and requires a detailed market analysis with the aim to ensure fair competition for end users in the face of dominant operators.

In contrast, fair and reasonable (FR) pricing should not be applied generally but only to specific access requests[1] to infrastructure of network operators. The determination of FR prices should give a preference to achieve or reflect bilateral, market-driven commercial agreements that generate value to the network operators as well as the access seeker.

It is therefore crucial to maintain a clear distinction between "fair and reasonable" prices and prices as part of ex-ante regulation for operators with Significant Market Power (SMP) under the European Electronic Communications Code (EECC).

*Acknowledgement of existing commercial agreements (Art. 3.2(a) GIA) when determining "fair and reasonable" conditions to preserve infrastructure investment incentives*

Tower Companies make significant investments to deploy and maintain critical infrastructure. The pricing for access services to this long-lasting infrastructure must ensure a predictable long-term return on these investments to maintain ongoing infrastructure development, particularly in high-cost or rural areas. Hence, access conditions, including prices, are provided on the basis of long-term commercial agreements with MNO customers. These long-term contracts provide commercial certainty to both parties, an essential element when investing in such infrastructure assets with multi-decade long lifetimes. Overriding existing agreements through regulatory intervention would risk undermining commercial certainty and likely slowing down future infrastructure deployment.

Access to utility networks with the aim to install equipment of VHCN and associated facilities is typically not provided on a commercial basis by utility network operators. Hence commercial agreements on access granting are typically not available in the case of utilities. This situation is fundamentally different in the TowerCo sector as such access provision is at the core of the neutral-host business model. With the motivation of FR prices to reflect market prices of commercial agreements, it is only logical to take conditions set out in existing commercial agreements as a benchmark if they are comparable to the specific access request. Given thousands of instances of infrastructure being shared already across Europe, finding suitable existing contracts as relevant benchmark for a specific access request, should regularly be the case in the context of passive infrastructure (towers) as associated facilities.

Additionally, existing agreements are pareto-optimal, reflecting competitive market dynamics and ensure that access granting and seeking parties' interests are balanced. We strongly recommend that the guidance on Article 3 acknowledges and respects these

[1] Infrastructure costs are highly case specific and depend on the location of infrastructure. To give an example, the costs for trenching strongly depend on the surface and the size of the trench impacts noticeably its costs. Also, site related costs for buildings or towers are different depending on the location, height, and configuration of the to be hosted active equipment (antennas).

commercially agreed terms to avoid regulatory uncertainty and unnecessary disruptions to existing market dynamics.

*Study issues associated to opportunistic and speculative behaviours regarding access to land to ensure negotiations are conducted in good faith (Art. 3.2 GIA)*

Article 3.2 of the Gigabit Infrastructure Act (GIA) mandates that operators and holders of rights over land on which facilities of VHCNs will be or have been deployed, negotiate access to land "in good faith". Furthermore, NRAs shall be informed of such agreements between both parties. This provision concerns a practice also referred to as "aggressive land- or lease aggregation" and associated practices of substantial lease cost increases for operators installing or operating network facilities on the specific land.

TowerCos, such as Vantage Towers, operate the passive infrastructure, i.e., the ground-based towers and rooftop sites, of wireless electronic communications networks. Access to the land or to the building where the passive infrastructure is built, is a critical input, and is typically secured through a lease with the individual landlord. Lease payments represent the largest source of costs for the provision of passive mobile infrastructure.[2] In this context, lease aggregation is a business practice that positions itself as an additional intermediary in the landlord-TowerCo relationship. Via the acquisition of usufructs' rights or surface's rights, these intermediaries become the beneficiary of lease payments paid by the infrastructure operator. This also grants them the right to negotiate the terms upon renewal or to decide against renewing the lease.

The construction of a tower represents a specific investment made by the infrastructure company in that location. Once a tower site is built and operational, it is an integral part of the mobile networks of usually multiple mobile network operators (MNOs) due to the sharing of the infrastructure. As a particular site can seldomly be relocated to another piece of land as part of existing networks, this creates a lock-in situation of the infrastructure operator, which gives a lease aggregator significant bargaining power. Dismantling a site is rarely an option, and when feasible, it is very expensive and involves value destruction, as a significant proportion of the costs are sunk (e.g., costs of power grid and fibre connection, construction costs, or limited reusability of materials). Some lease aggregators are aware of their strong bargaining position and exploit it as part of an aggressive business practice that focuses on substantial lease price increases without own value contribution not the subsequent value chain.

In Germany, for example, our data show that the cost of replacing a ground-based tower site, including dismantling, finding a new suitable piece of land to lease, and rebuilding the infrastructure can easily cost more than €500,000 and can be significantly higher in certain cases. Aggressive lease demands are regularly 200% or higher compared to previous year rents. These increases have no economic justification as full annual inflationary adjustments are already built into lease contracts.

It is increasingly important to monitor and address opportunistic and speculative behaviours associated with aggressive lease-aggregation. We believe that this practice hinders fair and efficient land access for network deployment and increases costs for subsequent levels of

[2] Based on our FY 22/23 annual report, ground lease expenses of €323.7 million represented the largest single expense item and accounted for 63.4% of total expenses for the year.

the value chain with, ultimately, not only an impact on end users' prices, but also on the quality and resilience of the network.

The GIA's provision requiring data collection on contracts between operators and holders of rights to land by National Regulatory Authorities (NRAs) provides a crucial opportunity to address the issue. However, we find that there is a need for a more comprehensive investigation into the phenomenon of land- or lease aggregation to identify the harmful practices and resulting economic harm as a prerequisite to this data collection. Such a study will then better enable NRAs to identify practices regarding land access that might jeopardise the sustainable and cost-effective network expansion across Europe that the GIA envisions. Alternatively, the issue of "aggressive lease aggregation" could also be investigated as part of BEREC's fact finding report on the competition indicators and regulatory highlights in different jurisdictions as part of Section 1.9 of the working programme. Please find our commentary on this below.

**Section 1.9: Fact finding report on the competition indicators and regulatory highlights in different jurisdictions**

In connection with Section 1.9 of the BEREC Work Programme, which examines competition indicators and regulatory developments across various jurisdictions, we strongly recommend that BEREC adopts a holistic perspective on the entire value chain supporting mobile telecommunications infrastructure. While trends such as the divestment of passive infrastructure to TowerCos and the restructuring of ownership in telecom markets are key areas of focus, it is equally important to consider the upstream level of land access that forms the foundation for these infrastructure deployments.

The aggregation of property interests and rights of use to land by and the aggressive price negotiation practices by certain investors poses competition risks by exploiting a "Lock-in" situation of infrastructure companies leading to inflating access costs or restricting site availability. This is particularly critical where investors gain significant control over prime locations essential for mobile networks or a critical mass of sites in a geographical area. By examining not only the value chain level of tower infrastructure but also the availability and pricing dynamics of land access for these sites, BEREC could gain a more comprehensive understanding of competitive pressures in the market. For further commentary on this problematic practice, we kindly refer to our feedback to Section 1.5 of the work programme.

Additionally, the United Kingdom's Electronic Communications Code (UK Code) is a promising example from a different jurisdiction that BEREC could examine in its fact-finding study. The UK Code includes provisions that address land access issues and provides an evaluation framework based on an alternative use of the land in question. While this approach could be refined and improved, it is based on opportunity costs, which we believe, is economically sound and promotes a welfare-maximizing use of land as a critical resource. By considering the lessons learnt from this framework, but also other successful examples, BEREC can assess whether a similar approach could also serve as a valuable model for Europe and support fair access and cost-efficient deployment of telecommunications sites across EU Member States.