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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Telecommunications and Information Society
Subject:	Gigabit Infrastructure Act - DK general remarks

Delegations will find in Annex the DK general remarks on the Gigabit Infrastructure Act.

Comments from Denmark

Denmark would like to thank the presidency for the opportunity to provide comments. As a supplement to our detailed comments that can be found in the 4 column document, we would like to highlight the following high-level or horizontal issues:

- We should remain firm on the deletion of tacit approval.
- In principle, Denmark does not support the proposal from the EP to incorporate price regulation of intra-EU communications into other legal acts such as GIA. Denmark does not support the EP's suggestion to abolish retail sur-charges for intra-EU communications completely. As raised by BEREC and the Commission there are still issues to handle before retail surcharges of intra-EU communications can be abolished. There are costs for operators associated with intra-EU communications, which they should be able to recover. Therefore, Denmark will probably be able to support an extension of the current price regulation. Denmark may also be able to support a gradual lowering of the price caps (e.g. a glide-path) if the underlying data supports it. However, we do not believe that the glide-path should end with a complete abolishment of the surcharge for intra-EU communications.
- Coordinating bodies on access requests and permits as proposed by the EP in art. 3(4) and 7(11c) would imply the establishment of new government bodies of a significant size, and Denmark cannot support these bodies being mandatory. Further, handling access requests to land is a commercial business sector today (site acquisition).
- Towercos should be referred to in a way that excludes wholesale-only MNOs which also own and provide access to tower infrastructure. These are wholesale-only companies (also) providing associated facilities, but their main wholesale business is wholesale access to mobile networks, so they are not towercos.
- Any provisions on access to private property should respect private property rights. In particular, the right of private land owners to refuse the extension of leases of land should be maintained, notwithstanding a potential obligation to enter into commercial negotiations in good faith (which should not mean that negotiations are barred from failing). Further, the pricing of access to private property should be at market conditions within the confines of competition law. Abusing a dominant market position is already illegal. Restricting the rights to say no to an extension of a lease or to price at market conditions may amount to "ex ante" expropriation (without individual assessments), which is regulated at the constitutional level in Denmark and requires a case-by-case assessment; "ex ante" expropriation may raise constitutional issues. Denmark does have

general access obligations for building owners (and can support this), but no restrictions on their pricing of access. Imposing access to land for towers where the owner is not willing to grant access is only possible by case-by-case assessments and only in exceptional cases; towers are a significant encroachment on private property.

- It is important that wording on matters related to article 4 does not contradict the interpretation of article 4(2), which has been confirmed several times, that the article can be fully complied with by establishing one or several request-based SIP(s). It is also important that there is no obligation to provide minimum information about physical infrastructure that is not subject to any access obligations in article 3, including as a result of article 3(6).
- Denmark remains skeptical on the competence for the Commission to issue guidance on the various articles, and on implementing acts for permit free works.