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Ms.
Lucrezia Busa
Europäische Kommission
1049 Brussels
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Contact person	E-Mail	Telephone	Date
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DE/2026/2637 – Notification by the Federal Network Agency regarding Telekom Deutschland GmbH's Reference Offer for Access to Civil Engineering Infrastructure

here: VATM's Comments (containing no confidential business information)

Dear Ms. Busa,

Dear Sir or Madam,

The German Association of Providers in the Digital and Telecommunications Market (VATM) would like to thank you for the opportunity to submit comments in the context of Notification DE/2026/2637 concerning the Federal Network Agency's decision on Telekom Deutschland GmbH's Reference Offer for Access to Civil Engineering Infrastructure.

VATM refers to the submissions it made previously in the national proceedings BK3-23/006 and maintains the position set out in them.

Access to civil engineering infrastructure is a key building block for the accelerated, efficient, and competitive deployment of very high-capacity networks (VHCNs). However, effective access requires contractual terms and conditions that genuinely enable the non-discriminatory, practical, and investment-secure use of existing passive infrastructure.

The amendments proposed by the Federal Network Agency represent significant improvements compared with earlier draft versions. Nevertheless, VATM believes that the final framework must still address several important issues.

These include, in particular, the objectively unjustified distinction between main cable (Hauptkabel, HK) and distribution cable (Verzweigerkabel, VzK) infrastructure, the continued lack of sufficient transparency regarding information contained in the Infrastructure Atlas, overly broad reservations relating to the provider's own requirements, contractual penalties that are insufficiently dissuasive, and termination provisions that undermine the investment certainty of access seekers.

I. Assessment

Access to physical infrastructure assets is essential for competing operators, as it enables them to use existing infrastructure efficiently, realize synergies in network rollout, and avoid unnecessary civil engineering works.

However, in practice, unclear or overly broad grounds for refusal, insufficiently robust availability data, inadequately sanctioned contractual breaches, and termination rights favoring the undertaking with significant market power (Deutsche Telekom) can lead to regulated access being effectively undermined.

For the draft standard offer to meet the requirements of equal treatment, fairness, and timeliness, the existing limitations, transparency deficiencies, and inadequate enforcement mechanisms must be comprehensively revised.

In the context of its assessment, the Commission should therefore ensure that the final decision of the Federal Network Agency establishes an access regime that is fully effective, non-discriminatory, and investment-secure.

II. Unjustified Distinction between HK and VzK-Infrastructure

From VATM's perspective, it is critical that the reference offer continues to distinguish between main cable (Hauptkabel, HK) and distribution cable (Verzweigerkabel, VzK) infrastructure, even though in both cases the access concerned relates to existing civil engineering infrastructure owned by Telekom. Such a distinction must not result in comparable access situations being subject to different contractual or economic conditions without objective justification.

In practical network deployment, projects regularly span different network segments. For access seekers, what is decisive is whether, and to what extent, usable civil engineering infrastructure is available. For regulated access, it is generally unimportant whether such infrastructure is historically or network-technically assigned to the main cable or distribution cable segment. What is instead essential is that existing passive infrastructure can be used efficiently and on a non-discriminatory basis for the deployment of very high-capacity networks (VHCN).

An artificial distinction between HK and VzK infrastructure may lead to additional complexity, differing pricing logics, and operational barriers. This makes end-to-end route planning more difficult and may render access less attractive in practice or economically difficult to assess. Such an approach contradicts the goal of optimizing the use of existing infrastructure and minimizing unnecessary civil engineering projects.

VATM therefore considers it necessary that the conditions for access to civil engineering infrastructure be designed uniformly and appropriately and aligned with the infrastructure used. Any differentiated contractual or pricing treatment of HK and VzK infrastructure should only be applied where there is an objective, transparent, and regulatorily sound justification. Otherwise, such differentiation should be removed or, at the very least, limited in a way that does not impair non-discriminatory access.

III. Insufficient Transparency of BA Information and the Infrastructure Atlas

VATM emphasizes that the quality, timeliness, and practical usability of availability data are of central importance for the successful implementation of regulated access to civil engineering infrastructure. Those seeking access must be able to make deployment decisions, plan routes, and calculate investments on the basis of complete, up-to-date, and reliable information.

The information provision currently envisaged via the Infrastructure Atlas and BA Information (information layer in the Infrastructure Atlas for empty conduit capacity) remains insufficient from VATM's perspective if it is limited, project-specific, not sufficiently up-to-date, or not provided in a form suitable for planning processes. Access that merely allows for point-by-point or visual inspection does not meet the requirements of practical network deployment. Modern network planning requires that data can be integrated into operators' own planning systems in a structured, reliable, and suitable format.

By contrast, Telekom has significantly more comprehensive internal visibility of its civil engineering infrastructure. Where access seekers are only able to obtain information in a delayed, incomplete, or lower-quality form, a structural information asymmetry arises. This is incompatible with the non-discrimination requirement and the objective of ensuring equivalent access conditions.

VATM, therefore, considers it necessary to ensure that BA Information provides complete, up-to-date, reliable, sufficiently detailed, and non-discriminatorily available information. This includes, in particular, details on location, occupancy, available capacity, usability, potential duct sharing, and existing reservations.

In addition, effective safeguards for data quality are required. Inaccurate, delayed, or incomplete data directly results in incorrect planning, additional costs, and delays in network deployment. VATM therefore maintains its position that deficiencies in data quality must be contractually enforceable and subject to sanctions. A mere transparency obligation without effective consequences is not sufficient.

IV. Telekom's Own Requirements and Capacity Reservations

The provisions on the undertaking's own requirements remain a particularly sensitive issue from VATM's perspective. The reservation of capacity for future deployment plans must not result in Telekom pre-emptively or strategically withdrawing existing civil engineering infrastructure from access by competitors.

Own requirements may only be accepted as a ground for refusal where they are narrowly defined, specifically substantiated, objectively verifiable, and clearly time-limited. General or long-term reservations of scarce infrastructure resources are incompatible with the requirements of fairness and equal treatment.

VATM considers it essential that the planning horizon for invoking one's own requirements be strictly limited. A multi-year planning horizon creates significant risks of abuse and is not compatible with the operational realities of fibre deployment. Deployment plans must be robust, documented, and verifiable by the Federal Network Agency.

Where own requirements are invoked, it must be transparently identifiable for which route, to what extent, for which period, and on the basis of which specific planning assumptions capacity is being reserved.

It is particularly critical that unjustified reservations for one's own requirements can have significant economic consequences for competitors. Where a route is not made available, access seekers are required to design alternative routes, commission civil engineering works, or delay deployment projects. This can increase investment costs, devalue projects and slow down the overall deployment of very high-capacity networks (VHCNs).

Against this background, VATM is calling for “self-use” to be recognized only where it is based on concrete, verifiable, and timely network rollout plans. The Federal Network Agency should require Deutsche Telekom to submit appropriate supporting evidence. Competitors, companies affiliated with Deutsche Telekom, and joint ventures must also receive equal treatment. Any preferential treatment of its own retail operations or associated entities would be incompatible with the non-discrimination obligation.

V. Insufficient deterrent effect of the proposed contractual penalties

VATM considers that the contractual penalties currently envisaged are not sufficiently effective insofar as they fail to create genuine incentives to comply with contractual and regulatory obligations.

Contractual penalties only fulfill their purpose if their level is proportionate to the economic significance of the breach. Low flat-rate amounts are inadequate where the consequences for access seekers may include substantial delays, additional civil engineering (trenching) costs, project cancellations, or missed opportunities for network roll-out. In such cases, there is a risk that breaches remain economically rational for Deutsche Telekom and therefore do not have a sufficiently deterrent effect.

This applies to unjustified “self-use” notifications, incomplete or inaccurate availability data, and non-compliance with binding deadlines in the ordering and provisioning process. Purely passive monitoring or merely symbolic sanctions cannot ensure the practical effectiveness of access obligations.

From VATM's perspective, contractual penalties must be set at a level that makes compliance with obligations clearly the economically preferable option for Deutsche Telekom. The sanction must therefore be tangible and should reflect the potential opportunity costs and replacement costs borne by access seekers. This includes the costs of alternative self-deployment, delay damages, and the economic value of the blocked network route.

In addition, the obligations subject to sanctions must be clearly defined. Effective contractual penalties require unambiguous process steps, binding deadlines, objectively measurable performance indicators, and transparent documentation in relation to the BNetzA and contractual partners. Only on this basis can breaches be identified, verified, and effectively sanctioned.

VI. Termination rules and investment certainty

Access to physical infrastructure assets constitutes a long-term upstream infrastructure input. On this basis, access-seeking companies take investment decisions with extended payback periods. They deploy fibre, plan routes, conclude end-customer and wholesale agreements, and align their rollout planning with the sustained usability of the leased infrastructure.

Termination rights that subsequently call this usage into question therefore undermine investment certainty. This principle applies both to ordinary termination rights with excessively short notice periods and to extraordinary termination rights based on subsequently asserted “self-use” requirements.

From the perspective of VATM, a notice period of only twelve months for individual services is inadequate. It does not reflect either the nature of the product or the practical requirements of alternative route planning, migration of end-customer services, and the execution of any necessary civil engineering works. Reliable use of the product requires a significantly longer lead time. VATM therefore maintains its position that a minimum notice period of 36 months should be provided.

An extraordinary termination right for Deutsche Telekom based on subsequently asserted self-use should, in VATM’s view, be removed entirely. Such a provision creates significant legal and planning uncertainty for access seekers and is incompatible with an investment-secure wholesale product. Self-use requirements must be assessed and asserted prior to contract conclusion. Once capacity has been lawfully provided and used by the access seeker, its use must be secured for an appropriate investment period.

Extraordinary termination rights in cases of non-use should also be viewed critically where they are applied in a blanket manner and without demonstrated harm. They can undermine the economic predictability of the product and impose one-sided burdens on access seekers. In the case of long-term leased ducts, a certain ramp-up and implementation phase is inherently reasonable. Early sanctions or termination without any concrete detriment to Deutsche Telekom would be disproportionate.

VATM, therefore, calls for termination provisions to be adjusted in such a way that they effectively safeguard the long-term usability of the infrastructure, the amortization of investments, and the continuity of end-customer service provision. Only in this way can access to physical infrastructure form a reliable foundation for competitive fibre network rollout.

VII. Concluding remarks

VATM welcomes the fact that the Bundesnetzagentur has addressed key criticisms raised by market participants in the national proceedings and has initiated improvements compared with earlier draft versions. Nevertheless, significant shortcomings remain that may impair the practical effectiveness of the standard offer.

The European Commission should therefore ensure, in the context of its assessment, that the final regulatory framework meets the following requirements: the differentiation between HK and VzK infrastructure must not result in objectively unjustified barriers to access. The BA-Info system or infrastructure atlas must provide complete, up-to-date, reliable, and practically usable information. Self-use may only be asserted in a narrowly defined manner, subject to concrete evidence and transparent documentation. Contractual penalties must have a genuine deterrent effect. Termination rules must ensure the long-term investment certainty of access seekers.

Only if these points are adequately safeguarded can access to physical infrastructure fulfill its intended function: to make existing passive infrastructure efficiently usable, avoid unnecessary civil engineering works, accelerate the rollout of very high-capacity (VHC) networks, and enable fair and non-discriminatory infrastructure-based competition.

Yours faithfully,



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