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Public Consultation on the draft “BEREC Report on a consistent approach to migration and copper switch-off”, BOR (21) 171.

here: Position Paper of VATM e.V. Germany (does not include business and trade secrets)

Dear Sir/Madam,

We hereby submit the views of VATM and our member companies with regard to the draft “BEREC Report on a consistent approach to migration and copper switch-off”, BOR (21) 171.

VATM welcomes the public consultation organised by BEREC and thanks BEREC for preparing the draft Report. We hereby welcome BEREC`s efforts to systematically outline the state of play and the advancements towards a complete copper switch off in Europe. The draft Report presents a list of remedies on a national level and gives a clear overview of the current situation in the EU. It also provides for a systematic comparison of the regulatory frames imposed by the national regulators.

However, we have concerns regarding the lack of best practices and recommendations based on the information presented in the report. In addition, we see a general lack of attention towards the common situation, where alternative operators operate the VHCN network corresponding with the copper-based network. Our comments and remarks are as follows:

- 1. We urge BEREC to compile a list of recommendations for a sustainable copper migration and copper switch off, considering the improvement of the current competition level of the MS` telecommunication markets.**

As VATM represents the German telecommunication market, we note that copper migration and copper switch off have not yet begun in Germany. However, we welcome any evidence based on the experiences of other MS which might provide for a smooth and timely customer migration from copper to VHCN.

We would like to emphasize that the role of BEREC and the NRAs providing guidance and predictability has been greatly appreciated by all market players.

In Germany, we experienced the first case of uncertainty regarding network migration in 2020, when Deutsche Telekom has announced that it plans to switch off its SDH network in 2023, as the platform is at its "end of life". Corresponding notices of service-termination and service-migration have been given to its contractual partners, which are also our member companies. However, those notices have been sent without complying with the established procedural requirements and consequently, BNetzA declared them inadmissible (BK2-20/024), granting that the SDH network will continue to be deployed. This case created a concern among our members that when there is no explicitly established guidance, and no specific procedure regarding the network migration has been put in place, the SMP operator would use that to undermine the alternative network operators.

Therefore, we would like to express the view that although the draft Report has introduced detailed information on the situation in the EU MS, has not outlined any best practices and recommendations. We acknowledge the fact that the regulatory rules and market structure may vary between the MS, but those still fall within the European regulatory framework. Thus, it is our view that Germany can use other MS' experiences to learn from their mistakes or to implement the solutions recognised as appropriate in MS with a similar country profile. The draft Report in its current state refrains from doing that and presents nothing more than a list of county measures without going into detail why those are appropriate in the country specific context and under what conditions those would be transferable and applicable in other MS. We would like to encourage BEREC to compile a list of regulatory incentives promoting better telecommunication services and acceleration of the VHCN roll-out.

We are convinced that creating stable and predictable rules and procedures governing the copper migration process, such as strict notice periods based on common understanding, ensuring stable access to network services and fair and transparent cost distribution would provide for a sustainable competition on the telecommunication market.

As we are already preparing for this transitional phase and anticipate the timely intervention of the German NRA on the matter, we would like to have an active role in the decision-making process contributing with our views and experiences. Having said that, it is paramount to have access to evidence-based country examples which would give some context to the discussion and would be helpful to better evaluate measures proposed for implementation on the German market. These measures should put forward the motion of competitiveness of the market for both services and for VHCN deployment areas and actively contribute to sustaining this criterion.

Finally, we would like to outline that the draft Report completely fails to address the possible implications on the market regarding the alternative VHCN operators.

We note that there is a general trend in the EU towards the emergence of new independent VHCN players, which deploy a VHCN in the intervention copper switch-off areas and may constitute the only network in those areas. We find it disturbing that those trends and their implications are not reflected upon in the draft Report. In addition, we urge BEREC to look into those cases in detail and provide its view on the copper switch off in those areas. In particular, we see challenges on market power issues (from the copper SMP operator) concerning investment incentives in VHCN as well as issues with the continuation of wholesale access services and therefore retail services by all providers concerned. We expect BEREC to address the possible provision of legacy end-user products based on copper services also in cases where the available VHC-network (receiving network) is not operated by the established SMP operator after the copper switch off. In our view, **the draft Report fails to address how migration for end-users relying on legacy contractual obligations (for services with low bandwidths - i.e. contractual obligations with a threshold of up to 30MB/s, 50MB/s, etc, which fall well below the thresholds set by the Digital Compass and the capacity of NGA-/VHC-networks) can be achieved, keeping in mind consumer preferences on the one hand and forward-looking capabilities of VHC-networks on the other hand.**

2. **We urge BEREC to express their views on cost distribution methodologies regarding the copper switch off and outline recommendations based on recognised best practices implemented in the MS.**

The BEREC draft Report states: *“The NRAs typically apply price regulation to the legacy copper-based wholesale access products and the alternative wholesale access products in a market analysis procedure. In many cases there is no need for further rules on the migration costs. However, in order to avoid competitive distortions further rules on migration costs could be useful under specific circumstances.”*¹

Regarding price regulation, VATM urges BEREC to consider adoption of price regulation of the copper switch off, which ensures that the cost of the copper migration does not fall on the alternative providers and access seekers. We invite BEREC to encourage the establishing of a separate procedure, which oversees the timely and cost-effective adoption of all regulatory measures related to the migration.

The draft Report states that in five MS (BE, CY, ES, IT, SE) explicit rules regarding the migration costs have been set.²

¹ BoR (21) 171, P. 4.

² BoR (21) 171, P. 19.

With regard to these country examples, **VATM would like to put forward the methodology implemented in Italy. We see the general outline as a good starting point regarding the copper switch-off and migration to VHCN, especially if there is a non-discriminatory approach towards migration costs independent of the ownership of the receiving VHCN.**

Furthermore, we would like to emphasize that tariff regulation regarding the migration from the legacy copper network is very important for our member companies and should be dully established well before the actual start of the migration. It is our view that the additional payments made by the alternative operators and access seekers over the years to encourage a new network roll-out can be used as a wedge in the context of the copper migration to ensure that no additional costs for the transition would fall on our member companies. We see the use of a wedge as a mean to promote competition. The timely regulation of this wedge effect would accelerate the copper migration as it would dissolve the lock-in effect to copper-based services. Having ensured these regulatory conditions, the alternative providers would switch to any available VHC-network – especially one operated by an alternative operator - as soon as it is available, which would create a domino effect and force the SMP-operator to accelerate its own migration. This approach would ensure that the wedge pricing methodology fulfils its regulatory purpose foreseen at its inception and contributes to a faster VHCN roll-out.

Therefore, we urge BEREC to endorse this regulatory approach and to introduce an overview of its impact and possible implementation in the EU MS.

- 3. We urge BEREC to organise a public workshop on copper switch-off and migration to a VHCN in order to receive a full and balanced picture including the views of the private sector.**

As stated in the draft Report, BEREC organised an internal workshop on “*migration from legacy infrastructures to fibre-based networks*” in 2019 to enable NRAs to share their experiences with the migration.³

However, **VATM would like to point out that there is an overall need of a follow-up event at least once a year, which also includes representatives of the telecommunications sector.** In our view, the complete omission of private-sector VHCN deployments is a result of this restricted dialogue and information gathering. It is paramount to lead an effective dialogue, which includes all relevant stakeholders and gives the opportunity for exchange of views and experiences.

³ BoR (21) 171, P. 5.