



# **ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY BEREC  
ON THE**

**DRAFT BEREC REPORT ON A CONSISTENT APPROACH TO  
MIGRATION AND COPPER SWITCH-OFF**

**BOR (21) 171**

**28 JANUARY 2022**

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## 1. Introductory comments and key ecta considerations

1. **ecta**, the **European Competitive Telecommunications Association**,<sup>1</sup> welcomes the opportunity to comment on the draft BEREC Report on a consistent approach to migration and copper switch-off, BoR (21) 1171. **ecta** thanks BEREC for preparing the draft Report.
2. **ecta** represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. **ecta** represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks and who demonstrate unique innovation capabilities.
3. The draft BEREC Report provides a factual overview of plans for, regulatory approaches to, and progress toward:
  - a) Full closure of the copper network, and full transition to end-to-end fibre (FttHome/FttOffice) networks (and in some cases wireless networks).
  - b) Copper network evolution, including partial phase-out of network elements (VDSL CO, VDSL2 StreetCab, g.fast, etc.).
4. **ecta** is in broad agreement with the facts presented. A key **ecta** comment, however, is that the final BEREC Report should separate full copper switch-off from copper evolution scenarios. These are entirely different processes, which should be subject to separate reporting, in order to avoid that the situation in countries with incremental copper network evolution appears equated with the situation in countries really progressing to end-to-end fibre service for all, and full copper switch-off. **The non-discrimination and competition issues raised by full copper switch-off are different from those that merely concern copper network evolution and require specific attention.**
5. In this response, **ecta** addresses the conclusions and recommendations contained in BEREC's draft Report (Sections 5 and 6), mainly with a view to encouraging BEREC to further identify, disseminate and promote best practices among NRAs.
6. In addition, **ecta** puts forward constructive suggestions for methodological and presentational improvements of the factual information that BEREC has gathered and adds some punctual brief comments.
7. **ecta** also requests BEREC to publish annual updates of the Report, to open these systematically to public consultation, and to organize at least one workshop with stakeholders per year, to ensure a close monitoring process, to detect problematic issues that are likely to arise and to consider how to correct such issues.
8. In closing, **ecta** provides key points to ensure non-discrimination and promote competition during the transition to end-to-end fibre, and final remarks.

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<sup>1</sup> <https://www.ectaportal.com/about-ecta>

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## 2. Comments on Section 5 of BEREC's draft Report and comments on Section 6, BEREC's conclusions

9. Sections 2, 3 and 4 of BEREC's draft Report consist largely of a listing of the plans and practices of operators with Significant Market Power (hereinafter 'SMPOs') and of the market analysis decisions made by National Regulatory Authorities (hereinafter 'NRAs'), principally relating to Markets 3a and 3b/2014 (and Market 4/2014 in a few instances). In Section 5, BEREC's draft Report identifies commonalities between the SMPO plans, practices and NRAs market analysis decisions and BEREC considers that these commonalities represent a consistent approach by NRAs. **ecta** agrees that these commonalities exist, and that it is worthwhile to identify them, but finds the approach descriptive, with BEREC not providing much by way of evaluation of what constitutes useful and good practices, BEREC simply noting certain practices which in reality are not good practices, and BEREC not making recommendations or providing guidance for improvement and best practices. Below, **ecta provides its reactions to the commonalities identified by BEREC, and in several instances asks for certain elements to be identified explicitly as best practice in BEREC's final Report.**
10. Type of procedure (Section 5.1): **ecta** agrees with BEREC that it is appropriate that the NRAs set the rules for the migration process and the copper switch-off in a full market analysis procedure, and – where justified – in response to an SMPO notification in application of Article 81 EEC or in a specific amendment decision (to the standing market analysis decision) in case of a major change. The full market analysis procedure indeed involves the strongest guarantees on proper technical and economic assessment, stakeholder involvement, and is subject to the Article 32/33 EEC notification process to other the European Commission, BEREC, and NRAs.
11. Level (granularity) of the rules (Section 5.2): **ecta** agrees with BEREC that it is appropriate for NRAs to match the level of granularity of the rules to the plans expected or notified by the SMPO. However, it would be preferable for BEREC to recommend this more explicitly, especially in light of BEREC's last sentence, which could be (mis)interpreted by NRAs as not calling for granularity when the SMPO has not been clear enough in articulating the practical implications of its plan. **ecta** considers that NRAs must ensure, by setting out the principles and requirements in advance, that SMPO's notifications contain the necessary granularity to enable the NRAs (and alternative operators during the consultation process) to assess concrete risks to discrimination and the impact on competition. **ecta** invites BEREC to indicate this as a best practice in its final Report.
12. Scope of the rules (Section 5.3): **ecta** agrees with BEREC, and simply asks BEREC to include footnote 39 in the main body of the text, because it is important that NRAs set out principles and requirements in advance (see our comment in paragraph 11 above).

13. Stakeholder involvement (Section 5.4): **ecta agrees** with BEREC, that **stakeholder involvement is a must**<sup>2</sup>. It would be welcome if BEREC would add that stakeholders must be involved not only to learn about the SMPO's plan, but must have the ability to **express their views on any change of access type and hand-over points and on the details of migration** arrangements, including any costs that may have to be borne by access takers. Technical forums and the NRA keeping a continuous dialogue with the stakeholders are highly relevant, irrespective of the matters ultimately being determined by means of a market analysis procedure.
14. Notice period (Section 5.5): **ecta** thanks BEREC for clearly stating that SMPOs want to switch off their copper-based access networks to reduce costs (page 25, para 2). This is an important statement, that needs to be borne in mind at all times. **ecta** can agree that the notice period is modulated, depending on the use made of various types of copper-based wholesale access products. However, utmost care must be taken by NRAs (and by BEREC in making any statements such as in the draft Report) that both Business-to-Consumer (B2C) and Business-to-Business (B2B) use cases of alternative operators are not unduly impacted, and that harm to competition (and thus to end-user interests) is not inflicted by notice periods that are unduly short. It is also very important that the migration is properly prepared and agreed by operators, and is not just a notice of cessation of wholesale products sent by the SMPO to the wholesale access takers. **The notice period should only start after migration processes are agreed by operators and validated by the NRA, and the shut-off date should apply equally for alternative operators and for the SMPOs' own products (retail, wholesale, internal use)**. More generally, based on the contents of BEREC's draft Report, and the timeframes mentioned in Section 5.5, **ecta** observes that most NRAs have moved to short transition periods, which are shorter than those of the European Commission's 2010 NGA Recommendation<sup>3</sup>. BEREC merely notes the transition periods adopted by NRAs, without comments, and seems to simply validate that NRAs depart from an EC Recommendation they are required to take utmost account of. BEREC takes the NRA facts and presents them as 'a consistent approach'. **ecta is of the view that NRAs have not in fact been taking consistent decisions on notice periods, because there is a high degree of variation among them, and that the notice periods listed by BEREC, especially those for copper local loop unbundling, entail real risks of damaging competition by being unduly short**. Attention is needed to B2B cases, for instance where alternative operators serve businesses with specific needs and have no readily available alternatives, have retail contracts running for a longer duration, and where retail contracts with public administrations were the subject of public tenders, with a contract duration exceeding the planned notice period for copper shut-down. Specific attention by NRAs (and BEREC in future reporting) is also needed to verify whether SMPOs intend to continue to use the copper network after ceasing wholesale access provision to

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<sup>2</sup> Is self-evident that alternative operators must be a party with rights to representation in any market analysis procedure or specific procedure that relates to changing or removing wholesale access products. If there are Member States where this would not be the case based on national law, that national law should be changed as a matter of urgency.

<sup>3</sup> 2010/572/EU: Commission Recommendation of 20 September 2010 on regulated access to Next Generation Access Networks (NGA): <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010H0572>

third parties. Such an outcome would be discriminatory and highly damaging to competition, and is unacceptable. **ecta** notes that in Spain, after the notice period ends, the SMPO must stop commercial offers on copper. This is clearly justified, and represents an important best practice which **ecta** asks BEREC to highlight in its final Report, including in the conclusions. The provisions adopted by the Italian NRA in Decision 348/19/CONS providing as prerequisites for the switch off a 100% NGA coverage in the area of the local exchange and a 60% of retail NGA take-up also deserve attention as an element of best practice, that could easily be used for both full and partial switch off.

15. Alternative wholesale access products (Section 5.6): **ecta** notes that BEREC states (page 26) that: *“There is no general need to impose on the SMPO the obligation to provide alternative wholesale access products only in case of copper switch-off”*. This statement is motivated by BEREC by the fact that the market analysis process of NRAs has often already led to the imposition of fibre-based (FttC, FttB, FttP) wholesale access products to-date. **ecta** agrees that this statement is broadly correct where it comes to copper evolution scenarios (to VDSL CO, VDSL2 CO/Street Cabinet) but it is much less clear that this statement is correct where it comes to end-to-end fibre and real copper switch-off. Also, the regulatory obligations imposed by NRAs with regard to end-to-end fibre are often limited (as BEREC itself recognizes) to VULA or bitstream, with passive access (fibre unbundling) being less frequently imposed by NRAs. This is a matter of serious concern to **ecta** and its members. **ecta** asks BEREC to reconsider Section 5.6 and in particular to conduct a more granular analysis, distinguishing:

- a) Full closure of the copper network, and full transition to end-to-end fibre (FttHome/FttOffice) networks (and in some cases wireless networks).
- b) Copper network evolution, including partial phase-out of network elements (VDSL CO, VDSL2 StreetCab, g.fast, etc.).

More generally, **ecta** takes issue with BEREC’s affirmations (bottom of page 26 and top of page 27) that: *“Duct access is imposed primarily in case ducts are (widely) available, fibre unbundling primarily in case the SMPO’s FTTH network is based on point-to-point fibre (not on PON) and already rolled out to a relevant extent, and active wholesale access products as e.g. VULA are of particular importance in case duct access and fibre unbundling are not possible or only to a limited extent”*. **ecta** wishes to put in on the record that:

- a) Some NRAs have not imposed civil engineering infrastructure access on the SMPO where it is possible and necessary, for instance by: (i) refraining from it on account of the existence of transposition measures of the EU Broadband Cost-Reduction Directive, resulting in absence of essential non-discrimination requirements and an inadequate cost standard, among others, and (ii), looking only at an increasingly outdated network architecture of SMPOs, thereby focusing only on the MDF to Street Cabinet connections. **ecta** considers these serious errors.
- b) The claim that the SMPOs’ GPON architecture somehow would not enable fibre unbundling should not be uncritically repeated by BEREC, especially in light of the EC

2010 NGA Recommendation which unequivocally requires fibre unbundling. All operators, including the SMPOs, have architected their fibre networks to enable both PON and P2P architectures, as part-overlays, and certainly to immediately connect an increasing number of customers/use cases (e.g. B2B, backhaul) by means of P2P fibre, and to readily be able to upgrade the network to move towards a more P2P oriented structure as and when they deem it needed. The alternative fibre operators have usually enabled their wholesale customers to opt for passive P2P wholesale access if they so wish, either by deploying a passive P2P network or by offering to lease out additional fibres in feeder segments. Key examples include OpenFiber in Italy (the largest alternative fibre operator in Europe), the concession holders for Réseaux d'Initiative Publique in France (representing over 8 million lines today out of 19 million lines planned), all Portuguese fibre operators, and others.

Based on the above, ecta also wishes to make clear its position that all NRAs should mandate passive access products (alongside civil engineering access and active access products such as VULA and more centrally delivered offers). BEREC should be very careful not to position the remedies of duct access, passive access (unbundling) and VULA/bitstream in a way to suggest that only one of them is suitable in response to a particular state of affairs. These remedies are all relevant and complementary. They do not depend on the SMPO's architecture choices alone, but on the willingness of the NRA to promote competition and ensure non-discrimination in both technical and economic terms.

16. Legacy copper-based wholesale access products (Section 5.7): ecta agrees with BEREC's findings, i.e. the consistent approach is to maintain the copper-based wholesale access products until the SMPO copper network is switched off. **ecta emphasizes that copper switch-off must mean copper switch-off for all, including the SMPO's own retail, wholesale and any internal or other use. ecta would find it acceptable for commercial switch-off to precede technical switch-off**, i.e. that SMPOs can stop provisioning new copper lines commercially, prior to switch-off, but it is **essential that this occurs on a fully non-discriminatory basis**, i.e. also the SMPO's own retail/wholesale/internal use must cease to receive new copper activations. The technical switch-off must be technical switch-off for all. It cannot be accepted that the SMPO ceases wholesale supply, and then continues to use the copper network for use cases such as backup lines, lines for certain technical installations (elevators, industrial machines, alarms, 5G small cells, etc.) while denying use to alternative operators.
  
17. Migration costs (Section 5.8): ecta is surprised to see BEREC stating: *"In many cases, there is no need that the NRA sets further rules on migration costs [... + points (i) to (iv) that follow on pages 27 and 28])"*. **BEREC is merely reflecting its finding that many NRAs have not so far regulated migration costs – which does not at all mean that there is no justification for such regulation.** The references *"(i) – the SMPO already offers free migration"*, and *"(iii) – the notice period is long (e.g. 5 years)"* are particularly frustrating from ecta's perspective, because point (i) is extremely rare, and BEREC itself reports that far shorter notice periods have been applied by NRAs. **ecta therefore asks BEREC to revise this section, and revise its conclusion.** ecta does welcome BEREC's statement

(page 28, para 2) that *“However, in order to avoid competitive distortions it could also be useful under specific circumstances and the national context that the NRA sets further rules on the migration costs as e.g. that the SMPO covers some migration costs (see section 3.6)”*. This refers to the Italian case, where the SMPO, TIM, is required to offer free of charge de-activation on the old network and free activation on the new network. BEREC also refers to the Swedish case (and **ecta** is aware of additional commercial arrangements in other Member States), where alternative operators’ stranded investments were reimbursed or taken into account as part of a migration package. These measures are clearly justified and represent important best practice which **ecta** asks BEREC to highlight in its final Report, including in the conclusions. In particular, BEREC could usefully highlight the Italian elements as best practice, rather than state that there is no need for NRAs to act.

**ecta** also reiterates in this context that BEREC has noted that it is in the SMPO’s interest to migrate and shut-down the copper network, to save costs. There is therefore a clear incentive in principle for the SMPO to assist alternative operators in migrating. The SMPO’s strategic interests in changing the dynamics of competition should not go ignored by NRAs.

18. Information of the SMPO and monitoring (Section 5.9): **ecta** finds BEREC’s position of monitoring migration very soft, including where it states: *“Whether NRAs also monitor the migration process and copper switch-off depends on national circumstances. In many countries this is the case”*. In actual fact, BEREC’s draft Report shows that only in 9 countries (CY, ES, FR, HU, IT, LI, LU, SE, SI) the NRA does monitor the migration process (page 21, para 3) and there is even a country (PL) where the NRA supposedly does not have powers to do so (page 21, para 4). BEREC’s reporting also shows a diversity of reasons for NRAs not monitoring, which include the migration either not being advanced, or being very advanced. **ecta considers that monitoring by NRAs of migration is essential, especially where it concerns the real transition to end-to-end fibre and actual copper network switch-off, in which case alternatives for wholesale access takers may be lacking or inappropriate, and this needs regulatory attention.**

**ecta** firmly believes that the monitoring of the switch off by the SMPO by the NRA is a core issue when it comes to avoid anti-competitive and discriminatory practices by the SMPOs during the migration. The monitoring therefore should become a wider practice by the NRAs in future when the migration processes will be more and more relevant. The provisions adopted by the Italian NRA in Decision 348/19/CONS (explicit mandate to monitor the processes involved in decommissioning and, in particular, the migration of wholesale services) also deserve attention as an element of best practice.

**ecta calls on BEREC to change its conclusion, and to state explicitly that best practice is for NRAs to systematically monitor the migration process and copper switch-off. ecta also calls upon BEREC itself to report, on an annual basis, on monitoring by NRAs. This should include not only whether NRAs monitor, but the outcome of such monitoring.**

19. Further rules (Section 5.10): **ecta** agrees with BEREC’s finding that the SMPO’s reference offer, resulting from the remedies imposed through the market analysis, is where the

alternative wholesale access products should materialize, and that the offer must be associated with KPIs and SLGs. Evidently, a non-discrimination obligation is also appropriate. **ecta is disappointed that BEREC only mentions the non-discrimination obligation conceptually, without providing any details. ecta urges BEREC to develop, in the final Report, the basic requirements and nature of the non-discrimination obligation in the context of migration. This could usefully be done in a format similar to that of the Best Practices for WLA, WBA, WLL, and should explicitly cover both B2C and B2B use cases** of wholesale products. For B2B migration, it is particularly important that the customer's essential business processes are not disrupted, and that alternative operators do not end-up losing their customers as a result of the SMPO's actions upstream. Whilst BEREC's draft Report is mostly generic, the situation for **leased lines and high-quality access** connections transitioning from copper to fibre requires **particular sensitivity**, which BEREC could usefully recognize. In addition, attention is needed that the copper to fibre transition does not result in *reducing* wholesale access Service Level Guarantees compared to copper unbundling, which is an issue that has arisen in practice. Fibre is intrinsically a better medium, often deployed in new civil engineering infrastructure, and can be better monitored on a permanent basis which should result in better uptime, better fault analysis (using spectrum analyzers, ODTRs, etc.), and better repair times, enabling *increasing* wholesale access Service Level Guarantees.

20. Permission to close MDFs (Section 5.11): The rules for MDF closure should be set in advance by NRAs, in full detail. Once the migration processes are agreed between operators and validated by the NRA, the notification of closure can be issued, and the notice period can start.
21. BEREC's Conclusions (Section 6): The concluding section of BEREC's draft Report does not contain recommendations or guidance; it merely restates a number of findings, identifying certain commonalities between NRAs' decisions after the fact, and BEREC considers that these commonalities represent a consistent approach by NRAs. **ecta's** points made above relating to Section 5 cover the contents of Section 6 as well, since Section 6 essentially is a short-form version of the contents of Section 5, containing no BEREC proposals for improvement or best practices. As such, **ecta** finds the conclusion of the draft Report lacking in ambition.

### 3. Comments of a methodological nature, and brief points on the findings described in Sections 2, 3 and 4 of BEREC's draft Report

22. The draft BEREC Report provides a **factual overview** of plans, regulatory approaches to, and progress toward:
  - a) Full closure of the copper network, and full transition to end-to-end fibre (FttHome/FttOffice) networks (and in some cases wireless networks).
  - b) Copper network evolution, including partial phase-out of network elements (VDSL CO, VDSL2 StreetCab, g.fast, etc.).



BEREC recognizes the important distinction between a) and b) – (detailed description of “*Full copper switch-off*” and “*Partial copper switch-off*” at page 6). Unfortunately, the draft Report goes on to treat these two subjects mostly as one and the same. This entails serious risks of presenting some SMPOs as very advanced and NRAs as deeply implicated in copper switch-off, whereas in fact they are merely managing transitory aspects of copper network evolution, which has been ongoing and has been well-understood in most EU Member States for well over a decade.

What is really at stake in the second decade of the 21<sup>st</sup> century is the complete replacement and switch-off of copper-based networks, with full transition mainly to end-to-end fibre-to-the-premises networks.

A key difference between the two subjects is that in copper network evolution, the wholesale access takers are transitioned between wholesale products of the SMPO (which is well-understood, even if often problematic, within a known regulatory framework), whereas in the full copper network closure scenario (transition to end-to-end fibre), there is potentially a much more disruptive change in the relationship between SMPOs and those taking or seeking wholesale network access. In addition, there are new provisions of the EEC (e.g. Articles 61(3), Article 72(2) last paragraph, Article 76/79, Article 80, Article 81), some of which relate to new network elements, entailing a major change in the legal and regulatory framework, resulting in severe risks of eviction of alternative operators from the market, and increasing responsibilities for regulatory authorities. **The non-discrimination and competition issues raised by full copper switch-off are different from those that merely concern copper network evolution and require specific attention.**

Based on the elements outlined above, **ecta asks BEREC to disentangle the two subjects, and to present its findings separately for the scenario of full copper network switch-off.** **ecta** believes that separating the subjects **would help in: (i) giving a clearer picture on the state of advancement towards full copper switch-off, (ii) comparing properly between countries and NRA decisions (‘apples with apples’), (iii) more readily lead BEREC to identifying early best practices from NRAs on full copper switch-off, which could be most useful for other NRAs and for market participants, and (iv) in particular help NRAs not to repeat avoidable mistakes** that could result in damaging competition and end-user interests.

23. Another methodological issue is that BEREC’s draft Report combines experience and NRA decisions from EU Member States that are fully subject to the EU regulatory framework, the EEA countries, and non-EU Member States such as Montenegro, Kosovo, and Switzerland. It is difficult for the reader to accept important draft BEREC conclusions where this is the case, and where Liechtenstein is more often addressed in text, footnotes and diagrams than Germany. **ecta** asks BEREC to systematically (in all documents) report separately on EU, EEA and non-EU countries.
24. Where a number of MDFs or Street Cabinets is addressed (e.g. Figure 2, but throughout the draft Report), **ecta** suggests that this would best be accompanied by the total number of

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MDFs and/or Street Cabinets in the country concerned, in order to make the proportion of locations affected understandable to the reader.

25. Where stakeholder involvement is discussed (Section 3.2), it is welcome that the concerns expressed by stakeholders are mentioned and summarized, but it is unclear from the draft Report whether the NRA has taken on board and addressed the concerns expressed. **ecta asks BEREC to elaborate on this point in the final Report.**
26. Figure 6, on alternative wholesale access products is interesting. It would be more impactful if the graphic presentation would show more clearly that several NRAs have imposed multiple alternative wholesale access products. In **ecta's** view, **imposing multiple access products, that meet multiple needs and thus are complementary, is the only right approach and thus constitutes best practice.**
27. On page 22, the draft BEREC Report discusses that copper switch-off tests were conducted in France and Italy. **ecta members have considered such tests/experiments very useful, to be able to identify practical problems in good time, and work towards their resolution before the problem hits with full force in an operational environment. Such testing could usefully be identified by BEREC as best practice in the final Report.**
28. Finally, **ecta** welcomes and finds useful that BEREC refers to a scenario in which copper wholesale access takers do not migrate to the SMPO's fibre network, but to another fibre network (page 27, para 3 and page 28, para 1). Whilst **ecta** expects alternative fibre operators to be generally more interested in supplying fit-for-purpose wholesale products than SMPOs, migration to an alternative fibre operator may come with its own problems, including possible retention tactics from the SMPO (retention tactics of technical or economic nature). This is therefore an area worth including in NRA and BEREC monitoring going forward, as there may be a learning curve and operator and NRAs may be able to learn valuable lessons from one-another.

#### 4. Key ecta points to ensure non-discrimination and promote competition during the transition to end-to-end fibre

29. **Alternative operators represented by ecta are committed to transitioning to fibre networks, and to rapid properly organized copper switch-off**, so as to avoid unnecessary parallel running of copper and fibre networks and provide the benefits of end-to-end fibre (and wireless access where appropriate) to as many end users as possible. Evidently, it is important for **ecta** members relying on wholesale copper access to continue to serve their customers in the transition, onto the network of the same SMPO or onto their own or another third-party network.
30. **ecta** considers that BEREC could and should do much more to ensure that migration and eventual copper switch off are a success, safeguarding a pro-competitive and non-discriminatory transition. Elements that need to be urgently and explicitly addressed in BEREC's future output, preferably in the form of Guidelines or a Common Position, or

updates to the Best Practices on WLA/WBA/WLL and Best Practices on Reference Offers, include the following:

- i. Definition of the architecture and especially the wholesale access/hand-over points of the VHCN network of the SMPO, jointly with wholesale access takers migrating to it (in particular in accordance with points 18, 23 and 39 of the European Commission's 2010 NGA Recommendation<sup>4</sup>). BEREC's draft Report should not merely note the existence of the Recommendation (in fact, BEREC notes the deviations from it without this being explicit), but endorse and emphasize its pro-competitive provisions and strong assurance of non-discrimination.
- ii. Active involvement of wholesale access takers in the definition of the transition/migration arrangements of the SMPO, related timetables (not just start and end dates, but all steps of the timetable, where necessary on a geographically distinct basis).
- iii. Definition, monitoring and enforcement of Key Performance Indicators (KPIs) and Service Level Guarantees (SLGs) for the transition/migration arrangements, with specific attention to covering all types of network usage (B2C, B2B, wholesale, backhaul, etc.) that need to be covered by the transition/migration.
- iv. Imposition of a strict non-discrimination obligation on the SMPO and active supervision thereof by the NRA, to ensure that wholesale access takers benefit from the **same transition arrangements, timing, and conditions** (incl. technical and economic conditions) as all (corresponding) activities of the SMPO, whether retail, wholesale, or their own subsidiaries or partners, internal, etc.
- v. Guidance to the effect that NRAs seek signed commitments from SMPOs that ALL copper lines will be adequately addressed in the transition/migration, notably to ensure that the SMPO cannot continue self-supplying resources whilst denying continued access to them to third parties. This is particularly relevant for copper lines that may be used to supply 5G small cells, for backhaul, for backup (of fibre lines), industrial control systems, and internal usage by SMPO, for which the copper network may have residual usefulness.
- vi. Reference Offers, subject to explicit approval and modification powers by NRAs, covering all elements of the transition/migration arrangements of the SMPO. ecta notes in this context that the BEREC Guidelines on the minimum criteria for a reference offer relating to obligations of transparency - BoR (19) 238 do not address copper migration and switch-off. These BEREC Guidelines could therefore also usefully be revised, to ensure that NRAs are enjoined to require reference offers with adequate contents.
- vii. Stability of wholesale charges for copper-based network access. ecta is aware that SMPOs exert pressure on NRAs, and lobby the European Commission, to loosen or remove wholesale copper price controls as part of the transition to VHCN, to change

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<sup>4</sup> Reference above.

the approach to WACC calculation, etc. These arguments appear to be partially contained also in the Visionary Analytics study performed for the European Commission. **ecta asks BEREC to reject arguments to the effect that raising the wholesale charges for copper-based services would facilitate the switch from legacy to VHCN-based services.** This will only lead to unjustified discrimination, benefiting the SMPO for whom the price of copper access is an internal transfer, while the cost for alternative operator relying on copper-based wholesale services is a very real external cost (as is the cost of sub-loop unbundling and dark fibre backhaul – downwards review of wholesale charges for these elements would help foster the transition to ultrabroadband). **ecta** points out that what drives the switch from legacy to VHCN-based services is not the wholesale or retail prices for copper-based services, but other elements such as the availability of infrastructure, the superior quality of service and user experience offered by VHCN, the digital readiness of the end users, and active promotion of VHCN-based services (including operators' own initiatives and discounts, as well as government-led schemes such as voucher schemes for certain categories of citizens and/or small businesses). **BEREC's draft Report also usefully highlights that the SMPOs' interest is to close down the copper network, for cost-saving reasons.**

31. **ecta** emphasises in this context that quality of service of SMPO's wholesale access remains an area of serious concern. **KPIs and SLGs for the new network of the SMPO need to be established, and must be expected to be better than those of the legacy network.** This comment is made because situations have already emerged in some Member States where the SMPO offered a repair-time SLG for the new network which was inferior to that of copper local loop unbundling, including where it concerns the premium SLGs (paid for options). This is really not the direction of travel that can reasonably be expected. Fibre cuts are a known reality, Operational Support System IT problems are a reality, but ambitious VHCN quality levels (for initial provisioning and for uptime and repairs), and best practices and incentives for improvement must be made mandatory where it concerns the regulated wholesale access inputs of SMPOs.

## 5. Final ecta remarks

32. **ecta** kindly asks BEREC to take into account the elements formulated in response, both in terms of overall approach, i.e. to **focus much more on providing best practices (notably best practices in the various areas listed in this ecta response)**, and in terms of methodology and detail, in particular by **separating out the findings on definitive switch-off of copper networks and final migration** to end-to-end fibre (or wireless) networks.
33. In addition, **ecta** believes that BEREC would make very useful contributions to the sector and to improving regulatory practice by:
  - a) Publishing a consultation report, summarizing the responses and comments received to this draft BEREC Report. This could usefully be done along the lines of the consultation

report on the BEREC Work Programme 2022, which ecta found to be a refreshing new initiative from BEREC.

- b) Publishing annual updates of the Report on a consistent approach to migration and copper switch-off, and to open these systematically to public consultation.
  - c) Organizing at least one workshop with stakeholders per year, to ensure a close monitoring progress, aimed at detecting problematic issues that are likely to arise and to consider how to correct such issues. It is particularly important to demonstrate best practices to all involved, to enable to learn from the best. An open dialogue between stakeholders, enabling stakeholders to hear each-others' views and positions, and enabling responses to positions expressed, is essential to NRAs gaining a full understanding of what is at stake, including in other countries than their own.
  - d) BEREC should recommend and ensure, as a best practice, that all NRAs monitor copper shut-down and related issues, and BEREC's future Reports should emphasize the results of such NRA monitoring.
34. Finally, in addition to BEREC annual reporting and workshops on migration and copper switch-off, **ecta** considers that there remain clear opportunities for BEREC to provide important guidance to NRAs and to the sector. This could be in the form of Guidelines or Common Positions, and in particular including in the form of updates and expansions of existing materials to address the specific topic of definitive closure of copper networks and final migration to end-to-end fibre (or wireless) networks. These materials include the Best Practices for WLA/WBA/WLL and the Best Practices for Reference Offers.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, **ecta** Director General.