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Body of European Regulators for Electronic
Communication (BEREC)
Fixed Network Evolution (FNE) Working Group
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Public consultation on the draft BEREC Report on a consistent approach to migration and copper switch-off

Dear Mr. Axelsson,

Dear Mr. Schramm,

Dear Sir / Madam,

The German Broadband Association, BREKO, welcomes the opportunity to comment on the recently published draft BEREC Report on a consistent approach to migration and copper switch-off, which gives a broad overview of all the significant issues related to the SMP operator's (internal) migration process from copper to his own fibre networks. The report shows how NRAs already started filling out the legislative frame given by Art. 81 EECC, and touches on important aspects like migration scenarios, notice periods, the availability of alternative wholesale access products and the required scope of regulation towards the incumbent that initiates the copper switch-off and migration process.

BREKO generally welcomes the timely consideration of this important topic as well as the comprehensive comparison of different approaches to regulating copper switch-off and migration. However, the report only covers scenarios where the copper switch-off and migration is initiated by the SMPO itself, while it does not take into consideration scenarios where one or multiple alternative network operators (ANOs) deploy NGA networks, and in particular, fibre. This is understandable insofar as Art. 81 EECC only covers migration and copper switch-off scenarios in regard to the SMPO, as well.

Nonetheless, if there are different rules and regulations for the fibre networks of SMPOs and those of ANOs, there is the risk of significant competitive distortions and a potential consolidation of market dominance. More specifically, there is the possibility of a “strategic copper switch-off” in all the areas where the SMPO already deployed fibre networks, with the goal of migrating end-users and wholesale customers to its own fibre network to reach a high network usage from the beginning. On the other hand, in areas where the (main) fibre network is deployed and operated by one or multiple ANOs, the SMPO could maintain its own copper network and keep it competitive (at least for some time) with technologies like Vectoring, Super-Vectoring or G.fast. Even though the higher quality and capacities of fibre networks will prevail over time, the migration process would be slowed down, and the full usage of the fibre network would be delayed. Reaching a high usage of the network shortly after it is deployed is a significant factor in business cases for fibre networks and influences the ANO’s possibilities to invest.

The occurrence and extent of these possible issues depends on multiple factors, including market history, structures in the copper and fibre markets and the copper network’s characteristics, which vary between Member States. In Germany, fibre networks are mostly deployed by competitors of the Deutsche Telekom AG, 56% of investments are done by ANOs, a large share of which are BREKO members. These investments are done by a big number of operators that often focus on the local and regional deployment of fibre networks. That being said, in Germany there is a comparatively performant copper network that is suitable for Vectoring and (partly) Super-Vectoring technologies, at least in urban and semi-urban areas. This constellation gives Deutsche Telekom both the possibility and the incentive for a “strategic copper switch-off” as described above. In order to prevent this, the conditions for a copper switch-off need to be harmonised, without regard to the actor which is deploying fibre networks.

The goal should not be that the NRA obligates the SMPO to switch-off their copper network. At least in Germany, constitutional law would probably not allow such an obligation. Instead, there should be incentives for a voluntary obligation by the SMPO regarding the acceptance of a level playing field – regardless of the fact if it was the SMPO or an ANO that deployed the fibre network. According to Art. 81 EECC, some aspects of migration processes have to be notified by the SMPO with the national regulatory authority. The SMPO’s voluntary obligation to accept a level playing field could fall

under the remit of the article and could thereby help avoid market distortion and a potential consolidation of market dominance.

In any case, a medium-term perspective for a copper switch-off has the potential to increase fibre deployment by ANOs, as this would reduce the time between the deployment and the full usage of the new fibre networks.

In conclusion, these arguments show the need for BEREC to take into consideration migration issues related to the fibre deployment areas of ANOs in this report and any further documents. Moreover, it is necessary to also discuss a possible voluntary obligation for incumbents to reach a level playing field, in order to protect the internal market and avoid the potentially harmful consolidation of market dominance.

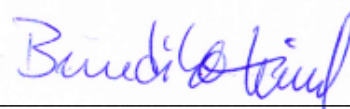
Should you have any further questions, please do not hesitate to contact us at any time.

Yours sincerely,



Jonas Wöll

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