

PUBLIC CONSULTATION ON THE DRAFT BEREC REPORT ON A CONSISTENT APPROACH TO MIGRATION AND COPPER SWITCH-OFF BY BEREC

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Introduction

Migration from legacy networks to fiber-based networks brings multiple benefits for users, economies, and societies as a whole. Not only users will be served via future-proof, high-speed technology with Gigabit potential, but also other benefits are generated, such as considerably lower energy consumption by FTTH technology.

Therefore, policies aiming to ensure swift and efficient copper-to-fiber switchover have the potential to unlock considerable value and therefore have to be carefully designed to maximize it.

The paper shows how important the forthcoming migration to the fiber infrastructure is and what the current progress is in the various member states. Migration requirements are not new. The issue of migration was already addressed in the NGA Recommendation in 2010. The paper shows that 13 incumbents already closed copper-based network elements and more than 17 countries has already rules set by NRA. The question will be, what is the purpose of the paper, when in majority countries the copper switch-off is working.

Deutsche Telekom, as an operator active in many EU and non-EU electronic communications markets, appreciates the possibility to comment on the BEREC draft report on a consistent approach to migration and copper switch-off. Our observations are outlined below.

The key observation we would like to share: our experience to-date indicates that there is hardly an aspect of migration from copper to fiber that can be taken in isolation from other ones. Rather, they should be weighted together as parts of the same “equation”.

This is especially relevant for the following factors: timing of switch-off, availability of wholesale substitutes and the compensation of costs, which are especially closely linked. For example, if timing of the steps is longer and commensurate to the period of depreciation of the infrastructure deployed by alternative operators, there is no need for compensation at all, as there are no sunk costs.

1. National rules transposing Article 81 EECC should not be altered or undermined by BEREC guidance

The transposition of EECC into national law, to our best knowledge, has either been finalized or is being currently finalized in most of the EU markets. Market players, in line with the principle of legitimate expectations, adjust their plans and business strategy in accordance with these new national provisions. This transposition includes national rules reflecting the provisions of Article 81.

It is of great importance that final BEREC report on copper switch-off does not suggest anything that would render national implementation redundant or would undermine it in any way, as this would cause considerable uncertainty for the market players.

2. Pace and timing of the migration process should be up to the SMPO

Switchover from copper to fiber is, in the first place, a highly technical process involving several layers of network architecture. Its ultimate purpose should be to ensure that it is smooth and causes no service disruption on the side of customers, retail or wholesale alike.

Therefore, the only practical way to ensure that this process runs properly is for the SMP Operator to design and propose when and how individual steps of the migration process are to be scheduled. By the same logic, it should be the SMP Operator who outlines technical details of migration, namely, how alternative operators are to be “switched off” from the legacy network.

On a more general level, excessive intervention into migration process would interfere with property rights of the SMPO, especially given that fact that investment into fiber is associated with high uncertainty and therefore high commercial risk. To be able to manage this risk, SMP Operator should be able to make independent decisions about migration.

3. Migration and switch off should be possible at a lower coverage than 100% fiber

As switching off copper infrastructure is possible on the low network granularity level, e.g. individual MDFs, LEXs or even buildings, the obligation to have 100% coverage by fiber to allow for the SMP Operator to announce switch-off should not be imposed. We would like to reiterate here our previous point that timing of migration should be fully in the hands of the SMP Operator, due to high complexity of the process.

Under no circumstance should copper switch-off be conditioned by 100% fiber coverage. The main point will be that alternative comparable products are available and could be offered. As EECC in Article 81.2 clearly distinguishes between “decommissioning” and “replacement,” BEREC, in our view, should also make clear beyond doubt that not all of the legacy network footprint should be “replaced” – some part of it will not be replaced by fiber and customers may be migrated to other technologies (see point 4 below).

In the context of possible different footprint of legacy and fiber networks, it is also necessary to ensure that in the areas where fiber network will not be available, SMP Operator will no longer be obliged to offer access. Under no circumstance may the SMP Operator be obliged to resell or in other way provide wholesale services which it procures from third parties to access seekers.

4. It should be possible to migrate customers to alternative technologies (e.g. satellite, wireless, coaxial)

For many reasons, technical and economic, it may not be possible to roll out fiber network to every customer presently being served via legacy copper-based network.

In this case it should be acceptable that comparable alternatives may be offered to such customers, such as satellite, coaxial-cable or wireless broadband, provided by the SMP Operator or by the universal service operator.

5. Alternative products should be comparable but not identical

Substitution of access to one wholesale product on legacy network (unbundled local loop) with multiple ones on the fiber network is in our view disproportionate and reduces the incentives of the SMP Operator to invest in fiber rollout. We therefore strongly support the logic when it is one active access product on the fiber network that is designated as closest comparable product.

In some countries there is imposed the access for passive products, ducts as compensation. There is in our view no economic justification why access to passive infrastructure should be mandated in the presence of a comparable active product, given the fact that passive infrastructure can also be provided by other entities than SMP Operator (e.g. utilities operators).

From this point of view an active alternative product is sufficient.

The requirement that active product(s) provided via fiber network should be identical and not comparable with the products provided over the legacy networks are objectively disproportionate. Such requirement would objectively constrain switchover to fiber, as differences are given by the very nature of new, fiber-based access products.

For example, Ethernet-based access lines may not necessarily deliver same delay parameters as SDH leased lines; however, their speed is superior. More importantly, SMP Operators are serving their own retail clients with same or similar needs and therefore there is no competitive advantage for them whatsoever when fiber-based access has comparable but not fully equivalent parameters as legacy networks. Such artificial constraint would also have negative impact on the environmental footprint of the networks.

Also Art.81 EEC imposed the duty to offer “... *alternative products of at least comparable quality.*”

6. Possibility to reflect increased cost of operation of legacy network in the increase of ULL prices

With increasing fiber rollout and corresponding migration of customers, it will be increasingly unprofitable to operate two networks simultaneously, due to decreasing revenues from legacy networks. The SMP Operators should have the possibility to reflect these higher costs in the increased price of legacy-based access products. Such increase would further serve as an additional incentive for alternative operators to migrate to fiber-based products.

We are convinced that maintaining artificially low prices of legacy access by the NRA would be a wrong policy choice, as it would not create the incentives for alternative operators to migrate, and would disregard objective increase in costs this also sending a wrong signal towards investors.

7. Preferably less migration phases and rules

Our preference is streamlined migration plan with outlined individual migration steps. The last migration showed that we had a good collaboration with the market player with less rules.

8. Notice Period

The German law, for example, specifies a notice period of at least 12 months. That is, in our view, fully sufficient. The alternative operators receive enough time after they become aware of a forthcoming migration. We prefer a short notice period. Timing of switchover steps has to reflect contract duration with retail customers, normally no longer than 24 months, which is consistent with the shorter switchover

timing we plead for. This would allow to align possible changes on the retail side with the necessary changes on the product side.

The original passage on notice period in the NGA Recommendation from 2010 specifies that if no migration path is agreed between the companies, the national regulatory authorities (NRAs) should ensure that alternative operators are informed at least five years before access points (APs) are decommissioned. That is no longer appropriate in the current circumstances.

During that same period of migration, in the presence of special external circumstances, the SMPO should have the possibility to apply exceptional short notice period, that is, to announce copper switch off earlier than originally planned. The most compelling and practical examples of such special external circumstance are breakdowns caused by construction works, such as building or road or other comparable activities or, due to degrading copper, especially in areas where fiber is already available or will be soon available. Under such circumstances repairing copper will definitely be costly without any prospective recovery of such costs. We also expect that such "emergency switch-off" will be rather an exception and concern very limited geographic areas.

9. Costs of migration should be solved according to WS contracts which normally contain relevant provisions

As we have stated in the beginning of this submission, under certain longer switchover time plans there is no need at all to compensate for costs incurred to alternative operators. If, nevertheless, there are still outstanding costs, they should normally be addressed according to the relevant clauses in the wholesale contracts.

Migration costs also arise for the SMP Operator and may not be covered by regulated charges. The parallel operation of networks results in higher operating costs for the operation of copper networks, which are usually not included in the regulated fees. Increased operating costs result from the fact that the stock of copper-based connections is likely to be concentrated in regions that are less densely populated and have higher operating costs. Also, a factor in higher operating costs in less densely populated regions is that there is a higher proportion of above-ground installations and they have a higher need for maintenance and upkeep. The longer the notice period lasts, the higher the operating costs for the copper lines per active connection.

More than that, the longer the notice period lasts, the less there is to be said for the incumbent to share in any wholesale customer migration costs.