



**ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY BEREC**

**ON THE**

**DRAFT BEREC PROGRESS REPORT ON MANAGING COPPER**

**NETWORK SWITCH-OFF**

**BOR (24) 181**

**31 JANUARY 2025**

## 1. Introduction

1. ecta, the [european competitive telecommunications association](#),<sup>1</sup> welcomes the opportunity to comment on the draft BEREC Progress Report on managing copper network switch-off, BoR (24) 181 (hereafter “draft BEREC Report”). **ecta thanks BEREC and its members for their intense work in preparing this draft BEREC 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.

## 2. Key ecta considerations

3. The draft BEREC report provides a detailed and useful overview on the copper switch-off status and practices in EU Member States, particularly the regulatory measures put in place by the National Regulatory Authorities (hereafter “NRAs”).
4. The level of detail of the information and data provided in *Chapter 5: Rules set by the NRA for the migration process and copper switch-off* and in *Chapter 7: Lessons learned so far*, is most welcome and is most useful for stakeholders. The **new information** included in the draft BEREC Report (incl. its extensive Annex 3) vis-à-vis the previous edition dating back to 2022 (BoR (22) 69), dated 9 June 2022) is **indicative of real efforts made, and real progress achieved.**
5. In line with the request made in its response in January 2022, **ecta asks BEREC to enhance the final text of the draft BEREC Report, by including a best practices and guidance section, based on lessons learned.**
6. In addition, **ecta insists that a next edition (to be issued in 2026) should explicitly take the form of a BEREC Common Position, setting out the best practices for NRAs to implement, and to be accompanied by a BEREC monitoring process.**

**BEREC providing best practices, and reporting on their actual implementation by NRAs, is crucial to ensure that all EU Member States get the process right, i.e. ensuring a decidedly pro-competitive copper migration and copper switch-off, securing an appropriate level of end-user protection.**

7. ecta asks BEREC to **publish annual updates of the Report and to the BEREC Common Position we request**, to open drafts systematically to public consultation, and to organize at least one workshop with stakeholders per year, to ensure a close monitoring process, enabling detection of problematic issues, and to ensure rapid correction thereof by NRAs.

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

8. **ecta** supports BEREC's conclusion (page 26, para 4) on the need to avoid that VHCN migration and copper switch-off are rushed, and expresses its concern regarding some recent legislative proposals to force copper switch-off (i.e. amendment and resolutions within the Italian Budget Bill – amendments which ultimately were not retained), that would limit the crucial role of the NRA in this extremely delicate and technical domain.
9. **ecta** endorses BEREC's position on target dates for copper switch-off, where it considers that "[...] uniform targets across all member states as suggested by the White Paper thus seem overly ambitious and may not be the most appropriate tool to tackle the vastly different situations across Member States" (page 3, para 4). The BEREC draft clearly shows that only 10 Member States are expected to reach the total switch-off by 2030, while in the majority of Member States, no switch-off has been yet announced by the SMPO. This is mainly due to the fact that there are Member States where there are more difficulties than in others performing the switch-off (including topographic or geographical reasons, lack of pre-existing civil engineering infrastructure, limited availability of a workforce to construct networks, weather issues impacting outside works, and the strategy of the SMPO). **ecta** is of the view that **setting timetables, if appropriate, is a matter for technical assessment, to be determined and managed by NRAs, taking full account national and sub-national circumstances including promoting competition and safeguarding citizens' and businesses' interests, and should not be politicized, neither at EU level, nor by national governments.**

### 3. Specific ecta remarks on the draft BEREC Report

10. **Alternative wholesale access product(s) (1):** **ecta** notes that, in the executive summary (page 2, para 5), the draft BEREC Report identifies that one of the most common practices of copper switch-off is the definition of "[...] an appropriate alternative wholesale access product" (presented by the draft BEREC Report in singular, our emphasis). **ecta** is strongly of the view that there is a need for fit-for-purpose alternative products (in plural), and underlines the need for NRAs to mandate both passive (unbundling) and active type (VULA/Bitstream) alternative wholesale access products, to continue to ensure competition, and overall, the ability for alternative operators to differentiate their services (across the speed (downstream and upstream)/QoS/price dimensions). Only a few EU NRAs have ensured multiple alternative access products, so far, and few have included a passive access product so far, as can be seen in the table on the subject (page 15, table 5). This needs to change.
11. **Alternative wholesale access product(s) (2):** At the end of the executive summary (page 3, para 4) and at the end of the conclusions (page 26, para 5) the draft Report rightly stresses the need for an appropriate level of end-user protection, which requires to foresee adequate notice periods, end-user information and the availability of adequate alternative wholesale access products at a comparable price. **ecta** strongly agrees and encourages BEREC during the forthcoming evaluation of the EECC to make these points, notably that adequate alternative wholesale access products (provided over fibre) should be provided

at a comparable price to the wholesale access products (provided over copper) being phased out. Italy is a best practice case identified by ecta in this regard, and it is present in the draft BEREC Report (page 18, para 2), in the following terms: *“In addition, the wholesale price of the NGA “substituting” service is equalized, during the migration period, to the wholesale price of the “substituted” copper service until the switch-off of the local exchange”*.

12. **Migration costs (1):** At the start of Chapter 5.9 on migration costs, the draft BEREC 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 and, therefore, there may be no need for further rules on migration costs”* (page 18, para 3). ecta is concerned that this statement may be interpreted as meaning that no action needs to be taken on migration costs, and/or that it is taken for granted that specific regulation of migration costs is a justified exception. ecta is on the record with BEREC, and has emphasized on several occasions, that specific price regulation in the migration context is a best practice, and that this needs to be promoted by BEREC among its NRA members. See also the points made in paragraph 13 below. Please allow ecta also to reiterate a comment made in response to the previous draft BEREC Report (2022): BEREC is merely reflecting its finding that, so far, a majority of NRAs have not regulated migration costs. This does not at all mean that there is no justification for such regulation. ecta therefore asks BEREC to revise this section, so as not to suggest a conclusion leading to inaction on the need for a pro-competitive approach to migration costs.
13. **Migration costs (2):** Chapter 5.9 on migration costs in fact identifies clear NRA best practices, applied in France (SMPO should not impose copper termination costs, since the alternative operators have no other choice than terminating their contracts in a copper switch-off context) and Italy (one-off costs for de-activation and re-activation covered by the SMPO; additional co-lo decommissioning costs covered by the SMPO; interconnection equipment for migration covered by the SMPO; wholesale price of the new wholesale access product is the same as for the legacy wholesale product during the migration process). These are the precise types of best practices that ecta expects BEREC to emphasise in a best practices section in the final text of this Report and in a future BEREC Common Position. Note: there is presumably an error to be corrected relating to Italy, where the draft Report states *“decommissioning in new local exchanges”* (page 19, para 2). This presumably refers to old local exchanges.
14. **Ensuring non-discrimination between the SMP Operators and others::** ecta members insists that technical copper switch-off must mean switch-off for all. . It must be unequivocally ruled out that the SMPO would be entitled to cease wholesale supply to alternative operators and then continue to use the copper network internally or for use cases such as backup lines, lines for certain technical installations (elevators, industrial machines, alarms, 5G small cells, etc.), and any other use case, while denying use to alternative operators.

15. **Concept of commercial closure:** ecta notes that, in the draft BEREC Report's introduction, the concept of commercial closure is attributed to the European Commission's Recommendation (EU) 2024/539, stating that *"It introduces the possibility to include a "commercial closure" step in the process of copper switch-off."* (page 4, para 3). ecta respectfully requests BEREC to modify this reference, because 12 NRAs introduced the concept of commercial closure, presumably on their own initiative or taking on board good ideas implemented by other NRAs, prior to the publication of this EC Recommendation on 6 February 2024. Furthermore, BEREC conducted the survey of NRAs in Spring 2024, i.e. prior to the adoption of the EC Recommendation.
16. **Appropriate communication towards end-users is essential:** avoiding economic measures imposed on end-users; avoiding forced migration of end-users: ecta would like to stress that the right tool to avoid forced migration is appropriate communication toward end-users, and not the use of economic incentives, which have proven to be ineffective. For instance, in Italy, one of the difficulties on the part of end-users to migrate to fibre is the fear of fraud or deceit. ecta agrees with BEREC that one of the key actions that NRAs should undertake to facilitate migration and copper switch-off should be [...] *"efforts around communication with the end-users"* [...] (page 3, para 3).
17. **Stakeholder involvement:** Chapter 5.3 on stakeholder involvement is just one paragraph in length. ecta wishes to reiterate a point made in its response to the draft 2022 Report, which is that proper stakeholder involvement is a must. It would be welcome if the draft BEREC Report would be explicit in stating 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.
18. **Particular caution is needed in EU Member States where there is no short to medium term outlook for copper switch-off - specific attention to Germany :** The draft BEREC report correctly describes that there is currently neither a binding nor a voluntary timetable for the shutdown of copper networks in Germany. German ecta members indicate that it is, regrettably, an objective reality that there has, so far, been little acceptance and use of fibre, particularly among private households. Migration and copper switch-off are clearly important but must therefore be approached with caution, to avoid harm to competition (the experience with the Vectoring I+II decisions by the NRA has been that competition was substantially damaged), and to ensure the protection of end users. German ecta members have developed a proposed substitution matrix, because there is a real concern that the NRA may not mandate alternative wholesale access products or will not include passive (unbundled) access to the SMPO's fibre network. More broadly, Germany in particular has work to do to ensure that migration is properly handled.

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

19. **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.
20. 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 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.
  - 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.

- 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 the approach to WACC calculation, etc. 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 operators relying on copper-based wholesale services is a very real external cost.
21. [ecta](#) emphasises in this context that quality of service of SMPO's wholesale access remains an area of serious concern. KPIs and SLGs for FTTH/FTTO networks of the SMPO need to be established, and they 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 repair-time SLG for the new network is inferior to that of copper local loop unbundling, including where it concerns the premium SLGs. 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

22. [ecta](#) kindly asks BEREC to take into account the elements formulated in response, and in particular to **focus much more on providing best practices, preferably already in the final text of this Report, and for the next iteration to become a BEREC Common Position on Best Practices for copper to fibre migration and copper switch-off.**

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In case of questions or requests for clarification regarding this contribution, BEREC is welcome to contact Mr Luc Hindryckx, [ecta](#) Director General, or Ms Pinar Serdengecti, [ecta](#) Regulation and Competition Affairs Director.