# Vodafone's response to BERECs' Draft Progress Report on managing copper network switch-off

We appreciate the opportunity to comment on this consultation and trust that our comments are helpful to BEREC and National Regulatory Authorities (NRAs) as well as to other stakeholders. We remain at your disposal to discuss our submission to the draft progress report on managing copper network switch-off, or any other aspect relevant in the context of the latter.

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In its released "*Draft Report on managing copper network switch-off*" BEREC aims to give an overview on the status-quo of legacy retirement amongst states. Overall, the Report aligns with the observation we made in our footprint (Czech Republic, Germany, Greece, Ireland, Netherlands, Portugal, Romania): while some countries, such as Sweden and Spain, are nearing the completion of their copper switch-off, others have yet to establish a framework for phasing out their legacy networks. While the report provides a comprehensive overview of the *status quo* - and variety - of EU countries when it comes to copper switch-off, it fails to provide relevant details that are necessary to evaluate best practices for copper switch-off.[1]

In contrast to the well-advanced states mentioned above, Greece, the Czech Republic and Germany do serve as examples which are in an early stage of starting the migration process. We want to highlight a few points on the status of migration in these markets:

- In the BEREC report, the Czech NRA reported that it did set rules for the migration process as well as the copper switch-off. However, the NRA recently fully deregulated Market 3b (wholesale central access) and narrowed the scope for Market 1 regulation (wholesale local access) rapidly to around 70 municipalities. For those regulated municipalities, the SMP has to inform and present a plan 1 year before switching-off an active unbundled line. In the deregulated municipalities the process is left without any regulatory intervention on the incumbent, which did not publish any plans on copper switch-off yet. The fact that the incumbent just recently invested into FTTC (and not FTTB/H) additionally leaves doubts whether such plans will be presented any time soon. This creates huge uncertainty in the market.

- In Germany, neither the NRA nor the incumbent have established rules for a copper switch-off. Consequently, the complete closure of the copper network remains a distant prospect. This aligns with what we believe is Deutsche Telekom's strategic goal to maximize profits from its legacy network for as long as possible and deploying homes passed to deter Altnets' deployment, ultimately leveraging its re-monopolising market power in the transition to fiber. In particular, in areas where incumbent DT has not yet built fibre, there is little incentive for DT to shut down the copper network – and of course no incentive to allow customers to migrate to third party fibre. Where DT has not rolled out fibre, models show that only if DT loses 80% of its

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[1] Referring to Chapter 2 of the Draft BEREC Report on managing copper network switch-off.

copper consumers will operating the copper network no longer be profitable for DT and therefore create incentives for DT to switch-off the copper network.[2]

The delays in copper switch-off will further jeopardise Digital goals set by European Commission

- The European Commission's White Paper on "*How to master Europe's digital infrastructure needs?*" analyses the challenges Europe currently faces in the rollout of future connectivity networks, and presents possible scenarios to attract investments, foster innovation, increase security, and achieve a true Digital Single Market.

- On connectivity, the White Paper sees copper switch-off as a key goal of the European Commission (EC). The EC sees the need to consider further measures to accelerate copper switch-off, including setting 2030 as the target date for complete switch-off in the Union.

However, not only a timely copper switch-off is important, but the **right implementation and competitive safeguards** and a model for "best practice":

- In the White Paper, the Commission specifically acknowledges that "*predictable and balanced measures are necessary to avoid the migration reversing competitive gains, including competitive infrastructure roll-out*" and that "*NRAs should ensure that the design of the copper switch-off process by the operator with significant market power (SMP), in particular as regards its timing and agenda, does not allow strategic behaviour that would weaken competition at wholesale or retail level*".

- Investment competition is a key lever to close the investment gap in fixed networks. The SMP regulation has not delivered a sufficient level of infrastructure competition. This is more relevant that ever as the upcoming migration from copper is as a once-in-a-generation "*make or break*" opportunity, especially given the roles Altnets and other VHCN operators could play in this process. The switch-off of copper networks and migration to VCHN, can genuinely shape a more competitive fixed market for the future – or the opposite, if the right safeguards are not put in place.

- The EECC and the Gigabit Recommendation provide a general framework to ensure a competitive transition. In our view, this framework needs to be complemented by additional safeguards to allow policy makers shaping copper to VHCN migration in a positive manner and a proper "best practice" model defined by the EC.

- According to the EECC, incumbents need to notify to the NRA their plans to decommission legacy infrastructure in advance and in a timely manner. The NRA shall ensure that the decommissioning includes a transparent timetable and conditions, and an alternative access product (of at least comparable quality) needs to be made available in the new network. The NRA also needs to ensure that the decommissioning process does not lead to discriminatory behaviour (e.g. differences in switch-off timelines by the incumbent need to be justified on objective criteria).

- Beyond the EECC, the Gigabit Recommendation provides for VHCN Coverage thresholds to be set by NRAs (Art. 78) and full transparency towards involvement off all stakeholders in drawing a plan for decommissioning process and timetable (Art. 79).

- Copper migration needs to ensure fair competition at retail and network levels, particularly if investment in VHCN by Altnets is to be encouraged, and so regulatory checks and balances on the migration must be maintained. We think further guidance needs to be provided in this regard and

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[2] ANGA-MARKTSTUDIE 2030.

therefore **suggest that the EC revises the Gigabit Recommendation accordingly**. The EC, in liaison with BEREC, must provide a "best practice" model for migration which NRAs are to follow.

Considering best practices from the Draft BEREC Report on managing copper network switch-off as well as other sources, we would suggest this "best practice" copper switch-off model includes *inter alia* the additional **safeguards** and **recommendations** listed below and which would be an add on to the ones currently included in recommends 76-79 of the Gigabit Recommendation and article 81 of the EECC.

This model should be detailed by the EC via a review of the Gigabit Recommendation to be adopted as a matter of urgency, and where BEREC's expertise needs to be fully considered[3]:

| Best Practice copper switch-off model – additional safeguards | | Implemented in |
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| **Maintaining infrastructure competition** | Ahead of the migration process, ensure regulated access is maintained in areas where SMP monopoly on VHCN remains. | Sweden[4] |
| | Clear plans (by region) of where SMP players are planning to deploy VHCN networks, thereby providing the opportunity for Altnets to identify where they might choose to deploy, without the risk of being crowded out by reactive reprioritisation of regions by SMP players. Sanctions on the SMP player in case of strategic overbuild. | |
| **VHCN coverage** | The migration process should start once a certain high percentage of the target area is covered by a VHCN[5]. | Spain, Italy, Greece[6] |
| | The bulk of households should be connected by VHCN to the premises - homes simply *passed* but *not connected* should not count for the coverage - before the migration process is started. | |
| **Transparency on timing** | SMP operators shall provide an approximate schedule, including key milestones for migration as soon as possible, to ensure sufficient time is available for access seekers to prepare the mass migration process. In those Member States where information on switch-off timing is currently lacking, certainty should be created as soon as possible considering the | Milestones defined by NRA in Belgium, Cyprus, Denmark, Spain, France, Lithuania, Luxemburg, Malta, Norway, Portugal and Sweden[7] |

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[3] These proposals mainly reflect concerns raised by Altnets in different Member States and are already reflected in BEREC's report from June 2022 (BoR (22) 69). Our ask is to include these modified proposals in a set of recommendations to NRAs.

[4] Copper switch-off European experience and practical considerations, p. 13.

[5] In ES and IT, Altnets expressed the view that the SMP Operator shall only be allowed to close MDFs/exchanges after all end-users were migrated to VHCN (no forced migration), source: internal research, WIK, Cullen, Analysys Mason.

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[7] Draft BEREC Report on managing copper network Switch-off, p. 8.

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| | national circumstances. For some member states, this point in time may already be reached in 2025. | |
| | Timetables for migration processes need to be discussed and agreed with access seekers in advance. | Denmark, Lithuania, Spain, Italy, Poland, Slovakia [8] |
| | SMP operators must ensure full transparency and proper lead-times before starting the migration process (i.e. there must be a prenotification period of at least 18 months). | |
| **Access products** | A fit-for-purpose VHCN "entry level" access product is in place, and ready to be activated, which provides equivalent or higher speeds to all operators without a price premium being applied. | |
| | NRAs must ensure that the standard of provisioning and service assurance of the copper network does not degrade in advance of formal notification of copper switch off or once a formal notification has been provided. A poor customer experience on copper services should not be used to trigger migration to fibre. | |
| | Before or at the time of announcing copper switch-off, SMP operators must have fully-fledged successor (i.e. higher speed tier) VHCN access product in place for both retail and business customers. | Belgium, Cyprus, Estland, Italy, Lithuania [9] |
| **Technology neutrality** | Where available, HFC/DOCSIS networks, which qualify as VHCN under the EECC and the Digital Decade KPIs, must be promoted as equivalent (long term) target networks to which copper retail customers can migrate. | Netherlands |
| **Communication/ Marketing** | Ensure strict pre-marketing rules on the SMP operator to avoid unfair competitive advantages during migration - i.e. pre-emptive marketing favouring the SMP operator's fibre over VHCN alternatives, or SMP retail offers over reseller retail offers. | |
| | Communication should not be centralised from SMP to customers but carried out by each operator to its own customers. | Belgium, Norway, Slovakia, Slovenia [10] |
| **Migration to 3rd party non-SMP networks** | In areas where the SMP operator does not have a VHCN alternative, the migration of wholesale copper customers to third party networks of non-SMP undertakings should take place primarily on a voluntary basis ("attractive offers"). | |

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[8] Draft BEREC Report on managing copper network Switch-off, p. 12.
[9] Draft BEREC Report on managing copper network Switch-off, p. 16.
[10] Draft BEREC Report on managing copper network Switch-off, p. 139-141.

| | There should not be an obligation on access seekers to move onto the third-party network (forced migration) if the conditions are worse than those offered by the SMP. | |
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| **Migration costs** | Determination of how costs will be dealt with, in particular[11]:<br><br>▪ *Direct migration costs* (e.g. activation of fibre lines, deactivation of copper lines, removal of equipment, costs for new CPEs) should be borne by the SMP operator. Decommissioning costs should not be passed on to the access seekers.<br><br>▪ *Indirect migration cost of access seekers* (i.e. administrative/IT cost) should be at least partially reimbursed. | |

**To conclude, to ensure NRAs are best equipped to ensure migration does not lead to anticompetitive outcomes, we advocate that the EC reviews the Gigabit Recommendation in order to put forward a "best-practice" model for copper switch-off which includes *inter alia* the safeguards listed above and ensures migration from copper effectively safeguards and promotes competition. BEREC's expertise will be key in this regard.**

In this context, we further advocate for a revision of Art. 81 Gigabit Recommendation as it can lead to competitive distortions. Evidence shows that fibre deployment and migration to fibre are propelled first and foremost by VHCN competition plus a clear ex ante copper/fibre framework, **pricing stability** and a robust switch-off programme - and not by higher copper prices. If NRAs consider relaxation of copper price control, this allows the SMP to exploit the margin of its fully depreciated copper network even more, ultimately having significantly more funds for network deployment than Altnets, which are disadvantaged if they rely on wholesale copper access. It thus depletes the cash available to challengers to compete in the market.

Further, it creates incentives for the SMP to delay migration process as long as possible due to windfall profits resulting from increased copper margins.

Finally, increased copper prices would be detrimental especially for lower-income households: As fibre-based products are regularly more expensive, these households may not be able to migrate to a fibre connection. If the price of the copper-based product increases without any additional benefit, they would be disproportionally worse off (considering access seekers would need to reflect the wholesale price increase in their retail offerings).

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[11] In ES, GR, IT, and SI, Altnets expressed concerns regarding the migration costs and considered that the SMP Operator shall cover at least some of those costs. For example, in Italy the SMP Operator has to cover the following costs (i) the deactivation of old/legacy wholesale access product and activation of new/alternative wholesale access product, (ii) additional costs for decommissioning of co-location ANOs' sites, and (iii) costs for co-location in new local exchange and for interconnection equipment's to migrate customers. In addition, during migration and until the local exchange is switched-off, the price of the NGA "substituting" wholesale service is equalized to the wholesale price of the "substituted" copper service, source: internal research, WIK, Cullen, Analysys Mason.