

BREKO Feedback on the draft BEREC Progress Report on managing copper network switch-off

Introduction

BREKO welcomes the opportunity to comment on the “Draft BEREC Progress Report on managing copper network switch-off”. The transition process from copper to fibre networks is vital to ensure fair and competitive market conditions on future digital networks. Since the last report (BoR (21) 171) analysing the status of copper switch-off in 2021, a lot of progress has been made in terms of network transition in many EU countries. In Germany however, neither has the transition process started nor has the NRA presented a concept on how to navigate this technological change. However, a concept proposal by the NRA to drive this process on fair terms would considerably foster fibre roll-out and be a significant driver to reach the EU Digital Decade goals of full fibre coverage by 2030.

As the leading fibre-optic association in Germany, BREKO successfully advocates for fair competition in the German telecommunications market. Its more than 500 members, among which over 260 network operators, are clearly committed to future-proof fibre optics and are responsible for more than 60% of fibre roll-out in the country.

In our feedback, we would like to highlight the main challenges of the copper to fibre transition process on the German market which need to be taken into account as fast as possible and to be directed and addressed in a concept by the NRA regarding the current market dynamics and still early stage of fibre deployment compared to other EU countries.

Emphasising the need for a fair and competitive switch-off process to foster efficient fibre network deployment

BEREC’s draft of the report entails valuable insights and learnings concerning the transition from copper to fibre networks throughout the European Union. However, we believe that the report does not put sufficient emphasis on the necessity of a fair and competitive switch-off process which however is crucial for efficient fibre deployment. Regarding the significant market power of the incumbent in the context of a telecommunications market which is still heavily reliant on copper networks, there is a substantial risk of strategic behaviour from the incumbent likely to hamper fibre deployment overall and to shift SMP from the legacy copper market onto the developing fibre market, which we believe should be strictly avoided.

While we acknowledge that point 5.12. of the report on “non-discriminatory control” mentions the possibility of constraints on the SMPO in areas where it is itself providing fibre network infrastructure, we believe that this crucial point deserves bigger regulatory scrutiny

and a more prominent focus in the BEREC progress report, especially regarding Germany. Moreover, a fair and competitive transition process from copper to fibre networks is not only relevant for wholesale customers but also for third-party network operators as the main fibre deployers in the market.

Thus, the requirements outlined in the report to provide for transparent timetable and conditions, and the availability of alternative wholesale access products of comparable quality alone are not sufficient to safeguard the regulatory objectives of fair competition as outlined within the regulatory objectives of article 3 of the EECC.

Emphasising the need for a timely copper switch-off concept in Germany

Further, we would like to highlight the importance of the regulators acting timely on the copper to fibre migration process, both to maintain fair market competition as well as to meet fibre deployment targets of the EU Digital Decade. To solely state that in Germany there is no sufficient customer interest for the take-up of fibre products is neither correct, having in mind that in mid-2024 Germany showed a fibre coverage rate of 43 percent, nor does it portray the complexity of the market-driven dynamics which are responsible for the status quo of heavily copper-reliant telecommunication networks. Furthermore, alternative network operators are much more incentivised in terms of investment strategy to ultimately connect and activate households with fibre connections compared to the heavily copper-reliant incumbent. Consequently, alternative network operators also activate significantly more households than the incumbent¹.

BREKO's view on how to achieve a non-discriminatory copper to fibre migration process

Since the right to initiate a shutdown process of legacy copper networks lies exclusively with the incumbent, there is a considerable risk of a strategic shutdown behaviour on behalf of the SMP operator, especially in Germany considering the predominance of copper networks owned by the incumbent. More precisely, in areas where the incumbent has deployed its own fibre network, it can achieve considerable cost savings by swiftly migrating customers to this new network and subsequently switching off its legacy copper network. Hence, the incumbent can avoid relying on open access agreements with other network operators in order to be able to offer fibre products to customers.

Inversely, in deployment areas of its competitors, the incumbent has a strong strategic interest in generating revenues for as long as possible via its legacy copper infrastructure, which has already been largely written off in terms of financial investments, and at the

¹ The [2024 BREKO Market Analysis](#) shows that among 5.2 million activated households in Germany, 77% are activated by Altnets, 23% by the incumbent

same time keeping the take-up rate of its competitors' fibre optic networks as low as possible by delaying the migration process.

Moreover, due to the long-term discount model (so-called commitment-model) allowing the incumbent to retain its major wholesale customers into in a 10+3 years binding contract which ties the purchase of copper-based wholesale products to the (future) sale of fiber-based products, the SMP operator can preserve and transfer a significant amount of market shares from the legacy copper onto the fibre market, without being subject to the same rules of competition as alternative network operators, for whom the acquisition of those customers is impossible, despite oftentimes more efficient available networks, which also provide for open access.

To avoid the risk of unfair competitive practices linked to strategic switch-off behaviours, which would also conflict with the regulatory objectives in terms of promoting VHCN networks and fair competition as outlined in article 3 of the European Electronic Communications Code (EECC), the German national regulatory authority (BNetzA) must clarify the key issues relating to the copper to fibre migration and ensure a switch-off process that prevents the transfer of market power and weakening of competition.

Further, the NRA must ensure that the shutdown of copper networks in areas where alternative operators have deployed fibre is not carried out in less favourable conditions than in areas where the incumbent itself has deployed fibre networks.

The BNetzA needs to ensure that these aspects are thoroughly considered before first switch-off requests are submitted. In this context, as over 60% of currently deployed fibre networks in Germany have been built by alternative operators², the copper to fibre transition process cannot solely rely on the willingness of the incumbent to decide on the timing and conditions to switch to fibre networks.

In April 2024, BREKO has presented an extensive migration concept³ with the idea of having a legally compliant proposal which the German NRA can build on to propose a fair and competitive copper switch-off plan. Further, it is of utmost importance that this switch-off plan can be adopted timely and before the incumbent initiates switch-off procedures.

We therefore urge the NRA to define objective criteria within the framework of the migration concept under which the copper switch-off takes place - irrespective of who has deployed the fibre optic network. These criteria would for instance rely on deployment quotas for Homes Passed and/or Homes Connected in relation to a specific area as well as on the condition of the permanent offer of wholesale services at fair, reasonable and non-

² [2024 BREKO Market Analysis](#)

³ [BREKO Copper to fibre migration concept summary](#)

discriminatory conditions. Further, beyond defining objective criteria, the NRA must also address practical questions concerning the process of migrating to fibre networks from alternative operators and clarify who is allowed to submit switch-off applications.

In this context, we would like to point out that our concept proposal of a non-discriminatory and objective criteria-based switch-off procedure also coincides with the decommissioning process under point 79 of the 2024 European Commission recommendation on the regulatory promotion of gigabit connectivity (C(2024) 523). We would like to highlight in this context that the EC Recommendation refers not only to wholesale customers but also to competitors of the incumbent and thus alternative network operators. We believe that BEREC can play a pivotal role in defining these criteria and coordinating their application throughout the Member States.

Conclusion

To conclude, we generally welcome the draft BEREC progress report on copper network switch-off as we believe this topic to be of the utmost importance to build a future-proof and competitive fibre market. Nevertheless, we would like to draw attention on several crucial elements which should be considered, especially to ensure that alternative network operators which currently are the largest fibre deployers in Germany, can continue to profit from competitive market conditions. Addressing these complex market dynamics within the BEREC report is crucial in order to draw more attention to the inherent deficits of the German market. In this context, we would like to put emphasis on the necessity of a strong and competitive copper to fibre migration concept to be published by the German NRA that prevents the transfer of legacy SMP and weakening of competition and can provide the foundation to further foster investments into fibre networks in Germany and thus contribute to the 2030 EU Digital Decade targets to the largest extent possible.

BREKO is registered in the lobby register (R002215) for the representation of interests vis-à-vis the German Bundestag and the Federal Government and in the European transparency register (028570718529-43) for the representation of interests vis-à-vis the EU institutions.