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## Initiative: Call for Evidence for an Evaluation and Impact Assessment of the Digital Networks Act

### Here: Position of Verband der Anbieter auf dem Digital und Telekommunikationsmarkt (VATM) e.V.

The European Commission's (in the following, the Commission) proposal outlined in the Call for Evidence for the Digital Networks Act (DNA) envisions a significant shift in the regulatory model, whereby ex-ante regulation would be downgraded to a "safeguard" mechanism, applicable only after symmetric measures - such as those in the Gigabit Infrastructure Act (GIA) - have been tested, and subject to multiple layers of review and veto. **VATM finds this approach both strategically misguided and structurally concerning.**

### Concerns related to dismantling the SMP-based regulatory framework

Effective competition requires proactive, not reactive, regulatory tools. Reducing ex-ante regulation to a last-resort instrument fundamentally misrepresents the realities of market power in the telecommunications sector and goes against the core principals rooted in competition law. Competition does not emerge spontaneously, particularly in markets where **structural** dominance continues to prevail. In Germany, for instance, approximately 70% of broadband connections on the retail market still originate from Deutsche Telekom's copper-based network (a pattern observed in many other European Member States (in the following, MS): In 13 (20) M.S., incumbents still carry 50 (40%) or more of all internet connections)<sup>1</sup> while in the b2b wholesale market, Deutsche Telecom accounts for a market share of nearly 70%<sup>2</sup> —clear evidence that significant market power (in the following, SMP) persists and must be addressed systematically. This view is also shared by most National Regulatory Authorities (in the following, NRA) that analyse the situation carefully and still find SMP in the markets susceptible to ex ante regulation.

Without robust pre-emptive tools such as the current SMP framework, regulators would be confined to reacting only after market distortions have occurred - often when damage to competition is already irreversible. Symmetric measures, while potentially helpful in theory, remain

<sup>1</sup> EURACTIV (2025): *Commission push to deregulate telecoms will allow billionaires to cash in.* ([Commission push to deregulate telecoms will allow billionaires to cash in - Euractiv](#), last accessed 11. July 2025).

<sup>2</sup> VATM (2025): *The 26. Telecommunications Market Analysis Germany 2025*, P. 5 (<https://www.vatm.de/wp-content/uploads/2025/06/VATM-Market-Analysis-Germany-2025.pdf>, last accessed 11. July 2025).

inadequate in markets where SMP persists. These measures are typically lighter and designed for scenarios where no dominant market power is present. In monopolistic or quasi-monopolistic conditions, symmetric rules lack the targeted enforcement capacity necessary to prevent anti-competitive behaviour. Moreover, any kind of symmetric regulation or intervention would help the SMP operator to strengthen its market power.

**An SMP-based ex-ante regime, by contrast, enables tailored obligations specifically directed at dominant operators** - something that symmetric regimes simply cannot provide.

Weakening or dismantling the ex-ante regulatory framework risks demonopolizing telecom markets, particularly in countries where vertical integration and legacy dominance still shape the competitive landscape. Such development would run directly counter to the European Commission's own strategic goals, such as ensuring infrastructure-based competition, preserving affordable pricing, maintaining consumer choice, and accelerating innovation.

To safeguard Europe's digital sovereignty, competitiveness, and innovation potential, the DNA must preserve and reinforce SMP-based ex-ante regulation. It remains the only effective tool to protect infrastructure competition and market diversity—especially in countries like Germany where structural market imbalance is still entrenched. **VATM therefore urges the Commission to retain ex-ante regulation as a core pillar of telecom oversight, ensuring that SMP-based remedies backed by a systematic regulatory toolbox, including the Recommendation on Relevant Markets, remain applicable in parallel to symmetric measures.** For as long as an SMP based market structure exists that makes self-sustaining competition impossible, this is necessary. In markets with entrenched SMP, expanding symmetric regulation would be counterproductive, as it would only strengthen the dominant company's position. Procedural hurdles and politically driven veto powers must be avoided, as they compromise the independence and effectiveness of NRAs. Instead, **making existing regulatory provisions more effective and speeding up NRA's analyses should be the Commission's focus going forward.**

Finally, a legislative instrument such as GIA cannot be considered sufficient to replace the existing regulatory framework – even in the context of symmetric regulation. The intension behind GIA was, and remains, the creation of a cost-cutting mechanism addressing the process of deploying telecommunications networks. Its role and scope are essentially different from a full-fledged regulatory framework that tackles the core functioning of the telecommunications market – of which network deployment is only one component. This ultimately disqualifies it as a fit-for-purpose tool to address the regulatory needs of the sector.

## Concerns with Harmonised EU-Wide Access Products

The Commission's proposal to introduce harmonised EU-wide access products with predefined technical characteristics as default remedies for SMP operators raises serious concerns. While intended to offer predictability and simplification, this approach risks undermining both regulatory effectiveness and market adaptability - particularly in the absence of a coherent, enforceable framework to determine market power and competition problems.

One major concern lies in the internal inconsistency of the proposal. Harmonised access products are envisaged as remedies to be imposed where competition problems persist, yet the Commission simultaneously suggests reducing the role of SMP-based regulation and deferring or weakening the process of SMP identification. This introduces a **regulatory gap**: such

remedies cannot be meaningfully applied without a clear and enforceable procedure to determine where and when they are justified. In markets like Germany - where the current framework, aligned with SMP principles, already suffers from procedural delays and enforcement gaps - this contradiction is particularly problematic. Without tools such as the Recommendation on Relevant Markets or a streamlined market analysis framework, NRAs would lack the legal clarity and procedural certainty needed to impose such obligations.

Beyond these procedural challenges, there are important **conceptual shortcomings**. The Commission rightly recognises that telecommunications markets evolve in a geographically differentiated manner. However, the concept of pan-European standardized access products contradicts this reality. Market conditions differ significantly across regions, shaped by infrastructure availability, competitive intensity, population density, and user demand. A one-size-fits-all remedy would risk being overly rigid in some areas and ineffective in others - failing to address real competitive bottlenecks.

This mismatch highlights a deeper policy inconsistency: localised market issues cannot be effectively addressed through uniform, top-down instruments. Without the flexibility to tailor remedies to specific market conditions, harmonization risks either overreaching - imposing unnecessary burdens - or underdelivering - leaving real challenges unaddressed. This creates uncertainty for all players - incumbents and challengers alike - undermining the predictability and stability the proposal seeks to achieve.

To support transparency and interoperability without stifling competition or innovation, VATM sees merit in a **non-binding Commission Recommendation** on best practice specifications for a variety of wholesale access products. This could assist providers in expanding across Member States and improve product visibility for consumers, SMEs, and enterprises. Crucially, such a recommendation must remain entirely **non-binding** for all types of operators - regulated incumbents, challenger networks, wholesale-only providers, and access seekers - regardless of their business models.

To enhance transparency further, NRAs could be mandated to publish publicly accessible inventories of available wholesale and retail access products in their respective markets. This would support market entry and cross-border expansion without distorting national competition dynamics.

However, any attempt to regulate access products by locking them into a predefined set - whether through legislation or indirect regulatory pressure - would be counterproductive. Such rigidity would restrict the ability of operators to adapt to technological change and evolving consumer needs, stifle service innovation, and reduce competitive diversity. Harmonization must not come at the expense of market responsiveness. The goal should be **interoperability and clarity**, not **uniformity at the cost of flexibility**.

Finally, this top-down approach risks marginalising the role of NRAs and BEREC, whose expertise in national markets is essential for designing proportionate, effective, and locally adapted remedies. Bypassing their input weakens the principle of subsidiarity and centralises regulatory authority in a manner that lacks both practical justification and institutional accountability.

## Response to the Proposal on Accelerating Copper Switch-Off

The Commission's proposal to accelerate the copper switch-off by introducing a toolbox for fibre deployment, requiring national switch-off plans, and setting an EU-wide default switch-off date - alongside a derogation mechanism for vulnerable users - is a potentially important step in advancing the deployment of Very High-Capacity Networks (VHCN). However, this approach must be carefully designed to avoid unintended consequences.

Setting a copper switch-off date would be a helpful policy signal encouraging national governments and regulators to act more decisively. It may also help align investment planning with the EU's Gigabit objectives by providing clarity for both incumbents and alternative network operators. In this sense, a common timeline could accelerate transition and regulatory convergence across Member States.

However, a uniform EU-wide switch-off date - if implemented rigidly - poses significant risks. It could place undue pressure on national administrations to meet deadlines that may not reflect local market conditions. In areas lacking sufficient fibre coverage, premature switch-offs could severely disrupt service continuity and degrade service quality undermine public trust in the digital transition.

These concerns are particularly relevant in Germany, where fibre deployment began later but is now gaining momentum. Imposing a binding 2030 switch-off date would be counterproductive, potentially introducing bureaucratic burdens and shifting the regulatory focus from market readiness to formal compliance. Without flexibility, an EU-wide deadline could hinder progress rather than support it.

VATM sees value in setting a timeline as a strategic signal to encourage copper migration – but only if accompanied by binding rules on transparency and service continuity. A mandatory 2030 switch-off date, combined with the removal of regulatory safeguards, would seriously disrupt service operations and long-term fibre investment planning in markets like Germany.

A more effective approach would support structured, transparent, and nationally led copper switch-off plans - coordinated at EU level but adapted to national and regional conditions. VATM strongly supports the development of such national plans, anchored in a clear procedural framework and grounded in three core principles:

### *Transparency*

The copper switch-off process must be fully transparent and inclusive. This includes:

- i) advance notification by the incumbent to the national regulatory authority,
- ii) mandatory public consultation involving market participants, civil society, and local authorities, and
- iii) notification of the final switch-off plan to the European Commission for transparency and coordination – modelled on the French approach.

Regulatory decisions must rely on documented criteria and published timelines, enabling all market actors to anticipate and adapt accordingly. Former incumbents should also disclose detailed network and usage data to facilitate an efficient migration process.

NRAs must play a proactive supervisory role and not rely solely on reactive, case-by-case proceedings under national law (e.g. Germany's §34 TKG). A robust regulatory concept must be developed prior to individual proceedings to ensure the switch-off process is fair, balanced, and does not disproportionately favour dominant players.

#### *Non-discrimination:*

The switch-off must apply equally in areas covered by the SMP operator's own fibre networks and in areas where alternative operators have deployed fibre - provided that wholesale access conditions are met. This principle ensures:

- iv) Equal treatment of all infrastructure providers
- v) Protection of investments made by alternative network operators
- i) Acceleration of copper switch-off in competitive gigabit-ready areas

NRAs must enforce this principle rigorously to prevent market distortions and uphold a level playing field.

Wherever gigabit infrastructure is available—regardless of the operator—copper networks should be decommissioned, provided that sufficient wholesale access products guaranteeing end-user continuity are offered. However, the bulk of connections should be migrated on a voluntary basis subject to suitable incentives.

#### *Availability of alternative access technologies / wholesale solutions:*

Copper should only be decommissioned where reliable and sufficient wholesale access alternatives exist. NRAs must verify compliance with points 77 and 78 of the Commission's Gigabit Recommendation, ensuring that:

- i) Equivalent access products are available for both business and consumer segments
- ii) Service continuity and competitive dynamics are maintained
- iii) Transition to fibre occurs without service disruption

#### *Conclusion Remarks*

Given the current market conditions in Germany, VATM does **not** support the introduction of a **binding** EU-wide copper switch-off date - whether via legislation or soft law. However, if criteria for targeted decommissioning are introduced, and provided they include robust safeguards for service continuity, such measures could improve investment signals and help guide the copper-to-fibre transition - **but only** within a predictable and stable regulatory framework.

Based on EU targets for copper switch-off, NRAs should enforce the development of switch-off timelines from incumbents. This timeline must be rooted in national realities and implemented through transparent consultation processes. While a date may create positive incentives, it must be coupled with clear exceptions and conditions to avoid premature and damaging outcomes—particularly in Member States unlikely to meet a 2030 target.

VATM calls on the Commission to adopt a **smart, timely, and well-calibrated** copper switch-off strategy—one that respects national differences while moving Europe in a common direction. This transition is essential and inevitable, but it must be **managed - not mandated**. A successful migration requires political commitment, regulatory foresight, and operational realism.

Only through this structured, balanced approach can the EU deliver a swift and equitable copper phase-out—advancing its digital leadership while protecting service continuity, competition, and public confidence.

Dem VATM gehören die größten deutschen Telekommunikationsunternehmen an, insgesamt rund 180 auch regional anbietende Netzbetreiber, Diensteanbieter, aber auch Zulieferunternehmen. Zudem steht der Verband für wichtige Investoren, die den Glasfaserausbau in Deutschland deutlich voranbringen werden. Die VATM-Mitgliedsunternehmen versorgen 80 Prozent aller Festnetzkunden und nahezu alle Mobilfunkkunden außerhalb der Telekom. Seit der Marktöffnung im Jahr 1998 haben die Wettbewerber im Festnetz- und Mobilfunkbereich Investitionen in Höhe von rund 127 Milliarden Euro vorgenommen. Sie investieren auch am stärksten in den zukunftssicheren Glasfaserausbau direkt bis in die Häuser. 86 Prozent der Haushalte, die gigabitfähige Anschlüsse nutzen, sind Kunden der Wettbewerber.