



# **ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY ARCEP  
ON THE**

**EVOLUTION OF THE TARIFF CONTROL FOR ACCESS TO THE  
COPPER LOCAL LOOP FOR THE YEARS 2022 AND 2023**

**CONSULTATION PUBLIQUE**

**DU 7 FÉVRIER 2022 AU 4 AVRIL 2022**

**EVOLUTION DU CONTRÔLE TARIFAIRE DE L'ACCÈS À LA BOUCLE LOCALE CUIVRE  
POUR LES ANNÉES 2022 ET 2023**

**4 APRIL 2022**

## 1. Introductory comments

1. **ecta**, the **European competitive telecommunications association**,<sup>1</sup> welcomes the opportunity to respond to the Public Consultation by Arcep on the evolution of the tariff control for access to the copper local loop for the years 2022 and 2023<sup>2</sup>
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.
3. **ecta** responds to national consultations only in exceptional cases and **ecta** has not answered previous consultations from Arcep. However, considering that an increase of copper prices in the transition from copper to fibre would represent an extremely dangerous bad precedent in the EU, **ecta** feels absolutely obliged to submit its critical observations.
4. **ecta** supports a quick and voluntary transition from copper to fibre provided that following minimum conditions are ensured to the market:
  - Stable wholesale copper prices are applied without any changes until the copper network is totally and effectively switched off.
  - Appropriate fibre (or on an ad-hoc base an equivalent technology) products and services to substitute the copper-based products are made available in a timely manner.
  - Appropriate quality of service (QoS) of wholesale products and services is guaranteed.
  - Clear and transparent processes are discussed and agreed with the access takers, including KPIs, service levels and dissuasive penalties in case of breach, that allow a smooth customer transfer.
  - Copper switch-off, commercial and/or operational, means copper switch off for everybody, even more so for the incumbent's own retail, wholesale and any internal or other use.
  - A non-discriminatory approach is applied also with respect to the receiving fibre network i.e. the incumbent's fibre network versus any alternative fibre network.

Sufficient safeguards are put in place to guarantee the contestability of the market. Indeed, the copper to fibre transition raises several questions that have not been answered so far. The migration from copper to fibre often resets the contract term. Therefore, there is a risk that a rapid transition will lock in customers for 12 to 24 months and thus freeze the market. Also, from a sales and marketing perspective the

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

<sup>2</sup> Consultations publiques, Evolution du contrôle tarifaire de l'accès à la boucle locale cuivre pour les années 2022 et 2023 (7 février 2022), Consultation en cours du 7 février 2022 au 4 avril 2022 <https://www.Arcep.fr/actualites/les-consultations-publiques/p/gp/detail/evolution-controle-tarifaire-acces-boucle-locale-cuivre-annees-2022-2023-070222.html>

transition might benefit more the operator with the highest 'copper' market share as it is easier to migrate a customer than to acquire a new customer.

## 2. Providing an incentive for Orange is unnecessary and inappropriate

5. In our recent contact with representatives from Arcep we were systematically referred to the decision 2020-1493<sup>3</sup> which mentions: *"Taking into account this objective of economic efficiency, the Authority considers it appropriate, as an incentive for Orange, that the level of the tariff may be adjusted upwards, including during the 2021-2023 cycle, in the event that Orange presents a concrete plan for the closure of the copper network and depending on the guarantees it provides regarding the speed of the transition from copper to fibre<sup>4</sup>.* (ecta underlines).
6. ecta acknowledges this statement and understands that it leads to the current consultation. However, ecta considers that it was not necessary to offer a "carrot" to the incumbent operator that holds Significant Market Power (SMP) in several downstream markets. It is even more inappropriate to ask the access seekers to finance the copper closure plan of the SMP operator. This for the following reasons:
7. Firstly, Orange - and most of the incumbent operators that have built their copper network with monopoly rents - have strong economic and operational incentives to quickly decommission their copper network, hence they do not need an extra incentive from the regulator.
8. Indeed, in its plan for the closure of the copper network<sup>5</sup> Orange mentions as introduction: *"The closure of the copper local loop network represents a major industrial project. It is part of an approach to modernising the country's digital infrastructure and is anchored in the context of the widespread deployment of the optical local loop throughout the country, initiated as part of the France Très Haut Débit Plan.*

*As with any project of this scale, its success depends largely on the mobilisation of all the players, first and foremost the operators and the public authorities.*"<sup>6</sup> (ecta underlines).

Orange explicitly mentions that the success of the closure depends foremost on the mobilisation of the operators including Orange, therefore it recognises implicitly that they

<sup>3</sup> Décision n° 2020-1493 de l'Autorité de régulation des communications électroniques, des postes et de la distribution de la presse en date du 16 décembre 2020 fixant un encadrement tarifaire de l'accès à la boucle locale cuivre pour les années 2021 à 2023

<sup>4</sup> Free translation of the original text: "En prenant en compte cet objectif d'efficacité économique, l'Autorité estime pertinent, dans un objectif d'incitation vis-à-vis d'Orange, que le niveau du tarif puisse être ajusté à la hausse, y compris au cours du cycle 2021-2023, en cas de présentation concrète par Orange d'un plan de fermeture du réseau cuivre et en fonction des garanties qu'il présenterait quant à la rapidité de la transition entre cuivre et fibre. »

<sup>5</sup> Plan de fermeture du réseau de boucle locale cuivre d'Orange.

[https://www.Arcep.fr/uploads/tx\\_gspublication/plan-fermeture-boucle-locale-cuivre-orange-notifie-fev22.pdf](https://www.Arcep.fr/uploads/tx_gspublication/plan-fermeture-boucle-locale-cuivre-orange-notifie-fev22.pdf)

<sup>6</sup> Free translation of the original text: " La fermeture du réseau de boucle locale cuivre représente un chantier industriel majeur. Il s'inscrit dans une démarche de modernisation des infrastructures numériques du pays, et s'ancre dans le contexte du déploiement généralisé de la boucle locale optique sur le territoire, initié dans le cadre du Plan France Très Haut Débit.

Comme tout chantier de cette ampleur, sa réussite repose en grande partie sur la mobilisation de l'ensemble des acteurs, en premier lieu des opérateurs et des pouvoirs publics. »

do not need a specific incentive to assure the success of what they call “a major industrial project”.

9. Furthermore, Orange recognises in its plan the economic, environmental and operational benefits when it mentions on pages 5 and 6 : “Now less suited to the uses of the French, and in particular to their needs in terms of speed, copper is increasingly being challenged by optical fibre, which is more efficient, less energy-consuming, and above all less sensitive to the vagaries of the weather. A more modern network, the rollout of which is accelerating, particularly under the impetus of operators and the Government, which is committed to ensuring that all homes can be connected to FttH by the end of 2025<sup>7</sup>. [...]

In this context, maintaining two wireline networks no longer makes sense, both in terms of usage and in terms of economic, technical and environmental aspects.

Indeed, the experience Orange has already gained with fibre shows that the average energy consumption for a fibre access is much lower than that for a DSL access (including an increase in usage linked to the switch to fibre).

This challenge of modernising networks and digital development of the territory is a major industrial project for France in which each player has a role to play to ensure its success:

- Orange, operator of the copper network, by anticipating, structuring, communicating and coordinating this project, in close collaboration with the entire ecosystem - particularly the Internet access providers - until the network is completely shut down and certain network elements are dismantled.” (ecta underlines).

10. The economic and environmental benefits (hence incentives) for Orange are also recognised by Idate in its recent white paper<sup>8</sup> such as the mention on page 7: “Fiber network is the most energy efficient communication solution.

The energy consumption of fixed (and wireline) technologies does not depend on data traffic whereas mobile technologies are directly correlated to data consumption. Hence, Fiber consumes 3 times less energy than xDSL and 10 times less than 4G access technology.

<sup>7</sup> Free translation of the original text: “Désormais moins adapté aux usages des Français, et notamment à leurs besoins en débits, le cuivre est de plus en plus concurrencé par la fibre optique, plus performante, moins énergivore, et surtout moins sensible aux aléas météorologiques. Un réseau plus moderne, dont le déploiement s’accélère, notamment sous l’impulsion des opérateurs et du Gouvernement qui s’est engagé à ce que tous les foyers puissent être raccordables au FttH d’ici fin 2025.

Dans ce contexte, maintenir deux réseaux filaires n’a donc plus de sens, tant sur l’aspect des usages que sur les aspects économiques, techniques et environnementaux.

En effet, le recul qu’Orange a déjà sur la fibre montre que la consommation énergétique moyenne pour un accès fibre est très inférieure à celle pour un accès DSL (en intégrant une hausse des usages liée au passage à la fibre).

Cet enjeu de modernisation des réseaux et d’aménagement numérique du territoire est un chantier industriel majeur pour la France dans lequel chaque acteur a un rôle à jouer pour en garantir la réussite :

- Orange, opérateur du réseau cuivre, en anticipant, structurant, communiquant et coordonnant ce chantier, en lien étroit avec l’ensemble de l’écosystème – particulièrement les fournisseurs d’accès à internet – jusqu’à la fermeture complète du réseau et au démantèlement de certains éléments du réseau ;»

<sup>8</sup> Idate Digiworld, White Paper February 2022, Fiber for a sustainable future, A key enabler to lower carbon emissions.

*Therefore, Telcos play an important role in exploiting energy efficient connectivity solutions. For instance, Telefonica<sup>5</sup> expects to reduce by 85% the CO2 emissions and energy usage thanks to the closure of the copper network in Spain.” (ecta underlines).*

11. Moreover, incumbent operators will be able to substantially monetise the extracted copper as a raw material. In the table below extracted from the Idate white paper<sup>9</sup> ecta believes that the second operator mentioned is Orange.

**Table 2: Operators replacing copper by FTTx stories**

Operator	Replace copper by fiber network	FTTx Benefits(environmental benefits)
<b>European top telecom operator</b>	Operator started its network transformation process since 2016, with the aim of decommissioning all copper plants by 2025,	The operator has removed sold 65 000+ tons of cable, recycled 7000+ tons of waste (i.e. electrical equipment). In term of energy saving, operator has saved around 1000 GWH.
<b>European top telecom operator</b>	Launched in 2020, the decommissioning of the copper network will completed by 2030	The operator will remove 80 000 tons of cable that will be recycled. Important energy savings are also expected. The level of these savings has not yet been evaluated
<b>European top telecom operator</b>	Copper switch-off will be performed alongside the development of FTTH network. The deployment of FTTH network will be driven by the consumer demand	Energy savings is a key environmental benefit. Recycling of copper is not yet considered as an option since its reusability may be questionable
<b>APAC region top telecom operator</b>	Since 2008, operator has begun to replace legacy copper network with fiber network. At current stage, FTTH and FTTB have achieved high coverage rates and copper coverage is less than 1%.	Fiber networks simplify the entire network architecture. The flat network architecture and the enhanced performance of network equipment have reduced network deployment complexity of the number active network devices, making the entire network more energy efficient and effective.

Source: IDATE DigiWorld

<sup>9</sup> Ibid

12. The international geopolitical situation has further pushed the prices for raw materials significantly up. Copper is now trading above the \$10K per tonne<sup>10</sup> at the London Metal Exchange (LME). LME is the world centre for the trading of industrial metals.



13. 80K tonnes of copper at the closing trading price on 29 March 2022 represents potential revenues of more than \$825 million.
14. Also, Orange mentions in its plan for the closure of the copper network on page 26<sup>11</sup> that it will only dismantle the network and equipment where it is technically or economically reasonable i.e. profitable.
15. The dismantling of the copper network will also make several properties redundant, and Orange will be able to sell them, thus generating additional profits.
16. Secondly, the decision to provide an incentive for Orange at the expense of the access seekers is at odds with the regulatory framework, the purpose of which is to ensure the contestability of the markets. The regulatory framework has been implemented to avoid anti-competitive behaviour of operators with SMP and to address or limit the potentially harmful effects of the exercise of SMP. It has not been designed to increase the power of the dominant player and even less at the cost of its competitors.
17. This is even more problematic in the light of Orange's intention to degrade the Service Level for copper lines after the commercial closing. Indeed, Orange mentions on page 18 of its plan: *"Orange will implement an adaptation of the after-sales service processes (or even a cessation of some processes), the precise terms of which are to be defined with all the operators, in order to use this milestone as an incentive to migrate accesses to alternative solutions, making operators and their customers aware of the trade-offs to be made in view of*

<sup>10</sup> <https://www.lme.com/en/metals/non-ferrous/lme-copper#Price+graphs>

<sup>11</sup> « Orange prévoit de démonter le réseau et les équipements sauf pour des configurations qui ne permettraient pas une dépose dans des conditions technique ou économique raisonnables (câbles en pleine terre, certains câbles de distribution en zones très urbaines, distribution privative, ...). »

*the subsequent technical closure.<sup>12</sup>* So, not only would access seekers pay more but also they would receive a degraded service. This would inevitably lead to strengthening Orange's position to the detriment of the access seekers that would be impeded in their investment capabilities in VHC networks.

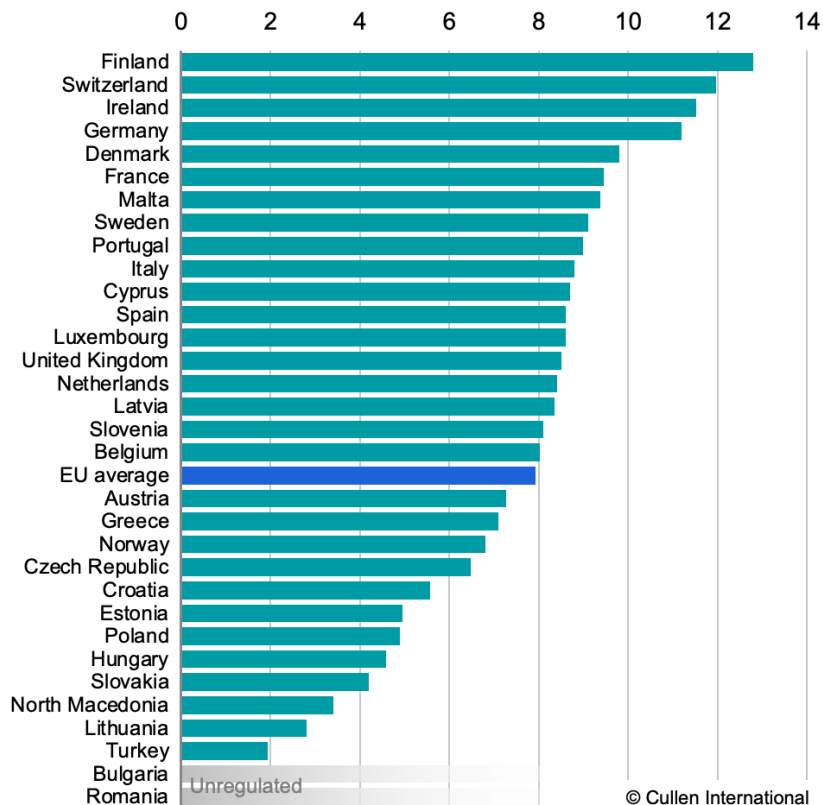
18. Thirdly, Arcep has so far been one of the driving forces within BEREC when it comes to promote best practices. Therefore, should Arcep continue with its plan and increase the unbundled copper loop and derived wholesale prices it would set a twofold **bad precedent** in the EU. Firstly, it would be at odds with Arcep's own past practices consisting in promoting the best and pro-competitive regulatory interventions, and secondly, it would set an EU precedent of increasing unbundled copper loop prices strengthening the SMP operator in several downstream markets to the detriment of access seekers, thereby reducing their ability to compete and invest.
19. Therefore, **ecta** calls on Arcep to recognise that the regulatory based incentive is unnecessary and inappropriate and therefore maintain stable copper prices in the transition period towards the copper decommissioning.

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<sup>12</sup> Free translation of the original text: "Orange mettra en oeuvre une adaptation des processus SAV (voire un arrêt de certains processus), dont les modalités précises sont à définir avec l'ensemble des opérateurs, afin d'utiliser ce jalon comme un levier incitatif à la migration des accès vers les solutions de substitution, responsabilisant les opérateurs et leurs clients sur les arbitrages à réaliser dans la perspective de la fermeture technique ultérieure. »

## 2. French unbundling prices are already among the highest in the EU

20. **ecta** strongly disagrees with Arcep's analysis of wholesale local loop unbundling prices it provides on page 20 and 21 of its decision 2020-1493: *"The Authority notes that the tariff levels thus determined are not out of line with the levels applied in European countries of the Arcep decision<sup>13</sup>".* It is clear from the Cullen International graph provided by Arcep that France belongs to the most expensive group of countries.



21. Furthermore, in the comparison made by Arcep in table 4 of decision 2020-1493 with the other main European countries, the French tariffs are 10% higher than in the UK, 7% higher than in Italy and 9 % higher than Spain. Only the German tariffs are 18% higher than the French.
22. However, the comparison with Germany is, in **ecta**'s view, inappropriate as Arcep compares two fundamentally different market situations. On the one hand, we have the French consumer market that we see as one of the most competitive in the EU with investments in networks that are constantly increasing for the last 6 years to reach €12,6 billion (excluding spectrum licenses) according to Arcep's figures. On the other hand, we have Germany, that **ecta** sees as one of the less competitive markets in the EU and

<sup>13</sup> Free translation from the original text: "L'Autorité constate que les niveaux tarifaires ainsi déterminés ne sont pas dépositionnés par rapport aux niveaux pratiqués au sein des pays européens : »



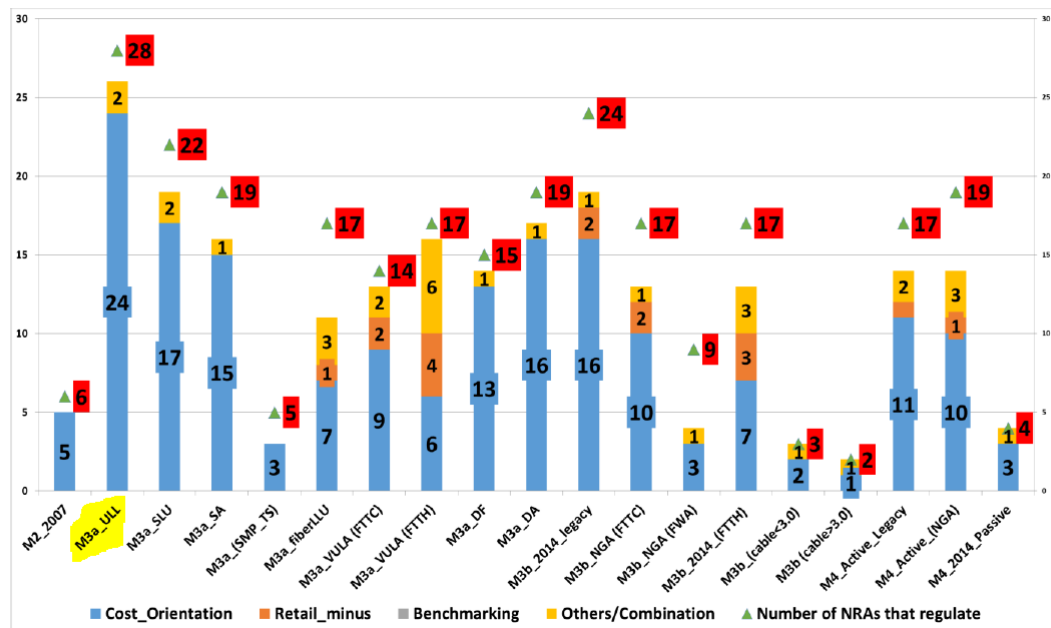
characterised by a weak implementation of the Regulatory Framework for the last two decades. This results in a non-competitive oligopolistic market structure dominated by Deutsche Telekom, with Vodafone and Telefonica as large operators part of large groups. The German market is, in **ecta**'s view, the perfect example demonstrating that deregulation or light regulation does not lead to better prices, better coverage, better service or more investments, quite to the contrary in fact. Also, the methodology for setting wholesale copper local loop prices in Germany is wholly unacceptable, as it takes into account actualized copper raw material prices and the cost of construction of new fibre networks, which is grossly inadequate.

23. Moreover, the cost-oriented prices are generally including cost elements foreseen to assure the replacement of the network (e.g. modern equivalent asset). This approach has led in many markets to an undue rent paid by the access seekers to the incumbent operators for more than two decades. Germany is a particularly extreme example of this. With the aggravating circumstance that many incumbents have not used this rent to replace their copper network by a new generation network although they knew their copper networks were condemned to be decommissioned. We may conceptually compare this with a pension plan that one contributes to for years and expects a return when one retires. Access seekers have contributed for more than two decades to the "copper" pension plan and now when the time comes to retire, they expect to be able to enjoy a good return on the "fibre" they helped invest in. Unfortunately, it seems that the manager of the pension plan has not acted as he should, and the return is not as obvious as it should be.
24. It is also important to note that Orange's extensive civil engineering infrastructure (including more than 560000km of ducts) has been built thanks to the monopoly rent.
25. Additionally, **ecta** would like to draw Arcep's attention to the fact that Orange's wholesale revenues are higher than Orange's capex. Indeed, according to Orange's 2021 consolidated results<sup>14</sup> the capex in France amounts to €4,117 billion whereas Orange has € 5,313 billion revenues deriving from its domestic wholesale business.
26. Finally, **ecta** has been informed about the potential idea of Arcep to depart from cost orientation and introduce a vague concept of non-excessive tariffs. To **ecta**'s knowledge, this concept is not applied ex-ante by any European NRA. This is confirmed by Figure 17 in the latest BEREC report Regulatory Accounting in Practice 2021 (BoR (21) 161)<sup>15</sup>. For the markets 3a\_ULL, 28 NRAs are regulating. 26 of them provided a response to the BEREC questionnaire. 24 out of 26 are imposing cost-oriented tariffs.

<sup>14</sup> <https://www.orange.com/en/latest-consolidated-results>

<sup>15</sup> [https://berec.europa.eu/eng/document\\_register/subject\\_matter/berec/reports/10134-berec-report-regulatory-accounting-in-practice-2021](https://berec.europa.eu/eng/document_register/subject_matter/berec/reports/10134-berec-report-regulatory-accounting-in-practice-2021)

Figure 17 - Price control main categories



### 3. Conclusions

1. **ecta** calls on Arcep to maintain stable copper prices in all phases of the transition from the copper to the fibre network and this until the full decommissioning of the copper network is completed.

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In case of questions or requests for clarification regarding this contribution, Arcep is welcome to contact Mr Luc Hindryckx, **ecta** Director General.