

Thank you for taking part in our online session discussing the European Commission's connectivity white paper and outlining our subsea cable work. I am writing to you ahead of the 11 April informal Ministerial Council which will be the only opportunity for Member States to make their voice heard on the European Commission's White Paper "How to master Europe's digital infrastructure needs?" published in February.

As mentioned during the discussion, at Google, we actively support the longer term goal of the Digital Decade targets: fostering sustainable economic, environmental and social benefits across Europe through digital transformation. However, the European Commission's white paper raises a number of concerns.

The White Paper shows that despite widespread opposition by almost all stakeholder groups, the network fees debate and its threat to net neutrality is not over.

The White Paper suggests rethinking, reopening and broadening the scope of the current EECC regulatory framework. One of the stated motivations is to address a perceived issue of regulatory 'level playing field' between traditional telecom providers and cloud and other providers, despite no evidence that there is market failure or a problem that requires redress. This expansion would potentially cover every provider of EU core networks and all networks on which public data transit, including a broad range of sectors and providers (section 2.3.4. Convergence and level playing field p 15/16; section 3.2.2 Scope of application p 25; section 3.2.8. Universal service and affordability of digital infrastructure p 34).

This presents a serious risk of introducing substantial new regulation which would normally need to be justified by well-evidenced, significant and systemic market failure. There are types of core networks which are private and they are currently regulated under the European Electronic Communications Code (EECC) as 'electronic communications networks'. Beyond those, depending on the interpretation of the high level wording in the white paper, this extended scope of regulation could apply to a whole host of organisations including cloud providers, content delivery networks, organisations active in the IP interconnection market and their customers, Internet Exchanges, etc.

And yet, there is little evidence that cloud and other related organisations active elsewhere in the Internet technical layer have evolved their services in such a way as to compete directly with telecom operators. Rather, one of the clearest and well-publicised evolutions of the ecosystem is that telecoms companies are now partnering with cloud companies to support their management of telecom networks. These services include analysing data points on the network, identifying anomalies and traffic needs, and optimising network management. All of these tremendously benefit telecom operators with both enhanced customer satisfaction and reduced costs. If there is any kind of convergence, it has been of a limited nature. For example, with some telecom operators developing their own cloud services, moving into adjacent markets by developing new competences in cloud provision, rather than several markets converging into one.

Making assumptions on a range of markets that have evolved very rapidly in recent years, and continue to evolve fast, is one thing. Moving from these temporary, liminary assumptions to suggesting major regulatory changes deserves much more serious consideration, scrutiny and stakeholder debate.

For these as-yet-not clearly identified organisations that the White Paper's scenario suggests should be regulated under the Electronic Communications Framework, this would entail a number of new regulatory burdens like legal interception of users' communications, new reporting and security requirements and the likely payment of universal service fees (a form of 'network fees'). These are significant regulatory obligations which present severe technical challenges and would also require in-depth scrutiny and impact assessment before being considered in earnest, notably in relation to data protection and privacy as well as conflicts of law.

Extending the telecom regulatory framework to these various layers and applications of the Internet stack would entail that telephony-era interconnection principles - and charging mechanisms - would be applied to the Internet. This would radically alter how Internet traffic is routed around Europe and the world because the distributed and open architecture for the Internet and the exchange of data on it is fundamentally different from how traditional centralised, bi-directional telecommunications works since the days of telegraphy and then the telephone.

This new system would also presumably adopt the economic model of telephony, including the introduction of charging mechanisms for interconnection. This would introduce a fee for 'terminating traffic' onto another network ('Sending Party Pays'). This would represent a major departure from the existing global architecture of the Internet, which goes:

- against evidence (especially as there is no demonstrated systemic market failure that would justify such a heavy-handed regulatory move);
- against good practice, with risks for competition as highlighted before by BEREC (see below); and
- [against net neutrality](#).

BEREC, OECD and others have all noted repeatedly that the current IP (Internet) interconnection market is highly competitive, apart from a handful of localised concerns that have been addressed in the past by the likes of DG Competition in relation to the activities of certain telcos.

[BEREC cautioned again just last year](#) against such a move as '[t]he "sending party network pays" (SPNP) model would provide ISPs the ability to exploit the termination monopoly and it is conceivable that such a significant change could be of significant harm to the internet ecosystem.'

This idea is also in essence the same as a proposal made in 2012 by ETNO in the context of UN discussions on the International Telecom Regulations - and that proposal was then rejected by the international community, including formally by the [EU Council](#), [BEREC](#) and [EP resolution](#) which highlighted that this:

- *Would be an inadequate system that would force CAPs to enter into a formal contract with ISPs to deliver content that users demand.*
- *Would increase cost of delivering, leading to higher consumer prices and inefficiencies in Internet traffic routing... unnecessarily, as no systemic market failure exists.*

- *Would impact a huge range of organisations involved in or using IP peering and interconnection.*

In short this is an old idea, which has been shown to be bad for many years, and should be rejected today, lest the entire Internet ecosystem suffers and leaves consumers facing higher bills.

Looking ahead, not backwards

We do not need more new regulations. Instead, we need to focus on effectively and efficiently ensuring the success of our current legislative and regulatory frameworks.

We encourage you to reject the false narrative that there is an “unlevel playing field” when it is suggested that cloud services remain unregulated. Europe has several parallel existing regulations that provide the sufficient legislative backbone to address the concerns and the ambitions for Europe from the EU CyberSecurity Certification Scheme (EUCS) and NIS2 for security, the Gigabit Infrastructure Act (GIA) for practical network build-out aspects, to the EEC for spectrum harmonisation and achieving a single market that delivers for consumers and for our businesses across the Union.

It is crucial that the perspectives of all players in the ecosystem including content providers, consumers, users, SMEs, creators and others are taken into account in any next steps. It is important that any proposals that emerge should be evidence-based, free from wide scale unintended consequences and support the continued growth of the open Internet in Europe.

We urge Germany to use the opportunity at the upcoming informal TTE Council on 11 - 12 April to voice out its concerns about the direction of the white paper and on the future of the connectivity sector.

We will follow up with the slide deck and further detailed resources shortly. Please feel free to reach out to us with any questions you might have.

Kind regards,