

DOT Europe response to consultation on White Paper “How to master Europe’s digital infrastructure needs?”

DOT Europe welcomes the opportunity to comment on the contents of the White Paper “How to master Europe’s digital infrastructure needs?”. Coming after almost two years of intense discussions on the future of telecoms policy, the paper provides valuable food for thought, covering a range of issues.

We would like to start by stressing our support for Europe’s Digital Decade goals. The White Paper reiterates the support for high speed digital connectivity for all, but goes further by providing the opportunity to define a vision for the telecoms sector for the next five years.

It has been our longstanding view that telecoms infrastructure providers and content and application providers (CAPs) enjoy a symbiotic relationship. Providers of connectivity services build and sell Internet access services that allow consumers to enjoy innovative applications and engaging content. At the same time, CAPs, by investing in said applications and content, are “demand creators” for connectivity services, encouraging, in turn, increased take-up of broadband connectivity; and making investment in improved infrastructure possible.¹ The White Paper recognises this reality, noting that “Profitability [for investors] depends on the take-up of enhanced fixed and mobile networks, which is itself linked to the development and increased take-up of data intensive applications and use cases, e.g., based on edge computing, AI, and IoT”². Any policy change should take due consideration of this complementary relationship and safeguard existing incentives that have allowed both sectors to mutually benefit from their respective services. It is important to recall here that BEREC has already pointed out that “a number of studies indicate that the provision of telecom access infrastructures is a profitable business with a relatively attractive risk return” and that “Generally, the risks of developing content and applications are typically higher compared to the risks of the business model of investing in infrastructure.”³

DOT Europe members support measures to achieve the EU’s connectivity objectives. However, we maintain that regulatory interventions should be targeted at proven market

¹ This symbiotic relationship has been demonstrated in a number of studies, Economides, N. and Viard, V.B. (2014), “The Effect of Content on Global Internet Adoption and the Global “Digital Divide”, available [here](#); Katz et al (2024), “The role of Video on Demand in stimulating broadband adoption”, available [here](#) and Deloitte (2024), “Estimating the Value of Content and Applications Services for Internet Users in Europe”, available [here](#).

² White paper, p. 11

³ [BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs](#), p.

failures, as the European Commission notes throughout its White Paper⁴ and not seek to regulate CAPs more broadly nor use regulation as an industrial policy tool without an exhaustive discussion of the implications of such a move, as per the European Commission’s Better Regulation principles. Recognition of the deep interconnectedness of the digital ecosystem and of the diversity of actors present within is essential to avoid policies that have an adverse effect on a market, which has functioned well for citizens and businesses to date. It is worth noting the BEREC observation that “From a legal and economic point of view, there needs to be a justification for any intervention in the market, given its impact on the different players. Thus, any measure would need to be thoroughly assessed including an assessment of existing measures to mitigate a problem in the market. Moreover, from an economic point of view, such measures would have to require that the market likely fails to function properly”⁵

Similarly, it is positive to see a recognition that there are multiple technological options to achieve high speed connectivity across Europe. For example, the White Paper notes that satellite broadband can bring high speed connectivity “to very rural and remote areas, where no very high-capacity networks are available”. Low Earth Orbit (LEO) satellite broadband will meet end users’ needs (in terms of download speeds and latency) and more cost-efficiently than fibre networks in the hardest-to-reach areas of the EU. A technology neutral approach supports exploring the potential contribution of these technologies, in order to ensure that, Europe’s connectivity goals are achieved in an efficient manner. This will benefit both consumers and Governments, who will be able to save billions in taxpayer-funded fibre subsidies.

Our submission to the consultation will focus on Pillars II and III of the paper, covering issues related to the Digital Single Market; and security and resilience.

Pillar II: Completing the Digital Single Market

Regulatory simplification

The White Paper puts forward some appealing ideas to alleviate the regulatory burden placed on telecoms operators, reduce administrative and operational costs, and deepen the Single Market. We believe that, among other ideas, one key way to achieve this is via harmonisation of more areas within the telecoms regulatory regime and greater consistency in transposition and application of the EEC across Member States. However, any changes to the regulatory framework should be subject to a prior in-depth

⁴ See p. 12 for cases where public funds should be allocated in market failure areas; p. 34 on criteria to address persistent market failures.

⁵ [BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs](#), p. 5

assessment, and accompanied by a clear idea of how they would work in practice. Harmonisation should also not be taken to necessarily mean centralisation of the regulatory framework. The following ideas merit further exploration:

- **Country of Origin Principle:** The European Commission highlights some advantages of adopting a single set of rules to regulate certain telecoms services based on the country-of-origin principle (COO) for providers of core networks and core network services. DOT Europe agrees with the Commission that some changes could potentially “... enable EU core network operators to leverage the full potential of the internal market to reach critical size, take advantage of scale economies, and reduce capital expenditure and operating costs”. However, the practical implications of incorporating this new principle into the framework should be properly assessed before any further changes to the framework are made. DOT Europe supports further exploring this idea considering the best evidence available. We also suggest undertaking a similar exercise for NIICS, which are increasingly being subjected to specific rules at national level, acting as barriers to leveraging the full potential of the single market.
- **Spectrum harmonisation:** The idea of further harmonising spectrum, particularly to ensure consistency and cooperation across borders and support technology rollout across the EU should be explored further. However, policy makers should ensure that the preferred policy option supports innovation and follows the principle of technological neutrality. Any changes towards more harmonisation should not focus on centralising spectrum governance, but instead foster cooperation to ensure EU policy is responsive to technological changes in the market.
- **Copper switch-off:** We encourage the European Commission’s proposals to work towards the completion of copper switch-off, as this stands to provide benefits by reducing operational costs for telecoms operators, while also resulting in substantial energy efficiency gains. Measures to accelerate this process will be useful and help provide investment certainty for the telecoms sector.

Unjustified intervention in a market that works well

The majority of our comments focus on scenario 4, which seems to potentially be the most broad in scope, and worded in a way that is vague and open to interpretation. The European Commission notes the possibility to broaden the scope and objectives of the current regulatory framework “to ensure a regulatory level playing field”. It must be pointed out that today’s **telecoms regulation applies to cases of an identified market failure**. The European Commission has subsequently explained that it would justify such

an intervention on the basis of achieving a Single Market for telecoms, absent a market failure. It would be a significant departure from this principle to expand regulation to areas where there is no market failure or for other purposes. Furthermore, extending regulation is unlikely to further the Single Market, and any proposal put forward on this basis would require objective and proportionate justification by the European Commission.

Moreover, it is necessary to highlight that BEREC, having followed the implementation of the EECC, has not raised any concerns akin to those included in the White Paper. This suggests that any consideration of regulatory change would require a very extensive, in-depth examination as a first step, as the Commission has not consulted on this matter previously. This exercise must consider the unintended consequences of such a shift in policy goals, as well as the associated complex legal questions. It should also consider whether the policy objective could be achieved via other means. An expansion of scope would potentially cover even more providers of EU core networks, networks on which public data transit and digital services from across industries, bringing into the scope of telecoms regulation a broad range of sectors and providers. This expansion of regulatory scope could lead to significant harm to digital competitiveness in Europe and harm progress towards the Digital Decade targets.

Cloud services: The White Paper puts forward the unsubstantiated claim that cloud services remain unregulated, creating an “unlevel playing field”. It must be pointed out that cloud is a service layer that is currently regulated horizontally through a number of regulations, such as the NIS 2 Directive, the DORA and the Data Act, with discussions currently ongoing on an EU Cybersecurity Certification Scheme. Adding a sectoral layer of regulation on top of existing rules, that are still under implementation, will create unnecessary overlaps and confusion. The main focus of the European Commission should be in ensuring that there is sufficient uptake of cloud services by end users, in order to meet the targets of the Digital Decade and extend the benefits of cloud adoption to the EU’s economy. The proposed overregulation of Cloud, with no objective justification on the part of the European Commission, is in fact likely to have the opposite effect. This is especially relevant, considering the relatively low uptake of cloud in EU telecoms networks and EU businesses at the moment.

Finally, the White Paper claims a convergence between telecoms and cloud markets due to operators’ small but growing use of cloud services to manage aspects of their networks and operations. Use of cloud services by telecoms providers is more of a tool supporting operations, akin to the use of vehicles in the providers’ daily workings. The broad range of

Cloud services, offering compute, storage, and higher-level applications “as a Service” are distinct from the communications services regulated under EECC.

In addition, there are various issues raised in the White Paper that can fall under this particular scenario.

Definition of private networks: The paper observes that “traffic transits mostly on private networks, which are largely unregulated, rather than on public ones” (p. 15-16). Contrary to statements in the White Paper, it is not unusual or novel for private businesses across industries to own and manage private networks to meet their commercial needs. The European Commission has subsequently clarified that the White Paper contemplates a sub-set of physical networks and private networks that carry public data (that are eventually handed over to public networks). It is stated that these types of networks are not regulated and, following clarifications by the European Commission, that these private networks should be regulated in the same way as public networks. Given that one of the main issues in the White Paper is the creation of an environment that supports the connectivity sector, it remains unclear how expanding regulatory requirements to certain private networks would benefit the competitiveness of the telecoms sector overall.

Separately, European Commission officials have noted that they would also like to explore a possible deregulation of the telecoms industry. This seems a more logical starting point than expanding the scope of regulation to more actors. As mentioned previously, private cloud networks, for example, are already regulated horizontally.

Interconnection market and dispute resolution: The European Commission has stated that they are interested in examining certain private networks and their interconnection with regulated telecoms network providers. The White Paper (p. 26) notes that changes in the EU interconnection market have resulted “to a very direct and cooperative interaction between CAPs and ISPs as they have to agree on technical and commercial conditions for transit and peering bilaterally”. The paper goes on to note that the existing interconnection market “generally functions well and so do the markets for transit and peering”. At the paper’s own admission, there are very few cases where regulatory intervention is needed (and the European Commission has subsequently noted that most examples of such intervention come from outside the EU). DOT Europe strongly cautions against any move to intervene in an interconnection market that evidently works well; and would like to recall that current EU telecoms law limits market intervention principally to address identified market failures.

Regardless, the White Paper considers extending EU rules on arbitration / dispute resolution to interconnection between large CAPs and regulated telecoms network providers, which could amount to a network fees mechanism through the back door in cases where an interconnection payment is set by arbitrators. Although the paper offers the caveat that action will be considered if disputes increase, such an approach would send a clear market signal to telecoms operators and is likely to encourage some to actively seek disputes. It is worth recalling that such a move would undermine the principle of net neutrality; increase the cost of delivering some services to consumers, resulting in higher prices; lead to a deterioration in the quality of service and inefficient traffic routing to avoid regulatory capture; and have a detrimental effect for a range of actors, such as European SMEs, European cloud providers, and public sector customers including local administrations, hospitals, universities. These points were reflected by the majority of respondents to the Exploratory Consultation launched in 2023, which examined, among other topics, the idea of network fees.

The current system of mutual settlement-free peering and cooperative commercial arrangements serves the digital economy goals effectively and efficiently, adapting dynamically to technological and consumer demands. Mandated interconnection fees would distort market incentives and inflate both providers' and consumers' costs, as demonstrated in South Korea. Any changes to the telecoms regulatory regime should be very carefully weighed against unintended consequences - such as overregulation, sudden cost increases and disruption of market dynamics - especially in areas of the ecosystem where there is no obvious need for intervention; and undermining interconnection mechanisms that play a crucial role in the functioning of the Internet.

NIICS and USO: The paper observes that NIICS are “are subject to only a few obligations and are exempt, for instance, from contribution to the funding of the Universal Service or the financing of sector regulation”. We have to point out that NIICS are by and large low margin, large scale services which are very cost-sensitive. Their partial inclusion in the European Electronic Communications Code has already increased the cost of providing these services at scale in the EU and the established revenue model is also under pressure from other areas of regulation. Policy-makers must be mindful that subjecting these services to USO contributions would threaten their viability and, in some cases, could result in withdrawal of the service from the EU market.

Additionally, it must be pointed out that the past mandate has seen a substantial amount of far-reaching regulation addressed at CAPs (DSA, AI Act, Data Act, to name but a few). Implementation of these complex pieces of legislation is still ongoing and their impacts have not been fully manifested yet. Any regulatory changes must be assessed for

compatibility with this new regulatory paradigm to avoid unnecessary overlaps or a reinterpretation of key legal concepts. This view has also featured consistently in the Council conclusions on the Future of EU Digital Policy, where the need to assess the impact of new regulatory initiatives and guaranteeing a coherent regulatory framework is underlined.⁶

Finally, as mentioned above, the European Commission should adopt a technology neutral approach and allow alternative technologies, such as LEO satellite broadband and 5G Fixed Wireless Access, to connect households in remote and rural areas as far as possible under market terms. This will support an efficient outcome for citizens and Governments, and ensure consistency with EU State aid rules.

Pillar III: Secure and resilient digital infrastructures for Europe

Security and resilience of submarine cables

DOT Europe supports the establishment of a regime that ensures strong and secure connectivity. This can be achieved by promoting investment in submarine cable infrastructure. Redundancy of subsea cable infrastructure is one of the best measures to ensure resilience of communications and offers the best protection against the impact of cable damage incidents.⁷ An additional measure to enhance resilience is the reinforcement of maintenance and repair capacity at EU level, which would mitigate the impact of any attempts to sabotage submarine cable infrastructure. For example, ships responsible for maintenance and repair of subsea cables are scarce resources; they should be reinforced to help strengthen the security of existing infrastructure.

Against this backdrop, the European Commission's holistic approach to international submarine connectivity is welcome and comes at a timely moment, given the increased attention to this issue from policymakers, regulators, governments, and the defence sector, in Europe and across the globe. The Ministerial Declaration on European Data Gateways⁸ highlights that Europe's digital sovereignty and global competitiveness depend on strong and secure internal and external connectivity, as a precondition for the European Union to become "the most attractive, most secure and most dynamic data-agile economy in the world".

⁶ [Council Conclusions on the Future of EU Digital Policy](#), par. 6

⁷ E.g. recent cases of cable damage have not disrupted internet traffic due to existing infrastructure redundancy ([Link](#)).

⁸ Ministerial Declaration: European Data Gateways as a key element of the EU's Digital Decade, March 2021 ([Link](#))

At the moment, we do not identify any major regulatory bottlenecks to subsea cable landing in Europe. However, the threat and security landscape is shifting constantly; it is thus important to adopt measures at the EU level to help improve the security of subsea cable infrastructure. These measures could take the form of cooperation obligations among Member States on the physical security of cables. This approach could act as a deterrent for potential adversaries from damaging this critical infrastructure, while resulting in a reduction to the high cost of implementing comprehensive protection measures to cable owners.

Conclusion

The White Paper continues a useful discussion on Europe's connectivity needs that started two years ago. It puts forward some interesting ideas, such as regulatory simplification that could help promote connectivity hand-in-hand with economic competitiveness.

However, we must avoid using this discussion as a covert way to make industrial policy or intervene in markets where there is no identified failure. Moreover, this discussion should respect the clear opposition to a direct transfer mechanism, which was widely rejected in last year's Exploratory Consultation and avoid the introduction of such a mechanism through the back door. It is necessary to recognise the symbiotic relationship between CAPs and telecoms providers: each have their respective role to play in the ecosystem; and together they create a virtuous cycle of economic growth.

DOT Europe stands committed to continuing its active participation in this discussion and contribute the views of the online services ecosystem.