

Consultation on the European Commission White Paper “How to master Europe’s digital infrastructure needs?”

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Introduction

Epicenter.works appreciates the opportunity to provide feedback on the White Paper ‘How to Master Europe’s Digital Infrastructure Needs?’¹ published on 21 February. Issues relating to the further development of network infrastructure and the importance of the concept of net neutrality for rights and freedoms of EU citizens have always been of particular interest to our organization². We have commented extensively on the debate around network fees (“fair share”) since it has been introduced in the EU policy debate in 2022³. In recent years, we have been actively involved in many new legislative projects and their regulatory implementation, particularly with regard to net neutrality. We analyse the Commission White Paper from a human rights and consumer perspective.

We have significant concerns that must be addressed to ensure a balanced and effective policy framework. Our primary issues include the flawed premise of convergence between connectivity and cloud services, the problematic conflict dispute mechanism that would introduce the previously rejected concept of network fees, and the narrow focus on the interests of large telecom operators, which overlooks competition and user demands

1. Flawed Premise of Convergence Between Connectivity and Cloud Services

The White Paper proposes expanding the current regulatory framework under the assumption of a convergence between connectivity and cloud services. This premise is fundamentally flawed and does not reflect the distinct nature and operational realities of these services.

- **Distinct Operational Realities:** Connectivity services (e.g., fibre, 5G) and cloud services (e.g., data storage, processing) operate within different technological and market contexts. Connectivity is about physical network infrastructure, while cloud services pertain to software and data services. Conflating these two under a single regulatory framework risks imposing inappropriate regulations that could stifle innovation and competitiveness in both sectors.
- **Evidence from Regulatory Studies:** Studies by telecom regulators indicate that the main bottlenecks in broadband infrastructure rollout are related to civil engineering capacities and bureaucratic permit processes⁴, not a lack of convergence or additional payments from cloud services. Without addressing these fundamental issues, expanding the regulatory scope based on a flawed premise could lead to inefficiencies and increased costs without achieving the desired infrastructure improvements.

1 <https://digital-strategy.ec.europa.eu/en/library/white-paper-how-master-europes-digital-infrastructure-needs>

2 [https://epicenter.works/en/documents?tx_news_pi1\[overwriteDemand\]\[tags\]=4](https://epicenter.works/en/documents?tx_news_pi1[overwriteDemand][tags]=4)

3 <https://epicenter.works/en/content/global-open-letter-to-defend-net-neutrality-against-attacks-from-eu-commissioners-vestager-breton> and <https://epicenter.works/en/content/state-of-net-neutrality-in-the-eu-guest-article-for-arcep>

4 <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-challenges-and-drivers-of-nga-rollout-and-infrastructure-competition> and <https://www.rtr.at/TKP/aktuelles/publikationen/publikationen/GlasfaserOe2018.de.htm>

2. Unjustified Dispute Resolution Mechanism for Interconnections

Interconnection is the backbone of the internet, enabling different networks to communicate and function as a cohesive whole. The proposed dispute resolution mechanism for interconnections effectively introduces network fees (often referred to as "fair share" by telecom lobbyists). This fundamentally changes the way the internet operates, shifting from a mostly peering model to a transit model. Such a dispute settlement mechanism requires a regulated price for the inter-connection market that would bring the European internet back to the telephony era concept of termination monopoly.

The internet primarily operates on the principle of "peering," where networks exchange traffic freely and for mutual benefit. "Transit," where one network pays another for access to the internet, is the exception rather than the rule. The White Paper's proposal to extend transit through the dispute resolution mechanism reverses this idea, potentially leading to a less cooperative and more commercially driven internet landscape. This shift undermines the principle of interconnection and jeopardizes the seamless operation of the internet, potentially fragmenting the global flow of information and services.

We reiterate⁵ that such a concept poses severe problems for the resilience of the global internet and could lead to network topology being no longer optimized for stability and service quality, but instead for profit maximization⁶. The responses to the 2023 public consultation of the European Commission showed an overwhelming rejection by all types of stakeholders that are not large telecom companies⁷. Many of the underlying premises of the whole debate are flawed⁸ and were already rejected⁹.

Network fees pose several significant risks. Firstly, they threaten net neutrality by potentially leading to preferential treatment of services based on their ability to pay. This view is supported by multiple statements of BEREC¹⁰. Net neutrality ensures equal treatment of all data on the internet, preventing ISPs from discriminating against or favouring particular services. Disrupting this balance could result in a fragmented internet where access to information and services depends on commercial agreements rather than user choice and quality of service.

Furthermore, high-level telecom industry executives have not committed to using additional payments from big tech companies for network investments. Historical evidence suggests that such payments do not necessarily translate into improved infrastructure. Instead, they might increase costs for consumers via higher subscription fees and reduce incentives for ISPs to optimize their networks and services efficiently.

5 <https://epicenter.works/en/content/network-fee-exploratory-consultation-submission>

6 https://www.euro-ix.net/media/filer_public/91/7a/917a92e8-77b0-4d29-bdfc-dd68bce9a523/spnp_impact_on_ixps_-_final.pdf

7 <https://radiobruelleslibera.com/2023/04/11/the-fair-share-repository/>

8 <https://epicenter.works/en/content/myths-about-net-neutrality-debate-on-network-fees-aka-fair-share>

9 <https://epicenter.works/en/content/open-letter-to-defend-net-neutrality-from-eu-commission-network-fee-plans> and

<https://epicenter.works/en/content/network-fees-global-civil-society-statement>

10 https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPS-to-ISPs_0.pdf and <https://www.berec.europa.eu/en/news-publications/news-and-newsletters/berecs-input-to-the-future-of-the-electronic-communications-sector-and-its-infrastructure-public-consultation>

Moreover, network fees threaten to degrade user experience. If ISPs prioritize traffic from companies that can afford to pay these fees, other services may suffer from slower speeds and lower quality, undermining the overall user experience on the internet. This creates an uneven playing field, where smaller providers struggle to compete, leading to reduced innovation and choice for consumers.

3. Narrow Focus on Large Telecom Operators

The White Paper predominantly reflects the perspectives of large telecom operators, neglecting important issues related to competition, innovation, and user demands.

- **Impact on Smaller Players:** By focusing on the interests of large incumbents, the White Paper risks creating policies that disadvantage smaller telecom operators and new market entrants. Smaller operators are often more agile and innovative, driving competition and better service quality. Regulatory frameworks should ensure a level playing field that encourages competition and innovation across the board.
- **Neglect of User Demands:** The policy proposals need to better address the demands and rights of users, including the principles of net neutrality, affordability, and access to diverse and high-quality services. Network traffic is not sent by Content and Application Providers unilaterally in the networks of telecom operators. Users drive the demand for internet access services and its via their internet access subscription that demand for data packages towards the network of telecom operators is requested. User needs should be at the forefront of any regulatory framework.

Conclusion and Recommendations

We urge the European Commission to reconsider the following points to ensure a balanced, competitive, and user-centric approach to Europe's digital infrastructure needs:

- **Reevaluate the Premise of Convergence:** Any regulatory expansion should be based on a clear, evidence-backed understanding of the distinct characteristics and needs of connectivity and cloud services.
- **Abandon network fees ("Fair Share"):** Focus on fostering a competitive and investment-friendly environment without introducing mechanisms that threaten net neutrality, increase costs, and degrade user experience. The term "fair share" is a euphemism for network fees, which we believe would ultimately harm the internet ecosystem. Additionally, these fees undermine the concept of interconnection, which is vital for the cohesive functioning of the internet, and misunderstand the fundamental principles of how the internet operates.
- **Broaden the Perspective:** Ensure that the regulatory framework reflects the interests of all stakeholders, including smaller telecom operators, digital innovators, and end-users, to promote competition and innovation.

Sincerely,

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