

Exploratory Consultation from the European Commission

The future of electronic communications sector and its infrastructure

ARTICLE 19 welcomes the efforts of the European Commission's (EC) initiative to gather stakeholders' views on the future of the electronic communications sector and its infrastructure. We appreciate the opportunity to provide the EC with our position on the topic and look forward to the ensuing discussions.

ARTICLE 19 is an international human rights organization that works to protect and promote the right to freedom of expression, both offline and online. With regional offices in different parts of the world, including Europe, we operate on a national, regional and global level. The work of ARTICLE 19's Global Digital Programme focuses on strengthening human rights considerations in the design, development, and deployment of Internet infrastructure technologies.

The proposal currently under consideration by the European Commission, regarding the need to regulate remunerations of large content and application providers (CAPs) to Internet service providers (ISPs), appears to echo past proposals that have already been discussed extensively. In 2012, ARTICLE 19 [reviewed the proposal of the European Telecoms Network Operators \(ETNO\) and its impact on net neutrality](#). We contended that the proposal is at odds with the net neutrality principle, which essentially posits that there should be no discrimination in the treatment of Internet traffic, based on the device, content, author, or the origin and/or destination of the content, service or application. We have also pointed out that the EC proposal to impose financial remuneration based on data traffic is essentially an attempt to apply the international telephony regime to IP interconnections, something which would be both overly expensive and out of sync with the settlement-free, peering system that has allowed the Internet to flourish. At the same time, this proposed model ignores users who already pay to get access to the Internet. We maintain these concerns in the context of the current EC proposal. Furthermore, we are strongly convinced that the risks for net neutrality can have an even worse impact in the present day, based on the increasingly important role that the Internet has taken in the everyday lives of people, and especially during the ongoing COVID-19 pandemic.

A variety of stakeholders have analysed the current proposal, including regulatory authorities from EU member states, the private sector, civil society organizations, and individual experts¹. Many of these contributions highlight a lack of fact-based evidence, and thus little justification for the proposal itself². Indeed, the traffic exchanged between networks is not directly attributable to

¹ Joint Industry, NGOs (including ARTICLE 19), Consumer, Telecom, MEPs and Rightsholder Statement against Network Fees

<https://epicenter.works/document/4660> and

<https://www.linkedin.com/feed/update/urn:li:activity:7059130693800353794/>

² *Our countries will also further cooperate on the digital economy. In particular, we will work together on EU connectivity to ensure an evidence-based discussion on the issue of network fees, focusing on a clear, fact-based problem definition first before any instruments can be considered. Joint declaration – Government Consultations Netherlands - Germany. 27 March 2023*

individual CAPs. Networks that exchange data contain a multitude of individual endpoints, including end-users, hosting companies and content delivery networks (CDNs). CDNs integrated by CAPs deliver most of the traffic locally to the user, thus some of the network topologies that are at odds with interconnection regulation are actually saving costs for ISPs by bringing data closer to consumers³. Zero-rating plans, which are banned in the EU but remain one of the only ways to get connected in most Global Majority countries, are the outcome of negotiations between CAPs and incumbent telecommunication companies - companies that are, very often, subsidiaries of the same EU-based companies claiming to be adversely affected by CAPs. These zero-rating agreements highlight the incongruity of the arguments raised by ISPs to justify this proposal. Not only do these agreements represent an important source of income for telecommunication companies, but they also limit the content accessed by users, reducing traffic significantly⁴. Zero-rated plans are attractive because they compensate the limited data cap with access to popular products created by CAPs. Telecommunication companies are claiming that Internet traffic is a burden; this is not the case. The content created by CAPs (social media, streaming platforms, messaging apps) is one of the key elements driving users' demand for telecom products. New generations of cellular network technologies (2G, 3G, 4G and the current 5G) aim to increase speed, reduce latency, and allow the usage of data intensive technologies. These technologies, in addition to Internet traffic, are currently and will be the main drivers of revenue growth for the telecom industry⁵.

In addition to our fundamental concerns regarding its justification, we maintain that this proposal has clear implications for the freedom of expression and other human rights in the EU. Internet connectivity is necessary for access to information online, as a means to form thoughts and opinions and share them with others. It enables people to access information from, *inter alia*, public

<https://www.bundesregierung.de/resource/blob/997532/2173422/fcdc18e1cf56abbd78f62ebc4f41270e/2023-03-27-joint-decl-neth-ger-data.pdf?download=1>

³ <https://tech.ebu.ch/docs/techreports/tr068.pdf>

⁴ This is the reality not only in the Global South, but also in many EU countries, even in the absence of zero-rating practices.. A recent study by the WIK institute, commissioned by the Bundesnetzagentur, on competition in the transit and peering markets, "Competitive conditions on transit and peering markets – Implications for European Digital Sovereignty", found that these days "most of the Internet traffic is handled by large Content and Application Providers (CAPs), which have integrated their own CDN and can thus deliver almost all their traffic locally to users. As a result, transit traffic via traditional (European) Tier 1 telecoms has declined sharply."

https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitalisation/Peering/download.pdf;jsessionid=98E9E962304F320E6BDCC58903A27BC?__blob=publicationFile&v=1
<https://policyreview.info/articles/analysis/beyond-zero-sum-case-context-regulating-zero-rating-global-south>

⁵https://www.itu.int/dms_pub/itu-r/opb/rep/R-REP-M.2516-2022-PDF-E.pdf ,
<https://www.ericsson.com/4ae28d/assets/local/reports-papers/mobility-report/documents/2022/ericsson-mobility-report-november-2022.pdf>,
<https://www.ericsson.com/en/reports-and-papers/mobility-report/dataforecasts/service-packaging>,

<https://www.adobomagazine.com/philippine-news/globe-telecom-expands-mobile-data-business-with-free-facebook-free-viber-offer/> and

<https://www.grandviewresearch.com/industry-analysis/global-telecom-services-market>

authorities, the media, and other relevant bodies. Furthermore, Internet connectivity directly impacts the exercise of other human rights, including the right to freedom of association and, as has become evident during the COVID-19 pandemic, the right to health. As such, to guarantee adequate Internet connectivity to all people is not only an economic goal, but also a social, civil, and political one. Infrastructure deployment and improvement is a key element for guaranteeing meaningful connectivity.

However, this exploratory consultation assumes as a starting point the infrastructure deployment model of incumbent telecommunication companies. This approach ultimately privileges the largest telecommunication companies, since it ignores the contribution from other connectivity models, such as the use of satellite or Wi-Fi mesh connections to provide community-level connectivity, and the impact of other affected stakeholders such as Internet Exchanges, SMEs or public and private broadcasters by only focusing on the remuneration of select telecommunication companies.

Alternative network operators contribute significantly to the provision of last-mile services to people and communities in the EU. In Germany for example, the network rollout by alternative network operators far outperformed the rollout of incumbents⁶. Connectivity is only useful if it is meaningfully designed for the particular needs of people and communities; often the most meaningful models are those that are designed by people and communities themselves. However, by demanding that CAPs provide remuneration to the largest ISPs, incumbent operators will grow even more powerful, further entrenching their dominant or gatekeeping position in the market, and further squeeze out local, community-managed, or non-profit networks. Incumbent business interests should not take precedence over people's right to freedom of expression and information.⁷

In view of the above, ARTICLE 19 calls on the European Commission to reject further development of this proposal.

⁶ <https://www.brekoverband.de/en/schwerpunkte/breko-marktanalyse/>

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https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/freedoms/freedom-expression-and-information_en