

CONTEXT

On 23 February, the Commission opened a public consultation on “the future of the electronics communications sector and its infrastructure”. ACT’s response to relevant questions is below.

QUESTIONNAIRE

Section 2. Fairness for consumers

(...)

26. The current source for financing the universal service in electronic communications is public general budget and/or financing from providers of electronic communications networks and services. What should be in your view the appropriate way for financing the universal service in electronic communications in the next 10 years? [Multiple options can be selected]

- Public general budget (as currently)
- Providers of electronic communications networks and services (as currently)
- Widen the range of providers to include online digital players or data generators that benefit from connectivity or only a set of them
- Other ways of financing

Please specify “Other ways of financing” - 100 character(s) maximum

Please explain your answer - 1000 character(s) maximum

We do not see the need to move away from the current financing model, a view that is supported by studies from, inter alia, the Dutch Government, WIK-Consult and others¹ (see Annex I for references).

We do, however, strongly oppose any type of ‘direct contributions’ impacting audiovisual media services (AVMS) to finance telecom companies’ universal service obligations and caution against measures that could indirectly impact our sector. AVMS are already subject to significant investment obligations and levies to support European culture and diversity, sometimes representing double-digit proportions of their total revenues². Additional costs in the form of direct or indirect network taxes will impact our ability to invest in new European content.

Furthermore, value chain effects on investments and therefore availability of AVMS content are likely to limit subscription interest in telecom operators’ services as this content is key to attract consumers.

(...)

29. Would a dedicated EU-wide fund be useful? [Only one option can be selected]

- Yes, it would be useful for support to ensure that consumers have affordable access to broadband in general
- Yes, it would be useful for support to ensure that consumers have affordable access to broadband only in specific crisis circumstances to address acute but temporary difficulties
- Yes, it would be useful for network deployment, especially in rural areas
- No, it would not be useful

Please explain your answer; If you reply yes, please explain whether a distinction should be made between all consumers and those with low income or special social needs. - 1000 character(s) maximum

As mentioned there is scarce evidence of the current USO framework being faulty or insufficient. As a consequence, we do not have a view on whether such an EU-wide fund would be useful. However, should a fund be deemed appropriate, AVMS should not have to contribute to it in any way. As outlined elsewhere, audiovisual services are already subject to vast investment obligations and levies to support European culture and diversity. The latter sometimes representing double-digit proportions of their total revenues². On top of this, AVMS have contributed significantly to the growth of European telecoms networks and the take-up of premium broadband subscriptions.

(...)

Section 4. Fair contribution by all digital players

52. Are there any obstacles preventing providers of ECNs from charging digital players for increased data traffic through their networks? [Only one option can be selected]

- No
- Yes
- I do not know

Please explain your answer. In particular, if you reply is yes, please explain the reasons (e.g. legal, regulatory, other) - 1000 character(s) maximum

Whilst much of the public discourse has focused on the dualistic relationship between very large tech companies and telecoms companies, we understand that by “digital players” the European Commission includes AVMS for the purpose of this consultation in addition to online platforms in the DSA sense. In our view, this should not be the case.

We understand that telecom companies may sometimes struggle in their relation with tech companies. To this extent, ACT members have reported that electronic communications network are already charging for data traffic through their network. These fees are a result of bilateral negotiations in which telecom companies have a stronger negotiating position to charge or impose rates for data traffic or interconnection. We would therefore caution against any initiative that might further strengthen their market power when dealing with AVMS.

Furthermore, most telecom providers also offer content, in direct competition with AVMS.

53. What could be the effect on the environmental footprint of the services provided over electronic communications networks of a potential mechanism whereby the largest generators of traffic would contribute to network deployment, and/or would be subject to obligations regarding data delivery mode?

Please explain your answer - 1000 character(s) maximum

Forcing AVMS to pay contributions to telecom providers would have negative effects on their ability to innovate and invest in greener and more sustainable technologies and solutions.

Internal studies on CO2 emissions have shown that a significant part is related to VoD are from the devices used by our customers in their own homes. We therefore do not believe that the issue of greening the AV sector is one that should be addressed through such a mechanism.

Tackling emissions is crucial. However, the focus should be how industry partners can work together and influence the whole value chain, in particular the ICT sector for more data (co2 emission & energy) transparency. In this context, we have previously called on the Commission to consider launching a study to compare the relative impact of different distribution models. Furthermore, telecom companies' push for more mobile broadband at WRC-23 is itself undermining the energy efficiency of our sector³ (see q. 58)

54. The European Declaration on Digital Rights and Principles states that all digital players benefiting from the digital transformation should contribute in a fair and proportionate manner to the costs of public goods, services and infrastructures to the benefit of all people living in the EU. Some stakeholders have suggested a mandatory mechanism of direct payments from CAPs/LTGs to contribute to finance network deployment. Do you support such suggestion and if so why? If no, why not? [Only one option can be selected]

- No
- Yes
- I do not know

Please explain your answer - 1000 character(s) maximum

We strongly oppose such a mechanism because:

- We do not see the need for such a mechanism, have not seen evidence of market failure and telecom companies are reporting record-high revenues⁴.
- AVMS are subject to financial obligations to support European culture and diversity. Conversely, those obligations do not apply to our direct competitors: online platforms.
- ACT members invest significantly in telecom infrastructure, directly or via partners, to ensure a smooth delivery of their content.
- Our sector supports ISPs by allowing Europeans to derive value from the premium broadband connections they purchase to watch our content.
- It could undermine net neutrality and affect market transparency.
- It could undermine both the quantity and quality of distribution for AV and restrict viewers' access to a rich and varied offers of original European content.

ACT understands the regulatory asymmetries with large tech companies. However, such a mechanism is not an appropriate solution.

(...)

58. Do you see any possible risks of a contribution to finance network deployment in the form of direct payments and if so, which? Please substantiate your answer, including with data.

Use drag&drop or the up/down buttons to change the order or accept the initial order.

- Negative effects on the incentives for innovation
- 1 - Other**
- 2- Negative consequences on medium/small traffic generators**
- 3- Negative consequences for consumers**
- 4 - Sustainability within the internet ecosystem**
- 5- Negative consequences on the competition between large and small providers of ECNs**
- I do not know

Please specify “Other” - 100 character(s) maximum

The whole AV ecosystem, which directly employs over 1.1 million people in Europe.

Please explain your answer - 1000 character(s) maximum

See our answer to question 54. But we would add that:

- Any tax applied to LTGs would likely either directly apply to our services or be passed on to us due to our use of 3rd parties for technical support (eg. many members use solutions like CDNs or other cloud infrastructure services to provide backend for streaming).
- More money paid in network fees would mean less invested in content, which means less money in the AV sector as a whole and less content available or lower quality content.
- ACT members already pay network fees to telecom companies (see question 52). Telecom companies are calling for more spectrum for mobile connectivity at the World Radiocommunication Conference (WRC-23). Should the WRC-23 decide to allocate the sub-700 MHz UHF band (470-694 MHz) to mobile services, broadcasters would be forced to fully move online, increasing their data consumption dramatically. This would likely lead a wide range of broadcasters being considered “large traffic generators”.

(...)

60. The European Declaration on Digital Rights and Principles states that all digital players benefiting from the digital transformation should contribute in a fair and proportionate manner to the costs of public goods, services and infrastructures to the benefit of all people living in the EU. To achieve this, some stakeholders have suggested to introduce a mechanism consisting of a EU/national digital contribution or fund. Do you support such suggestion and if so why? If not, why not? [Only one option can be selected]

- No**
- Yes
- I do not know

Please explain your answer - 1000 character(s) maximum

See our answer to previous questions, in particular 54 and 58.

Our suggestion is to focus on a solution where telecom networks can have direct impact by dealing with rampant piracy of copyright protected content often found on their networks. Indeed, many networks are saturated by pirate content, in particular at peak hours. Pirate content has no benefit to any legitimate parts of the supply chain, undermines content creators, leads to losses of jobs, revenue, does not contribute to the economy yet and harms all parts of the AV ecosystem. Yet telecoms operators have resisted taking action against piracy, which also often impacts network quality. This content is often dangerous and is the most energy inefficient and should be the first area of examination when looking at network congestion.

Finally, we would like to underline the need for more evidence with regards to telco traffic data demonstrating market failure ahead of any possible initiative. At the very least, policy makers and regulators should be granted access to such data.

ACT - NETWORK FEE CONSULTATION – SUPPLEMENTARY SUBMISSION

On 23 February, the Commission opened a [public consultation](#) on “the future of the electronics communications sector and its infrastructure”. This paper seeks to complement ACT’s response to the consultation.

BACKGROUND

ACT members understand the need for strong, widely available telecoms infrastructure in Europe which, among other things, helps European consumers access high-quality TV and VoD services. However, 'taxing' high bandwidth services for delivering content that consumers request would be counterproductive and could have significant unintended consequences, including on the creative and cultural industries, consumer rights, additional costs for consumers and net neutrality principles. Any type of ‘mandatory direct contributions’ could cause numerous collateral damage to an ecosystem that has generally functioned correctly on a commercial basis.

Audiovisual media services (AVMS) do not "generate" traffic. Their users request it and pay telecom companies for it. Indeed, during the COVID-19-crisis internet traffic increased significantly for a period based on end-user demand¹. Traffic growth rates have now stabilised², as have costs of traffic sensitive components in networks³.

Based on the approaches suggested so far by some large telecom providers, it is very likely that many AVMS, be they broadcasters, VOD providers, or both, would be considered large traffic generators in many countries. For instance, streaming of live events can sporadically represent a high share of total traffic in individual markets.

Even if AVMS were not directly in scope, any tax applied to “large traffic generators”, would likely be passed on to ACT members due to our use of 3rd parties for technical support (eg. many members use solutions like Content Delivery Networks (CDN) or other cloud infrastructure services to provide back-end for streaming).

AVMS already invest significantly in telecom infrastructure, directly or via partners, to ensure smooth delivery of their content. These content providers invest in resource efficiency because it is in their interest to keep infrastructure costs down (whether network, servers or data centres) while delivering a high-quality service (content) to consumers. Additionally, our sector supports ISPs by allowing Europeans to derive value from the premium broadband connections they purchase to watch our content. AVMS have contributed significantly to the take-up of premium broadband subscriptions, which has generated important funds for telecom companies.

AVMS are also already subject to significant European investment obligations and levies to support European and national culture and diversity, sometimes representing double-digit proportions of

¹ BEREC, “BEREC Summary Report on the status of internet capacity, regulatory and other measures in light of the Covid-19 crisis” (BoR (21) 184), <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-summary-report-on-the-status-of-internet-capacity-regulatory-and-other-measures-in-light-of-the-covid-19-crisis-14>

² See p. 5-6 of Communications Chamber report “An internet traffic tax would harm Europe’s digital transformation <http://static1.1.sqspcdn.com/static/f/1321365/28531995/1657135490797/Internet+Traffic+Tax+1.pdf?token=uDfEiCgnKxdnUWZtGhFpNgF8Cr8%3D>

And p. 6-8 of WIK Consult report WIK consult report <https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?blob=publicationFile&v=1>

³ See p. 7 to 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

their total revenues⁴. Additional costs in the form of direct or indirect network taxes would impact our ability to meet these obligations and compete. Conversely, those obligations do not apply to video-sharing platforms and social networks which benefit from large regulatory asymmetries and with which AVMS providers now compete directly.

Furthermore, telecom companies themselves are calling for more spectrum for mobile connectivity at the World Radiocommunication Conference (WRC-23). Should the WRC-23 decide to allocate the sub-700 MHz UHF band (470-694 MHz) to mobile services, broadcasters would be forced to fully move online, increasing their data consumption dramatically. This would likely lead to a wide range of broadcasters being considered "large traffic generators".

To this end, we strongly oppose any calls for network fees or other types of 'direct contributions' impacting audiovisual media services.

RECOMMENDATIONS FOR MARKET ANALYSIS & PUBLIC POLICY GOALS

- **Ensuring a full and balanced assessment of alleged market failure:** ACT calls on EU policymakers to conduct a more thorough and comprehensive research and review exercise on telecom companies traffic data, in order to demonstrate whether there actually is a market failure ahead of any possible initiative. At the moment, telecom companies have yet to show the actual traffic data per country and have resisted requests for more transparency. At the very least, policymakers and regulators should be granted access to such data. The EC public consultation's questionnaire should be complemented by a neutral fact-finding exercise to ensure an objective and evidence-based proposal.

The financial situation of most telecom companies, especially after COVID, is healthy⁵. The need to move away from the status quo is not supported by available studies from, *inter alia*, the Dutch government, WIK-Consult and others⁶. Traffic increase is plateauing and BEREC notes that it has grown steadily over the years⁷. Initial evidence suggests that the spike in the rate of bandwidth and traffic growth in 2020 from the pandemic was a one-time event and we have largely returned to more traditional rates of growth⁸.

Finally, it is important to notice that optimising content through dynamic compression techniques and the use of CDNs as close as possible to the end-user has always been key for content providers, to ensure an optimal user experience, and helps networks. This significantly reduces the pressure of data traffic on networks, including from an energy efficiency point of view.

⁴ See for instance Cullen Mapping of cross-border investment / financial obligations (https://www.cullen-international.com/dam/jcr:c93bc240-f3ac-4fd3-a58b-aec68d73eb71/Cullen-International-EPRA-Conference-2023_Crossborder.pdf)

⁵ MTN consulting, "Network Operator Forecast Through 2026" <https://www.mtn-c.com/product/network-operator-forecast-through-2026-june-2022-update/> or Telefónica communication <https://www.telefonica.com/en/communication-room/telefonica-increases-revenues-in-all-markets-and-earns-2011-million-euros-in-2022/>

⁶ Dutch Government, "Proposals for a levy on online content application providers to fund network operators" <https://www.government.nl/documents/reports/2023/02/27/proposals-for-a-levy-on-online-content-application-providers-to-fund-network-operators/>

WIK consult report <https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?blob=publicationFile&v=1>

⁷ https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary_assessment-payments-CAPs-to-ISPs_0.pdf

⁸ Telegeography E-Books "state of the network" <https://www2.telegeography.com/hubfs/LP-Assets/Ebooks/state-of-the-network-2023.pdf>

- **Impact on markets:** A number of ACT members have reported that electronic communications networks are already charging for data traffic through their networks. These fees are a result of bilateral negotiations in which telecom companies have a stronger negotiating position to charge or impose rates for data traffic or interconnection. We would therefore caution against any initiative that might further strengthen their market power when dealing with AVMS⁹. Additionally, investment in infrastructure is triggered by competition and demand and there is no evidence that a network fee would automatically translate into higher investments. Finally, AVMS have contributed significantly to the growth of European telecoms networks and the take-up of premium broadband subscriptions. Value chain effects on investments and availability of AVMS content are likely to limit interest in subscribing to telecom operators' services as this content is key to attracting consumers.
- **Impact on consumers:** Network fees would undermine both the quantity and quality of distribution for AV and restrict viewers' access to a rich and varied offer of original European content¹⁰. Any form of contribution would likely be passed on to the users who may end up paying twice (or more) for their consumption. It is important also to note that consumers are currently paying for very high levels of connectivity which are not used to their fullest potential, e.g. streaming 25 movies simultaneously¹¹.
- **Impact on net neutrality:** Net neutrality requires equal treatment of traffic, both at technical and pricing levels. The creation of a network tax risks undermining this principle¹², one which lies at the heart of telecoms and technology policy and has helped protect media plurality since the birth of the internet.

Network fees represent a slippery slope, risking both the cost and quality of distribution for AV and other services; and with it, potentially restricting European consumers' access to a rich and varied offer of original European content.

In South Korea, the introduction of a sender-party-network-pays principle (and thus mandatory directly payments to telecom providers) has forced access online services to off-shore their business, reduced network investment, increased latency for video streaming, harmed local application providers, and ultimately slowed internet service for Korean consumers¹³.

- **Impact on the environment:** We do not believe that the framing of a potential additional "network contribution" in the Commission's consultation as a pro-sustainability initiative is fair and appropriate. Forcing AVMS to pay contributions to telecom providers would have negative effects on their ability to innovate and invest in greener and more sustainable

⁹ "[network fee] would de-facto enforce dominant telecom operators' agenda, create so-called termination monopolies and create a distortion of competition, thus disincentivising other players from investing in infrastructure or content distribution" stated 50 organisations in a recent [statement](#).

¹⁰ <https://www.rijksoverheid.nl/documenten/publicaties/2023/02/27/plans-for-charging-internet-toll-by-large-telecom-companies-feared-to-have-major-impact-on-european-consumers-and-businesses>

¹¹ In the EU, average fixed-line download speeds have increased by more than half (+51.9 percent), from 68 Megabits per second (Mbps) in March 2020 to 103.3 Mbps in June 2021. <https://www.balkanicaucaso.org/eng/Areas/Europe/Europe-s-internet-speeds-are-faster-than-ever-but-not-for-everyone-212940> Netflix recommends at least 5 Mbps for FHD quality and 15 Mbps for Ultra HD or 4K quality (Netflix, "Internet Connection Speed Recommendations")

¹² MVNO Europe paper, Aug 2022 <http://mvnoeurope.eu/mvno-europe-position-paper-on-network-investment-contributions/>

¹³ <https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?blob=publicationFile&v=1>, pp. 36-37. <https://www.internetsociety.org/resources/doc/2022/internet-impact-brief-south-koreas-interconnection-rules/>

technologies and solutions. Internal studies on CO2 emissions have shown that a significant volume of emissions emanates from the devices in customers' own homes.

We, therefore, do not believe that the issue of greening the AV sector should be addressed through such a mechanism. Tackling emissions is crucial. However, the focus should be on how industry partners can work together and influence the whole value chain, in particular, the ICT sector for more data (CO2 emission & energy) transparency. In this context, we have previously called on the Commission to consider launching a study to compare the relative impact of different distribution models. Furthermore, telecom companies' push for more mobile broadband at WRC-23 is itself undermining the energy efficiency of our sector (see above).

- **Prioritising network decongestion by focusing on illegal content:** ACT suggests focusing on a solution where telecom networks can have direct impact by dealing with rampant piracy of copyright-protected content. Pirate content has no benefit to any legitimate parts of the supply chain, undermines content creators, leads to losses of jobs, revenue, does not contribute to the economy yet harms all parts of the AV ecosystem¹⁴. This content is often dangerous and is the most energy inefficient and should be the first area of examination when looking at network congestion.

¹⁴ World: <https://www.go-globe.com/online-piracy-in-numbers-facts-and-statistics-infographic/>

Europe: <https://www.aapa.eu/illicit-iptv-in-europe-an-aapa-economic-report>

For more information: <https://www.acte.be/publication/act-response-to-the-ec-call-for-evidence-on-piracy-of-live-content/>

ANNEX I

References

1. Market studies
 - a. Proposals for a levy on online content application providers to fund network operators
(<https://www.government.nl/documents/reports/2023/02/27/proposals-for-a-levy-on-online-content-application-providers-to-fund-network-operators>)
 - b. WIK-Consult report - Competitive conditions on transit and peering markets Implications for European digital sovereignty
(https://www.bundesnetzagentur.de/EN/Areas/Telecommunications/Companies/Digitisation/Peering/download.pdf?__blob=publicationFile&v=1)
2. See for instance Cullen Mapping of cross-border investment / financial obligations
(https://www.cullen-international.com/dam/jcr:c93bc240-f3ac-4fd3-a58b-aec68d73eb71/Cullen-International-EPRA-Conference-2023_Crossborder.pdf)
3. http://www.ors.at/fileadmin/user_upload/ors/downloads/LoCaT-Final_Report-v1.2-Studie-Energieverbrauch-Antennen-TV-2021.pdf
4. <https://www.telefonica.com/en/communication-room/telefonica-increases-revenues-in-all-markets-and-earns-2011-million-euros-in-2022/>