

ACT RESPONSE TO THE CALL FOR EVIDENCE ON THE DIGITAL NETWORKS ACT

[ACT](#) members recognise the importance of strong and widely available telecoms infrastructure in Europe, which, among other benefits, enables European consumers to access high-quality TV and VoD services. However, we are concerned by several assumptions in the document that risk undermining the foundational principles of net neutrality, content investment, and, more broadly, the sustainability of the media ecosystem. We therefore oppose any potential introduction of network fees or a mandatory dispute resolution mechanism under the Digital Networks Act (DNA).

Below, we set out our comments on three specific issues raised in the Call for Evidence:

LEVEL PLAYING FIELD

Under the guise of a “level playing field”, the Call for Evidence refers to the perceived need to facilitate “cooperation among the actors of the broader connectivity ecosystem by NRAs or BEREC.” This language is concerning as it suggests the potential introduction of mandatory dispute resolution mechanisms¹. Any kind of mandated negotiation in the interconnection market could ultimately lead to content providers, such as Audiovisual Media Services (AVMS), having to pay telecom companies for the delivery of content requested by consumers.

As repeatedly recognised by both BEREC and the Commission itself, the interconnection market generally works well. The relationship between AVMS is a mutually beneficial one and there is no evidence that suggests that cooperation between these actors requires regulatory intervention.

Any dispute resolution measures or negotiation obligations affecting AVMS would be counterproductive and could have significant unintended consequences, including on the creative and cultural industries, consumer rights, additional costs for consumers, the environment and net neutrality principles.

A number of ACT members have reported that telecom companies are already charging for data traffic through their networks. These fees are the result of bilateral negotiations in which telecom companies have a strong negotiating position which allows them to charge or impose rates for data traffic or interconnection. These bilateral agreements generally function well, as recognised by the Commission itself and confirmed by its exploratory consultation.

We are, however, generally concerned about proposals to intervene in commercial relationships, as they could distort the balance in favour of telecom providers—particularly in markets where they already hold significant leverage. Such intervention risks enabling regulatory backstops that would, in practice, mandate negotiations or payments under the guise of “cooperation,” effectively introducing a sender-pays model without explicitly naming it.

We therefore want to reiterate that:

¹ The [White Paper](#) (Pillar II, Section 3.2.2) recognises that:

- There are very few known instances of regulatory or judicial intervention in the contractual relationships among market participants
- Contractual arrangements between actors, including those for transit and peering, generally function well

Only if circumstances change in the future: “ [...] subject to careful assessment, policy measures could be envisaged to ensure swift resolution of disputes. For example, the commercial negotiations and agreements could possibly be further facilitated by providing for a specific timeline and by considering the possibility for requests for dispute resolution mechanisms, in case commercial agreements could not be found within a reasonable period of time”

- AVMS do not "generate" traffic. Their users request it and pay telecom companies for it.
- AVMS already invest significantly in telecom infrastructure, directly or via partners, to ensure smooth delivery of their content via Content Delivery Networks (CDNs). AVMS also invest in resource efficiency solutions like codecs or other compression technologies because it is in the AVMS interest to keep infrastructure costs down (whether network, servers or data centres) while delivering a high-quality content delivery service to consumers.
- Our sector supports Internet Service Providers (ISPs) by allowing Europeans to derive value from the premium broadband connections they purchase to watch our content services. AVMS have contributed significantly to the take-up of premium broadband subscriptions, which has generated important funds for telecom companies.
- AVMS are subject to significant financial obligations to support European culture, sometimes representing double-digit proportions of their total revenues². Any regulatory change would ultimately undermine both the quantity and quality of distribution for AV and restrict viewers' access to a rich and varied offer of original European content³.
- AVMS operate in a highly regulated environment with stringent obligations both on the content and advertising they distribute to their viewers. Conversely, most of these 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. Imposing additional obligations and costs on AVMS for the distribution of their services would exacerbate this imbalance.
- The European Electronic Communications Code (EECC) recognises the necessity to "separate the regulation of electronic communications networks and services from the regulation of content". It also – repeatedly – recognises the pursuit of media pluralism and as such is without prejudice to measures designed to "promote cultural and linguistic diversity and to ensure the defence of media pluralism". This pursuit justifies that broadcasting organisations are awarded a special status in the EECC. We would caution against any approach that would meddle the distinction between conduit and content and undermine media pluralism.
- Any form of contribution may lead to unintended consequences and increased costs for consumers, 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 simultaneously⁴.
- In South Korea, the introduction of a sender-party-network-pays principle (and thus mandatory direct payments to telecom providers) led to very negative side effects as it forced access online services to off-shore their business, reduced network investment,

² See for instance Cullen's 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 <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>

⁴ In the EU, average fixed-line download speeds have increased by more than half (+51.9 per cent), 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](#))

increased latency for video streaming, harmed local application providers, and ultimately slowed internet service for Korean consumers⁵.

- The priority should be placed on network decongestion by focusing on a solution where telecom networks can have a direct impact by dealing with rampant piracy of copyright-protected content. Nearly a quarter of the global Internet bandwidth is used for online piracy⁶. Pirate content has no benefit to any legitimate parts of the supply chain, undermines content creators, leads to losses of jobs, revenue, and does not contribute to the economy yet harms all parts of the AV ecosystem⁷. Pirate content is often dangerous and energy inefficient and, as such, should be the first area of examination when looking at network congestion.

We therefore do not agree with the assumption that there is a need to “level the playing field”, particularly in the relationship between telcos and AVMS. As the White Paper has demonstrated there is no clear evidence of market failure and no need to move away from the status quo, as evidenced by several available studies from, *inter alia*, the Dutch government, WIK-Consult and others⁸.

We therefore recommend that the Commission:

- move away from rhetoric mechanisms that would entrench the market power of telecom companies in their relationships with AVMS or other actors in the audiovisual value chain (e.g. CDNs).
- conduct a more thorough research and review exercise on telecom companies’ traffic data before drawing any hasty conclusions as to whether a legislative intervention is justified. This request aligns with the Council’s [conclusions](#) on the White Paper.

SUSTAINABILITY

ACT supports the Commission’s intention to support environmental sustainability of the sector. Tackling emissions is crucial. Indeed, ACT members have developed a number of actions throughout the years in order to optimise bandwidth use and raise viewers’ awareness on the environmental impact of content consumption. That is why, our members are actively investing in greener infrastructure and continually improve the efficiency of their delivery networks through advanced compression, caching strategies, and the use of CDNs placed close to end-users. As mentioned previously, this is also in AVMS’ interest as it allows to provide the best quality service to consumers, while keeping costs down. We thus do not see a need to ‘incentivise’ further traffic optimisation.

If the Commission wants to be effective in achieving its green objectives, the focus should be on how industry partners can work together and influence the whole value chain, in particular, the ICT

⁵<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/>

⁶ <https://www.go-globe.com/online-piracy-in-numbers-facts-and-statistics-infographic/>

⁷ World: <https://www.go-globe.com/online-piracy-in-numbers-facts-and-statistics-infographic/>

Europe: <https://www.aapa.eu/illegal-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/>

⁸ 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>

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, we caution against policy approaches that could divert investment away from green innovation. Imposing additional burdens — such as dispute resolution mechanisms, direct fees, or spectrum reallocation — on AVMS, which are already significant investors in sustainable content delivery, would reduce our ability to continue optimising emissions, particularly in a value chain where a substantial portion of energy use occurs in consumers' homes. Furthermore, telecom companies' push for more mobile broadband at WRC-23 is itself undermining the energy efficiency of our sector (see below).

SPECTRUM

Spectrum remains a strategic asset for the broadcasting sector. In particular, the sub-700 MHz UHF band is essential for the distribution of audiovisual services. A recently published Report from the European Audiovisual Observatory outlines that 30% of all TV channels in Europe are distributed on DTT networks. The importance of DTT is even more pronounced for local TV as 49% of local and regional TV channels are distributed on DTT networks⁹. DTT covers more than 90% of the world population¹⁰. In Europe, DTT reaches over 90% of citizens in Italy and over 70% in Greece¹¹. Its coverage efficiency ensures universal access and guarantees citizens' access to trusted news, democratic debate, and emergency information without commercial or technical barriers.

However, telecom companies themselves were calling for more spectrum for mobile connectivity (e.g. at the World Radiocommunication Conference - WRC-23). Any such reallocation would accelerate the migration of services online, paradoxically increasing traffic on telecom networks and undermining the efficiency goals of the DNA.

We therefore recommend that the Commission maintain strong safeguards for broadcasting spectrum and avoid policy choices that would penalise existing and legitimate distribution models.

⁹ <https://rm.coe.int/audiovisual-media-services-in-europe-2024-data-june-2025-j-a-tran-/1680b661f2>

¹⁰ https://tech.ebu.ch/docs/factsheets/ebu_tech_fs_dtt_success.pdf

¹¹ <https://digital-strategy.ec.europa.eu/en/library/study-use-sub-700-mhz-uhf-band-tv-broadcasting-and-events>