



ecta RESPONSE

**TO THE PUBLIC CONSULTATION BY
BEREC ON THE DRAFT REPORT ON**

**ENTRY OF LARGE CONTENT AND
APPLICATION PROVIDERS INTO THE
MARKETS FOR ELECTRONIC
COMMUNICATIONS NETWORKS AND
SERVICES**

BOR (24) 51

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1. key ecta considerations

1. ecta, the [european competitive telecommunications association](https://www.ectaportal.com/about-ecta),¹ welcomes the opportunity to provide feedback on the public consultation launched by BEREC on 14 June 2023 on a “*DRAFT BEREC REPORT ON ENTRY OF LARGE CONTENT AND APPLICATION PROVIDERS INTO THE MARKETS FOR ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES*” BoR (24) 51 (hereinafter “the draft Report”).
2. ecta represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. ecta represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High-Capacity Networks (hereinafter “VHCN”) and who demonstrate unique innovation capabilities. ecta counts Mobile Network Operators (hereafter ‘MNOs’), Fixed Wireless Access operators (hereafter ‘FWA operators’) as well as Mobile Virtual Network Operators (hereafter ‘MVNOs’) among its members.
3. ecta appreciates BEREC’s draft report and believes that the issues raised by it reflect well the overall picture and the main issues concerning the entry of large content and application providers into the markets for electronic communications networks and services. ecta provides some suggestions to further improve the final text of the report (paragraphs 8 to 11 below).
4. ecta is convinced that the description of the facts and the issues listed by BEREC are relevant, notably regarding: i) Overview of large CAPs investments, ii) Dynamics between large CAPs and ECN/ECS operators, and iii) Restrictions on access to services or functionalities by Operating System providers.
5. ecta firmly believes that the main challenges which should be followed up by BEREC with top priority consist in: i) the analysis of large digital ecosystems’ impact on business communications services (usually bundled with other services such as cloud and software) and the implications for the ECS providers., and ii) access to services, functionalities, and technologies effectively or potentially restricted by Operating System providers
6. ecta would like to highlight that the issue regarding the large digital ecosystems’ impact on business communications services (e.g. bundling with services such as cloud and software) and the implications for the ECS providers needs further analysis, and ecta therefore welcomes the studies that BEREC can undertake on this issue.

¹ <https://www.ectaportal.com/about-ecta>

7. **ecta** also believes that issues described by BEREC, and faced today by some operators, notably as a result of restrictive practices engaged in by Operating System providers, sometimes restricting ECN/ECS providers' ability to correctly give access to services or to the network itself, should be subject to constant supervision and timely intervention by the NRAs. If the issues that exist now are not solved quickly, there is a risk that, over time, Operating System providers will create more wide-ranging problems for competition, possibly affecting all ECN/S operators. **ecta** therefore appreciates BEREC's focus on Operating System providers' behaviour, and kindly invites BEREC to reflect on how to increase its and NRAs' engagement on these issues.

Specific ecta remarks on the Draft Report.

8. **ecta**, while appreciating the draft report in relation to the investment trends of the large CAPs, notes that BEREC does not make an unequivocal distinction between investments made by CAPs in what clearly constitutes electronic communications networks (networks transporting internet and cloud traffic) and electronic communications services (CDNs, NI-ICS and NB-ICS provided by CAPs), and other activities engaged in by CAPs. **ecta** believes that such distinction can be crucial to understand the competitive trends driven by the CAPs investments.
9. Similarly, **ecta** also notes that the draft report does not analyse at all the capacity of the data centres and how such capacity has been evolved in time according to the specific CAP and reference regions by showing the market shares of the players in the data centre market. Nor does it examine investment in data centres at the beginning of 2000, when operators such as Level 3 (Colt today) built many of them.
10. Another relevant question the final text of the report should consider is whether telecoms or other regulations (GDPR) have had an impact on the CAPs' investments in markets for electronic communications networks and services or in the cloud market.
11. Finally, in relation to the case study on the submarine cables market, it would be important for BEREC to clarify in the final text of the report what is being intended by the international IP traffic: does this include only the intercontinental IP traffic or does it refer to the IP traffic between each EU Member State?

In case of questions or requests for clarification regarding this contribution, the European Commission is welcome to contact Mr Luc Hindryckx, **ecta** Director General, or Ms Pinar Serdengeçti, **ecta** Regulation and Competition Affairs Director.