



CISPE Comments on the draft BEREC Report on Cloud and Edge

In the past few years, BEREC has been a reliable and reputable actor in providing fact-based and measured input to the European Commission's ideas about connectivity, helping to dispel misconceptions about how the internet ecosystem works today. Accordingly, we welcome the Body's draft Report on the Cloud, which we hope will help to shape the European Commission's thinking. However, we believe there are certain aspects of the draft BEREC Cloud report which could be improved, as noted below:

1. **Cloud pessimism:** The Report paints a rather negative picture about cloud, focusing much more on the potential negative scenarios that may arise on the cloud market and its interplay with the telco market, instead of the transformative role that cloud will play in enabling Europe's twin transition and making the European economy and society more competitive and sustainable.
2. **Questionable underlying narrative:** The Report also at least partially endorses the narrative that cloud and telco providers are 'converging'. As explained below, we believe that this narrative has been completely blown out of proportion in recent times and is leading the European Commission down a blind alley when it comes to policy and regulatory intervention, hindering the continent's ability to truly leverage the benefits offered by the cloud.
3. **Ignoring effects of extending unfit regulation to the cloud:** Although we understand that as the European telco regulator, BEREC's focus tends to be on the actors on the telco market instead of cloud providers. However, we are still disappointed that the Report ignored the risks for cloud providers – and their customers – should they be made to fall under the scope of the Electronic Communications Code. BEREC understands the EEC Code better than anyone, and therefore is well-placed to explain in its Cloud report why this legislative act is not the right way to regulate cloud companies, given their completely different business model.
4. **Encouraging speculation-based regulation:** The Report lacks pushback when it comes to the Commission's idea about regulating 'possible' issues that 'may arise' in the future. We believe that regulation should be focusing on objective market failures. The lack of single market for telcos in Europe is not a market failure, but a political one, which does not in any way justify extending pre-existing regulations to the cloud, especially if those are not fit for that purpose (see above).
5. **Encouraging over-regulation:** As noted also in the draft, in recent years, EU cloud providers have faced a deluge of new legislative proposals in areas such as cybersecurity (NIS2, DORA), content moderation (DSA), law enforcement cooperation (e-Evidence package), as well as switching, interoperability and international data transfers (Data Act), just to name a few. Some of these laws have not even entered into application yet. BEREC should clarify that the effects of these recently adopted laws should be better understood before the adoption of further regulatory burden on EU cloud providers that are already strained under the weight of excessive regulatory burden and compliance costs. Lacking this, Europe may not be able to enjoy the benefits of cloud adoption, including the cloudification of network functions.

You can find a more detailed explanation about these concerns below.

1. Cloud should give us hope, not pessimism

Although it is a natural tendency for a Report to focus on potential issues instead of the things that are working well, we believe that there is a lack of balance between these two sides within the report currently, which notes a long list of issues, especially when it comes to the effect of cloud on telcos. Just looking at the public consultation questions, they present a potentially bleak picture whereby (i) investments in the cloud adoption go against with investments in network coverage; (ii) issues in cloud

computing spill over to ECNs/ECSs; (iii) may create an uneven playing field in electronic communications markets; (iv) may enhance risk of API exposure; and (v) may risk of internet fragmentation.

Although these are of course valid questions that are worth exploring, especially the issues around unfair software licensing practices in the cloud against which CISPE has been at the forefront for the past several years, we would like to see the Report further emphasise the benefits of cloud and edge computing can bring for Europe, including new opportunities and efficiency gains for telcos.

2. Telco-Cloud Convergence – a questionable underlying narrative

The draft report repeats the underlying narrative of the Commission’s White Paper, namely that ECN/ECS and cloud provision are ‘converging’. We believe that this narrative is strongly exaggerated, especially in its most extreme form, such as stated by DG CNECT Director-General Roberto Viola, who argued in his keynote at the 12th BEREC Stakeholder Forum that cloud and telcos will become one and the same in the near future.

The BEREC draft report argues that the proof of this convergence is that:

- 1) Telco networks functions are increasingly moved to the cloud; and
- 2) Hyperscalers are increasingly offering traditional telecommunications services.

This two points deserve separate attention.

When it comes to the cloudification of network functions, we believe that this proves nothing but the fact that moving to the cloud provides benefits for telco operators – such as faster deployment, reduced CAPEX/OPEX, increased scalability, flexibility, accessibility, and so on – just like for any other industry. In this sense, there is simply no vertical industry that is not going through this process of ‘cloudification’ – from agriculture and manufacturing to tourism and public administration. Nonetheless, nobody claims that cloud is becoming one with tourism or manufacturing, just because these industries are also moving workloads to the cloud.

As for the second point, it is true that cloud providers are ‘increasingly’ offering traditional telecommunications services, but only in the same sense as a space probe landing on Mars makes the red planet ‘increasingly heavy’. Today, cloud providers are only offering such solutions in extremely targeted cases and all of these are coming from hyperscalers – and when they do, they fall under the rules applicable to traditional providers. However, 99% of cloud providers, including basically all EU-headquartered CSP, do not offer such services. On the contrary, it is the integrated telcos offering both cloud and access services that have a competitive advantage compared to (smaller) European cloud providers via their vertically integrated nature, who are able to leverage for example their extensive networks and capillarity for advanced use cases such as developing edge computing solutions.

Although BEREC’s position on the matter is much more nuanced than that expressed in the White Paper in the European Commission, we believe that BEREC has a responsibility to be more outspoken in correcting the European Commission White Paper’s false narrative of exaggerated convergence. This is crucial, since otherwise there is a significant risk of the Commission adopting misguided legislation that has the potential of causing irreparable damage to the wider EU cloud ecosystem, which – as noted also in BEREC’s draft Report – is already suffering from increasing regulatory burden

and unfair software licensing practices by dominant software providers such as Microsoft and Broadcom/VMware.

In sum, instead of accepting the narrative that telcos and cloud are becoming an integrated market, BEREC should emphasise that the two remain overwhelmingly separate domains with only a thin overlap, and minimal if any convergence, so that any potential regulatory proposal from the Commission can remain evidence-based and avoid causing harm.

3. Regulation designed for telcos is not a good fit for the cloud

Regulation designed for ECN providers, such as rules about access and interconnection, do not translate effectively to the realm of cloud providers due to fundamental differences in their business models and technological architectures. For historic reasons and due to special market dynamics, telcos needed to be highly regulated which allowed for the development of a healthy digital ecosystem in Europe for the benefit of citizens and businesses. If the Commission believes that some of these regulations can be simplified without undoing the achievements of the past, we would be willing to consider the evidence provided for such a claim. However, extending the requirements of the EECC to cloud providers in the areas of network access and/or interconnection, as proposed in the White Paper, is not justified by the findings of the Report and should therefore be explicitly rejected by BEREC.

4. Regulation should be based on facts, not speculation

Further to the point above, and specifically about the Commission White Paper's assertion that although interconnection markets work well, legislation might be justified if issues arise, we believe that this is dangerous thinking that BEREC should warn against.

First of all, as BEREC knows very well, although indeed interconnection disputes are rare, when they arise, they do so usually for one specific reason, namely when a large access provider leverages its dominant and integrated position to force exorbitant prices from providers trying to send data to its networks. We are worried that extending the EECC's interconnection rules to cloud providers would only exacerbate these issues.

Secondly, making regulation dependent on the existence of disputes may incentivise one or both of the parties (which feel they may gain from regulation) to raise disputes merely in order to push the Commission to regulate. Moreover, by establishing a conflict resolution mechanism, the Commission would reduce the 'barriers to entry' for interconnection conflicts, which could itself become a self-fulfilling prophecy and lead to a sharp increase in disputes, disturbing an otherwise relatively well-functioning market.

Finally, an extension of the EECC to this end would effectively reintroduce network fees, potentially impacting intermediaries such as cloud and content delivery network (CDN) companies even more than traditional content providers. This would of course have a large-scale downstream effect on the entire ecosystem, affecting all companies delivering content via the cloud and CDN by increasing prices and resulting in lower service quality.

We urge therefore a careful consideration of the potential ramifications of extending arbitration mechanisms in this manner. Such a decision should weigh the need for regulatory intervention against the risk of unintended consequences, particularly those that could stifle innovation and competition

in the digital economy. We urge BEREC to highlight these points in both the cloud report as well as in its upcoming draft IP interconnection report which is scheduled to be published in June.

5. Cloud providers are already strained under the weight of excessive regulation

The cloud was one of the main focuses of the European Commission during its current mandate. Recently adopted legislation in cybersecurity, content moderation, law enforcement cooperation and data governance highlight policymakers' efforts to address evolving challenges in the digital sphere and we welcome most of these new rules as positive. However, the added administrative burden from regulatory changes nonetheless poses significant challenges for EU cloud providers, who must navigate complex compliance requirements while they are trying to continue to innovate and remain competitive.

Although it is not BEREC's responsibility to ensure that cloud providers are not over-regulated, we believe that the report could put additional emphasis on the fact that regulation, especially regulation applicable to actors both big and small, is a double-edged sword that may create more issues than it solves. Instead, there is a need for a thorough analysis of the currently applicable legal framework and how it can be used to tackle some of the issues outlined in the report.

For example, when it comes to the competition issues outlined in Chapter 7.2.2., BEREC should explicitly recommend that the European Commission analysis whether they could be solved via existing competition tools, such as the DMA, or via traditional antitrust investigations. Moreover, industry actors such as CISPE – together with a wide range of actors in the wider cloud ecosystem, including customers – are already working on tools and APIs to enhance interoperability between cloud services, for the benefit of a more dynamic cloud market. Such efforts, including those developed under the auspices of Gaia-X, could be further highlighted in the report.

We thank BEREC for the opportunity to contribute to this very important Report, and remain at your disposal to expand on any of these points or to answer any questions.