LA VOZ DE LA INDUSTRIA DIGITAL

AMETIC's contribution to BEREC'S public consultation on
the Draft BEREC Report on the IP Interconnection Ecosystem
FINAL VERSION
JULY 2024

AMETIC's contributions to Draft BEREC Report on the IP Interconnection Ecosystem

AMETIC is the Multisectorial Association of Electronics, Information and Communication Technologies and Telecommunications and Digital Content Companies, we represent the main companies in this sector, and we have a wide experience and recognition for the plurality of our high number of members and the value and sectorial balance of the positions. As an Association of companies immersed in the digital economy, we represent companies for which digital transformation is a key element that has proven to be a main support for the development, sustainability and diversification of our economy.

We welcome the opportunity to provide feedback on the Draft BEREC Report on the IP Interconnection Ecosystem. We are pleased to submit for your consideration the recommendations mentioned below:

Fair contribution

BEREC, OECD and others have all noted repeatedly that the current IP (Internet) interconnection market is highly competitive, apart from a handful of localised concerns that have been addressed in the past by the likes of DG Competition in relation to the activities of certain telcos.

BEREC cautioned again just last year against such a move as '*[t]he "sending party network pays" (SPNP) model would provide ISPs the ability to exploit the termination monopoly and it is conceivable that such a significant change could be of significant harm to the internet ecosystem.*'

This idea is also in essence the same as a proposal made in 2012 by ETNO in the context of UN discussions on the International Telecom Regulations - and that proposal was then rejected by the international community, including formally by the EU Council, BEREC and EP resolution which highlighted that this:

- Would be an inadequate system that would force CAPs to enter into a formal contract with ISPs to deliver content that users demand.
- Would increase cost of delivering, leading to higher consumer prices and inefficiencies in Internet traffic routing… unnecessarily, as no systemic market failure exists.
- Would impact a huge range of organizations involved in or using IP peering and interconnection.

In short this is an old idea, which has been shown to be bad for many years, and should be rejected today, lest the entire Internet ecosystem suffers and leaves consumers facing higher bills. Instead, regulatory efforts should maintain the longstanding distinction between cloud providers and telcos to enable innovation and competition.

Regulatory interventions should aim to address market failures, and the IP interconnection system does not invoke any specific concern from either an economic or security perspective that would require new intervention.

Disputes

We believe that is worth to take into account that establishing a dispute resolution mechanism for IP interconnection would effectively resurrect the proposal of network fees that was rejected by Member States last year:

- The notion of a 'fair contribution' in the form of network fees was met with great opposition by member states, NGOs and European industry in last year's exploratory consultation on the future of connectivity. While the explicit language of network fees is no longer being used, it is clear that the idea has not been abandoned by the European Commission.

- Indeed, the possible introduction of a dispute resolution mechanism is essentially a disguise for network fees.
- We are concerned that dispute mechanisms over the IP interconnection would effectively **implement an Internet Levy on intermediaries**, with snowball effect for European businesses and consumers – see below.

There are hundreds of thousands of European companies that are using Cloud to enable their digital transformation. Among the different cloud services, Content Distribution Networks allow European companies that generate content (video, gaming…) to cache content close to end users, thereby reducing latency for consumers, reducing the amount of traffic that traverses telecom operators' networks, reducing energy consumption, and reducing telecom operators' transit cost.

An extension of the scope of dispute mechanism over the interconnect as a mechanism to implement Network fees would affect all of those European organizations that use cloud and CDNs customers to deliver their content to end users. Additional costs will be passed on to them. Moreover, charges imposed on interconnection that are not grounded on negotiation and market value will cause CDNs to prefer alternative, cheaper paths (transit) over direct peering, which will lead to a decrease in performance and additional operational overhead for both the CDNs and the ISPs.

Ultimately this will impact consumers, increasing costs and lowering quality-of-experience (in particular affecting latency). This is what happened in Korea, where a regulation of the interconnect was introduced in 2016. This led to an increase in price of interconnection. Some companies decided to move their content server out of Korea (increasing latency for consumers), others decided to not to offer services anymore in Korea, others decided to stay but they had to increase prices.

In light of the proposal by large telecom incumbents to introduce dispute resolution mechanisms in the interconnection market, often perceived as a veiled attempt to impose an internet tax, we must underscore the adverse effects of such a policy on consumers.

Research indicates that the proposed fee would yield negligible benefits for internet access providers while causing substantial losses in the internet content sector, ultimately diminishing consumer experience. Furthermore, the anticipated the potential for lower connection prices to benefit consumers—is highly uncertain and depends on complex market dynamics, with expected minimal benefits actually reaching consumers.

Ultimately, the current system of mutual settlement free peering cooperative commercial arrangements serves the digital economy goals efficiently, adapting dynamically to technological and consumer demands. Mandated interconnection fees would distort market incentives and inflate consumer costs.

Continuing with the dispute resolution mechanism in the interconnection market, such a mechanism would have a detrimental effect on key European players, as well as the Internet ecosystem as a whole. It also creates risks to European businesses operating abroad, where other regions might seek to charge European companies peering fees. Over 99% of global peering arrangements are on a settlement free basis, any form of intervention in the peering and transit market would up-end the global trend for settlement free peering, seriously jeopardize net neutrality and the open Internet as we know it.

The notion of a 'fair contribution' in the form of network fees was met with great opposition in last year's exploratory consultation on the future of connectivity. While the explicit language of network fees is no longer being used, it is clear that the idea has not been abandoned by the European Commission.

The possible introduction of a dispute resolution mechanism is essentially a disguise for network fees. The Commission, without any proof that such situations exist and require intervention, makes predictions favouring the narratives long espoused by the telecoms sector in particular. And would seek to reinforce the existing termination monopoly positions of incumbent telecoms operators.

Additionally, we see that in jurisdictions where dispute-resolution is already happening works (between telcos), there are disputes, with France's ARCEP being the flagship regulator. So, if we create a disp-res body, and it wants to do its job, and has procedures, disputes will arise all of a sudden, by the nature of the dynamic when these mechanisms are in place.

Market developments

It is important to highlight that there are:

- **No market failure.** Regulators have not observed a market failure in the sector. Hence no such failure would warrant regulatory scrutiny and concerns. What is generally happening is the ongoing development of a series of interactions between the infrastructure and application layers, with a number of parallel sub-markets *interdependent* of each other, but not *competing* with each other.
- **No regulatory gap:** There is no unlevel playing field that would need to be addressed via regulatory actions by the EU.
- A dispute resolution mechanism is: (i) **unjustified** (as mentioned, no market failure); (ii) **detrimental** for consumers and our industry (increased costs; other technical consequences?); and (iii) negative consequences on all businesses.