

The Consumer Voice in Europe

MIND THE (CONNECTIVITY) GAP: MAKING DIGITAL INFRASTRUCTURE WORK FOR CONSUMERS

BEUC response to the public consultation on the European Commission White Paper "How to master Europe's digital infrastructure needs?"



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Why it matters to consumers

In an ever more interconnected world, consumers need affordable, high-quality access to the internet to be able to participate in a digital society and economy. However, not all consumers can access or afford a basic internet connection or master communication technologies. The provision of connectivity services must be guided by clear, predictable rules which encourage the deployment of digital infrastructure where it is still lacking and is needed most. This goal should not, however, be pursued to the detriment of competition or the openness of the internet.

Summary

BEUC - The European Consumer Organisation welcomes the opportunity to reply to the European Commission's public consultation on the White Paper "How to master Europe's digital infrastructure needs".

In principle, BEUC supports the objective of bridging the digital divide by investing in the development of network infrastructure, underlining the need for competition and available, accessible and affordable high quality bandwidth internet connection.

However, BEUC has significant reservations regarding certain scenarios which are being offered for discussion on how to achieve these objectives. Among the key concerns for consumers are the potential scenarios 4 and 5, where proposals would open the door for market deregulation (Scenario 5, "recommending no markets for presumptive ex ante regulation"), market consolidation (Section 3.2.7, "support the emergence of pan-European operators"), and network usage fees (Section 3.2.2. mentioning the possibility of introducing "dispute resolution mechanisms" for the IP interconnection market), measures initially proposed by representatives of European telecommunications operators, who have pushed for these outcomes over the past years.

For consumers, the potential disadvantages from such measures would range from a distortion and reduction of competition on electronic communication markets, which negatively impacts consumer choice, the diversity of products, prices and network performance, to a potential challenge to net neutrality, which would undermine an open and free internet.

Ultimately, the future of telecoms should be rooted in consumer protection and competitive markets. Going forward, BEUC would like to make the following key recommendations:

- 1. Achieving the 2030 Digital Targets should be primarily focused on ensuring the correct implementation of the European Electronic Communications Code (EECC) while identifying gaps to effectively protect consumers and competition.*
- 2. Any potential measure to increase investment to deploy high-quality broadband connectivity infrastructure should preserve a high level of competition, ensure net neutrality and avoid market deregulation.*
- 3. Reaching the 2030 connectivity targets must prioritise the deployment of infrastructure to areas where connectivity is lacking, focusing on remote areas and supporting vulnerable consumers.*
- 4. Completing the EU Single Market for electronic communications should be focused on promoting competition and protecting consumers, with a focus on removing barriers for consumers to use and access telecoms services. Supporting instead the emergence of a few 'European Champions' would lead to empowering former monopolistic telecoms operators to the detriment of competitors and consumer choice and protection.*
- 5. Network fees or other types of 'direct contributions' by content providers to telecom operators that could amount to a "sending-party-pays" system should be rejected.*
- 6. Any further EU regulatory actions should be based on an inclusive and comprehensive impact assessment and public consultation, with a clear focus on the potential impact for consumers.*

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1. General considerations

BEUC welcomes the opportunity to respond to the public consultation on the European Commission's White Paper "How to master Europe's digital infrastructure needs"¹ ("the White Paper"). This response adds to the views already presented on 19 May 2023 on the European Commission's exploratory consultation on 'The future of the electronic communications sector and its infrastructure.'²

BEUC supports the objective of bridging the digital divide. We acknowledge that that may require investment to further develop network infrastructure and deliver to consumers available, accessible, affordable and high-quality connectivity. However, any measure to boost investment can only be supported if the consumer is put at the centre, competition is not undermined, and applicable laws and BEREC guidance are complied with.

The Digital Decade targets **should not predetermine future regulatory or enforcement intervention** to the extent of **going against or trading-off the public interest objectives** of promotion of competition and consumers' interests. Any potential regulatory interventions based solely on self-imposed numerical targets, without an objective justification and proven necessity, can bring risks and challenges for consumers and the market which must be carefully analysed and addressed to avoid counterproductive consequences.

We are concerned that the White Paper seems to disproportionately prioritise the perspective of large telecoms companies over the welfare of consumers. The liberalisation of the EU telecoms markets through regulation over the past three decades has been an EU success story, bringing about more competition and consumer welfare.

However, three decades later, we notice a **growing trend for market concentration and consolidation starting to take hold across the EU telecoms markets**, with big telcos openly calling for in-market consolidation. The proposed aims of the White Paper to support empowering "Pan-European operators"³ and consider market deregulation for the big telcos runs contrary to the achievements of the past decades and would potentially contribute to aggravate this trend, which would result in dire consequences for consumers, ranging from increasing prices, deteriorating quality of service to perpetuating the insufficient investment and slow deployment of connectivity in some less profitable areas.

¹ White Paper - *How to master Europe's digital infrastructure needs?*, 21 February 2024: <https://digital-strategy.ec.europa.eu/en/library/white-paper-how-master-europes-digital-infrastructure-needs>

² European Commission, Results of the exploratory consultation on the future of the electronic communications sector and its infrastructure, 10 October 2023: <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

³ Press conference by Margrethe Vestager, Executive Vice-President of the European Commission, and Thierry Breton, European Commissioner, on the Connectivity package on digital networks and infrastructure, 21 February 2024: <https://audiovisual.ec.europa.eu/en/video/1-252895>

We understand that the role of the White Paper is to “prepare the ground for possible policy and regulatory actions”⁴, including a potential new legislative proposal (a so-called “Digital Networks Act”).⁵ In this vein, we would like to stress that any new proposed policy measure to increase investment in network infrastructure **should not compromise the primary objectives** of the European Electronic Communications Code (EECC) of **promoting competition, the internal market and the safeguarding of end-user interests**⁶, as well as the **principle of net neutrality** safeguarded in the Open Internet Regulation.

It is paramount that any proposals upgrade consumer rights, safeguard open competition, uphold net neutrality, and promote more accessible and affordable connectivity with higher quality of service for consumers.

Following the conclusions of the present consultation, BEUC reiterates that any move towards a legislative proposal should be equally preceded by an **inclusive and comprehensive public consultation and impact assessment** following the Better Regulation principles, with a clear focus on the potential impact on consumers’ protection, experience, choice, and price implications.

2. Considerations on the (absent) consumer perspective

BEUC regrets that the **White Paper fails to adequately provide a consumer perspective in the future of telecoms policy**. Overall, we question the choice to disproportionately prioritise the perspective of major telecoms operators and their business models, choosing to address the welfare of big telcos over what is needed to uphold consumer rights and better protect consumers in electronic communications markets.

Going forward, BEUC recommends the European Commission to **propose a strategy with potential new measures to deliver a single market for consumers**. The demand side cannot be overlooked. In particular, BEUC would like to make the following key recommendations from a consumer perspective:

Bridging the digital divide with those most vulnerable in mind

As the White Paper itself acknowledges, the “stable bedrock of any future regulation should be the European Declaration on Digital Rights and Principles for the Digital Decade⁷, which enshrines that “[e]veryone, everywhere in the EU, should have access to affordable and high-speed digital connectivity”.

⁴ Commission Work Programme 2024, page 9. https://commission.europa.eu/document/download/79628203-f1b5-450d-9d6c-0a2f5374a9dc_en?filename=COM_2023_638_1_EN.pdf

⁵ Thierry Breton, LinkedIn post: <https://www.linkedin.com/pulse/digital-networks-act-redefine-dna-our-telecoms-thierry-breton/>

⁶ Directive (EU) 2018/1972 (European Electronic Communications Code), Article 3 and recital 23, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>.

⁷ European Declaration on Digital Rights and Principles for the Digital Decade, Chapter II, (3), 15 December 2022 (2023/C 23/01), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023C0123\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32023C0123(01))

Consumers, especially those most vulnerable who cannot afford or access high-quality connectivity, must be at the centre of any proposed strategy or solution which aims to bridge this digital divide.

From a consumer perspective, the White Paper lacks a targeted strategy to reach connectivity for all by focusing on supporting investment precisely where connectivity is lacking: **the areas less profitable for operators to invest**. These areas, known as “white areas” (without connectivity), and “grey areas” (only one operator is present, and another network is unlikely to be developed in the near future)⁸ should be the White Paper’s starting point in the objective to bridge the connectivity gap and reach the objective of connectivity for all by 2030.

Moreover, the White Paper seems to **miss an opportunity to use the full potential of the Universal Service Obligations (USO)** set out in articles 84-92 EEC, which stands out as an essential framework to drive investment and prioritise solutions for the most vulnerable consumers, by actively incentivising telcos to prioritise accessible connectivity and deployment of broadband to consumers in more remote, less profitable areas. Any strategy to “master” investment needs should rely on a similar or revamped USO regime.⁹

Effective and comprehensive consumer protections

From a consumer perspective, **there are still substantial challenges for electronic communications markets to deliver to consumers**. While the EEC was set to bring many benefits to consumers¹⁰, there is still a long way to go when it comes to fully delivering on consumer protection and the rights of end-users.

BEUC points out the necessity **of ensuring the full and harmonised implementation of the current EEC rules, which are still delayed across the EU**. Since 2020, Member States have struggled with significant delays to transpose the EEC, which can deliver key benefits to consumers. These benefits range from new obligations for telcos to a substantial chapter on end-users’ rights, as well as a new universal service regime created to support those most vulnerable consumers, precisely by encouraging not only more affordable but also greater accessibility to high-quality connectivity, especially in more remote areas.

The slow implementation of the EEC, together with a growing trend of market consolidation and reduction of competition across the EU telecoms markets has led to prices consistently rising (yet again this year) and (with a few exceptions) quality of service that is either stagnant or deteriorating.

⁸ Commission Communication, EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, 2013/C 25/01, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013XC0126\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013XC0126(01))

⁹ More considerations on Universal Service Obligations under the EEC in Section 4.5.

¹⁰ BEUC press release, EU reforms telecom markets – better deal for consumers, 6 June 2018, <https://www.beuc.eu/press-releases/eu-reforms-telecom-markets-better-deal-consumers>

In the past years, **BEUC members have reported a sharp rise in consumer complaints**, a disproportionate majority of which originate in the telecoms sector. The content of those complaints essentially reflects the failures of telecom operators to fully commit to the obligations under the current EU rules to deliver what consumers have been promised with the adoption of the EECC: **from unilateral price hikes to lower quality of service, and misleading marketing of offers to lock-in measures**. Consumer organisations have reported price hikes and too few competitive offers (e.g. Portugal, Czechia) and multiple disparities across Member States between advertised offers and the actual service provided, especially regarding fibre to the home or 5G (e.g. Spain, Belgium).

BEUC Spanish member OCU reports consumers are still facing several **misleading and aggressive marketing campaigns** on 5G offers, while in Slovenia, our member ZPS reports that **lock-in measures still prevent consumers from easily switching operators** for better offers on optical fibre or cable connectivity.¹¹ In Germany and Slovenia, our members report about a **lack of transparency by certain operators**, which still fail to adequately provide their contract summaries with enough time in advance to consumers or change the agreed-upon price during the contract's duration.¹² Our German member vzbv has recently put forward the **first-ever class action in Germany against a telco provider for unilaterally raising prices on consumers without informing them** or seeking their consent for a substantial contractual change.¹³ This lack of transparency is exactly the kind of problems which the EECC should have addressed.

As BEREC conducts its evaluation of the EECC implementation on end user rights, BEUC would like to encourage the Commission to bring the consumer perspective to the spotlight of discussions on the future of telecoms. The Commission **should put consumers at the centre of the future of telecoms policy** and not only focus on the needs of companies.

BEUC expects the European Commission to do a thorough review of the implementation of and compliance with the EECC end-user provisions, following up on the BEREC Opinion on this review, which is due before the end of 2024.¹⁴ BEUC urges the Commission to **engage in further consultation with consumer organisations on how to improve consumer protection under the end-user rights review** of the EECC.

Moreover, discussions around the **future of telecoms policy should also prioritise the end of intra-EU communications charges** before the 2029 target set under the EU Gigabit Infrastructure Act. BEUC urges the Commission to **prioritise secondary legislation to turn this goal into reality** and **asks for further engagement with consumer organisations**. We were disappointed that the Commission had not taken any legislative measure to prevent the expiration of the current rules setting up price caps. Following the missed opportunity to end intra-EU communications surcharges ahead of the

¹¹ BEREC Workshop on End-Users rights, presentation by ZPS, Consumers during the contract provision, 9 April 2024.

<https://www.berec.europa.eu/system/files/2024-04/8.%20Consumers%20during%20the%20contract%20provision%20-%20Bostjan%20Okorn%20%28ZPS%29.pdf>

¹² BEREC – BEUC Joint Workshop on the application of rights of end-users in the EECC, Summary Report: presentation by Susanne Blohm, pages 7-8, 9 March 2023. <https://www.berec.europa.eu/system/files/2023-03/BoR%20%2823%29%2025%20Report%20on%20the%20BEREC%20E2%80%93%20BEUC%20Joint%20Workshop.pdf>

¹³ Vzbv, Verbraucherzentrale Bundesverband (vzbv) klagt gegen Vodafone wegen einseitigen Preiserhöhungen, 23 April 2024, <https://www.sammelklagen.de/vodafone>

¹⁴ Article 123 EECC.

2024 EU elections, we call on the Commission to remove this obstacle to achieving a full single market and to ensure that this features prominently in the EU's telecoms strategy.

Competition drives consumer welfare

Consumers need **vibrant and competitive electronic communications markets**, where operators of all sizes and natures openly compete against each other to earn consumers' trust and satisfaction with high quality, affordable services.

In this regard, the **liberalisation of the telecoms markets has been one of the EU's biggest success stories**. The current European telecoms regulatory framework (EECC) is based on **pro-competitive principles**, such as infrastructure-based competition and technology neutrality, which have allowed a very significant degree of competition to develop in the EU over the past three decades, both in fixed and mobile markets.

These competitive markets, combined with effective ex-ante regulatory measures, have been the driving force behind infrastructure investments, innovation and consumer welfare, ultimately delivering some of the best indicators in the world, with lower prices and higher quality of service.

However, over the past few years, **consumer organisations have been sounding the alarm about a growing trend for market concentration across the EU**. Despite the allegation by big telcos that European telecoms markets are "too fragmented" with "too many operators present"¹⁵, the last few years saw a **rise of mergers and acquisitions taking place** - the most recent examples in Spain (Orange/Más Móvil¹⁶) and Belgium (Orange/Voo¹⁷) - which **have reduced competition from challenger alternative operators and further consolidated** the presence of the major, former monopolist telecom operators in EU national markets.

As a result, consumers are **now starting to face the negative consequences of ever-more concentrated telecom markets**, experiencing increasing prices, deteriorating quality of service and, most importantly, a lack of investment or slow deployment of high-quality infrastructure in more remote areas, where geographical conditions make it less profitable for telcos to invest.

We therefore express our overall surprise that the White Paper seems to ignore this reality: by prioritising solutions which would only benefit the major incumbent telcos, such as additional market deregulation and consolidation, the **proposed scenarios would only aggravate the current trend and make consumers pay the price**.

¹⁵ ETNO, GSMA Summary of the Joint Telecom Industry Response to the EU consultation on "The future of the electronic communications sector and its infrastructure", <https://www.telefonica.com/en/wp-content/uploads/sites/5/2023/05/ETNO-GSMA-joint-response-to-the-future-of-the-electronic-communications-sector-and-its-infrastructure-consultation.pdf>

¹⁶ OCU, Fusión Orange Másmóvil: Europa dice sí... pero, <https://www.ocu.org/tecnologia/internet-telefonía/noticias/fusion-orange-masmovil>

¹⁷ Testachats / Testaankoop, Testachats rassurée quant à la reprise de VOO par Orange, mais inquiète pour l'avenir du marché des télécoms, 20 March 2023, <https://www.test-achats.be/hightech/telecom/presse/reprise-voo-par-orange>

3. Considerations on chapter 2: trends and challenges in the digital sector

3.1. A welcome but incomplete exercise

BEUC **welcomes the European Commission' inclusion of an assessment of the "trends and challenges of the EU telecoms sector"**. However, this analysis falls short of the necessary broad scope analysis required to identify the key issues at stake and is therefore an incomplete exercise. Moreover, there seems to be a **fundamental mismatch** between the data presented, the metrics used to evaluate it and the policy conclusions which are drawn from it. We believe that this mismatch happens for **two main reasons**:

- **Assuming a single premise that the EU "risks missing its 2030 digital targets and falling behind other leading regions"**¹⁸, quoting several indicators but without clarifying how they reached this conclusion, conditioning the analysis from the beginning by presenting a foregone conclusion.
- **Overlooking the current trend of growing market concentration and consolidation across the EU telecoms markets**, both in wholesale or retail markets, and failing to draw a causation between the growing lack of competitive pressure and rising prices, lower quality of service and slower deployment of infrastructure.

3.2. Overall negative outlook seems unjustified

The European Commission makes an **overall negative assessment of the state of connectivity in the White Paper**. More concerningly, the White Paper seems to downplay the overall success story of EU telecoms liberalisation of the past three decades, and how competitive markets have been the driving force behind infrastructure investments, positive innovation and consumer welfare in EU telecoms, even if more needs to be done.

This negative assessment **does not seem to fully reflect the most recent public data or gather the support from the majority of relevant stakeholders** of the sector (including regulators¹⁹ and alternative telecom operators),²⁰ with only the exception of big telcos. For example, the European Competitive Telecommunications Association (ecta) considers that such an **assessment "is not proven by the facts"** and **"completely fails to build an unequivocal relation** between the alleged poor performance and the need for a structural change in the EU regulatory framework",²¹ pointing out that publicly available data shows that the **"EU is not performing badly in any segment of electronic communications, quite the contrary."**²²

¹⁸ White Paper, page 4-5.

¹⁹ Euractiv, French regulator Arcep opposes European Commission's telecoms deregulation proposal, 31 May 2024:

<https://www.euractiv.com/section/digital/news/french-regulator-arcep-opposes-european-commissions-telecoms-deregulation-proposal/>

²⁰ This assessment is publicly shared by alternative operators, e.g. Iliad, Digi, who publicly stated their disagreement with the "too dramatic" assessment from the European Commission. Launch of ecta Manifesto, "[Building on the Effectiveness of the European Model to Empower the European Economy and Its Citizens: Leveraging Diversity in Electronic Communications](#)", 5 March 2024.

²¹ ecta, Considerations on the European Commission's White Paper - "How To Master Europe's Digital Infrastructure Needs?", page 36, https://www.ectaportal.com/images/Press_Releases/ECTA_Considerations_on_Commission_White_Paper_24_June_2024.pdf

²² Ibid.

Despite the Commission assessment that the EU “risks missing its 2030 digital targets and falling behind other leading regions”, ecta considers the **EU is “well engaged to achieve the 2030 Digital Decade Connectivity Objectives**: the EU’s overall 5G coverage is 81%, fixed very high-capacity network (VHCN) coverage is 73% while “fibre-to-the-home” (FTTH) coverage is 56%, meaning more than half of each connectivity objective has already been met 7 years ahead.”²³ The present data suggests that the current rhythm of infrastructure deployment alone would be more than sufficient to reach the 2030 goals ahead of time.

The more **positive assessment that Europe is actually leading in many key indicators** is also supported by a recent European Parliament report²⁴, which shows strong indicators that place the EU ahead of global competitor peers:

- **On “fibre-to-the-home” (FTTH) deployment rate** in 2023, EU population coverage reached 63.4%, better than South Korea (59.9%) and United States (49.3%).²⁵
- **On overall fibre adoption**²⁶ the majority of EU/EEA Member States are presently some of the more advanced in the World, with over 90-95% deployment rates.²⁷ However, the EU average is negatively affected by a few, major EU Member States where the lack of sufficient competition has translated into lower investment levels (e.g. Italy, Czechia, Greece, Belgium, Germany, Austria).
- **On affordability and inclusion of broadband offers for consumers**²⁸, despite growing concentration and price increases, the EU market continues to have lower prices than its global peers: the lowest prices for ‘Triple Play’ offers among all speed categories compared to Japan, South Korea and United States. Prices for bundles in all speed baskets are also lower in the EU than in Japan and the United States.
- **On 5G coverage**, the overall 5G coverage²⁹ in the EU was 81% in 2023, the fixed ‘very High-Capacity Network’ coverage in Europe is 73%. Together with the FTTH coverage, that equalates to more than half of the connectivity objectives set by the EU seven years ahead of schedule of the EU 2030 Digital Decade objectives.

In addition, we question the comparison made between the EU liberalised model, which has led to more competition and lower prices over the past three decades, with other global models of “international competitors”, notably the United States of America and China.

²³ ecta, Manifesto 2024, A Vision for an Innovative, Competitive, Inclusive, and Greener Europe.

https://www.ectaportal.com/images/Press_Releases/ecta_manifesto-2024_final.pdf

²⁴ European Parliament Research Service, “A future-proof network for the EU: Full fibre and 5G”, April 2024, p. 2

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762298/EPRS_BRI\(2024\)762298_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/762298/EPRS_BRI(2024)762298_EN.pdf)

²⁵ ETNO, State of Digital Communications 2024,

<https://etno.eu/downloads/reports/etno%20state%20of%20digital%20communications%20-%202024.pdf>

²⁶ OECD mid-2022 Broadband data: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fweb-archive.oecd.org%2F2023-07-13%2F132819-1.10-PctFibreToTotalBroadband-2022-12.xls&wdOrigin=BROWSELINK>

²⁷ Namely Spain, Sweden, Lithuania, Latvia, Portugal, Finland, Luxembourg, France, Slovenia, Denmark, Estonia, Slovakia, Poland, Hungary, Iceland, Norway.

²⁸ Mobile and Fixed Broadband Prices in Europe 2022: <https://digital-strategy.ec.europa.eu/en/library/mobile-and-fixed-broadband-prices-europe-2022>

²⁹ State of the Digital Decade report 2023: <https://digital-strategy.ec.europa.eu/en/library/2023-report-state-digital-decade>

From a consumer perspective, the **United States is perhaps one of the most striking examples of what European regulators should avoid**: excessive market concentration and deregulation have resulted in extremely low levels of competition,³⁰ have less consumer choice and higher prices³¹. If anything, the EU should keep devoting more efforts to increase competition leading to lower prices and greater consumer choice.

The White Paper makes the case that the EU is “lagging behind its international competitors” in investment in digital infrastructure and proposes scenarios where solutions such as market deregulation and consolidation seem to feature prominently. However, independent studies show that there is no correlation between higher market concentration and increased network investment.

For example, both an independent study³² and the latest US Federal Communications Commission (FCC) data³³ show that investment levels, coverage and take up in the **US are lower than in the EU** due to the lack of competitive pressure, as in-market consolidation leads to higher prices for consumers and no increase in investment. **It is therefore competition, and not concentration, that drives investments and innovation.**

Finally, we also **urge caution when considering policy measures based on the assessed “investment gap”**, as presented by the Commission study commissioned from WIK Consult.³⁴ In Section 2.3.1. the White Paper argues the “required total investment needs for connectivity alone to be over EUR 200 billion”.³⁵ However, we note that the “investment gap” put forward by the Commission has **struggled to be independently verified**, having been **significantly challenged or openly dismissed** by some industry stakeholders³⁶ and by certain Member States as containing “wrong numbers.”³⁷

A study from December 2023 challenged the concept altogether as an “erroneous presentation by the Commission of the WIK report”, clarifying that the **“financing needs are considerably smaller”** (potential public funding needs around EUR 40 billion) and is “largely covered using already existing funding mechanisms”. Moreover, it concludes that “FTTH network deployment in individual Member States is **progressing faster than Commission data suggests, making the connectivity goals feasible**, with any disparities attributed to investment decisions”.³⁸

³⁰ Consumer Reports, Customers report low value and a lack of choice in a Consumer Reports member survey, 10 June 2024

<https://www.consumerreports.org/electronics-computers/telecom-services/best-and-worst-home-internet-providers-a2853390170/>

³¹ Federal Communications Commission, 2022 Communications Marketplace Report, 30 December 2022,

<https://www.fcc.gov/document/2022-communications-marketplace-report>

³² Big Telcos Aren’t Necessarily Better: A Case Study of EU versus US Market Concentration, March 2023,

<https://osf.io/download/63bd311b49680d02ec93daef/>

³³ FCC Communications Marketplace report, December 2022. <https://www.fcc.gov/reports-research/reports/consolidated-communications-marketplace-reports/CMR-2022>

³⁴ WIK Consult, Investment and funding needs for the Digital Decade connectivity targets, 12 July 2023. <https://digital-strategy.ec.europa.eu/en/library/investment-and-funding-needs-digital-decade-connectivity-targets>

³⁵ White Paper, page 10.

³⁶ https://www.ectaportal.com/images/Press_Releases/ecta_manifesto-2024_final.pdf

³⁷ Letter from Italian State Secretary for the Digital Transition, Alessio Butti, to Commissioner Thierry Breton, 4 August 2023, available at: https://mcusercontent.com/5033fed3700fc7c55f9cf9991/files/576783e1-3442-07ea-7d4f-f11ea7556dd3/Letter_to_Thierry_Breton.pdf

³⁸ Mind the Gap: Demystification of the so-called ‘connectivity investment gap’, 1 December 2023, page 2, https://www.stratix.nl/wp-content/uploads/2023/12/Stratix-paper_Mind-the-Gap.pdf

4. Considerations on chapter 3: “Mastering the Transition to the Digital Networks of the Future - Policy Issues and Possible Solutions”

4.1. Broadening the scope and objectives of the EECC

BEUC is concerned by the proposal in the White Paper’s **Scenario 4, which considers “broadening the scope and objectives of the current regulatory framework”** to include “industrial competitiveness” and “economic security”. We are **not convinced that “recent technological developments and new global challenges” require considering such a change.** ³⁹ The current objectives of the EECC are the result of a delicate balance achieved by co-legislators to ensure markets are competitive and that consumers benefit from greater choice, protection and lower prices.

From a consumer perspective, the introduction of **industrial policy or economic security considerations as regulatory objectives would be incompatible with the regulatory nature of the EECC** and directly clash with its primary objectives of promoting competition, the internal market and the safeguarding of end-user interests. In practice, such additions would risk **diluting the importance of the current general objectives** vis-à-vis the new additions, potentially allowing for laxer interpretations of the rules by National Regulatory Authorities (NRAs).

Regulatory objectives matter.

They guide the actions of national governments and NRAs on what public policy goals should inform their actions when intervening in markets. The purpose of EU regulation should not be to direct industrial policy but to ensure that telecoms markets work efficiently, transparently, and fairly for all, and that they deliver increasing consumer protection.

Should the European Commission choose to review the EU telecom rules in this area, the addition of **new objectives cannot take place at the expense of any of the other primary objectives**, especially the protection of competition and consumer rights.

4.2. Removal of “ex ante” regulation

We are concerned that the White Paper, in **its proposed scenario 5, second bullet point 2, calls for “recommending no markets for presumptive ex ante regulation”.** ⁴⁰ In Section 3.2.7., the White Paper acknowledges that ex-ante regulatory intervention has been “broadly successful in lifting barriers to competition in the national market for fixed legacy networks” as the “emergence of competition after regulatory intervention made it possible to reduce the number of markets that national regulators need to assess ex-ante from 18 to 2 between 2003 and 2020”.⁴¹ However, the White Paper then proceeds to argue that this success should mark the “right time to explore the possibility of not recommending at the EU level any market for ex-ante regulation”.

³⁹ White Paper, page 25.

⁴⁰ White Paper, page 36.

⁴¹ White Paper, page 14.

From a consumer perspective, we respectfully disagree. BEUC, together with ecta,⁴² raised the alarm about the potential implications of such a proposal for competition and consumer welfare: this scenario could lead to the **complete removal of wholesale access obligations on the dominant telecoms companies** (providers with 'Significant Market Power'), potentially enabling them to **refuse competitors wholesale access to their networks**, which in many cases remains **essential for the existence of meaningful competition** at both wholesale and retail markets.

This withdrawal ultimately responds to the wishes of the major telecom companies, who have long pointed out that their profitability is being undermined by EU competition rules. This prospect has **raised opposition from the vast majority of the sector's relevant stakeholders**, from alternative and mobile virtual telecoms operators, to industry associations to consumer organisations and digital rights groups⁴³, fearing such measures **could open the way to supporting and strengthening the position of major former monopolist telecoms operators, to the detriment of other market actors**, which would result in reduced competition, hinder rollout of high-capacity infrastructure, limit the availability of affordable options and ultimately encourage operators to **increase retail prices to raise their profitability without regard for the impact** on consumers.

In its place, the Commission proposes that dominant telecoms service providers should only be required to undergo regulation in special cases, at local or regional level, based on the "3 Criteria Test" to be applied by National Regulatory Authorities (NRAs) to "determine (sub-national) markets where ex ante regulation is still necessary."⁴⁴ **However, this implies a reversal of the burden of proof on the NRAs** to prove a market is susceptible to ex-ante regulation, and since this involves market definition, SMP designation and remedies, the Commission would retain its veto power through the procedure in Article 32 EEC. Considering the most recent track record of Commission decisions on NRA proposals for ex ante regulation, **we fear that such tests would most likely fail to introduce any timely and meaningful regulation.**

The benefits of **NRAs introducing ex ante regulation should not be underestimated.** Since the adoption of the EEC, several NRAs have proactively reacted to the current trends for reduced competition by actively proposing additional ex ante regulations in attempts to introduce more contestability in their markets. Over the past few years, regulators in Czechia, Malta, Estonia and Denmark have proposed measures to introduce ex ante regulation in their respective national markets, **thus demonstrating how ex ante regulations are still relevant and very much needed.**

In two of the most recent cases, draft measures proposed by the NRAs in Czechia (2023) and in Malta (2024) aimed to specifically introduce remedies on wholesale infrastructure access to address the considered oligopolistic nature of the mobile telecoms markets:

⁴² BEUC, ecta joint call on EU ministers to reject push for deregulation, reduction of competition and consumer-welfare in EU telecoms, Telecoms Council informal meeting 11-12 April, 10 April 2024:

https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-037_Telecoms_Council_informal_meeting_11-12_April.pdf

⁴³ Joint Statement: Preliminary Concerns regarding the European Commission's White Paper on EU Digital Infrastructure Needs, 16 May 2024: [https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-049_Preliminary_concern_regarding_the_EC's_white_paper_on_EU_digital_infrastructure_needs.pdf)

[049_Preliminary_concern_regarding_the_EC's_white_paper_on_EU_digital_infrastructure_needs.pdf](https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-049_Preliminary_concern_regarding_the_EC's_white_paper_on_EU_digital_infrastructure_needs.pdf)

⁴⁴ White Paper, page 34.

- **In Czechia**⁴⁵, the Czech Telecommunication Office (CTU) proposed to impose remedies on the three larger telco operators (T-Mobile, Vodafone and O2) of the mobile retail market. BEUC member dTest has long supported the Czech regulator in intervening to curb the oligopolistic nature of the market, with some of the EU's highest retail prices for mobile services, up to three times higher than neighbouring countries.⁴⁶ In March 2023, the Commission vetoed the measures.
- **In Malta**, the Commission opened an investigation and ultimately vetoed⁴⁷ a decision by the Malta Communications Authority (MCA) to impose ex ante remedies obligations on dominant telco operator GO. The MCA argued that the presence of a challenger third player (Epic) is significantly dependent on ex ante regulation on infrastructure access, noting that such a decision risked confirming the "duopolistic nature of the Maltese telecoms market", ultimately raising prices and reducing choices for consumers. Despite a dissenting BEREC opinion siding with the Maltese NRA, the Commission vetoed the draft measures in April 2024.⁴⁸

BEUC members have signalled how **similar problems still persist across Europe**. For instance, our Dutch member Consumentenbond⁴⁹ points out how the lack of competition at the infrastructure level and the granting of access to competitors has negatively affected the retail market in the Netherlands: despite a high rate of fibre penetration, an effective "duopoly network market" shared by major telecom operators KPN and Ziggo has led to consumers paying some of the highest prices in the EU for a fixed Internet connection.

BEUC therefore agrees with the vast majority of both stakeholders⁵⁰ and Member State assessments⁵¹ that the **White Paper does not make it sufficiently clear that ex ante obligations are no longer necessary**, and recognises in the efforts of national telecoms regulators to introduce ex ante regulations over the past few years⁵² as a confirmation that **ex post competition law alone is not sufficient to ensure effective competition at the present time** where the current trends in the EU telecoms markets require the continuation of the ex-ante regulation.

Moreover, we highlight that the scenario of "*recommending no markets for presumptive ex ante regulation*", by definition, **necessarily leads to a review of the Commission Recommendation on relevant markets susceptible to ex-ante regulation** ('Relevant Markets Recommendation'). On a preliminary basis, we would **urge caution against**

⁴⁵ Commission closes its in-depth investigation into the proposed regulation of the market for wholesale access to mobile services in the Czech Republic, 27 March 2023. <https://digital-strategy.ec.europa.eu/en/news/commission-closes-its-depth-investigation-proposed-regulation-market-wholesale-access-mobile>

⁴⁶ dTest, *Srovnání nabídek mobilních operátorů*, <https://www.dtest.cz/clanek-10446/srovnani-nabidek-mobilnich-operatoru>

⁴⁷ European Commission vetoes proposed regulation of the wholesale broadband market in Malta following in-depth investigation: <https://digital-strategy.ec.europa.eu/en/news/european-commission-vetoes-proposed-regulation-wholesale-broadband-market-malta-following-depth>

⁴⁸ BEREC Opinion on Phase II investigation pursuant to Article 32 of Directive (EU) 2018/1972, Case MT/2024/2484 Wholesale physical and virtual infrastructure access market: https://www.berec.europa.eu/system/files/2024/02/BoR%20%2824%29%2057_EWG%20Opinion%20MT2024-2484.pdf

⁴⁹ Consumentenbond, *Weinig concurrentie, duur internet* Consumentengids, July 2024 (upcoming).

⁵⁰ Joint Statement, Preliminary Concerns Regarding the European Commission's White Paper on EU Digital Infrastructure Needs, 16 May 2024 https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-049_Preliminary_concern_regarding_the_EC's_white_paper_on_EU_digital_infrastructure_needs.pdf

⁵¹ The Netherlands Government Cabinet appreciation of White Paper on digital infrastructure, 5 April 2024. Available at <https://open.overheid.nl/documenten/4f6e64a7-b945-4ab6-8d44-b5807c2fa123/file>

⁵² Examples of Czechia and Malta.

proceeding with such a broad regulatory overhaul, where a potential review of the 'Relevant Markets Recommendation', together with a more far-reaching review of the EECC and a potential upcoming 'Digital Networks Act' legislative proposal could all come together over a small period of time.

Should the Commission intend to pursue a comprehensive review of the 'Relevant Markets Recommendation', it is important to recall that such a Recommendation is a non-legislative measure where, for the purposes of its revision, the Commission is not bound to take into consideration the Member States' and the European Parliament's views in the context of a proper legislative procedure.⁵³ In order to **ensure a proper policy debate over the overall changes** which are to be proposed to the EU telecoms framework, we strongly recommend that **such a review takes place only after the Commission presents its report and potential proposals for the review of the EECC** (by 21 December 2025 in accordance with Article 122 EECC), or even **a potential new legislative proposal** (such as the announced so-called 'Digital Networks Act').

4.3. Supporting Pan-European scale operators

4.3.1. Deregulation is not the answer

BEUC is also concerned with the policy directions proposed in the White Paper **focusing on deregulation to support the creation of large-scale pan-European telecom companies**, and the disproportionate focus given to this solution as an instrument for solving the infrastructure needs. At a time when **major telecom companies are openly arguing for in-market consolidation as a necessary precondition** to achieve cross-border scale, the proposals for further deregulation focused on the scale of dominant, former monopolist operators are reason for concern.⁵⁴

The premise on which the Commission bases its argument for a regulatory change is **challenged by the Body of European Regulators for Electronic Communications (BEREC)**, which has recently stated that **"there are no technical or regulatory obstacles to providing EU services** as the regulatory and/or commercial options currently available are fit-for-purpose and would also allow building of pan-EU offers."⁵⁵

Moreover, BEREC clarifies that the **reasons why "providers choose not to provide pan-EU offers are largely commercial** (e.g., cultural differences, diverse market circumstances making the establishment of homogeneous wholesale access products on SMP operators neither suitable nor required) rather than because of any technical or regulatory barriers".⁵⁶

⁵³ The Commission does not have a legal obligation to involve the Council and the European Parliament in this review, as the procedure provides only for a public consultation and a BEREC opinion, which is non-binding.

⁵⁴ We raised these issues before in BEUC-ecta's joint Statement on the Future of EU Telecoms Regulation, 9 November 2023, https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-146_Joint_Statement_on_the_future_of_EU_telecoms_regulation.pdf

⁵⁵ BEREC's Response to the Exploratory Consultation: The future of the electronic communications sector and its Infrastructure, 19 May 2023, page 7, available at <https://www.berec.europa.eu/system/files/2023-05/BoR%20%2823%29%20131b%20Overview%20of%20BEREC%20Response%20to%20Exploratory%20Consultation.pdf>

⁵⁶ Idem, ibidem.

French Telecoms regulator Arcep⁵⁷ has also recently stated that the **current EU telecommunications framework does not need deregulating to incentivise consolidation**, as the current framework **already allows for cross-border consolidation**. More importantly, the French regulator points out the examples of French telecoms operators that already operate in other EU countries, such as former monopolist Orange and alternative operator Iliad, **demonstrating that cross-border operations are already possible without the need for deregulation**.

Indeed, some **pan-European operators already operate across the EU and their operations can even be instrumental to introduce competition** in what would otherwise remain more uncompetitive markets. For instance, the alternative telecoms operator DIGI⁵⁸ (with operations in Romania, Italy, Spain and Portugal) has recently entered the Belgian telecoms market, becoming a new fourth operator to bring market contestability.⁵⁹

From a consumer perspective, **the problem does not necessarily lie in having cross-border operators per se**, but on the **assumption that deregulation would be an adequate way to support them**. Such measures **risk being counterproductive, due to their potential to cause more consolidation and reducing competition** at the national level. The most recent public statements by major Telcos themselves show that there is indeed cause for concern: the CEOs of Deutsche Telekom, Orange Telefónica and Vodafone made clear at the Mobile World Congress 2024 that the ultimate goal is “not cross-border but in-market consolidation”.⁶⁰

This is also the **view of alternative operators represented by ecta**, of which Iliad and DIGI are members, **which also oppose the push for deregulation⁶¹ and point out that** according to the latest data of ETNO in its State of the Telecommunications Report 2023, the cumulative per capita **investment in Europe in FTTH networks by alternative operators is already higher than that of incumbent operators**, therefore adding further evidence that **deregulation is currently neither demanded or necessary**.⁶²

The call from big telcos for further deregulation in order to expand and gain scale **also fails to prove that supporting cross-border consolidation would be the pathway to more efficient networks**, given that the few available examples of former monopolistic telecom companies already operating in several Member States show that they are not necessarily more efficient. For instance, in the Nordic countries, telecoms operators like Telenor or Telia are already running cross-border operations without it

⁵⁷ Euractiv, French regulator Arcep opposes European Commission’s telecoms deregulation proposal, 31 May 2024:

<https://www.euractiv.com/section/digital/news/french-regulator-arcep-opposes-european-commissions-telecoms-deregulation-proposal/>

⁵⁸ DIGI 24, DIGI se pregătește pentru lansarea serviciilor în Belgia, 17 May 2024: <https://www.digi24.ro/stiri/economie/digi-se-pregatete-pentru-lansarea-serviciilor-in-belgia-2795309>

⁵⁹ The fourth operator has been a longstanding claim by Belgian Telecoms regulator BIPT, consumer organisation and BEUC member Test-Achats/Testaankoop and has received a warm welcome by the Belgian government. See Belgian Telecoms Minister Petra de Sutter, LinkedIn post, 17 May 2024 : https://www.linkedin.com/posts/petradesutter_begov-activity-7196888697819021312-JyAL

⁶⁰ “As noted by European telco association ETNO, “operators still believe that creating adequate scale for European connectivity players will require a change in merger policy that enables in-market consolidation.” European telco CEOs step up rhetoric on M&A, 1 March 2024, <https://www.fierce-network.com/wireless/european-telco-ceos-step-rhetoric-ma>

⁶¹ ecta, Considerations on the European Commission’s White Paper - “How To Master Europe’s Digital Infrastructure Needs?”, page 38, https://www.ectaportal.com/images/Press_Releases/ECTA_Considerations_on_Commission_White_Paper_24_June_2024.pdf

⁶² Ibid, page 39.

translating into better prices or service for consumers.⁶³ The experience of consumers gathered by our member shows that **less competition only leads to less investment, less innovation and poorer consumer welfare.**

4.3.2. Competition, not fragmentation

BEUC regrets that the White Paper seems to **confuse market fragmentation with effective competition, the ultimate driver of network investment and consumer welfare.** We fundamentally disagree with the White Paper's criticism of "fragmentation" when describing what is actually the diversity and the level of competitiveness of the EU telecoms market: *"While there are around 50 mobile operators, and more than 100 fixed operators in the EU, only few European operators (e.g. Deutsche Telekom, Vodafone, Orange, Iliad and Telefonica) are present in several national markets. When it comes to mobile markets, at service level, 16 Member States have three mobile network operators, nine Member States have four and two Member States have five".*⁶⁴

While the implicit suggestion might be that there are somehow too many operators in Europe, we believe that the White Paper is proving the very opposite point. As more than half of the EU Member States already count only three operators, the White Paper has demonstrated how a diversified EU telecoms market is becoming more consolidated.

In the past years, **BEUC members have consistently warned that telecoms markets are becoming more consolidated** (and in some cases even oligopolistic), being essentially dominated by just three large telco operators. This has translated into consistently rising prices and either stagnant or deteriorating quality of service, a trend which is reflected in a **sharp rise in consumer complaints** regarding unilateral price hikes, low quality of service and lack of transparency in the provision of offers and services.

For instance, surveys by our Spanish member OCU **demonstrate a correlation between the lack of competition and rising consumer complaints**, showing how the disproportionate **majority of complaints** received by consumer organisations **concern the dominant, mostly former monopolistic telcos.**⁶⁵

Our Belgian member Testachats/Testaankoop⁶⁶ has regularly denounced the dominance of three major telcos (Orange, Proximus and Telenet) over a market where the **absence of challengers resulted in higher prices for consumers.** In Germany, BEUC member vzbv raises that, despite the available public funding, network infrastructure deployment

⁶³ OpenSignal, Across Scandinavian markets, Telia and Telenor underperform in Sweden, <https://www.opensignal.com/2024/04/23/across-scandinavian-markets-telia-and-telenor-underperform-in-sweden>

⁶⁴ White Paper, page 14.

⁶⁵ OCU, Operadores de telefonía, ¿usuarios satisfechos?, 5 June 2024, <https://www.ocu.org/tecnologia/internet-telefonía/noticias/satisfaccion-operadores>

⁶⁶ Over the last five years, most well-known challenger operators that consumers could theoretically switch to (Scarlet, Mobile Vikings) have been acquired by Proximus Group, while Voo has recently been acquired by Orange Group. TestAchats, Orange et Telenet concluent un accord pour utiliser leurs réseaux respectifs, <https://www.test-achats.be/hightech/telecom/news/orange-et-telenet-accords-reseaux>

in rural areas, remains **very slow**⁶⁷ as **“telecom operators have no incentive to invest in less profitable areas”**, continuing to prefer the more profitable urban areas, which often see duplication of capacity.⁶⁸

When **competition between operators is falling, consumer prices are rising**. A recent study has demonstrated that “effective competition in markets with four mobile network operators not only leads to much lower mobile prices, but also to substantially lower fixed broadband prices: in markets with only three mobile network operators, the overall “monthly prices are two to three times higher”, while “gigabyte prices are five to six times higher”.⁶⁹

Indeed, the **entrance of challenger “fourth operators” has for long proved to be beneficial for market innovation and consumer welfare** in particular: back in 2014, a survey by our French member UFC -Que Choisir confirmed that the entrance of a fourth operator in the French market was instrumental for introducing competition and improving consumer welfare, as **following the entry of the fourth operator Free, prices dropped significantly (by 30%) and the quality and variety of offers increased**.⁷⁰

In a context where big telcos are openly calling on EU lawmakers to reduce competition and allow in-market consolidation⁷¹, complaining about low profitability rates while they simultaneously hit record profits,⁷² we particularly **welcome European Competition Commissioner Margrethe Vestager’s assurances that EU competition rules will not be reviewed**, especially the four-to-three merger policy⁷³, and the clear position that “consolidation at the national level would not lead to the creation of pan-European players. To the contrary, it would lead to less competitive national markets and to a more fragmented Single Market”, having recalled that **“no evidence suggests that more concentrated national markets lead to better outcomes”**.⁷⁴

Ultimately, such proposals for further market concentration would likely **undermine the deployment of very high-capacity infrastructure and the availability of affordable offers** for European consumers.

⁶⁷ Vzbv, Recht Auf Breitband-Grund- Versorgung Für Alle, page 12, https://www.vzbv.de/sites/default/files/2022-05/STN_vzbv_Recht-auf-Breitband-Grundversorgung-fuer-alle.pdf

⁶⁸ Vzbv contribution (questionnaire response) to exploratory consultation on the future of the electronic communications sector and its infrastructure, 19 May 2023, available at <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

⁶⁹ Rewheel Research, The state of mobile and broadband pricing – 1H2024, April 2024:

https://research.rewheel.fi/downloads/The_state_of_mobile_and_broadband_pricing_1H2024_PUBLIC_REDACTED_VERSION.pdf

⁷⁰ UFC – Que Choisir, La ligne consommériste ne doit pas être coupée, 29 April 2014, <https://www.quechoisir.org/action-ufc-que-choisir-concurrence-dans-la-telephonie-mobile-un-bilan-sans-appel-la-ligne-consumeriste-ne-doit-pas-etre-coupee-n13543/>

⁷¹ GSMA Manifesto 2024: New Rules for a New Era: https://www.gsma.com/gsmaeurope/wp-content/uploads/2024/03/GSMA_Manifesto_2024_New-Rules-for-a-New-Era.pdf

⁷² Telefonica press release, Telefónica increases revenues to €40,652 million and meets all the 2023 financial targets <https://www.telefonica.com/en/wp-content/uploads/sites/5/2024/02/q4-2023-telefonica-results-press-release.pdf>

⁷³ Press conference by Margrethe Vestager, Executive Vice-President of the European Commission, and Thierry Breton, European Commissioner, on the Connectivity package on digital networks and infrastructure, 21 February 2024: <https://audiovisual.ec.europa.eu/en/video/1-252895>

⁷⁴ Speech by EVP Margrethe Vestager at the Merger Regulation 20th Anniversary Conference, 18 April 2024, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_24_2141

4.4. Risks and concerns regarding net neutrality

BEUC regrets that the White Paper **still entertains the idea of network usage fees**, particularly when considering the extension of the EECC rules to cloud providers, and by mentioning the possibility of introducing “dispute resolution mechanisms”⁷⁵ for the IP interconnection market, scenarios which were first proposed in 2022 by representatives of some telecoms operators as one of the possible options for “Fair Share” mechanisms.⁷⁶

We recall that the same scenarios have already received a clear rejection from the majority of stakeholders⁷⁷ in the European Commission’s exploratory consultation ‘The future of the electronic communications sector and its infrastructure’ of May 2023⁷⁸, given its counterproductive effects for **consumers, competition and net neutrality**.⁷⁹

In its response to the Exploratory Consultation⁸⁰, BEREC has also been clear that it **“has not detected a market failure or market power exercised to the detriment of end-users”** in the IP interconnection market, further adding that it is “currently not aware of structural interconnection problems in relation to growing volumes of traffic attributed to [Content and Application Providers]”.

Already back in October 2022, in its preliminary assessment on a possible introduction of payments from large online platforms to Internet Service Providers (ISPs), **BEREC had found “no evidence” that an actual problem or market failure exists** in the electronic communications sector,⁸¹ and reaffirmed that the costs for internet connectivity are typically covered and paid for by consumers.⁸²

In addition, we are concerned that the White Paper’s proposal for a dispute resolution mechanism seems to **resemble the proposal by Telefonica for a ‘fair contribution’ negotiation mechanism** for a “dispute resolution mechanism managed by a competent authority, whose decision will be binding for both parties, in case agreements are not reached on commercial terms”.⁸³

⁷⁵ White Paper, pages 25-26.

⁷⁶ ETNO, Report by Axon, “Europe’s internet ecosystem: socio-economic benefits of a fairer balance between tech giants and telecom operators”, May 2022, page 44. Available at: <https://etno.eu/downloads/reports/europes%20internet%20ecosystem.%20socio-economic%20benefits%20of%20a%20fairer%20balance%20between%20tech%20giants%20and%20telecom%20operators%20by%20axon%20for%20etno.pdf>

⁷⁷ Joint Statement on network fees, 2 May 2023: https://epicenter.works/sites/default/files/statement_against_nf_020523_-_final_0_0.pdf

⁷⁸ European Commission, Results of the exploratory consultation on the future of the electronic communications sector and its infrastructure 10 October 2023: <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

⁷⁹ Joint Statement, Preliminary Concerns Regarding the European Commission’s White Paper on EU Digital Infrastructure Needs, 16 May 2024: https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-049_Preliminary_concern_regarding_the_EC%27s_white_paper_on_EU_digital_infrastructure_needs.pdf

⁸⁰ BEREC’s Response to the Exploratory Consultation, The future of the electronic communications sector and its infrastructure, 19 May 2024, page 10: <https://www.berec.europa.eu/system/files/2023-05/BoR%20%2823%29%20131b%20Overview%20of%20BEREC%20Response%20to%20Exploratory%20Consultation.pdf>

⁸¹ BEREC preliminary assessment of underlying assumptions of payments from large CAPs to ISPs, 7 October 2022. https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf

⁸² Ibid, pages 6-7:

⁸³ Telefonica Contribution to the EU Commission’s Exploratory Consultation, The future of electronic communications sector and its infrastructure, 19 May 2023, pages 14-15, available at <https://www.telefonica.com/en/about-us/public-policy-and-regulation/public-positioning/fair-share-for-network-sustainability/>

BEUC shares the views of a vast number of relevant stakeholders, including of several Member States⁸⁴, that **such a proposal would in practice constitute a network usage fee**. Recently, in May 2024, a coalition of industry, consumer and digital rights groups raised the alarm once again about such proposals.⁸⁵

In view of the above, we are therefore surprised that this type of scenarios is being proposed once again. **BEUC calls on the European Commission not to pursue these scenarios.**

4.5. Universal service and affordability of digital infrastructure

BEUC welcomes the introduction of a specific section on Universal Service, namely the Section 3.2.8. on “Universal service and affordability of digital infrastructure”. However, this section falls short of addressing the present challenges that stand in the way of making the universal service a reality for all consumers.

From a consumer perspective, **we have consistently expressed our concern in recent years about the delayed implementation of the current rules across the EU**. Since 2020, Member States have struggled with significant delays to transpose the EECC, which stands to deliver key benefits for consumers, from a comprehensive chapter of provisions on of end-users’ rights to the universal service obligations regime created to support vulnerable consumers.

We therefore consider that the **White Paper is a missed opportunity to address the long-delayed implementation of the Code** and fully commit to the **speedy and full implementation of Universal Service Obligations (USO)** set out in articles 84-92 of the EECC. The USO regime should not be viewed merely as a form of social assistance for consumers who lack adequate connectivity or the freedom to choose their service provider, but as an **already available framework with a fundamental role to play for driving investment and prioritising solutions for the most vulnerable consumers**, actively incentivising telcos to **prioritise accessible connectivity and deployment of broadband to consumers in more remote regions** which are less profitable.

BEUC and its members⁸⁶ have recently raised this critical issue in the European Commission’s exploratory consultation on the future of the electronic communications sector of 2023, with our German member vzbv stating that the national implementation of the universal service “made it clear” that **telecoms operators have “no interest in providing broadband to non-profitable regions without regulation”**, noting that in Germany, until as recently as March 2024, “not one internet connection was created under

⁸⁴ The Netherlands Government Cabinet appreciation of White Paper on digital infrastructure, 5 April 2024. Available at <https://open.overheid.nl/documenten/4fbc64a7-b945-4ab6-8d44-b5807c2fa123/file>

⁸⁵ Joint Statement, Preliminary Concerns Regarding the European Commission’s White Paper on EU Digital Infrastructure Needs, 16 May 2024 https://www.beuc.eu/sites/default/files/publications/BEUC-X-2024-049_Preliminary_concern_regarding_the_EC's_white_paper_on_EU_digital_infrastructure_needs.pdf

⁸⁶ BEUC and its members vzbv (Germany), CECU (Spain), KKR (Finland) contributed to the exploratory consultation on the future of the electronic communications sector and its infrastructure, 19 May 2023, available at <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

the USO regime”, as “no telecommunications company has declared its willingness to provide universal service on a voluntary basis”.⁸⁷

The **EECC has key measures to provide more accessible** (public funding incentives to deploy network infrastructure in rural areas not profitable for telcos) and **more affordable** (social tariffs) connectivity. Therefore, it should be a priority for the White Paper to support the role that the existing rules can play to prioritise infrastructure deployment to households where commercial deployment is not profitable and ensuring that all consumers have access to affordable and accessible high-quality connectivity.

Moreover, **we disagree with the framing of the discussion** that “*in the future, a different kind of social exclusion may emerge, that of weaker end-users not being able to benefit from the best available networks due to their localisation (for example rural/remote areas) or due to the price of services*”. This “**social digital divide**” is not new and **consumer organisations have for long advocated for the urgency of bridging it**⁸⁸: most vulnerable consumers, especially with lower economic backgrounds or living in remote areas (such as rural areas or insular territories), **effectively already struggle to have access to any connectivity at all**, even more so high-quality connectivity.

BEUC’s German member vzbv pointed out that the latest public data from 2022 shows that, in the strongest economy of the EU, there are **still millions of households which are digitally excluded due to affordability issues**: although “91% of all households were equipped with an Internet connection, one in six households with a net household income of less than 1,500 euros per month had no Internet access” while by comparison, “with a net household income of 3,750 euros or more, virtually every household is connected”⁸⁹.

The same scenario can be seen in France, where over 80% of the population already have access to optic fibre, **but rural areas are still left behind**. A study by BEUC’s French member UFC – Que Choisir published in 2023 shows that 37.1% of households in small municipalities (<1,000 inhabitants) still had no access to optic fibre, compared to only 9.6% in the largest municipalities (>100,000 inhabitants). This shows not only that **technology alone does not solve the issue, but also that it can aggravate it if there are no regulatory incentives for operators to cover these neglected areas**.⁹⁰

Moreover, we highlight that **more connectivity is not a guarantee of better connectivity**. Even where EU rules can provide an incentive for deployment of connectivity infrastructure, it is fundamental that these rules ensure that connectivity is not only available, but that the **offers by telecom operators are designed to meet the evolving needs of consumers** and households. In order to bridge the digital divide in a

⁸⁷ Vzbv contribution (questionnaire response) to exploratory consultation on the future of the electronic communications sector and its infrastructure, 19 May 2023, available at <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

⁸⁸ White Paper, page 34.

⁸⁹ Vzbv, Recht Auf Breitband-Grund- Versorgung Für Alle, page 12, https://www.vzbv.de/sites/default/files/2022-05/STN_vzbv_Recht-auf-Breitband-Grundversorgung-fuer-alle.pdf

⁹⁰ UFC – Que Choisir, Accès à L’Internet Fixe - La Fracture Numérique Cimentée par la Défaillance du Déploiement de la Fibre : <https://www.quechoisir.org/action-ufc-que-choisir-fracture-numerique-la-fibre-n-a-pas-regle-le-probleme-au-contre-n107114/?d=116022>

society where public and private services are migrating online, the minimum speeds mandated by the USO regime must reflect these needs to ensure that all citizens can fully participate in modern society.

However, the **slow, incomplete implementation of the EECC**, in particular defining the Universal Service obligations, has led to a **lack of harmonisation of these rules across the EU**, resulting in significant **disparities in minimum speed requirements** and **contributing to a lack of incentives for increasing deployment of high-capacity infrastructure**. For instance, while the USO should provide minimum speeds of 100 Mbps download and 30 Mbps upload, which are necessary to support high-bandwidth applications and to ensure basic needs of consumers, Member States are still **falling short of mandating telecom operators to provide these basic services as a minimum**. For example, in Germany, the USO minimum download speed of 10 Mbps is insufficient to meet the contemporary demands of consumers and households.⁹¹ This discrepancy highlights the urgent **need for harmonisation of USO standards across Member States**, not only to ensure equitable access to high-quality internet services for consumers, but also to give the **right incentives** for telecom operators to **provide quality services for consumers** and **deploy the new infrastructure** required to provide them.

In addition, we also question the **nature of the reference made to the sources of financing of Universal Service**, which seems to **entertain (yet again) the proposals for network fees**: on page 34, the White Paper observes that sector-specific universal service obligations have relied on “two modes of financing: state financing and sector financing”, which “has so far been limited to electronic communications providers, while providers of NIICS [number-independent interpersonal communications service] have been excluded”.⁹² The White Paper brings these market players into the discussion again, but **this time without a clear reason or conclusion**.

This reference seems equally misplaced following the results of the Commission’s exploratory consultation on the future of the telecoms sector and its infrastructure, where stakeholders were already asked about changing the funding of the universal service regime, with the **overwhelming majority of respondents** clearly expressing their support for maintaining the current financing model, **rejecting a potential broadening of the scope** to include cloud providers: indeed, only a “minority of the respondents opted for widening the scope of funding providers”.⁹³ From a consumer perspective, given the recent and still ongoing transposition efforts of these provisions under the EECC, **it is still too early to conclude if changes to its financing model are needed**.⁹⁴

⁹¹ See in more detail Vzbv, Recht Auf Breitband-Grund- Versorgung Für Alle, https://www.vzbv.de/sites/default/files/2022-05/STN_vzbv_Recht-auf-Breitband-Grundversorgung-fuer-alle.pdf

⁹² White Paper, page 34.

⁹³ European Commission, Summary Report on the results of the exploratory consultation on the future of the electronic communications sector and its infrastructure, 19 May 2023, page 10, <https://digital-strategy.ec.europa.eu/en/library/results-exploratory-consultation-future-electronic-communications-sector-and-its-infrastructure>

⁹⁴ BEUC response to the exploratory consultation on the future of the electronic communications sector and its infrastructure, 19 May 2023, available at: <https://www.beuc.eu/position-papers/fair-consumers-future-connectivity-and-open-internet>

Moreover, we recall that the deployment of high-quality digital infrastructure and 5G networks are not an end in itself: connectivity infrastructure is of no use without users who can afford and access them.

We therefore recommend that the **White Paper shifts its focus from increasing market supply to stimulating the consumer demand for such services**. Additional measures could be envisaged, and more funding could be made available to increase demand for connectivity services, ensuring consumers have affordable (e.g. public subsidies for broadband services to households) and accessible (e.g. prioritise infrastructure deployment in uncovered areas) high-quality connectivity, encouraging further competition (opening access to infrastructure for challengers) which stands to further decrease prices and increase consumer choice.

5. Conclusion and the way forward

Going forward, we call on the Commission to **adopt a pro-competitive and consumer-centric approach to address the challenges of bridging the digital divide and deploying high-quality connectivity**, which addresses the interests of consumers first – not big telcos. From a consumer perspective, it is fundamental that the drive to meet the 2030 Digital Decade **connectivity objectives does not come at the expense of competition**, the most important driver of investment, commercial success and more consumer choice.

The Commission should **prioritise the full implementation of the EU's under implemented, underused telecoms rules already at its disposal**, clarifying them and ensuring their application in full. We reiterate the potential of the EECC and its USO regime (articles 84-92 EECC) as a positive regulation framework that can **drive investment and prioritise solutions for the most vulnerable consumers**, by actively incentivising telecom operators to prioritise accessible connectivity and deployment of broadband to consumers in more remote, less profitable regions.

Moreover, **proposing to extensively review the EECC** only to lead to more deregulation and market concentration **would be premature and counterproductive**. Any regulatory intervention within the EU telecoms market should be guided by a **strict evidence-based approach**, in line with the European Commission's Better Regulation Principles, **including a comprehensive impact assessment and an inclusive public consultation** on any policy proposals.

Any new measure should be **guided by, not question or endanger, the primary objectives of the EU legal framework for electronic communications** enshrined in the EECC to **promote competition, the internal market and the safeguarding of end-user interests**.⁹⁵

⁹⁵ Directive (EU) 2018/1972 (European Electronic Communications Code), Article 3 and recital 23, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L1972>

In this sense, we urge the Commission to **prioritise its work on delivering the completion of the EU telecoms single market for consumers** and focus on the critical analysis of the **implementation and compliance of the end-user rights provisions of the EECC**, identifying and addressing any shortcomings before considering alternative, more complex regulatory instruments beyond its scope.

From a consumer perspective, the ultimate hurdle to achieving a full Telecoms Single Market represents **removing barriers to consumers enjoying the full potential of the EU telecoms offers and digital services** (such as Roaming or Intra-EU calls surcharges or unjustified geo-blocking), not by supporting the profitability levels of Big Telcos.

We therefore call on the European Commission to **deliver on the legislative commitment adopted in the Gigabit Infrastructure Act to end surcharges on Intra-EU calls by 2029**, by making all the required efforts to enact the necessary secondary legislation to make it happen as soon as possible.

