

CISPE's Contribution to the European Commission White Paper 'How to master Europe's digital infrastructure needs'

June 2024



Executive Summary

The European Commission's White Paper on the Future of Connectivity proposes the radical idea of extending EU telecom regulation, including rules on access and dispute resolution, to cloud providers. This includes the introduction of a de facto "Internet traffic fee" to be paid to large incumbent operators, as well as additional red tape for the operation of private intra-cloud networks. We at CISPE fundamentally disagree with this proposal and its premise, and warn that such a change in the applicable regulatory framework would have significant negative consequences for Europe's competitiveness, its digitization goals, and its citizens.

I. Incorrect premises:

- **Cooperation, not convergence:** The assertion that traditional boundaries between telcos, cloud, and content providers are blurring is both a hyperbole and an oversimplification. Cloud technology serves as a horizontal enabler across various vertical industries, including but not limited to telecommunications. The cooperation between the two industries brings benefits to both.
- **Lack market failure or investment gap:** The White Paper's sweeping proposals lack justification in the form of any kind of market failure. The paper overestimates the telcos' contributions to connectivity investments while underestimating those of other actors. It also fails to account for the significant investments already planned or expected.

II. Wrong proposed solutions:

- **Telco Regulation is not fit for the cloud:** Extending telco regulations to cloud providers is inappropriate, as these rules are designed to address specific telco market dynamics. Applying them to cloud services would create unnecessary legal uncertainty and administrative burden.
- **There is no major issue with interconnection:** The interconnection market generally works well. The Commission's focus on interconnection issues appears driven by one-sided telco narratives and justified by a small number of cases where incumbent telcos have abused their dominant position. Existing tools are already sufficient to address these isolated instances without broad regulatory changes.

III. Unintended consequences:

- **Increased Red Tape:** Applying telco regulations to cloud providers, particularly SMEs, would impose significant compliance costs and hinder their ability to compete.
- **Competition Issues:** The proposed regulatory changes could provide incumbent telcos with unfair competitive advantages against smaller providers, both cloud and ISP.
- **Higher Costs and Slower Cloud Adoption:** Imposing interconnection fees on cloud and CDN providers would increase costs, reduce efficiency, and slow down cloud adoption, jeopardizing the EU's Digital Decade objectives.

About CISPE

CISPE is an association of more than 35 cloud infrastructure service providers in Europe, the large majority of which are European SMEs. Given that connectivity is essential for the health of the cloud sector, we care deeply about the future of European communications networks. Moreover, many CISPE members, especially SMEs, are also ISPs, offering local connectivity services, often in un- or underserved areas, meaning that they are directly effected by the scenarios proposed in the White Paper.

Introduction

CISPE welcomes the opportunity to comment on the European Commission's White Paper on 'how to master Europe's digital infrastructure needs'. We agree with the Commission that connectivity is a matter of critical interest to European citizens and businesses, and therefore it is crucial to continuously evaluate the existing systems and explore possibilities for positive action.

We also applaud that the Commission admits that the White Paper is only an early and rough draft of how European connectivity currently looks like, how it will evolve, as well as what steps can we take to improve it. Indeed, we believe that the analysis and proposals presented in the paper require significant further work to ensure that they correctly reflect the state of play and thus comes to appropriate conclusions. We therefore appreciate the opportunity to work with DG CNECT to correct the inevitable misconceptions and injudicious policy proposals, so that we can move together in a direction that truly benefits European citizens and businesses.

In summary, having read the analysis of the White Paper and its proposed policy scenarios, we unfortunately believe that:

- Its analysis is partially based on **wrong premises**;

therefore

- It often suggests the **wrong solutions**;

therefore

- It would lead to some **unintended negative consequences**.

I. Wrong premises

1. Cloud and telco providers cooperate, not compete

We believe that the White Paper's assertion that the 'traditional boundaries between the various actors' such as telcos, cloud and content providers are 'blurring' is an exaggeration and oversimplification of real-world trends.

Cloud is a horizontal technology offering significant efficiency benefits for practically all 'vertical' industries (e.g. energy, manufacturing, agriculture, telecommunications). This is the very essence of the cloud – it is a neutral service that can support the day-to-day operation of any company, from the smallest bakery (e.g. website and e-mail hosting) to the largest energy operator (e.g. centralised middleware for smart grids). During their digitalisation journey, each company will evaluate the potential benefits and issues with moving to the cloud, and can select the appropriate solution from a multitude of available offerings (hundreds of different public, private, hybrid and multi-cloud solutions). The same is of course true to the use of cloud technologies by access network operators. Telcos today move workloads to the cloud for the same reason every other industry does, such as faster deployment, reduced CAPEX, increased scalability, flexibility and accessibility, and son on.

As their technologies are complementary to each other, the relationship between telecommunications operators and cloud service providers is largely cooperative and mutually beneficial. On the one hand, cloud providers would mostly not be able to offer their services without telcos providing connectivity on the last mile. On the other hand, according to a [recent study](#)¹, the use of cloud services by telco providers enables increased productivity, reduced data storage and processing costs and higher levels of automation and scale. The study estimates that these efficiency gains have the potential to reduce their network OPEX from 18.4% to 13.5%, as well as their total IT expenditure from 6.2% to 3.5%. However, the benefits of cloud usage goes further than this – it can also help telcos to achieve their sustainability goals, increase security via more detailed real-time threat monitoring and many others.

2. There is no market failure

We are concerned that the European Commission – based on the false premise of cloud-telco convergence noted above – wants to extend telco regulation to the cloud, without having identified any issues or market failure.

Unfortunately, in spite multiple readings of the Paper and engagement with DG CNECT, we are still not sure that we understand what is the exact issue or market failure that the Commission is trying to solve by including cloud providers and their private networks under telco rules. The only argument the Commission gave us was that the 'market failure' that they are trying to solve is the lack of a telco single market in Europe. Although emotionally compelling, we do not believe that this creative re-interpretation of the term 'market failure' is appropriate, as it risks confusing actual market dynamics with predominantly political matters. We do not believe that lack of political will could be patched over with additional layers of regulation.

As for incumbents such as Telefónica, they argue, based on external studies they commissioned², that the 'market failure' is that content providers – due to their

'incomplete understanding of the technology' of telcos – do not realise the benefits they would gain from financially supporting them to invest in their networks. Accordingly, the paper by Compass Lexecon argues³, they need to be forced to do so.

This seems to lead to the inevitable message that cloud providers simultaneously do not understand the telco business model, while at the same time converging with the telcos' business and technology. Besides being offensive to the skills and intellect of CISPE members, this claim is also clearly paradoxical and should be rejected by the Commission.

Finally, the Commission also argues that currently it is very difficult to build cross-border networks in the EU. However, in the experience of our members, although regionality adds costs, it is not a major issue and even our smaller members were able to establish cloud regions in other member states without significant additional costs.

3. There is no serious issue with investment

CISPE is concerned that the Commission's assessment of the investment needs is mistaken due to (a) overestimating telco contributions while underestimating investments by other actors; (b) narrowly focusing on long-term political goals without properly understanding the needs on the ground; (c) not properly accounting for investment that is already planned or in planning via public and private funds.

Another underlying premise of the White Paper is that telco profitability must be raised because investment in connectivity networks predominantly comes from large incumbent telcos. Although their contributions are undeniable, it is important to note that all players in the internet infrastructure value chain (access networks, data centres, hosting companies, CDNs) spend approximately 15-20% of their revenue in CAPEX to expand network capacity. To demonstrate this, even the Commission itself admits that more than half of international traffic transits through private networks, and that a significant percentage of 'last-mile' connectivity, especially in rural and remote areas, comes from local Fixed Wireless Access providers, which are more often than not European SMEs. Consequently, we at CISPE do not see an appropriate justification for investments into access networks to be financed by other players in the value chain whose contributions already match those of the access network providers.

Moreover, Cloud and CDN providers, including but not limited to hyperscalers, invest in deploying content, applications, and services close to access networks, for example via on-net caches. This strategy reduces costs for telcos, as it eliminates the need for them to purchase IP Transit services to access these resources.

Finally, even taking the Digital Decade targets at face value, there are studies showing that the funds needed for investment (i.e. 174 billion by 2030) are and will be available via public and private funds.⁴ Even the WIK study⁵, on which telcos often base their 'investment gap' arguments, talks about total 'investment needs' – much of which are expected to be covered by public and private sources – and not an 'investment gap'.

4. The Commission should focus on outcomes, not technologies

We generally do not agree with the Commission's top-down approach when it comes to 5G, fibre and edge roll-out. In our view, currently the Commission overestimates the demand and need for these technologies as they are still searching for widespread use-cases.

The hype around technologies such as fibre, 5G and edge computing is justified, but the timescales sometimes overly optimistic. If the market does not seem to be fulfilling top-down targets arbitrarily imposed by the Commission (e.g. 5G/FTTH uptake, 10,000 edge nodes), it's worth considering that it might be the targets that are mistaken, not the market.

In reality, not all areas, homes and businesses need to have gigabit connectivity.⁶ What they need is a reliable broadband connection, which in rural areas is mostly provided via Fixed Wireless Access (FWA) – a solution that is barely mentioned in the paper, even though it is championed largely by European SMEs. These companies help to retain technology, jobs and talent in these rural areas and create local markets. While FWA is not as fast as fibre and not as sexy as satellite, it is much cheaper than both, and even provides higher and more reliable bandwidth than the latter. It is therefore puzzling why the Commission does not acknowledge that fixed wireless is often more efficient for achieving connectivity coverage of rural areas than either fibre or satellite solutions. Promoting fibre in areas where FWA is a more effective solution might even go against state aid rules. Indeed, both the aforementioned studies by WIK and Stratix clarified that the total connectivity investment needs of Europe could be significantly reduced by prioritising FWA in some remote and rural areas.

It's important to add that providing funding to telco incumbents to develop connectivity and/or cloud solutions in remote areas requires very careful mapping and up-to-date knowledge of market conditions, so that existing solutions provided by EU SMEs are not being overbuilt.

A similar sort of over-excitement surrounds the Commission's approach to edge computing – a generally very promising technology whose short-term potential has been blown out proportion*. Until recently the Commission often mentioned the idea that by 2025, 80% of processing will happen in the edge instead of in centralised data centres (see box below). As attested by the fact that the Commission dropped this data point from the White Paper, this 'prediction' has since proven to be clearly mistaken. We believe it is important that the Commission acknowledges this, so that it's policies can be re-aligned given more accurate statistics and predictions.

Moreover, the Commission seems adamant to push a top-down edge adoption strategy. This includes the target of 10,000 edge nodes by 2030, which most industry actors we talked to believe is a political target not necessarily aligned with market needs or realities. We would urge the Commission to re-think its current approach, especially by better understanding the bottom-up edge computing projects already driven across Europe, including by European SMEs and via Gaia-X, and find ways to support and scale these instead of continuing to push top-down projects that may not be based on real-world demand and trends. Our members would be happy to provide examples of use-cases already deployed.

* As noted by no other than ETNO, 'the limited presence of compelling use cases for edge technology restricts the development of a viable business case, which in turn leads operators to allocate resources to other areas instead. This underscores the importance of identifying and promoting use cases that can demonstrate the tangible benefits of edge computing [...].'

Autopsy of an incorrect prediction

As of today (20 June), the Commission's webpage on Cloud Computing⁷ (last updated June 2023) states that:

'Whereas cloud computing happens mostly in large data centres today, by 2025 this trend will reverse: 80% of all data is expected to be processed in smart devices closer to the user, known as edge computing.'

This prediction first seems to have appeared in the European Data Strategy (2020)⁸, citing 2017 data from Gartner that we have not been able to locate, although we found a 75% prediction from 2018.⁹ The 80% claim has nevertheless then been repeated in multiple papers, such as the 2021 Commission report on strategic dependencies and capacities¹⁰ and a 2023 Edge Deployment Data Report (2023)¹¹.

Other times it was presented as more of a policy target than a prediction, such as in the 2030 Digital Compass Communication (2021)¹² or the European industrial technology roadmap for the next generation cloud-edge offering¹³ (both 2021). Finally, in the 2022 roadmap for next-generation IoT¹⁴ (2022), the Commission changed the prediction to 75% of processing in the edge, but also pushed the deadline out to 2027.

Although we haven't found reliable data on this, our rough estimate is that the current percentage of processing in the edge as opposed to data centres is only slightly more than 20%, and is unlikely to surpass 30% by 2025.

Subsequently, the prediction seems to have slowly been dropped and was not mentioned in the White Paper, in spite of edge computing playing a prevalent role in the document.

Gartner's revised claim is 55% of processing 'of all data analysis by deep neural networks' and the edge by 2027.¹⁵

5. The Commission already addressed the relevant competition concerns

As noted above, Telcos and cloud providers operate in distinct but complementary areas, contributing to a robust digital ecosystem, but without significant convergence beyond some limited edge-cases. The fact that telco workloads are being moved to the cloud – referred to with the unfortunate term ‘cloudification’ – cannot be viewed as anything different than moving any other workload to the cloud, and therefore is no more proof of convergence than moving workloads for smart grids into the cloud proof of energy-cloud convergence.

In any case, if cloud providers would ever decide to start directly competing with telcos, they would automatically find themselves covered by the current telco regulatory regime – and vice versa. For example, when a telco provider sells cloud services, it of course has to abide by the cloud-specific EU Regulations (e.g. Data Act, DORA), besides the more horizontal legislative acts (DSA, DMA, NIS2). Similarly, in case a cloud provider decides to enter the telco market by offering access services, it would automatically fall under the applicable telecommunications rulebook, and of course – if large or dominant enough – the gatekeeper rules of the DMA and the anti-trust rules of the Treaties.

In short, we don’t see significant reasons to propose regulation for convergence that is unlikely to happen on the one hand, and would not cause any regulatory gaps on the other hand.

Telco vernacular

Telcos have a tendency of using their own specialised words. For example, the simple act of moving from on-prem to the cloud is referred to as ‘cloudification’. Although admittedly this term is used also in other industries, it has almost exclusively been monopolised by access providers. Similarly, telcos often use the term ‘verticals’, which simply means ‘industries that are not telco’. This sometimes makes tendencies in the sector appear unique, even though they differ from more general trends in name only.

6. Interconnection generally works well

As noted by practically all actors in the internet ecosystem, including the Commission’s own White Paper and BEREC’s recent IP-IC Report¹⁶, disputes in interconnection are extremely rare. These markets are generally dynamic, open peering rampant, transit costs generally reasonable. We at CISPE believe that the only reason we are talking about interconnection as a potential issue point is that interconnection was identified by incumbents as a promising mechanism via which they can bring back the idea a ‘network traffic fee’ through the backdoor.

According to BEREC’s recent draft IP-Interconnection Report¹⁷, prices for IP-IC services are continuing to show a downwards trend, thanks to well-functioning market dynamics and technological innovations (especially on-net caches).

Moreover, another justification used by incumbents for interconnection payments is that somehow the internet was created with symmetric data flows in mind. Under this argument, the fact that users download much more content than upload has created a problem for telcos. Indeed, many have minimum ratios after which they refuse to peer settlement-free with content and application providers. However, this once again does not seem to withstand closer scrutiny. First of all, most of telcos' networks were already designed with uneven data flows in mind – if uploads would suddenly match downloads tomorrow, they would certainly not be able to handle them. Moreover, penalising traffic asymmetry could lead to serious unintended consequences, as explained in Part III. Finally, as noted in BEREC's IP-IC report, it is likely that traffic asymmetry will show a downward trend in the following years, due to increased use of video communications and cloud services.

II. Wrong solutions

Under Scenario 4 of the White Paper, the Commission raises the possibility of proposing new rules to broaden rules currently applicable to telcos also to cloud providers. The Commission justifies this based on their view that telco and cloud providers are 'converging' and that 'traffic transits mostly on private networks, therefore there is a need to 'level the playing field' regarding applicable rules.

Besides disagreeing with this scenario's premises (see above) we also fundamentally disagree with its proposals, for the reasons explained below.

1. Telco regulation is not fit for the cloud

The rules contained in the Electronic Communications Code were tailor-made for access providers and address a very specific concern, namely the tendency of this market for monopolisation. These rules – and their predecessors – represent a testament to the success of the European Commission in liberalising telco markets for the benefit of European businesses and customers. However, these rules are ill-fitted to apply to cloud providers.

Disregarding the fact that we do not see any purpose in the extension of interconnection and access regulations to cloud providers and their private networks, we also don't see how this extension could be done without inadvertently including additional obligations. Although the Commission argues that a 'tailored' expansion of the EECC is possible, especially if the country of origin principle would be followed, legal and industry experts disagree. They argue that obligations relating to notification, reporting, security (including of supply chains), lawful interception, data protection and consumer protection probably also be extended to the sector as a result. This would of course lead to significant additional red tape (see Part III below), especially since most of these would duplicate pre-existing obligations contained within other laws, such as the NIS2, GDPR or the ePrivacy Directive.

Consequently, it seems guaranteed that such extension would lead to a lot of confusion and legal uncertainty as cloud providers try to figure out how to comply with rules that will mostly don't make sense for them. For example, how would the concept of an 'end-user' and any obligations related to end-users apply to a purely B2B cloud infrastructure provider? We at CISPE have a lot of experience in trying to translate overly generic

legislation for the cloud (see for example the CISPE GDPR Code of Conduct), but even we would find it impossible to interpret rules that simply do not make sense in the context of the cloud.

In brief, the extension of the EECC rules to cloud providers would introduce purposeless additional legal uncertainty and red tape to provider. It's worth adding that it would disproportionately hurt small European providers who often do not have dedicated legal teams or ongoing relationship with NRAs to facilitate their compliance.

Private networks are extremely far from being 'unregulated'

In recent months, the Commission repeatedly referred to private networks of cloud providers as 'unregulated', arguing that the issue they try to tackle is that a lot of network traffic through such 'unregulated' networks. It is important to note that this assertion couldn't be further from the truth – indeed many different regulatory regimes, including the NIS2, already provide extensive obligations to ensure the security of such networks for the benefit of citizens and business users alike.

2. The proposal does not take into account European cloud SMEs

The Commission's analysis of the cloud market in the White Paper is very strongly focused on the behaviour of incumbents and hyperscalers. The terms 'cloud provider' appears 6 times in the text, but almost exclusively in the context of hyperscalers, as visible in the following table:

	Refers to hyperscalers?	Refers to SMEs?
[...] massive investments made by <u>large</u> cloud providers [...]	YES	NO
[...] economies of <u>scale</u> of cloud providers [...]	YES	NO
[...] in partnership with <u>large</u> cloud providers [...]	YES	NO
[...] obligations related to the activities of cloud providers [...]	YES	YES
[...] if cloud providers run <u>large</u> (backbone) electronic communications networks [...]	YES	NO
[...] <u>large</u> cloud providers operate their own backbone networks [...]	YES	NO

Accordingly, one could be forgiven for thinking that the rules proposed by the Commission would only apply to companies above a certain size. This would still negatively affect small EU CSPs – for example most incumbents offer cloud services and therefore if they somehow manage to force payments from large CAPs, they would be able to leverage these to gain an unfair competitive advantage against EU CSPs. However, our understanding is that the Commission is proposing symmetric regulation without any kind of size cap. This would of course significantly exacerbate the issues mentioned in this paper, leading to unnecessary red tape and competition issues which are likely to further jeopardise the SMEs’ ability to compete – including with both hyperscalers and incumbent telcos.

In short, by focusing on large actors but proposing new rules for even the smallest providers, the Commission is endangering the very actors it should support if it wants to achieve its goal of maintaining a healthy and thriving European tech sector – namely European SMEs. It is crucial to ensure that small players don’t become ‘collateral damage’.

3. Better tools for interconnection issues already exist

Based on our discussions, we understand that the Commission’s desire to include cloud providers under the interconnection rules of the EECC is – at least partially – motivated by the fact that a very small number of telcos refuse to peer with content and application providers, leading to these services to use ‘less efficient solutions’ such as transit.

It is true that very few incumbent telcos have spent the past decade enacting extremely closed peering policies and not providing for sufficient capacity at with Tier 1 backbones, IXPs or allowing for on-net caches. As a result, content providers who didn’t want end-users to experience issues were forced to overpay for these incumbents’ own ‘transit’ services that are indistinguishable from paid peering at prices bordering on racketeering. However, it is crucial to underline that such practices are rare and limited to very few actors.** Changing the complete regulatory structure to solve this significant but extremely narrow issue would be like trying to slap a mosquito with a howitzer – an extreme overreaction, especially in light that such abuses are already covered by existing law.

For example, BEREC notes that such abuses of termination monopoly are likely to already be in breach of the Open Internet Regulation – and probably also of EU anti-trust rules. Making something ‘double-forbidden’ does little to help the underlying issue.

Moreover, as noted above, it feels to us that this narrow issue is simply an *ex post facto* justification for a policy measure that was actually endorsed for a different reason – namely to surreptitiously re-introduce the idea of enacting ‘internet traffic levy’ for the benefit of incumbent telcos. This feeling is based on the fact that this solution was proposed by the very actors that it supposedly aims to work against. As stated by ETNO:

An obligation to negotiate with operators a fair and adequate contribution, with a dispute resolution kicking in if negotiations fail, would help alleviate this challenge’ [of low telco profitability].¹⁸

Indeed Telefónica, the incumbent provider that originally came up with the idea of extending telco rules to cloud providers as an alternative to the failed ‘fair share’ proposal,

** One could even argue that the number of European incumbents with abusive peering policies and prices can be counted on one finger.

seems to have ready-made suggestions for even how this arbitration mechanism should work – namely ‘final offer arbitration’ (FOA).¹⁹ Although we at CISPE did not have the capacity to deep-dive into game theory and analyse whether this system would provide Pareto-optimal outcomes for the market as a whole, we have a suspicion that it was not necessarily chosen for its tendency to benefit all actors equally.

4. Much more urgent issues remain unaddressed

The Commission has done well recently to tackle issues hindering cloud adoption, for example via the Data Act’s new on cloud switching obligations. When it comes to the remaining concerns of European cloud providers, interconnection would not even make the Top 10.

If the Commission is serious about supporting cloud providers, cloud customers and cloud uptake in general, we would recommend to focus on the issue of unfair software licensing.²⁰ The costs incurred due to these practices by large legacy software providers is several orders of magnitude higher than the costs of peering and transit. This issue was highlighted in both the CMA’s recent Cloud Competition Working Paper²¹ and the BEREC Report on Cloud and Edge.²² Explicit Commission support for CISPE’s fair software licensing principles²³ could help rectify this issue and provide tangible benefits to EU cloud providers and their customers.

III. Unintended consequences

1. It would lead to unnecessary red tape

Both the telecommunications and cloud sectors have experienced significant regulatory changes in the past few years. For the former, the European Electronic Communications Code (EECC) has not even been fully implemented across all Member States, while for the latter, new legislation affecting relevant aspects of the cloud, such as competition (Data Act, DMA), network security (NIS2) and sustainability (EED, CSRD) have been adopted only during the current Commission mandate.

As explained above, should the EECC be extended, all cloud providers would suffer. However, for European SMEs without dedicated legal teams, this could be a matter of life and death. European CSPs’ market share has fallen below 13% in 2022²⁴ (most of which is provided by telco incumbents) and we at CISPE find it difficult to grasp how obliterating the European cloud sector for the benefit of large incumbents would contribute to Europe’s increased digital sovereignty or to the EU’s Digital Decade’s 75% cloud uptake target by 2030. As a reminder, according to the Commission’s own analysis, this target is already unlikely to be met, jeopardising billions of euros of potential benefit.²⁵

Just to mention the obvious, SMEs would have to apply for authorisation in each country in operate, penalising especially those small SMEs that dared to dream big and expanded to additional markets, especially border regions. The Commission argues that this would be solved by the introduction of the ‘country of origin’ principle, but there is no indication that any Member State is in favour of this system.²⁶ As noted in a recent paper by Plum Consulting, this additional red tape would lead to higher costs for cloud services, which would lead to reduced uptake and slower digitalisation for Europe as a whole (see point 3 below).

Finally, today, over 99% of all interconnection agreements are on a ‘handshake’ basis²⁷, without a written contract. This is of course the best possible scenario for everyone except contract lawyers. The Commission’s proposals risk undermining this beneficial status quo and causing additional legal costs for everyone involved.

In summary, we would urge the Commission to listen to the Council’s recent recommendation²⁸ and prioritise the implementation and evaluation of already existing rules before suggesting sweeping changes into how cloud (and telco) operators are regulated, thereby increasing unnecessary red tape across the ecosystem.

2. It would lead to competition concerns

There are many different scenarios through which incumbent telcos could abuse their role to gain an unfair advantage over smaller providers – both cloud and ISP. For example, the proposed interconnection dispute resolution mechanisms would encourage background deals between large content providers and incumbents. Although we are not sure what exactly these two would cook up behind closed doors, we are fairly certain that it would not be beneficial for European SMEs.

It’s important to remember that cloud SMEs are often competitors to incumbent telcos. Therefore, any additional powers or resources given to them by the regulator is likely tip the balance of competition in their favour. As noted in the draft BEREC IP-IC report, the bargaining power of large incumbents is already strong enough to force payments from even the largest content providers, who are not able to substitute direct (paid) peering with transit due to quality-related reasons (p. 32). If even the largest content providers can be being bullied into (over)paid peering by incumbents, one can only imagine the struggles of their SME counterparts.

3. It would raise costs and hinder cloud uptake

As noted above, like most other non-incumbent telcos in the ecosystem, CISPE also views the proposal of extending the conflict resolution mechanisms for interconnection agreements to cloud and CDN providers as a resurrection of the ‘network fees’ / ‘fair share’ proposals of yesteryear. Just like with the direct ‘sending-party-network-pays’ idea that was comprehensively rejected last year, such a *de facto* fee for traffic would cause significant issues for the entire ecosystem, such as:

- A. Higher prices:** Should the scope of dispute mechanism be extended to interconnect and therefore additional cloud and CDN providers would need to start paying telcos for peering, this would have a downstream effect on all EU actors using cloud and CDNs to deliver their content to end users in the form of additional costs.
- B. Lower efficiency:** Higher interconnection prices caused by dispute resolution mechanisms are likely to cause cloud and CDN providers to move from direct peering to cheaper transit alternatives, which is likely to lead to a decrease in performance, especially regarding latency, and add operational costs for everyone, including ISPs.

C. Slower cloud uptake: Higher prices and lower efficiency will inevitably lead to less desire from customers to move to the cloud. This in turn would jeopardise the Digital Compass objective of 75% cloud adoption. As a reminder, over 1.5 trillion on economic value is expected to be unlocked by cloud-dependent elements of the EU Digital Decade Programme.²⁹

4. It would lead to perverse incentives.

As stated above, we regret the Commission's assertion in the White Paper that *'it cannot be excluded that the number of [interconnection dispute] cases in the future will increase'* and there for *'policy measures could be envisaged to ensure [their] swift resolution'*. Although this may feel like a completely innocuous thing to write, words – especially those in Commission Papers – have consequences. We fear that this seemingly throwaway line could introduce serious perverse incentives for some actors.

First of all, making regulation dependent on the existence of disputes may incentives one of the parties (which feel they may gain from regulation) to raise disputes simply in order to push the Commission to regulate.

Secondly, 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 such disputes. As noted by the BEREC IP-IC Report, it would ultimately be the end-user customers who would ultimately suffer from disputes between different market players across the internet value chain.

Finally, as noted in Part I, penalising traffic asymmetry could also lead to serious unintended consequences. For example, instead of paying for the asymmetry, content providers could be incentivised to artificially 'rebalance' the traffic by sending large amounts of non-essential or even pointless data upstream. At best, content providers would come up with bespoke offerings that could 'balance' their traffic³⁰ – at worst, they would simply send 'empty data' until they reach the non-paying threshold. In either case, it could lead to largely unnecessary added congestion on upstream networks.

Conclusions

In light of the points above, CISPE respectfully urges the European Commission to reassess and refine its approach as outlined in the White Paper and to abandon policy proposals that would harm European businesses and citizens.

First of all, we ask you to reassess the premises of the White Paper. The current propositions would inadvertently stifle innovation and competitiveness within the cloud services sector. Recent studies, especially by BEREC, have clearly shown that the White Paper's assertions do not stand up to closer scrutiny and starting from mistaken premises will inevitably lead to harmful policy proposals.

Secondly, we ask you to better consider the interests of European SMEs by avoiding unnecessary regulatory burdens and fostering a fair competitive environment. The current policy proposals risk harming almost all actors, but SMEs would be disproportionately affected, given their lack of human resources and limited negotiating power.

Thirdly, we would like to ask the Commission to - once and for all - abandon the idea of an 'internet traffic fee' proposal. Following hundreds of warnings by stakeholders from all across the internet value chain, it has become clear that such a fee would harm all actors in the ecosystem except for a few incumbent telcos. For cloud providers, it would impose undue financial burdens that would also harm customers, leading to increased costs and potential barriers to digital services access. CISPE and our members are open to working with the European Commission and ISPs to find alternative ways to ensure that (reasonable) connectivity targets are met, without causing irreversible damage to the internet ecosystem.

Following these steps will not only benefit cloud service providers, but will also enhance the overall health and competitiveness of the European digital economy.

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About CISPE

Cloud Infrastructure Services Providers in Europe (CISPE) is a non-profit association that focuses on developing greater understanding and promoting the use of cloud infrastructure services in Europe. Members based in 14 EU Member States range from SMEs to large multinationals. CISPE members have invested billions of euros in Europe's digital infrastructure and currently provide services to millions of customers, including organisations in multiple countries and locations outside the EU.

