



Euro-IX's Response to the EU Consultation on the future of the electronic communications sector and its infrastructure.

We responded to the questions asked in section 4. **Fair contribution by all digital players.** A lot of work was put in to our response and we'd like to take the opportunity to thank the Euro-IX Regulatory working group for their time in this work.

Introduction

Euro-IX is the association of European Internet Exchange Points (IXPs), representing most of the European IXP community, whether measured by traffic carried, number of networks served or overall network capacity.

IXPs perform a crucial function in supporting efficient and resilient interconnection between Internet networks facilitating multilateral internet data exchange (peering), which contributes to lowering costs, more competitive network dynamics, and increasing service quality for connected networks. This increases interconnection density and route choice, thereby improving the overall resilience of Internet infrastructure and reducing network latency. Organisations providing IXPs are recognised as "Operators of Essential Services" for Digital Infrastructure in the Network and Information Systems Directive (2016/1148) and will be deemed "Essential Entities" in NIS2.

Question 49

Specify the threshold above which you would consider a company to constitute a so-called large traffic generator ("LTG") based on the percentage level of traffic loaded on your network during peak time traffic (or any other classification that you may use). You should refer to this categorisation method in all questions referring to LTGs.

In our response, we tried to clarify that how traffic is generated:

"Internet users generate traffic by requesting it. Users ask their ISP to take and convey CAP's content/services to them according to the data allowances agreed by them with the Internet subscription and related tariffs (flat or pay as you go). BEREC clearly made this point in their preliminary assessment of October 2022, in which it strongly refuted the description of online services as "causing" the Internet traffic. It is therefore unfortunate that the consultation does not clearly acknowledge this fact, but instead perpetuates this misrepresentation of traffic causation in subsequent questions"

Question 50

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In your view, over the last 5 years how have LTGs' investments in digital infrastructure and other innovations (e.g. evolution of compression algorithms) impacted the costs of network deployment investments of the network operators related to the increase of data traffic?

In our response to question 50, we noted that investment was needed in all areas of the internet ecosystem:

“Investments in networks is only one part of the Internet investment ecosystem. Data centres, software, equipment manufacturers, R&D, undersea cables, policy & technical standards development etc. all contribute to the functionality and resilience of internet service delivery to users. Global Internet infrastructure is built collectively, with organisations each contributing to the development and optimisation of the interconnection infrastructure. ISPs develop and deploy access infrastructure by investing in Fibre to the Home (FTTH), mobile & other types of physical networks. Internet Exchange Points (IXPs), develop & deploy geographically distributed powerful platforms enabling networks of all types & sizes to peer & exchange traffic among each other. Content providers develop high-speed dedicated networks interconnecting their caches, bringing content closer to consumers, or even deploying so-called on-net caches inside the ISP. This is why the Internet is described as an ecosystem”.

Question 52

Are there any obstacles preventing providers of ECNs from charging digital players for increased data traffic through their networks?

In our response, we noted we do not know if there are any obstacles preventing providers of ECNs from charging digital players for increased data traffic:

“Euro-IX suggests that it would distort competition and prevent new players should this charging system be mandated by way of regulation. This would potentially include inhibiting new European large content creators and providers & ISPs, from entering the market. As described by BEREC in its report, there is no evidence of a market failure that would warrant a policy intervention. Instead, the most likely outcome of an intervention would be to distort existing markets in favour of larger ISPs. To outline the real world example - larger ISPs have significant negotiating power vis-a-vis the online service providers due to their large customer base. Small ISPs with a smaller customer base, would not have the same access or bargaining power in negotiating similar payments, or negotiate a payment at all, placing them at a competitive disadvantage.

Question 54

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The European Declaration on Digital Rights and Principles states that all digital players benefiting from the digital transformation should contribute in a fair and proportionate manner to the costs of public goods, services and infrastructures to the benefit of all people living in the EU. Some stakeholders have suggested a mandatory mechanism of direct payments from CAPs/LTGs to contribute to finance network deployment. Do you support such suggestion and if so why? If no, why not?

We responded no, with the following details:

“We are is deeply concerned by the policy interventions suggested in the consultation, specifically the suggestions made in Q54 & Q60. Such interventions are incompatible with the open & global Internet that the EU Commission publicly supports. They would cause significant harm to EU internet users, including the risk of Internet fragmentation. More specifically & with respect to the IP interconnection sector, we believe that such policy interventions would:

- Increase the costs of concluding interconnection agreements;***
- inhibit networks’ choice to peer;***
- reduce interconnection density & quality of service to the end-user;***
- replace the current market-based model for interconnection with a highly regulated interconnection market in which administrative rules rather than technical necessity or a high-quality internet for the European citizens becomes the primary determinant of interconnection decisions;***
- accidentally create new systemic weaknesses in critical infrastructure.***

Question 58

Do you see any possible risks of a contribution to finance network deployment in the form of direct payments and if so, which? Please substantiate your answer, including with data.

Our response to Question 54 repeated points from our letter we sent to the EU Commission in January 2023:

“The proposal will risk being detrimental to the correct functioning of the Internet connectivity and peering market and distort competition therein. European citizen’s internet experience in basic business operations, sharing data, accessing cloud services and developing research projects will be negatively impacted.

This can be seen by mandatory termination charges implemented in South Korea, which has resulted in reduced quality and security of the services provided to end-users and the death of mid-sized and small operators. Euro-IX remains highly neutral on the question of whether some form of regulatory adjustment is justified to subsidise network investment. Policymakers should give paramount priority to protecting the integrity of critical

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infrastructure: no policy changes aimed at improving investment returns should be considered without complete certainty that they are safe in terms of the Union's and the public's vital interests".

Question 60

The European Declaration on Digital Rights and Principles states that all digital players benefiting from the digital transformation should contribute in a fair and proportionate manner to the costs of public goods, services and infrastructures to the benefit of all people living in the EU. To achieve this, some stakeholders have suggested to introduce a mechanism consisting of a EU/national digital contribution or fund. Do you support such suggestion and if so why? If not, why not?

Here we answered no and referred to our letter on the fair share debate sent to the EU in January:

"See responses to Q54 & 58

We wish to reiterate the Euro-IX position on the fair share debate and potential impact of SPNP on European IXPs and the Internet ecosystem, as expressed in our letter to the European Commission, 3 January 2023:

<https://www.euro-ix.net/en/services/regulatory/>