



European Internet Exchange Association
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Amsterdam, 3 January 2023

Mrs. Margrethe Vestager, Vice-President,
Commissioner for Competition

Mr. Thierry Breton
Commissioner for Internal Markets

European Commission
Rue de la Loi 200 – Bruxelles (B)

OBJECT: fair share debate and potential impact of SPNP on European IXPs and Internet ecosystem

Dear Commissioner Vestager,
Dear Commissioner Breton,

Euro-IX¹ 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.

Euro-IX is particularly concerned that the potential regulatory developments some are proposing as a response to the so-called “fair share” debate, would:

¹ <https://www.euro-ix.net/en/>

- Increase the costs of concluding interconnection agreements;
- inhibit networks' choice to peer;
- reduce interconnection density and 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.

Such an outcome would be detrimental for the entire Internet ecosystem.

We specifically refer to the proposal labelled as Sending Party Network Pays (SPNP) , from the European Telecom Network Operators group (ETNO) which dates back to 2012², and was recently confirmed in October 2022, to replace the current Internet's interconnection model, consisting of voluntarily agreed peering and transit agreements, with a mandatory "call termination settlement" model - a regulated mechanism which so far has never been used for the Internet, while being instead only applied in the old telephony networks.

This proposal, promoted by some large European telecom operators³, aims to capture value from global content networks by allowing access network operators to impose charges on content providers for access to their customers, network end-users. This is justified by a claim that shifting value to network operators would enable them to increase investment in network infrastructure, the next round of which is branded Very High Capacity Networks (VHCNs).

According to BEREC, the SPNP model would simply lead large players exploiting the last-mile telecom bottleneck to increase monopoly profits, while leading to unnecessary and distorting regulation of what is otherwise a very competitive market.

On this basis, Euro-IX respectfully observes that the proposal will risk to be detrimental to the correct functioning of the Internet connectivity and peering market and distort competition therein. Citizen's 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 Korea⁴, which has resulted in reduced quality and security of the services provided to end-users.

Euro-IX remains neutral on the question of whether some form of regulatory adjustment is justified to subsidise network investment. We do, however, believe that policy-makers should give paramount priority to protecting the integrity of critical 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.

Euro-IX believes that when considering the SPNP model, policy makers should exercise a high level of care to avoid accidentally creating new systemic weaknesses in critical infrastructure. It is not

² https://www.berec.europa.eu/sites/default/files/files/document_register_store/2012/11/BoR%2812%29120rev.1_BEREC_Statement_on_ITR_2012.11.14.pdf

³ <https://etno.eu/news/all-news/717-ceo-statement-2021.html>

⁴ <https://www.internetsociety.org/blog/2022/09/sender-pays-what-lessons-european-policy-makers-should-take-from-south-korea/>

sufficient to rely on assurances that major network operators individually commit to maintaining high levels of network availability, not even if that commitment is backed by regulatory obligation and the prospect of dissuasive penalties for failure. The Internet is a complex eco-system, and it is policy-makers who are ultimately responsible for systemic effects resulting from policy choices.

We are therefore writing to you to alert you to a foreseeable negative systemic effect in the interconnection market that is a predictable result of shifting from broadly-based interconnection through a wide diversity of interconnection solutions including IXPs, to the system of administratively determined interconnection implied by the SPNP model.

Euro-IX's particular concern is that the SPNP model would 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.

The current peering market has an exceptionally low-cost base, and a very high proportion of peering relationships are concluded entirely "settlement free". This has enabled the emergence of a broad variety of IXPs serving local markets, from very large IXPs in major regional interconnection centres (often with a pan-European and global customer base) to much smaller IXPs focussed on a single nation or metropolitan area.

Given such an efficient starting point, it appears inevitable that moving to administrative determination with a regulated price would add considerable costs (including transaction costs) for concluding interconnection agreements.

Reducing networks' propensity to peer could only lead to an aggregate reduction in the number of points of interconnection between access and content networks. This would make Internet connectivity more fragile and less resilient against local equipment failures, with the potential to increase both the frequency and severity of large-scale technical outages, including outages that directly impact end-users and critical services.

Such a systemic change in the aggregate architecture of network interconnection could never be compensated by improvements in the levels of reliability of individual networks, no matter how strict the regulatory requirements laid on individual actors.

Euro-IX believes that European critical infrastructure is well-served by the high level of interconnection density that the IXP community enables. The spontaneous growth of IXPs across Europe in response to interconnection demand from network operators constitutes a major success for the European Union's world-leading regulatory approach.

We understand, and agree upon, that any regulatory initiative in this matter will be preceded by careful examination of the market and by an inclusive consultation with concerned stakeholders. We respectfully ask you to make sure that your analysis as well as consultation process and documents consider facts and arguments mentioned in our letter.

We recognise that the specifics of interactions between the commercial structure of the interconnection market and implications of pan-European performance and resilience can be complex and technical in nature. Euro-IX would be pleased to send experts to meet with your officials to provide supplementary independent expert advice.

We remain available for any conversations with which we can help further elaborate our concerns.

Yours sincerely,

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