



## The European VOD Coalition’s feedback to the European Commission’s White Paper “How to master Europe’s digital infrastructure needs?”

### Introduction

The European VOD Coalition (“**the Coalition**”) welcomes the opportunity to provide input to the European Commission’s consultation on the White Paper “How to master Europe’s digital infrastructure needs?” (“**the White Paper**”).

The Coalition brings together video-on-demand (“**VOD**”) and digital entertainment companies that share common values and invest in and distribute audiovisual content in the Europe Union as their core commercial activity. We promote high quality, diverse European content to wider global audiences and believe in supporting an innovative and sustainable European audiovisual sector, to give consumers greater choice in accessing content. VOD services typically operate in a competitive entertainment market, which incentivizes content providers to continuously improve the value of their products by investing in quality and experience.

In our 2023 submission<sup>1</sup> to the Commission’s exploratory consultation on “The future of the electronic communications sector and its infrastructure”, we stated that existing EU pro-competitive regulations have already achieved great outcomes for connectivity coverage and affordability, for the benefit of Europeans and that regulatory intervention was not necessary.

We explained how the Coalition members, as Content and Application Providers (“**CAPs**”), already cooperate with Internet Service Providers (“**ISPs**”) across Europe and have a symbiotic and mutually beneficial relationship. In fact, CAPs have consistently been proven to fuel demand for broadband and increase broadband adoption, including take-up of high-speed plans, thus having a significant and positive effect on consumer surplus, creating lasting benefits for both ISPs and consumers<sup>2 3</sup>. Without ISP networks Coalition Members would not be able to deliver their content to European consumers. The Coalition reiterates that this equilibrium **should not be endangered via unnecessary changes to the regulatory framework and/or to the relationship between CAPs and ISPs.**

---

<sup>1</sup> <https://www.europeanvodcoalition.com/positions/vod-coalitions-reply-to-european-commissions-exploratory-consultation-on-the-future-of-the-electronic-communications-sector-and-its-infrastructure/>

<sup>2</sup> <https://www.sciencedirect.com/science/article/abs/pii/S030859612400048X>

<sup>3</sup> <https://ccianet.org/research/case-studies/estimating-value-content-applications-services-internet-users-europe/>



## The market for IP interconnection and the introduction of a “dispute resolution mechanism”

As previously stated, the Coalition believes that the interconnection market is working well, that disputes are rare and have quickly been resolved for the benefit of the consumer.

However, whilst the Commission states, “*that there are very few known cases of intervention (by a regulatory authority or by a court) into the contractual relationships between market actors*”, it continues by asserting that “*it cannot be excluded that the number of cases in the future will increase*”. In such cases, the Commission envisages policy measures to “*ensure swift resolution of disputes*” such as requests for dispute resolution mechanisms in case commercial agreements are not found within a reasonable period of time.

Given the lack of detail or explanation as to how such mechanisms will be used and the potential for abuse, Coalition members are concerned that this could lead to unnecessary and unjustified regulatory intervention into everyday commercial negotiations, as well as opening the door to network fees via mandatory negotiation obligations. **We urge the Commission against such unnecessary intervention.**

Furthermore, such proposal is neither suggested nor supported by the Body of European Regulators for Electronic Communications (“**BEREC**”) in their recently published draft Report on the IP-Interconnection ecosystem<sup>4</sup>. BEREC considers “*the IP-IC ecosystem is still driven by functioning market dynamics and by the cooperative behaviour of market players. Despite this, BEREC is aware that a few IPIC disputes have occurred since 2017, and BEREC’s workshops also revealed similar insights. BEREC notes that stakeholders typically did not call for regulation but suggested monitoring and a case-by-case assessment*”.

Coalition members have repeatedly stated that money paid in network fees would mean less money to invest in European content, which in turn means less high quality, diverse European content available to consumers. This is especially true when considering the already significant content investment obligations and quotas that Coalition members, regulated under the EU Audiovisual Media Services Directive<sup>5</sup>, must comply with. Ultimately, this would also hurt European consumers, as they would not only have access to less (quality) content but less choice of content.

Before any regulatory changes are made, we strongly urge an evidence-based approach, and support BEREC’s ongoing research into the interconnection market and practices of large ISPs.

---

<sup>4</sup> <https://www.berec.europa.eu/en/document-categories/berec/reports/draft-berec-report-on-the-ip-interconnection-ecosystem>

<sup>5</sup> <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>



## Universal service and affordability of digital infrastructure

We note section 3.2.8 of the White Paper, in which the Commission considers several existing approaches to Universal Service, including using Universal Service obligations to subsidize fibre network rollouts in remote and rural areas and the extension of funding obligations to other providers.

Allocating additional public funds needs to be carefully considered with a targeted analysis of an investment gap. When it comes to basing any funding mechanism on contributions from CAPs it is important to take into account that (i) internet services often change in popularity and therefore, are not a stable source of revenue (ii) this risks creating market distortion and discrimination (iii) in any case, ***such contributions should not be assessed on internet traffic, which would have the unintended effect of disproportionately affecting VOD services, reducing investment in creative content and the demand for broadband services.***

## Sustainability

In section 3.2.9 of the White Paper, the Commission highlights the need to improve networks' sustainability and energy efficiency and specifically singles out CAPs who *“could also contribute to increasing transparency on the emissions related to the usage of their services, such as codecs' performance labels”*.

Again, we underline that CAPs and ISPs already cooperate to deliver digital content and especially video, efficiently. Content providers such as Coalition members already invest in and use compression technologies such as codecs, which help ensure a smoother and less energy intensive delivery of content on the networks – while maintaining high quality video content delivery adapted to the end user experience. Codecs themselves are evolving and becoming more sustainable over time. Resource efficient content delivery improves cost and performance. As a result, network-based emissions are not growing, despite traffic growth (GSMA, DT, etc...) <sup>6</sup> given the rapid evolution and adaptation of the technologies deployed.

Regulatory intervention in codecs is not required and may have unintended consequences. The market is already innovating in codecs without regulations. Most emissions in the digital sector come from the making and using of new user home devices. Online video streaming companies, including Coalition Members contribute to the extended life of end users' devices by ensuring the compatibility of their apps and content (codecs) with a wide range of devices. Backward compatibility with older devices may imply the use of older, less efficient codecs, and therefore result in more traffic: ***calling for codec labels for the purpose of reducing carbon emissions may trigger user device refresh and be counterproductive.***

---

<sup>6</sup> [6 BT, 2018 \(p9\)](#), [Vodafone, 2022 \(p38\)](#), [Telefonica, 2022](#), [T Mobile, 2021 \(p56\)](#), [BEREC, 2022](#), [Ofcom, 2023](#)



\*\*\*\*\*