Dear [Name],

Thanks again for your time last week. Following the discussion we had on specialized services and your specific request on the challenges we face with the text, we wanted to reiterate the following elements:

- The text is about preserving the open Internet with the definition of EU safeguards to avoid a patchwork of national laws. However, preserving the open Internet has nothing to do with regulating the specialized services. The text should avoid creating a new layer of regulation on services, in the absence of market failure and impacts assessment of any regulation. Such a move would also mean increasing the unbalanced situation with other providers of specialized services that are not operators. In that sense, it is worth noting that the FCC is working on safeguards for the open internet, including by preventing potential impairment by specialized services, but rightly considers that this does not necessitate regulating or defining specialized services themselves.

- According to the definition of specialised services, they are “electronic communication services”. But according to article 23.2, they can also be provided by players not being “electronic communication provider”. Does it make sense that an electronic communication service could be provided by a “not electronic communication provider”?

- When looking at the definition voted in the EP on specialized services, in our sense
  - Only voice PSTN precisely matches all the criteria mentioned in the definition. We understand from our discussion that in your view the text only applies to “internet” services and does not cover PSTN. But when applying the definition as it stands, PSTN will undoubtedly fall in the category of specialized services; nothing excludes it.
  - In addition, specialised services are not always internet services (ex: VPN), they can use other protocols and this market being rather emergent, except PSTN, it is even more necessary to be forward looking and future proof. If a definition is worked on, it should cover all the future potential technical features related to those services, which obviously makes the exercise rather challenging but is required to avoid inhibiting the launch of innovative services.
  - IPTV uses mutualized resources with Internet Access Service in the access part of the network, and therefore does not match with the definition based on “logically distinct capacity”. IPTV would therefore not be a specialized service; consequence of which remains unclear to us. In other words, what about the services which do not qualify as specialized services? The text does not indicate that IAS and specialized services categories exhaustively cover the scope of ECS.
  - The same would also apply to other services like mobile LTE or VPN for business for instance.

- Besides these issues of definition, if it becomes prohibited to mutualise capacities between IAS and specialized services, then the average capacity available to IAS will be reduced, not increased and the customer experience, including on IAS would be globally impaired.

- When looking at the definition of net neutrality introduced in the text and added to the definition of IAS, it would mean that all traffic are equal. How to accommodate this principle with the fact that for instance traffic is oriented diversely by routers, their function being precisely to route packets differently (i.e. not equally) depending on packets characteristics and information received on network availability? Where is the limit within routing techniques between what would be “equal” or “not equal”? More globally, how to implement and monitor this principle? How to prevent litigations (“my bits did not follow the same route”)?

- The text provides that traffic management should be authorized only if congestion is exceptional and temporary. Therefore, we understand that when congestion is neither exceptional nor temporary, as it is generally the case for instance in mobile networks at peak times in dense areas, then traffic management would become prohibited and network operators would have the obligation to let their network unprotected from traffic overflow and risk systematic breakdowns.

These are only a few – non exhaustive – illustrations of the difficulties to understand the meaning and therefore the potential consequences of the current text.

We remain at your disposal to continue that discussion.

Kind regards

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