Steering brief

Scene setter

You are meeting [redacted] who has been [redacted] of the Fédération française des télécoms on 16 May 2022. [redacted] will be representing the Federation and Bouygues Telecom during the meeting on 30 May 2022.

Some of [redacted] colleagues at the Federation might join the meeting via Webex.

Topics will be the potential contribution of the platforms to the financing of telecom networks and Data Act.

The OTT fair contribution issue

The European telecoms operators have long argued that the main OTT internet-based digital content providers do not make a fair contribution to the cost of the telecom networks which carry their transmissions, despite representing a large proportion of the traffic passing over those networks, and that as a result the financial position of the telecom operators has deteriorated, putting into question their ability to make the investments needed to meet the digital decade connectivity targets.

This issue was recognised in a relatively oblique way in the Commission's proposed text for a European Declaration on Digital Rights and Principles for the Digital Decade, which includes a commitment to "developing adequate frameworks so that all market actors benefiting from the digital transformation assume their social responsibilities and make a fair and proportionate contribution to the costs of public goods, services and infrastructures, for the benefit of all Europeans." This text is currently being negotiated with Council and Parliament.

On Monday 02/05 ETNO, the association of incumbent telecom operators, published a Report (by Axon Partners Group) on 'Europe's internet ecosystem: socio-economic benefits of a fairer balance between tech giants and telecom operators', supported by a study (by Frontier Economics, for the four big network operators) on 'Estimating OTT traffic related costs on European Telecommunications Networks'. ETNO argue that network operators have invested over EUR 500 billion during the last ten years in the development of their fixed and mobile telecoms networks in Europe, but that the big tech companies that benefit from the connectivity provided are not making a fair contribution to those investment costs.

Coinciding with the publication of the ETNO report, EVP Vestager was quoted by Reuters on 02/05 as stating that "I think there is an issue that we need to consider with a lot of focus, and that is the issue of fair contribution to telecommunication networks,", adding that "They [the big tech companies] have not been contributing to enabling the investments in the rollout of connectivity," "And we are in the process of getting a thorough understanding of how could that be enabled."

This was followed on 03/05 by an article in Les Echos in which Commissioner Breton was quoted as saying that "Le principe est acquis. Les règles en place depuis vingt ans arrivent à bout de souffle et les opérateurs n'ont aujourd'hui plus le juste retour sur leurs investissements. Il faut réorganiser la juste rémunération des réseaux". The article goes on to say that a new legislative proposal is to be presented by the end of the year.

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Role of OTT contribution going forward

(excerpt of a background document prepared by CNECT for a 'deep dive' meeting with the EVP and Commissioner Breton on 31 May)

The applications that currently drive internet traffic growth are video streaming, social networking, browsing and gaming. Video streaming holds 54% of internet traffic in the first half of 2021, social networking applications are responsible for 13% of internet traffic, browsing holds 10% and gaming poses as a main driver for internet traffic in the future with 6% of the share (Sandvine, 2022).

According to estimates, more than 57% of internet traffic originates from few large CAP providers (GAFAMN).

International IP traffic, concretely IP transit and IP peering, is not regulated; rather it is negotiated contractually between the various providers and telcos. Depending on the IP traffic volume generated by a provider and on the volume equivalence of the IP traffic exchanged, payments between carriers ("settlement rates") might be due or not. In case there is net more traffic sent than received, the sender has to pay for his overshooting traffic volume ("sender pays principle").

Some of the largest OTTs (such as e.g. Google, Facebook) send large amounts of IP traffic, however hardly receive any IP traffic in return. Moreover, even though many OTTs (e.g. Google, Facebook) run large (backbone) electronic communications networks, these networks are not "provided to the public", [redacted]

Based on the above, specific telecom providers in the EU argue that because the services provided by these OTTs generate more and more traffic and data, which requires investments to upgrade the networks, these costs should be shared more fairly. Based on their claims, this "fair sharing" cannot be achieved by the market itself due to the existing bargaining power asymmetries. This is because the OTTs do not have any negotiation or payment obligations in order to convey their content over the networks. Further, telecom providers argue that due to the Net Neutrality rules they cannot increase their bargaining power by treating differently the traffic from OTTs on their network. A study recently conducted by Axon for the European Telecommunications Network Operators' Association (ETNO), purports to show that telecoms operators lack the countervailing buyer power in relation to the large OTTs, which offer must-have content and are accounted for almost 57% of global traffic in 2021.

Further, a cost estimation study that was conducted by Frontier Economics for the top 4 European telecom companies (Deutsche Telecom, Orange, Telefonica and Vodafone) showed a total annualised cost that should be attributed to OTTs based on their traffic volume between 8 to 10 billion euros for the fixed networks and 28 to 30 billion euros for the mobile. [redacted]

Key messages

On the Data Act

- The Data Act leads to better control on data generated with the use of connected devices, as much for consumers as for companies. New access and portability right improve competition in aftermarkets of such products, such as repair and maintenance.
- New data access rights cannot be granted to the benefit of the largest players defined as gatekeepers in the Digital Markets Act. Those players do not need an access right to get to the data, market mechanisms work for them.
- The Data Act is a true SME-instrument, foreseeing favourable conditions for SMEs to put them at the negotiating table and enable them to develop digital solutions on the basis of valuable data.
- The framework for business-to-government data sharing will empower public institutions to get access to privately-held data, where absolutely needed in exceptional situations. This mechanism will enable public authorities to formulate databased solutions.
- The Data Act will remove barriers to accessing data, for both private and public sector bodies. It will preserve incentives to invest in data generation by ensuring a balanced control over the data for its creators.
- It will unlock the value of data generated by connected objects in Europe. This is one of the key areas for innovation in the coming decades. It will clarify who can create value from such data and under what conditions.
- It will ensure fairness in the allocation of data value among the actors in the data economy and in their contracts. It will respect the legitimate interests of companies and individuals that invest in data products and services. The new rules will empower consumers and companies by giving them a say on what can be done with the data generated by their connected products.
- The Data Act will give both individuals and businesses more control over their data. There will be a reinforced data portability right. This means data can be copied or transferred easily from across different services, where the data are generated through smart objects, machines and devices.

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