



17. June 2024

Response from The Telecom Industry Association - Denmark (TI)

### **Consultation on White Paper: “How to master Europe’s digital infrastructure needs?”**

On 21 February 2024, the European Commission presented its White Paper: “How to master Europe’s digital infrastructure needs? The Telecom Industry Association - Denmark (TI) appreciates the opportunity to contribute to the Commission’s future proposals in this domain.

TI is a Danish industry organization, which represents the vast majority of Danish private entities related to and within the Danish telecommunications sector. Currently, TI has 31 members ranging from MNOs, MVNOs, fibre, cable and copper operators, tower cos to internet and TV- service providers.

#### **General remarks**

We welcome the EU Commission's white paper on "How to master Europe's digital infrastructure needs?". The White paper accurately identifies a series of challenges facing Europe's connectivity ecosystem, encompassing all stakeholders, while identifying options to improve the overall competitiveness of the EU. We share the view that supporting this diverse ecosystem requires a step change in investment levels, which must be enabled by a reform of EU rules and policies. With the transition to gigabit infrastructures, 5G, cloud-defined networks, and AI-automation, Europe's telecom and competition policy needs a paradigm shift considering the new market and technology reality.

Taking account of the importance of meeting the Digital Decade objectives for ubiquitous fibre and 5G coverage, we agree with the Commission's assessment that the current state of Europe's digital infrastructure is not yet ready to address the challenges of a data-driven society and economy. We believe that achieving these objectives will require significant investments and incentives, and we welcome the Commission’s efforts to address the challenges facing the EU's connectivity ecosystem. In this regard, we urge the Commission and Member States to ensure framework conditions that enhance incentives to invest in digital infrastructure, promote innovation, competition, and quality for end-users. These framework conditions should be based on market terms and take into account the differences between national markets within the EU.

The White Paper encompasses various domains and touches upon numerous aspects. In our response to the consultation, we will deliberate on a chosen set of issues. However, it should be noted that this does not imply concurrence or disagreement with matters not specifically addressed in this response.

#### ***Unlocking the Potential of a Digital Single Market***

We acknowledge the risks of missing the Digital Decade digital infrastructure targets and the far-reaching impact it would have, going beyond the scope of the digital sector. Therefore, we urge the EU to take bold steps to ensure that Europe's digital infrastructure is amongst the world's best, which will be essential to

stimulate the development of new use cases and create business opportunities, contributing to the digital transformation of Europe. In this regard, it should be remarked that national regulatory frameworks and the lack of a genuine single market limit the benefits of cross-border consolidation. As such, the fragmented and non-harmonised telecom market can be considered a challenge to innovation and consistent high-quality offerings across the EU but also across individual member states.

In contrast, adherence to common standards can help ensure compatibility between products and services and seamless communication across the EU. Consistent regulation and harmonized rules across EU would ensure competition and consumer protection. We would in this context like to stress that standards and regulation should be limited to where it is necessary, justified and proportionate to ensure a well-functioning market and at the same time promote incentives to invest in digital infrastructure.

Regarding spectrum, we agree that when it comes to overall planning an aligned radio spectrum market in the EU could prove beneficial. Nonetheless, it is crucial to respect national characteristics and market demands, and we recommend that the specific assignment of spectrum be handled at the national level to avoid additional administrative costs at the EU level. This approach also considers the distinct national challenges and market situations.

#### ***On consolidation and the need for investments***

Investments in the telecommunications industry are crucial for the development of electronic communications networks and services across the EU. However, the challenge today is that both in Denmark and the rest of the European Union, we are now operating in a distinctly fragmented telecom and fiber market with many small players. At the same time, the companies' returns are characterized by being very low. This reduces the companies' ability to continue the crucial investments in especially critical infrastructure. This is because the sector is increasingly challenged due to high inflation, higher interest rates, a supplier market challenged by geopolitical challenges and increasing costs of new technologies. In addition, a restrictive interpretation of the merger control rules related to in-market consolidation has resulted in a highly fragmented market with small players compared to other parts of the value chain. The key challenge in this regard has been and continues to be the very narrow focus of the impact of in-market mergers on consumer prices alone without ensuring the proper balance of other key parameters such as quality of services and products; innovation; the future level of investments; as well as sustainability and security ambitions.

Therefore, we believe that in-market consolidation related to digital infrastructure in the telecommunications market is essential for unlocking economies of scale and generating efficiencies. By merging resources and operational streamlining the industry can unlock resources that are vital for the much-needed investments. In essence, increased in-market consolidation and integration in the telecom industry should be viewed as a catalyst for growth and development, rather than a deterrent to competition.

We believe, as underlined in the Letta Report and as recently announced by France and Germany, that in-market consolidation is the prerequisite for cross border consolidation. We do, however, support the view that cross-border consolidation and integration can lead to greater economies of scale, allowing companies to produce and distribute goods or services more efficiently. This, in turn, can lead to lower costs, better quality, and faster delivery times, ultimately benefiting consumers. However, potential cross-border synergies, like those from a shared core network as proposed in the White Paper or other shared systems, will most likely be less significant compared to the benefits of in-market consolidation. Thus, we agree with the Commission's stance that consolidation in the market has never been a problem from a competition

standpoint, given the national dimension of the EU electronic communications markets. In summary, we believe that consolidation and integration in the telecommunications industry can promote growth, development, and efficiencies across the EU market.

### ***Convergence and competition neutrality***

As the Commission points out in the White Paper, cloud providers may operate extensive electronic communications networks, including backbone networks. However, these networks are not subject to the rules of the electronic communication's regulatory framework. This is particularly true for access regulation and dispute resolution. We agree with the Commission that the current separation between "traditional" electronic communications networks/service providers and cloud or other digital service providers is superseded by a complex converged ecosystem. Thus, highlighting the urgent need for the players in such converged ecosystem to fall under equivalent rules applicable to all whilst ensuring that the demand side benefits from equivalent rights. We would therefore welcome a rethinking of the scope of application of the electronic communications regulatory framework ensuring a level playing field between "traditional" electronic communications networks/service providers and cloud or other digital service providers, which should include access to institutionalised dispute resolution.

The same principle should be applied when considering peering agreements. These are typically established between providers that have a roughly equal amount of traffic flowing between their networks. However, in the relation between large content providers (large traffic generators) and providers of electronic communications networks, the exchange of traffic is asymmetric. It is therefore important, that agreements between large content providers and providers of electronic communications networks are negotiated commercially in order to agree on peering and ensure that data is distributed and exchanged in the most effective ways. The basic principle should be, that potential payment/remuneration for the exchange of traffic between the parties is based on commercial negotiated agreements, and it might be relevant and justified that the parties are obliged to enter into such negotiations. If the parties are not able to agree on the terms on how to exchange traffic, some kind of dispute or arbitration mechanism could be considered.

### ***Country of origin***

The white paper highlights the significant barriers telecom operators face due to fragmented national rules and additional regulations driven by public and national security concerns. These regulations prevent operators from implementing shared systems and functions, hindering cross-border efficiencies and integration efforts. The proposed country of origin (CoO) principle aims to remove these obstacles by applying a unified approach to authorisations under the EU telecom framework.

To make the CoO principle effective, variations in the sector-specific regulations across Member States should be reduced. Without this, the CoO principle could lead to forum shopping and competitive distortions due to differing regulatory burdens. Additionally, the principle is insufficient if it does not address public and national security restrictions. These issues require Member States' intervention, but the Commission can play a crucial role in identifying and addressing them in discussions with Member States.

The introduction of the CoO principle is a positive step towards achieving more legislative predictability and transparency in the EU telecom market. However, Member States must address existing restrictions, and significant harmonisation of rules is necessary. Without these additional measures, extending the CoO principle could lead to competitive distortions in the telecom sector.

### ***Cyber Security and prevention of fraud***

Telecommunications play a critical role in the functioning of society, making cybersecurity a matter of national security that should be prioritized alongside other defence activities. At the same time, we are witnessing a significant rise in digital fraud – especially in the financial sector – making threats related to both cybersecurity and digital fraud major societal issues that demand immediate attention.

The threat of cyberattacks from state and non-state actors is increasing at an alarming rate, requiring significant investments to adapt the protection of digital infrastructure and communication to the new threat landscape. Failure to ensure adequate levels of security and resilience could undermine the pervasive digital communication throughout society and, in the worst case, disable essential digital communication for emergency response, healthcare, payments, and other critical services.

The threat encompasses both cybersecurity, where artificial intelligence (AI) and quantum technologies can both secure and undermine digital security, and physical security, where the White Paper also calls for increased focus on submarine cables. Against this backdrop and with heightened geopolitical risks in sight, there is a need for significantly increased, much closer and far-reaching cross-sectoral, public-private cooperation with international perspectives. Regular reviews of the legislative framework are also essential to ensure it keeps pace with technological developments and the cybersecurity threats we face. In this regard, we welcome the Commission's focus on a secure and resilient digital infrastructure in the EU. It is vital that all relevant actors collaborate to mitigate the risks and address the challenges posed by cybersecurity. Specifically, we recommend the establishment of a framework that facilitates greater sharing of intelligence, including risk assessments, between telecommunication companies and intelligence agencies or governments. To promote a culture of proactive cybersecurity, this framework should enable authorities to offer guidance and advice to companies without penalising them for non-compliance. Such an approach will help to encourage companies to seek guidance and improve their cybersecurity posture without the fear of negative repercussions.

While digital fraud in itself may not pose an existential threat to the EU's digital infrastructure, it does undermine the trust of citizens and businesses, indirectly threatening the efficient use of new technologies and thereby economic growth. Digital fraud, particularly in the financial sector, is significantly increasing with the emergence of vishing, smishing, phishing, and spoofing. With the use of artificial intelligence, new forms of fraud are constantly evolving, becoming more and more sophisticated. The financial sector bears a great responsibility to address these challenges. However, in order to hinder financial fraud, future regulation should seek to eliminate barriers to information sharing between sectors such as the financial sector and the telecommunications sector. Specifically, the outdated ePrivacy-directive should be repealed and the possibilities and limitations to sharing of traffic data aligned with the GDPR-regulation. In general, a regulatory framework which balances freedom of expression, privacy and fraud protection to enable the relevant parties to act should be ensured.

New technologies will provide more secure, stable, efficient, and agile networks, enabling the development of new innovative applications and services and being essential for the spread of IoT, self-driving cars, and new breakthrough technologies and cloud transformation. This development underlines the importance of continued focus on cyber security, fraud prevention while protecting freedom of expression and data protection, as authorities, businesses, and citizens must feel secure in the use of new solutions.

We thank again for this opportunity to contribute to the Commission's work and we are, of course, available for further clarification of the response to the consultation and to answer any questions.

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