



# *Playbook*

Competitiveness

2025

# Competitiveness

Competitiveness drives progress by fostering innovation in markets, enabling businesses to differentiate and adapt in a global, interconnected and ever-changing environment. In the digital age, achieving scale and addressing the digital and green transition are key strategies for strengthening competitiveness and improving welfare. In this sense, Telefónica and the telecommunications sector, with its connectivity and digital solutions, are essential strategic allies.

- 01 The European *Single Market* and the Telecommunications Sector
- 02 A 21st Century *Industrial Policy*: Towards a Tech-based European Competitiveness
- 03 Pro-investment *Market Structures* in the Telecommunications Sector
- 04 *Competition*: Review of the European Union's Merger Control Policy
- 05 An Efficient *Spectrum Policy* Adapted to Digital Objectives
- 06 A *Fair Relation* for Network Sustainability

01

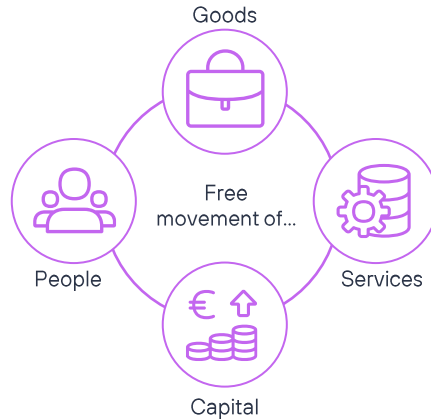


# The *European Single Market* and the Telecommunications Sector

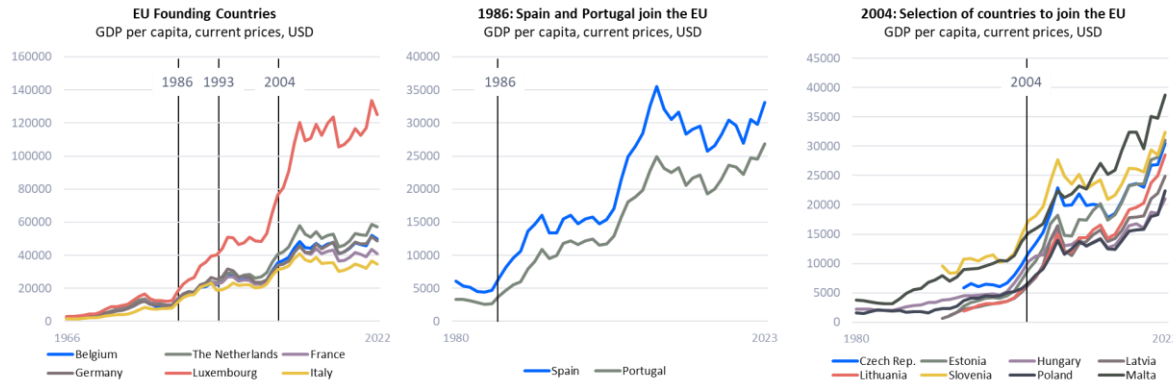


## Single Market: A Breakthrough for the European Union

A market of about  
**500 million** people  
**23 million** companies  
representing **14%** of world GDP<sup>1</sup>,  
and where the four freedoms apply.



### Benefits of EU membership are reflected in terms of GDP per capita<sup>2</sup>



The Digital Single Market aims to maximise the benefits of the digital age, and the telecoms sector and connectivity play a crucial role in facilitating the exercise of the four freedoms for other sectors of the economy.

## Challenges to the Digital Single Market

### Excessive regulation

86%<sup>3</sup> of European Round Table member companies believe that regulation is limiting Europe's competitiveness. Similarly, it highlights that policy and regulatory barriers affect telecoms operators' investment<sup>4</sup>.



**86%**  
of companies believe  
regulation limits  
competitiveness

### The sustainability of the telecommunications investment effort

A regulatory environment that incentivises investment and reduces barriers to the deployment of the connectivity infrastructure is needed to deepen the Single Market. To this end, it is necessary to consider:

#### The local dimension of network deployment

Operators need a sufficient uptake in the areas where they deploy their fixed and mobile networks to ensure financial viability. This is essential for:



#### Geographical expansion

Expectations of return on investment, linked to market structures and competitive conditions in each market, are key factors in the decision to expand.

#### Development of digital services

Network virtualisation enables these services to become pan-European, but their viability relies on high-quality access infrastructure, itself dependent on operators' financial sustainability.





Return to the original vision of the Single Market based on the removal of legal, administrative and political barriers to the free movement of resources, moving from the current vision of a harmonised market

1

Conduct a review of regulations in the EU



Promote the removal of regulatory barriers to investment in networks and basic infrastructure necessary for the creation of a digital Single Market.

Prevent fragmenting the single market through sector-specific regulation by Member States. In this case, their removal should be encouraged.

2

Design a competition policy that contributes to the strengthening of the telecommunications sector



Ensure that competition decisions do not create exit barriers for market players caused by the imposition of remedies that create artificial competition and unsustainable market structures.

Facilitate in-market consolidation to enable operators to compete and achieve the local scale necessary for viability and growth, thereby strengthening their ability to invest.

3

Establish a regulatory framework that frees up resources to speed up network deployment



Reduce administrative burdens and associated costs, including taxation, and simplify red tape for deployment.

4

Update spectrum policy



Provide certainty of licence renewal on reasonable terms and seek to maximise the value of spectrum for end-users.

5

Promote coordinated action for the prevention and removal of new barriers to "the four freedoms"



Carry out a cost-benefit analysis, in terms of the Single Market, of future rules.

6

Strengthen the sector with the Digital Networks Act



The Digital Networks Act as a key tool to revitalise the Single Market for telecommunications in Europe.

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## Context

The European Union's Single Market was created thirty years ago. In essence, this market is an economic construct based on the free movement of goods, services, capital and people – the so-called "four freedoms" – and therefore on the removal of legal, administrative or political barriers that restrict them.

This fosters a more competitive and dynamic market by encouraging companies to innovate and create added value, which in turn improves their competitiveness and the supply of products and services to European citizens. This constructive competition mobilises Member States' resources where they are most effective, leading to the creation of wealth and prosperity for EU citizens and businesses.

In the digital age, these benefits can be enhanced by a Digital Single Market, making it easier for European industry and society to take full advantage of the new digital age. In this sense, by deepening a single market for telecoms infrastructure and services, we will facilitate the exercise of the four freedoms in other sectors of the economy. To this end, connectivity is fundamental. High quality connectivity, combined with digital solutions, accelerates the digital transformation of economic sectors, enables their expansion, allows them to achieve scale and thus consolidates the benefits of digitisation in the region. This underlines the essential role of telecoms operators in deepening the Single Market.

Recognised as a key driver of the EU's future competitiveness, revitalising and deepening the Single Market is a strategic priority for the European cycle 2024–2029. The first step in this direction has been the report by Enrico Letta, commissioned by the European Commission, to guide action in this new European cycle.

## Challenges

Although the Single Market was established based on the four freedoms, this concept has evolved into a seemingly similar concept of a "harmonised market". Harmonisation is necessary in certain cases to reduce administrative complexity for those actors who choose to provide services in more than one Member State.

However, empirical evidence shows that over-regulation has undermined the foundations on which the Single Market is built. This concern has been echoed by the European Round Table, whose survey shows that 86% of its members believe that regulation reduces the competitiveness of their businesses. Therefore, regulatory harmonisation cannot be the way to achieve a Single Market. This can only be achieved by removing barriers to the free movement of goods, services, capital and people.

In the telecommunications sector, operators can now expand their geographical footprint in the EU without significant regulatory barriers. However, the expected return on investment, linked to the infrastructure and competitive conditions of the local market, rather than the possible economies of scale that could be achieved through such expansion, is the determining factor in this decision. It should be recalled that operators require a sufficient take-up in the areas of deployment of their fixed and mobile networks for their financial viability.

Moreover, this viability, which is critical for network deployment, is also critical for the development of digital services. While these have the potential to take on a pan-European dimension through network virtualisation, their viability is closely linked to the quality of fixed and mobile access infrastructures, which in turn depend on the financial health of operators in their areas of operation (network roll-out), whether national or local.

## Recommendations

To deepen the Digital Single Market, it is essential to remove the legal, administrative and political barriers that restrict operators' ability to invest. It is therefore recommended to:

- 1 **Conduct a review of regulations in the EU.** Promote the removal of those that hinder investment in networks and basic infrastructures necessary for the creation of a digital Single Market. In addition, States should be prevented from fragmenting the Single Market with sector-specific regulations.
- 2 **Design a competition policy that contributes to the strengthening of the telecommunications sector.** Ensure that competition decisions do not create exit barriers for market players caused by the imposition of remedies that create artificial competition and unsustainable market structures. Similarly, it is necessary to facilitate in-market consolidation to enable operators to compete and achieve the local scale necessary for viability and growth, thereby, strengthening their ability to invest.
- 3 **Establish a regulatory framework to free up resources to speed up network deployment.** Reduce administrative burdens and associated costs, including taxation, and simplify red tape for deployment.
- 4 **Update spectrum policy.** Provide certainty of licence renewal on reasonable terms and seek to maximise the value of spectrum for end-users.
- 5 **Promote coordinated action for the prevention and removal of new barriers to "the four freedoms".** Carry out a cost-benefit analysis in terms of the Single Market of future rules.
- 6 **Strengthen the sector with the Digital Networks Act (DNA)** as the key tool to revitalise the Single Market for telecommunications in Europe.

A 21<sup>st</sup> Century  
*Industrial Policy:*  
Towards a Tech-based  
European Competitiveness



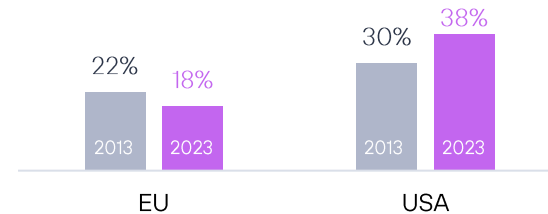
## Towards Greater Digital Autonomy to Achieve the EU's Digital Goals

The need to strengthen Europe's technological leadership...

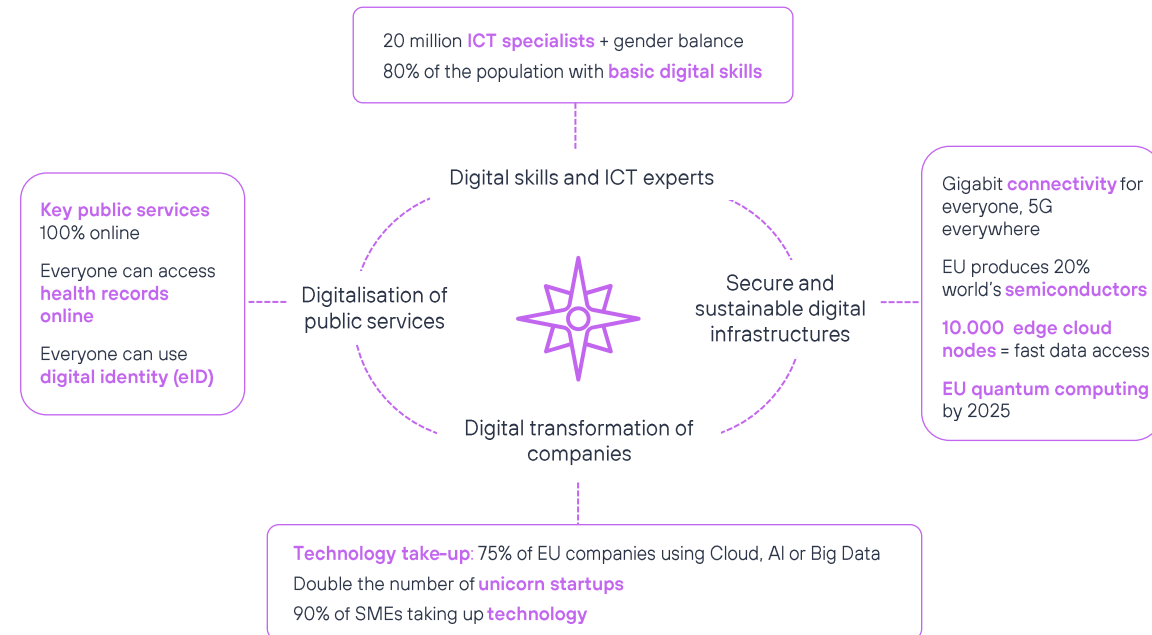
China is the global leader in **37 out of 44** crucial cross-cutting technologies, followed by the US.<sup>1</sup>

...promoting Europe's technological capacity and digital autonomy

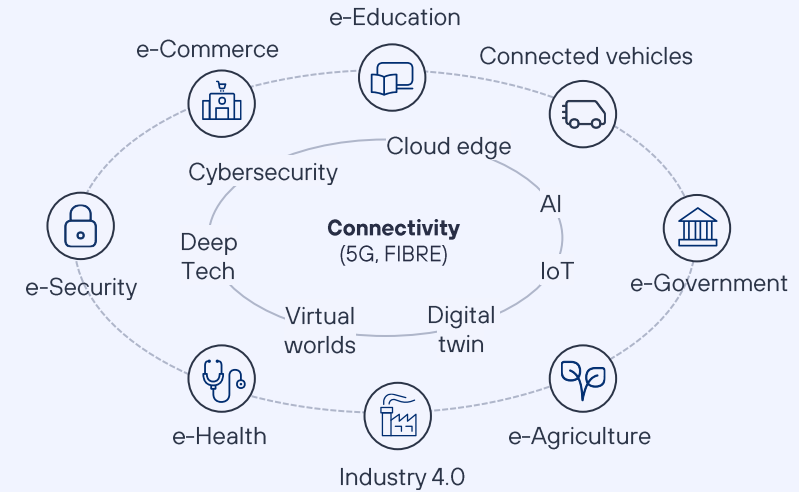
Global ICT revenue share evolution<sup>2</sup>



### Europe's Digital Decade: Digital Goals for 2030<sup>3,4</sup>

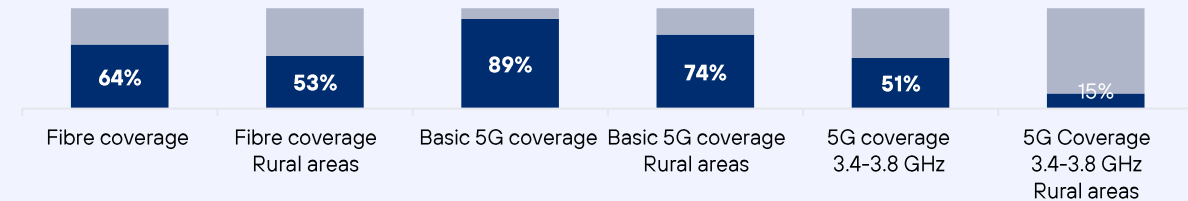


Quality connectivity requires telecommunications infrastructures that are ready to meet the current and future challenges of society and the digital economy, making it essential to increase their capacity, resilience and competitiveness.



## The Challenge of EU Telecoms Competitiveness

The current trend in the pace of network roll-out calls into question the 100% coverage target of the Digital Decade 2030 (data 2023).<sup>5,6</sup>



### The need for a favourable investment and profitability environment for the sector<sup>7</sup>

Capex per capita, 2023

USA € 226.4

EU € 117.9

Return on investment of the European telco sector (ROCE)

5.9% in 2023

vs. 6.6% in 2017

Investment gap<sup>8</sup>

€ 200 billion







Put investment and innovation at the heart of public policy, ensuring coherence with the objectives of the industrial strategy

1

Promote a framework that incentivises investment



Promote sustainable and less fragmented market structures at national level, encouraging investment and innovation.

Foster an investment-friendly spectrum policy, increasing its supply and certainty about its future availability and ensuring allocation on reasonable terms that maximise value for end-users.

Simplify regulation and reduce administrative burdens and deployment costs.

2

Promote a level playing field for a well-functioning digital ecosystem



Promote horizontal regulatory frameworks covering aspects such as privacy, consumer rights and security, while removing telecoms sector-specific regulation.

Establish the principle of 'same services, same rules' to restore balance in the digital value chain, including promoting the sustainability of the network and its responsible and efficient use by promoting a fair relation between actors in the Internet value chain.

Provide additional guidance on net neutrality to allow for innovative use cases such as those enabled by 5G.

3

Strengthen the role of digitalisation in sustainability



Promote policies that recognise telecoms infrastructure as an enabler of the digital and green transitions, as well as an enabler of efficiencies that drive productivity.

4

Support the capacity and competitiveness of European industry, from R&D to the market



Adapt and align the approach of competition policy, State Aid and regulatory frameworks with industrial policy objectives.

Encourage policies that promote the development and adoption of emerging and cross-cutting networks, technologies and services, digital trust and digital skills to increase productivity, employability and usage.

Strengthen international cooperation for convergent development based on harmonised principles for technologies such as AI or cybersecurity.

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## Context

Europe is losing global economic relevance. According to data from the International Monetary Fund, the EU economy has gone from representing 25% of the global economy in 1990 to just over 14% in 2024.

Loss of competitiveness affects strategic autonomy. If European companies are unable to compete effectively on a global scale, excessive dependence on imports and foreign technology could undermine their ability to make independent decisions in strategic areas. This could have an impact on the economy, politics, technological development or public security.

Europe's competitiveness gap is particularly relevant in the technological and digital domain, an area that is defining a new era of geostrategic economy. Technology companies have become key players in geopolitics, extending their influence beyond geographical borders. As a result, leadership in future technologies and industries, such as AI, biotechnology, quantum computing, semiconductors and others, has translated into a global power struggle between China and the United States.

Europe's industrial strategy identifies the transformation to a more digital and sustainable economy as a key asset to boost its competitiveness and resilience. This is reflected in the European Commission's Competitiveness Compass (inspired by the Draghi and Letta's reports), or in the objectives of the EU Digital Decade 2030, which recognise the strategic importance of the telecommunications sector in the shaping of industrial policy. A competitive and sustainable digital economy is linked to the availability of connectivity based on state-of-the-art fixed and mobile networks. These networks together with digital solutions drive technological and digital innovation and the transformation of the social and economic fabric for the benefit of people, businesses and European society as a whole.

## Challenges

Europe is falling behind in the global economy, raising alarm bells in the public and private sectors. The widening technology gap is particularly worrying because of its important geostrategic implications and its impact on global economic relevance. Industrial policy must address the challenge of strengthening the competitiveness of cross-cutting technology sectors, such as telecommunications, industrial sectors and strengthening Europe's position in the world.

Connectivity, based on high-capacity networks such as fibre and 5G, is essential for the development of robust technological and industrial ecosystems that drive innovation. These networks make it possible to expand and improve the supply of services, promote digitalisation and the efficient use of resources, thereby boosting productivity, job creation and prosperity. However, their deployment is slower than in other regions and at a pace that puts at risk the achievement of the goals of the Digital Decade by 2030.

Added to this is the challenge of refocusing industrial policies in other regions to stimulate investment and innovation in key technologies to drive more digital and sustainable economies. This could lead to a gradual technological decapitalisation of Europe as investment could be redirected and industrial capacity migrate to regions with more investment- and innovation-friendly regulatory frameworks.

Europe faces the challenge of adapting its industrial policy to the 21st century economy, focusing on digital innovation, and the transition to a more digital, sustainable and autonomous economy. This approach aims to promote economic security and reduce strategic dependencies, while preserving free trade and international cooperation. In the digital domain, this means strengthening Europe's position in key areas such as 5G and telecommunications, while ensuring the continued development and access to key technologies for the digital and green transition.

## Recommendations

Public policies must strengthen the competitiveness of sectors that are crucial for the achievement of the objectives of the European industrial strategy, such as the telecommunications sector. To this end, it is key to foster an environment that promotes investment and innovation in this sector. It is therefore recommended to:

- 1 Promote a framework that incentivises investment.** Promote sustainable and less fragmented market structures, incentivising investment and innovation, with a spectrum policy that increases supply, ensures future certainty and allocation on reasonable conditions. In addition, simplify regulation and reduce administrative burdens and deployment costs.
- 2 Promote a level playing field for a well-functioning digital ecosystem.** Promote horizontal frameworks for issues such as privacy, consumer rights and security, while removing telecoms sector-specific regulations. Establish the principle of 'same services, same rules' to restore balance in the digital value chain, including by promoting the sustainability of the network and its responsible and efficient use through a fair contribution from large traffic generators. Finally, provide additional guidelines on net neutrality to encourage innovative uses such as those enabled by 5G.
- 3 Strengthen the role of digitalisation in sustainability.** Promote policies that recognize telecoms infrastructure as an enabler of the digital and green transitions, as well as an enabler of efficiencies that drive productivity.
- 4 Support the capacity and competitiveness of European industry, from R&D to the market.** Adapt and align the approach to competition policy, State Aid and regulatory frameworks with industrial policy objectives. Also, stimulate policies that promote digital adoption, digital confidence and skills to enhance employability, productivity and use. In addition, international cooperation for convergence in the development based on harmonised principles of technologies such as AI and cybersecurity..

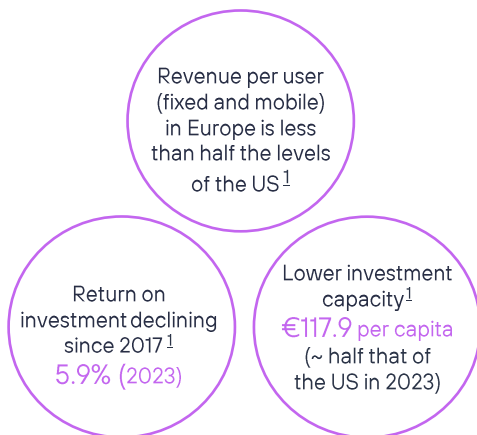
# *Pro-investment Market Structures* in the Telecommunications Sector



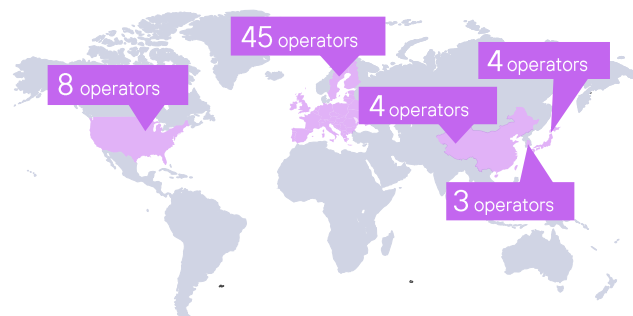


## A Fragmented Market Structure

Investors attribute the deflationary outlook for revenues and returns in the European telecoms sector to an artificially competitive and fragmented landscape, which weakens their ability to invest.



Mobile operators with more than 500,000 customers by 2023<sup>1</sup>



The weakening of the telecoms sector is leading...  
to a risk of...

... and to an impact on the quality of service (2024)<sup>1</sup>

↓ Loss of value, competitiveness, digital leadership, relevance

↓ Technological decapitalization, reorientation of investments, vulnerability to takeovers

↓ Loss of digital autonomy

EU vs. US download speeds

- 44.3% in fixed network
- 34.2% in mobile network

5G standalone Coverage

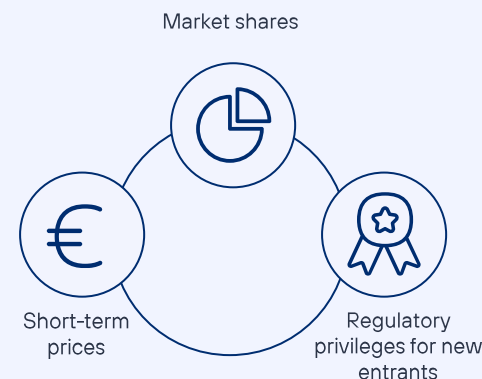
Region	Coverage (%)
EU	40%
US/Canada	91%

Network Coverage, Gigabit Capacity

Region	Coverage (%)
EU	82.5%
US	90.3%

## Towards a Change of Approach

The EU's approach to competition policy and regulation is not adapted to the new competitive dynamics and requires a holistic perspective to benefit individuals, businesses and society as a whole.



Maintaining the outdated approach has created a high degree of artificial fragmentation in national markets, leading to unsustainable market structures that hinder the achievement of scale, return on investment and digital goals.

To remain competitive in the digital age and to encourage investment and innovation in the sector, Europe needs to evolve:

### From:

Policies to encourage market liberalisation and an approach to competition based on number of operators and short-term prices.

### To:

Investment and innovation-friendly market structures to benefit society.



Evolve the approach to competition policy to prioritise market structures conducive to investment and innovation

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1

Promote sustainable market structures in the Member States



Promote more concentrated telecommunications markets at national level would benefit consumers, citizens, businesses and the economy as a whole by fostering sustainable competition and efficient investment in higher quality infrastructure, while facilitating an appropriate return on investment.

2

Align competition policy with sectoral regulation and industrial policy



Ensure that different policies pursue common objectives linked to the industrial strategy.

3

Update the enforcement of competition policy to achieve a holistic perspective



Focus on dynamic efficiencies such as innovation, quality, speed of deployment, value-added services, resilience, environmental or industry sustainability, and long-term investment cycles rather than short-term price and market share expectations at country level.

Stop encouraging artificial competition. End artificial and asymmetric support, through regulatory advantages, for new entry after 25 years of competition in today's highly competitive market.

Reduce barriers to in-market consolidation. Enable market-led reorganisation of the sector and adopt a more flexible and reliable approach to horizontal agreements in favour of innovation.





## Context

The EU telecoms sector is highly fragmented at the national level. In 2023, Europe had 45 mobile operators with more than 500,000 customers, compared to eight in the US, four in China and Japan, and three in South Korea.

The current approach to regulation and competition policy continues to foster artificial competition by giving asymmetric preferential treatment to certain players, or by making mergers more difficult, in order to maintain the number of players in the market. This results in inefficient and unsustainable market structures.

This situation of a lack of local scale to cope with investments in network roll-out or modernisation results in a lower return on investment and value of the European telecoms sector compared to its counterparts in other regions. Investors attribute this situation mainly to high fragmentation. This has consequences for the European economy and its citizens.

The weakening of the financial, competitive and investment capacity of a strategic sector for the competitiveness of the economy, such as the telecommunications sector, increases its vulnerability and economic security. On the one hand, the loss of attractiveness for investors could encourage the redirection of investments to other regions or to more profitable sectors, affecting technological capacity, innovation and regional digital autonomy. On the other hand, undervalued European operators could increase their vulnerability to foreign takeovers.

This puts at risk the sustainability of future investments, the achievement of the objectives of the digital strategy, as well as the quality of services provided, the capacity for innovation and the ability to drive the digital transformation of the region.

## Challenges

Public policy has a crucial role to play in improving the well-being of citizens, businesses and the economy as a whole: it must foster competitive markets where competition can flourish by improving the quality of services provided to citizens, while supporting growth, innovation and investment for the future.

To remain competitive in the digital age and to achieve the goals of the Digital Decade 2030, Europe needs to move towards sustainable market structures in the sector, without ruling out market consolidations, and moving beyond the initial approach taken in the 1990s after liberalisation. Adapting to technological and market changes is essential to achieve the goals.

Operators are faced with significant investments, and in order to improve return on investment and ensure economic viability, it is necessary to consolidate deployments. Consolidation in national markets (in-market consolidation) allows for a minimum level of local take-up in the areas of network deployment, a greater impact on efficiency and better use of spectrum, than possible economies of scale from cross-border mergers. These will result from the viability of European operators and a business case for investment in Europe. Recent cases of market consolidation in the sector, without structural remedies (e.g. Brazil or the US) have not reduced the level of competition and have instead benefited the welfare of citizens.

There is a need for a framework for competition analysis that accurately reflects current market realities and is adaptable and agile enough to deal with rapid and significant changes. It is essential to give greater weight to effects that are not exclusively linked to theoretical prices or the number of players. And the market itself has a key role to play in the efficient allocation of resources in this complex environment.

## Recommendations

Evolving the approach to competition policy to prioritise market structures conducive to investment and innovation. It is therefore recommended to:

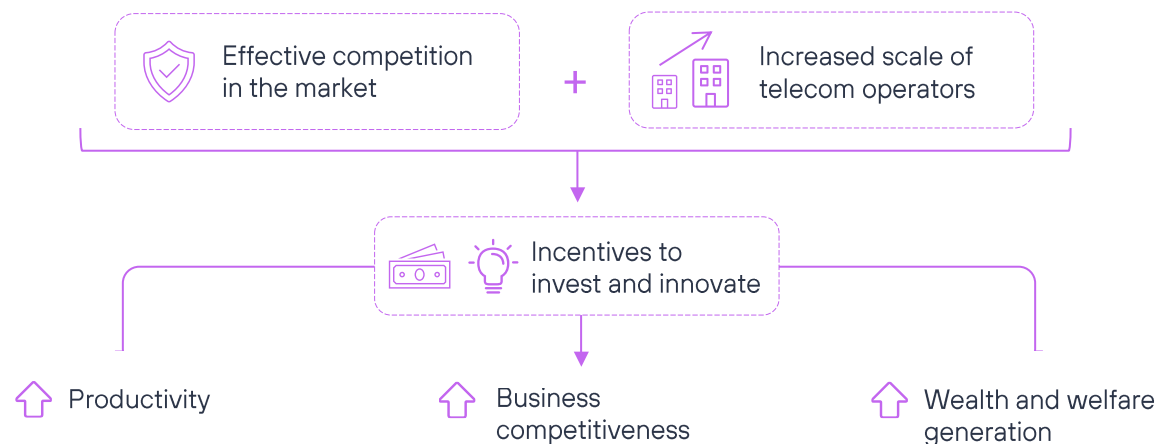
- 1 **Promote sustainable market structures in the Member States.** Promote more concentrated telecommunications markets at national level would benefit consumers, citizens, businesses and the economy as a whole by fostering sustainable competition and efficient investment in higher quality infrastructure, while facilitating an appropriate return on investment.
- 2 **Align competition policy with sectoral regulation and industrial policy.** Ensure that different policies pursue common objectives linked to the industrial strategy.
- 3 **Update the enforcement of competition policy to achieve a holistic perspective.** An approach aimed at protecting the competitive process itself or pursuing theoretical efficiencies is insufficient.
  - Focus on dynamic efficiencies such as innovation, quality, speed of deployment, value-added services, resilience, environmental or industry sustainability, and long-term investment cycles rather than short-term price and market share expectations at country level.
  - Stop encouraging artificial competition. End artificial and asymmetric support for new entry after 25 years of competition in today's highly competitive market.
  - Reduce barriers to in-market consolidation. Enable market-led reorganisation of the sector and adopt a more flexible and reliable approach to horizontal agreements in favour of innovation.

# *Competition:* Review of the European Union's Merger Control Policy





## A Merger Control Policy for the Benefit of Competitiveness



Europe is aware of the need to refocus competition policy in the interests of the prosperity of its society.

+20 years  
without update



The new European Commission has a mandate to reform the Horizontal Merger Guidelines to ensure that its decisions take account of wider EU objectives.



The review of the Guidelines is welcome, but the reform of the Merger Control Regulation would reinforce this new approach to competition policy that enhances Europe's competitiveness, resilience and strategic autonomy. In order to maintain legal certainty and predictability in merger control, this reform should also provide for a review of the thresholds.

## Towards a Holistic, Long-term Approach



### A broader view of consumer welfare

The current approach considers price as the main parameter for measuring the effects of competition on consumers. However, quality, choice and innovation are essential welfare parameters.

Other factors such as efficiency, resilience, sustainability, security or investment intensity also need to be considered in the Commission's holistic and long-term analysis.

### Review of the Horizontal Merger Guidelines

Considering ...



Holistic, dynamic and long-term approach



Substantive requirements for defence of efficiencies



Effect of remedies on competitive dynamics



Greater legal certainty in theories of harm

### Review of the European Merger Control Regulation

That, in addition to consolidating the reforms of the Guidelines into an instrument with the force of law, it should consider ...



Thresholds review after 35 years without update



Coherence between regulations (e.g., DMA, FSR)



Need for a geographic nexus test to eliminate unnecessary notifications of extraterritorial cases



Simplification and increased focus on complex cases



Independence between investigative and decision-making bodies; and greater involvement of other Commission Directorates-General.





A holistic and forward-looking approach, broadening the vision of consumer welfare to include long-term considerations such as quality, sustainability, innovation, resilience and investments that support the EU's strategic objectives

1

Review the Horizontal Merger Guidelines



Adopt a broader and more holistic approach, taking into account the EU's competitiveness, sustainability, security, resilience and innovation objectives.

Identify new economic theories that allow for a more dynamic analysis that is closer to business and market realities.

Carry out a more dynamic, forward-looking and long-term analysis.

Promote a more dynamic and long-term analysis of efficiencies, to ensure a real application of this instrument with a standard of proof proportionate to that of the Commission to identify competition problems; also including non-market efficiencies that will facilitate the achievement of other EU objectives.

Encourage the imposition of proportionate remedies, including behavioural remedies, and more controls on their effects, considering also other EU objectives.

Analyse more dynamically the theories of harm and apply a more proportionate standard of proof for so-called gap cases (e.g. criteria to qualify as a Significant Competitive Force or close competitor).

2

Review the EU Merger Control Regulation (EUMR)



Consolidate the reform of the Guidelines and...

Review the turnover thresholds: update the amounts and include a new transaction value threshold.

Establish a local nexus test on all reportable transactions.

Align the EUMR with the Digital Markets Act and the Foreign Subsidies Regulation to ensure greater consistency in thresholds and reporting requirements.

Simplify procedures to focus on complex cases.

Adopt a more balanced and transparent approach to the merger control procedure. Separate the case investigation team from the decision-making body, as in the case of many jurisdictions. Encourage greater involvement of other Directorates-General of the European Commission.

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## Context

In a context of declining competitiveness in the European Union due to slowing productivity and wealth creation, the European Commission 2024-2029, and in particular the Commissioner for Competition, has a mandate to lead a new approach to competition policy.

The aim is to support European companies to achieve scale and ensure that they have incentives to invest, innovate and grow, while promoting effective competition in markets.

The Commission must also ensure that its decisions are based on clear evidence, take account of sectoral policies and respond to the need to create a resilient EU in the face of the current geopolitical environment, threats in supply chains and unfair competition from subsidies.

One of the main priorities for the EU cycle 2024-2029 is the review of the Horizontal Merger Guidelines. According to the mandate, this review should take into account the most pressing needs of the European economy in terms of resilience, efficiency and innovation, as well as time horizons, the investment intensity of competition in certain strategic sectors and the new defence and security environment.

The revision of the Guidelines is positive but should be accompanied by a revision of the EU Merger Control Regulation (EUMR) that consolidates this new approach in a legal instrument with the force of law. In addition, following the Illumina/Graill judgment, this review should reform the thresholds in order to ensure the predictability and legal certainty of the EU merger control system, and avoid the current trend of extending the competences (by including so-called call-in powers) of National Competition Authorities to capture transactions below the thresholds.

## Challenges

The challenge for EU competition policy is to move towards a more holistic and long-term approach that takes a broader view of consumer welfare. The current approach focuses mainly on short-term price effects. However, quality, choice and innovation are long-term but essential parameters for measuring the impact of competition on consumer welfare. There are other factors that consumers also value (e.g. related to sustainability or safety of products or services, among others) that should be included in the analysis, thus fulfilling the mandate of the new Commissioner's Mission Letter to take into account other EU objectives (e.g. competitiveness, innovation, resilience, etc.).

This revised approach, supported by a more dynamic economic analysis, would drive the necessary changes to the Horizontal Merger Guidelines and the EU Merger Control Regulation (EUMR).

First, the short-term focus of the Guidelines prevents an effective defence of the efficiencies arising from a potential merger, an assessment of the impact of remedies on the competitive dynamics and the contribution of such a merger to EU objectives in the long run. In addition, a static analysis of theories of harm and a disproportionate standard of proof for so-called gap cases may reduce the effectiveness of the merger assessment.

Secondly, following the Illumina/Graill judgment, a revision of the EUMR is necessary to provide the legal certainty and predictability needed to fill the enforcement gap identified by the Commission in relation to killer acquisitions and other operations of companies with negligible turnover but a significant competitive position. In addition, the EUMR is not aligned with recent legislation, such as the Digital Markets Act or the Foreign Subsidies Regulation. Finally, there are the challenges of simplification, transparency and objectivity of procedures and promoting the involvement of other Commission's DGs to integrate the EU's strategic objectives.

## Recommendations

- 1 **Review the Horizontal Merger Guidelines.** Adopt a broader and more holistic approach, taking into account the EU's competitiveness, sustainability, security, resilience and innovation objectives. This requires:
  - Identify new economic theories that facilitate a more dynamic analysis that is closer to business and market realities.
  - Carry out a more dynamic, forward-looking and long-term analysis.
  - Promote a more dynamic and long-term analysis of efficiencies, to ensure a real application of this instrument with a standard of proof proportionate to that of the Commission to identify competition problems; also including non-market efficiencies, which will facilitate the achievement of other EU objectives.
  - Encourage the imposition of proportionate remedies, including behavioural remedies, and more controls on their effects, considering also other EU objectives.
  - Analyse more dynamically the theories of harm and apply a more proportionate standard of proof for so-called gap cases (e.g. criteria to qualify as a Significant Competitive Force or close competitor).
- 2 **Review the EU Merger Control Regulation (EUMR).** In addition to the above, it is necessary to:
  - Review the turnover thresholds: update the amounts and include a new transaction value threshold.
  - Establish a local nexus test on all reportable transactions.
  - Align the EUMR with the Digital Markets Act and the Foreign Subsidies Regulation to ensure greater consistency in thresholds and reporting requirements.
  - Simplify procedures to focus on complex cases.
  - Adopt a more balanced and transparent approach to the merger control procedure. Separate the case team from the decision-making body, as in the case of many jurisdictions. Encourage greater involvement of other Directorates-General of the European Commission.

# An Efficient *Spectrum Policy* Adapted to Digital Objectives



## A Key Factor for Inclusion and Growth

### Spectrum is a key resource for meaningful connectivity

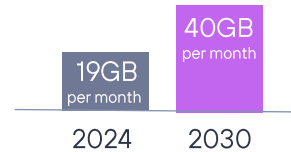


Enabling coverage of hard-to-reach areas.



Enabling the connected transformation of economic sectors.

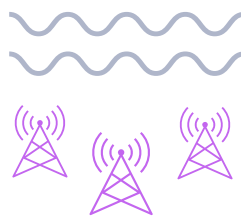
+25,000 million of connected devices by 2027<sup>1</sup>



Helping to cope with increased data traffic per user.<sup>2</sup>

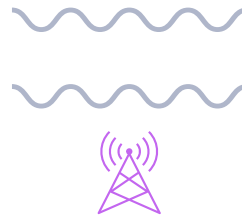
### Increasing spectrum capacity is the most efficient option, financially and environmentally

Failure to expand capacity would result in network densification and an increase in the number of sites.



Reduced capacity

VS.



Extended capacity

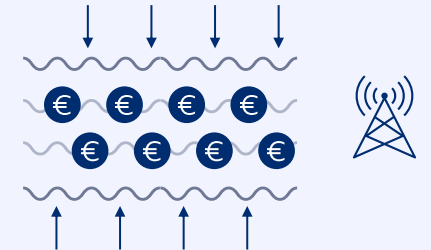
35%-40% of CAPEX

European operators spend on average 7% of their annual revenues (between 35% and 40% of their CAPEX)<sup>3</sup> on acquiring radio spectrum usage rights, with large variations between countries.

## Towards Efficient Spectrum Allocation

### Artificial spectrum scarcity

The current spectrum policy is based on artificial scarcity, increasing its price in auctions and imposing a large investment on operators.



### High demand for low and medium bands

The low and medium bands are the most valuable for mobile deployments. However, operators face high uncertainty about the renewal of their licences and pressure from other users to reserve new frequencies coming onto the market for other uses.



### Users with spectrum reservations

There are users who enjoy spectrum reservations for uses such as satellite, local area networks, or unlicensed low-power uses. They access spectrum virtually free of charge, creating artificial scarcity for mobile operators.





Create a spectrum regulatory environment that facilitates investment and enables Europe to meet its ambitious connectivity and digitisation goals

1

Ensure sufficient supply



Provide certainty about the future availability of operators' existing usage rights as licences expire, and a reasonable expectation of being able to access new low and medium frequencies in the medium term.

2

Promote a cost-benefit analysis of spectrum reservations for specific uses



Conduct a rigorous and transparent cost-benefit study for low-power local networks (e.g. 3.8-4.2 GHz), unlicensed uses (e.g. 6 GHz) or broadcasting services (e.g. UHF), demonstrating their benefits for society.

3

Ensure reasonable conditions



Prevent administrations from becoming spectrum monopolists and seeking to maximise the revenues they receive from usage rights. Doing so would be detrimental to end-users. To this end:

- Prevent reserve prices in auctions from being higher than the value of spectrum in uses that are excluded from competitive processes because of technical or other conditions imposed in licences.
- Avoid reservations for new entrants or local users which create artificial scarcity and inflation for other users and inefficient use of frequencies.

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## Context

Spectrum refers to the electromagnetic waves, also called radio waves, which are used for wireless connectivity. Spectrum is a critical resource for good connectivity, and without usage rights it is not possible to deploy a network.

Spectrum management is the process of allocating this scarce public resource, deciding who can use it and under what conditions. The process starts with the allocation of frequencies to services (low-power local networks, television or radio broadcasting, mobile broadband, etc.). Once allocated, the frequencies are assigned to specific users (Telefónica, Vodafone, TV, unlicensed uses, etc.).

European operators spend on average 7% of their annual revenues (between 35% and 40% of their CAPEX) on acquiring radio spectrum usage rights, with large differences between countries. This is a significant investment that diverts resources from other purposes.

An appropriate spectrum policy is key to facilitating digital inclusion and increasing the efficiency of connectivity infrastructure. On the one hand, there are populations living in remote or hard-to-reach areas that cannot be covered by fixed networks. To ensure that all people have the opportunity to enjoy the benefits of digitalisation and new technologies, it is necessary to deploy mobile networks that rely on spectrum. On the other hand, efficiencies, both environmental and financial, can be increased through the expansion of spectrum capacity. This would avoid the need to densify the network and increase the number of sites.

Spectrum is an indispensable element to evolve networks efficiently to support the smart and connected transformation of industries, buildings and cities.

## Challenges

Curent spectrum policy has created artificial scarcity, diverted excessive resources from the sector and given preferential access conditions to some services and users. This trend needs to be reversed.

According to PwC, the number of connected devices is expected to reach 25 billion by 2027. In addition, Ericsson forecasts that the amount of data flowing over the mobile network will increase from 19GB per user per month in 2024 to 40GB in 2030. However, there is a barrier to these forecasts: spectrum availability.

In the low and mid-bands, which are the most valuable for mobile deployments, operators face high uncertainty about the renewal of their licences. In addition, they face pressure from other users to reserve new frequencies coming onto the market for other uses (low-power local networks, unlicensed uses).

Access to spectrum currently has a dual character. First, telecommunications operators deploying mobile networks pay large sums of money for usage rights. Second, users competing for the same spectrum and offering connectivity solutions that are in many cases substitutes for mobile broadband (satellite, local networks, low-power unlicensed uses) enjoy spectrum reservations that allow them to use the spectrum at virtually no cost.

Operator profitability in Europe is on average below the cost of capital, making it extremely difficult to justify and undertake new investment. For operators to be able to invest and offer the best possible connectivity at a competitive price, access to spectrum rights must be on reasonable terms. It is not enough to have a sufficient supply of spectrum. It is equally important that spectrum is not offered at excessive prices.

## Recommendations

Spectrum policy must take its share of responsibility in creating a regulatory environment that facilitates investment and enables Europe to meet its ambitious connectivity and digitisation goals. It is therefore recommended to:

- 1 **Ensure sufficient supply.** Provide certainty about the future availability of operators' existing usage rights, once licences expire, and a reasonable expectation of being able to access new low and medium frequencies in the medium term. This will allow the investment required to meet growing demand in a context of limited revenue growth.
- 2 **Promote a cost-benefit analysis of spectrum reservations for specific uses.** Conduct a rigorous and transparent cost-benefit study for low-power local networks (e.g. 3.8-4.2 GHz), unlicensed uses (e.g. 6 GHz) or broadcasting services (e.g. UHF), demonstrating their benefits for society.
- 3 **Ensure reasonable conditions.** Prevent administrations from becoming spectrum monopolists and seeking to maximise the revenues they receive from usage rights. Doing so would be detrimental to end-users.
  - Prevent reserve prices in auctions from being higher than the value of spectrum in uses that are excluded from competitive processes because of technical or other conditions imposed in licences.
  - Avoid reservations for new entrants or local users that generate artificial scarcity and inflation for other users, and inefficient use of frequencies.



# *A Fair Relation* for Network Sustainability



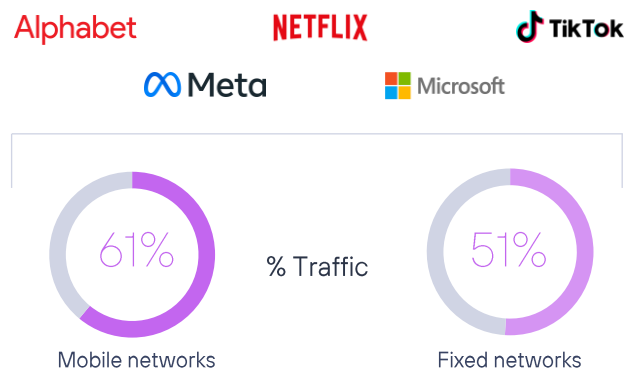
Over the last ten years, IP traffic has increased by 30% per year in both fixed and mobile networks, despite improvements in compression algorithms and services.



## Causes and Consequences of Increased Traffic

Large traffic generators derive revenue by relying on digital infrastructure. They also drive demand for higher quality connectivity from users who want to enjoy advanced digital services.

Five platforms<sup>1</sup> generate more than half of the traffic on fixed and mobile networks in 2023.



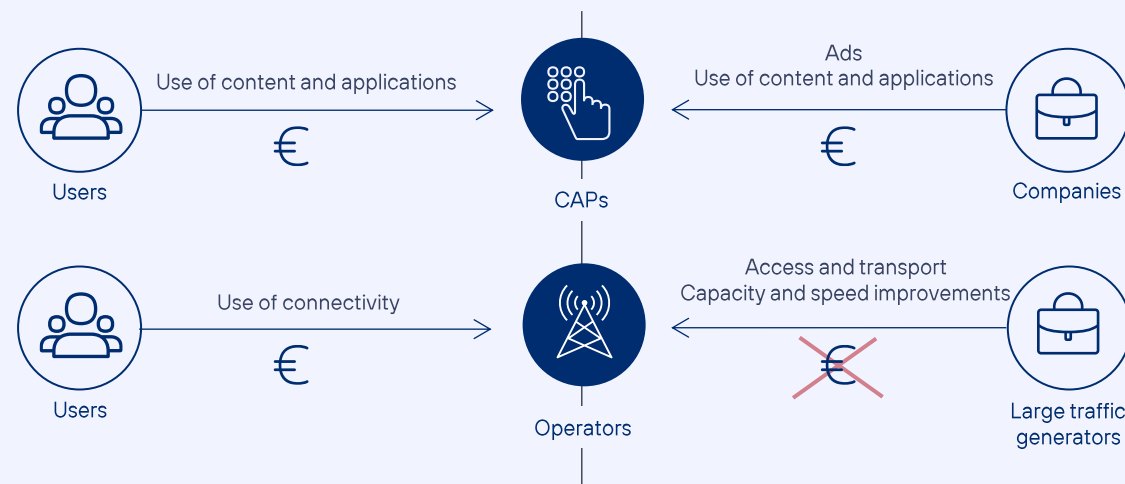
### Operators must make significant investments in networks to cope with the increase in traffic

It is estimated that European operators have invested between **36-40 billion euros** to carry the fixed and mobile traffic attributable to the activities of large traffic generators<sup>2</sup>.



## Restoring Balance on the Internet

This situation is the result of the evolution of the Internet business model and of regulation that has prevented operators from negotiating on equal terms with digital content and application providers (CAPs) for the traffic transport services they provide.



This model has proven to be unsustainable for two reasons:

1. There is no incentive to make efficient use of networks and traffic.
2. There is no reasonable correlation between the significant growth in data traffic on networks and the revenues of operators, negatively impacting the sustainability of their investments.

Ensuring fair agreements—despite their disparate market power—between operators and large CAPs would lead to a sustainable investment model in networks, as well as more efficient data usage and the consequent reduction in energy consumption and CO2 emissions.







Advance the sustainability of network investments by ensuring balanced service provision agreements between telecommunications operators and major traffic generators, thus also encouraging responsible and efficient network use

1

Establish a binding dispute resolution mechanism for cases where a voluntary agreement is not reached between companies providing services in the Internet value chain



Design a mechanism that ensures the conclusion of an agreement with fair terms and conditions in the event that commercial negotiations do not succeed, enabling a balanced negotiation between companies providing services across different segments of the Internet value chain.

2

Establish in a clear manner for the entire EU: 1) a European authority to resolve disputes, 2) the guidelines to which the adjudicating authority will be subject, 3) a short deadline for resolution



Ensure balanced and consistent criteria for the entire EU that accompany the powers to resolve disputes within a short timeframe. The certainty of a fast and effective dispute resolution mechanism will be the greatest incentive for operators and content and application providers (CAPs) to prioritize reaching agreements as a result of commercial negotiations.

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## Context

Over the last ten years, fixed and mobile network traffic has grown by 30% per year, despite improved compression algorithms and services. Large digital content and service providers are the main drivers behind this increase in network traffic consumption.

According to a report published by Sandvine in 2023, just five major digital platforms are responsible for half of the data traffic flowing over the Internet. Operators are spending around one-third of fixed network investments and around two-thirds of mobile network investment to cope with traffic growth. There is an additional cost of acquiring new spectrum bands for mobile traffic. The European Commission estimates an investment gap of EUR 200 billion to upgrade fixed infrastructure to gigabit speeds and fully deploy 5G.

The concept of Fair Relation emerged as a result of the inefficiencies in the use of network resources by large traffic generators (LTG), and the impact on investment and cost to operators of maintaining this situation. This debate has intensified at a global level with the aim of improving the sustainability of network investment through a fee for the service that operators provide to those players that generate large volumes of traffic, while encouraging the efficient use of network resources.

The Fair Relation solution would guarantee the network investment needed to achieve the connectivity goals of Europe's Digital Decade 2030: 100% of European households covered by a gigabit network by 2030, with all populated areas covered by 5G and 10,000 edge nodes built and available.

## Challenges

While it is the operators that invest in connectivity infrastructure, it is the large traffic generators (LTGs) that benefit most from such investments. Frontier estimates that the cost to European operators of carrying fixed and mobile traffic attributable to the activities of LTGs is between 36 and 40 billion euros. However, LTGs do not pay for the connectivity service – access and transport they receive from operators. As a result, they do not contribute to the improvement of the digital infrastructure from which these players mainly benefit in order to offer new digital services with higher traffic consumption, such as Virtual Worlds or Artificial Intelligence.

The inability of operators to obtain payment for network use by LTGs is the result of an evolving Internet business model and regulation that has prevented operators from negotiating on equal terms with the companies that generate the majority of Internet traffic.

Initially, digital content and service providers were part of the user base of telecoms operators. However, those that achieved sufficient market scale developed their own infrastructure (e.g. CDNs or submarine cables) to gain more autonomy and to expand their business. However, they continued to rely on telecommunications access networks to transport their digital services and applications to end users. This new situation gave them bargaining power with operators, forcing them to provide free transport service for their traffic.

This model has proved unsustainable for the telecoms sector. Not only it has lost revenue due to the distortion of the initial Internet model, but it has also had to make large investments driven by the increased demand for data traffic from LTGs without receiving any compensation.

## Recommendations

It is necessary to advance in the sustainability of network investments by ensuring balanced service provision agreements between telecommunications operators and major traffic generators, thus also encouraging responsible and efficient network use. It is therefore recommended to:

- 1 **Establish a binding dispute resolution mechanism for cases where a voluntary agreement is not reached between companies providing services in the Internet value chain.**  
Design a mechanism that ensures the conclusion of an agreement with fair terms and conditions in the event that commercial negotiations do not succeed, enabling a balanced negotiation between companies providing services across different segments of the Internet value chain.
- 2 **Establish in a clear manner for the entire EU: 1) a European authority to resolve disputes, 2) the guidelines to which the adjudicating authority will be subject, 3) a short deadline for resolution.** Ensure balanced and consistent criteria for the entire EU that accompany the powers to resolve disputes within a short timeframe. The certainty of a fast and effective dispute resolution mechanism will be the greatest incentive for operators and content and application providers (CAPs) to prioritize reaching agreements as a result of commercial negotiations.



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