

Digital Networks Act

[Video Games Europe](#) is the trade federation representing the video game sector in Europe. Over 110.000 people currently work in the video games sector in Europe, and game development has been recognised by the European Parliament as one of the key sectors to the digital economy in the EU.¹ In Europe the sector is mostly composed of SME's, whose games which are enjoyed worldwide across multiple platforms: consoles, PC and mobile.

Video Games Europe has been anticipating the publication of the DNA for a number of years, as connectivity is a crucial policy issue affecting our members. We are encouraged to see that the European Commission has not included network fees in their DNA proposal, and we welcome the inclusion of measures aimed at harmonizing the Single Market, and further enabling high-quality and affordable connectivity for all. Nonetheless, we are concerned that the DNA represents a fundamental shift in how the Internet operates, particularly with its proposed changes to IP interconnection and to the general authorization regime.

The DNA proposal shifts the regulatory focus away from a decentralized network of networks, and instead looks to increase the power that connectivity infrastructure operators already have. Effectively, we see a shift toward an infrastructure-centric regime that favors incumbent telecommunications operators, and effectively codifies their narrative on both traffic imbalance and investment incentives. This is why we reiterate that regulatory intervention in this space is unwarranted, and likely even harmful for consumers and business in the EU.

1. **Dispute resolution mechanism**

It is well established that the interconnection market generally functions well within the EU. Articles 191-193 of the DNA proposal establish a mechanism aimed at facilitating and promoting 'cooperation' between providers of electronic communication services (ECS) and other undertakings, such as content and application providers (CAPs). This mechanism is presented as voluntary, but Video Games Europe have significant concerns that this 'voluntary' element will in practice become mandatory: a refusal to engage in this facility could very well be construed later by a court as a sign of bad faith by an undertaking, and serve as a precursor to litigation. For example, while parties are not legally mandated to participate in the conciliation meeting convened by a National Regulatory Authority (NRA), requests for conciliation can be triggered by any party with no clearly specified right of the NRA to exercise its judgement before taking the process forward – meaning there is no legal protection for parties or NRAs against abusive or frivolous 'conciliation' requests.

Several large European telecommunications operators have argued towards policymakers that the growing demand for content and applications is a problem, rather than an economic opportunity,

¹ [European Parliament resolution of 10 November 2022 on esports and video games \(2022/2027\(INI\)\)](#)

but simultaneously, have often told their shareholders² that the demand for content drives up the number of internet access subscriptions, and consequently their own revenues.³ This misrepresentation has clouded the European policy debate around connectivity in recent years, and should be addressed: creative content providers invest significantly in content to the benefit of consumers and the European economy, but also to that of ISPs (Internet Service Providers), since the demand for content is demonstrably the main driver of selling and upselling of Internet access services.

Given that large ECS providers effectively control traffic termination, this conciliation facility risks creating a perverse incentive for these same providers to leverage their position in order to secure more favorable traffic settlement terms. This would come at the expense of both consumers and CAPs, as the former could see their traffic requests for their content of choice to be throttled, and the latter would find itself in a position where it would either pay the premium demanded by the ECS, or rely on general transit, which is not a viable option in many cases (notably in multiplayer online games). Ongoing litigation in one member state⁴ has illustrated how much leverage large telecommunication operators enjoy in relation to CAPs, and we are concerned that this DNA proposal will reinforce it. This reinforcement will likely not be in the interest of consumers or businesses in the EU.

Therefore, Video Games Europe advocates that the ‘voluntary conciliation mechanism’ should be either removed or substantially amended with clear procedural safeguards that guarantee it remains truly voluntary.

2. Modifications to the General Authorization Regime

Video Games Europe welcomes the preservation of the exemption from the general authorization regime for number-independent communications in Article 9(3). Article 2(8) clearly notes that “interpersonal and interactive communication merely as a minor ancillary feature that is intrinsically linked to another service” is not an interpersonal communications service, for the purposes of the DNA. Indeed, the example referred in Recital 12 of the proposal is welcomed: in-game chats are a typical example of ancillary features that should not be subject to the general authorization regime.

In the interest of clarity, however, we would welcome further detail on what is meant in Recital 12 by “depending on the features of the communication facility of the service”. This raises the question of at what point/feature does a communication feature stops being ‘ancillary’, and awareness of where the threshold lies would generally be desirable.

² “The increased availability and use of streaming and TV services **may also further increase demand for data**. These effects can lead to an increase in the average monthly data consumption per customer and thus further increase the demand for tariffs with larger data volumes. If these effects are more positive than expected, **they could have a more positive impact on our revenues**” [Telefonica Deutschland Holding AG, Yearly Report 2022](#), p.39; “Mobile revenues increased, too, by almost 5 % according to Analysys Mason, driven by an increase in data usage per SIM card and the rising popularity of data-intensive apps. In addition, the build-out of 5G networks drove demand for higher-value rate plans and increased investments in telecommunications infrastructure” [Telecommunications market - Deutsche Telekom Annual Report 2024](#);

“In Europe, mobile revenue is expected to benefit from **increased usage as customers transition to higher data bundles, and new consumer and business products and services are introduced**... ongoing capital expenditure ... to provide products and services in line with customer expectations, including of **higher data volumes and speeds**” [Vodafone 2024 Annual Report](#) p.154

³ “The providers benefit from the infrastructure deployed by operators to deliver their services, and **operators benefit from the services and content delivered by content providers that encourage more users to connect to the Internet.**” (source [here](#))

⁴ [Netzbremse - Die Telekom drosselt das Netz!](#)

On the other hand, Video Games Europe is concerned over how Article 9(2) of the DNA substantially expands the scope of the General Authorization Regime. Under the proposed DNA, it will now apply to “providers of electronic communications networks used, wholly or mainly, for the purpose of providing electronic communications services or information society services available to the public”. This is an excessively broad definition, requiring potentially any private network used to deliver online content to the public to register under the regime, bringing private networks used to deliver game content into scope, which would create unclear and unwarranted regulatory burdens for the European games industry. We believe this definition should be amended to instill more legal certainty, and avoid any potential negative impact on the European video game sector.

3. Internet usage patterns are accommodated by ISP networks

In its final report on the IP Interconnection ecosystem,⁵ BEREC affirms that “the internet has, since it was created, managed to cope with traffic growth and more accentuated peak traffic, all of which reflect changing usage patterns. BEREC considers that, due to competition as well as technological progress, there is currently no indication that this is likely to change in the future. Video Games Europe agrees: end users are able to use their internet connections to download and stream games, or play together efficiently, with little to no negative impact on networks, and traffic is already efficiently managed through cooperation between ISPs and CDNs or CAPs.

To mitigate potential network issues due to game downloads during the COVID-19 crisis, video game publishers and services took measures such as installing slots (so-called ‘rolling-out schedules’) for downloads of new releases to ensure these happen late at night to early morning when, Internet usage is lower, and according to territories and time zones. After deployment of these measures, however, many companies found these not to be necessary, as the existing network infrastructure and practices were flexible and robust enough to accommodate increased traffic. Such schedules created very unsociable hours for development teams, which proved not to be worthwhile in light of the ability of the *status quo* to cope, even under heightened pressure.

Overall, we reiterate that regulatory intervention in this space is therefore unwarranted, and likely harmful for consumers and businesses in the EU.

4. Conclusion

Video Games Europe welcomes measures aimed at ensuring that consumers and businesses have access to quality, affordable connectivity. However, we would be remiss to not point out that several elements of the DNA proposal effectively risk further entrenching the power of large ECS operators in relation to their customers. At the same time, expansion of regulatory scope to all private networks will create unnecessary burdens and costs for technology that enables innovation online, running counter to Europe’s competitiveness and simplification goals.

Net neutrality should remain a core pillar of the EU’s internet policy, and settlement-free peering should remain the norm for interconnection arrangements. Regulatory intervention, such as proposed under the DNA, risks dismantling the existing balance, by granting an incentive for the infrastructure controllers to litigate.

⁵ [BEREC Report on the IP Interconnection ecosystem](#)

About Video Games Europe

Since 1998, Video Games Europe has ensured that the voice of a responsible video games ecosystem is heard and understood. Its mission is to support and celebrate the sector’s creative and economic potential and to ensure that players around the world enjoy the benefits of great video game playing experiences. Europe’s video games sector is worth €26.8bn and accounts for 116,419 jobs. 54% of Europeans are video game players. We publish a yearly [Key Facts](#) report with the latest data on Europe’s video games sector.

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