

The European DNA proposal as regards IP interconenction and fair share: what's new, and its impact on IXPs

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Opinions, views and analysis in this presentation are personal and do not necessarily reflect the position of any agency or corporation for which I may serve as an advisor

ABOUT ME

- Innocenzo Genna, legal and public affairs advisor on EU telecoms and Internet policy - 30 years expertise (started in 1994)
- Former VP and board member of EuroISPA, MVNO Europe, European Internet Forum. Previously: chairman of ECTA, general counsel of the Tiscali group, partner of Ughi & Nunziante law firm, legal service of the EU Court of Justice
- Providing legal/policy analysis as well as strategic advice to governments, undertakings and trade associations in the matter of European digital and telecom regulation

New Commission, new approach, new life

- From Breton (VDL1, 2019-2024) to Virkkunen (VDL2: 2024-2029): the new Commissions marks **important changes** for the European telecom policy
- What was trendy with VDL1:
 - Consolidation
 - Less competition
 - Fair share!
 - Level playing field (eventually: less net neutrality)
- What is trendy for VDL2:
 - Competitiveness
 - Resilience and cybersecurity
 - Digital sovereignty

The DNA in brief

- Regulation proposal adopted on 21 January 2026
- Replaces the current European Telecom Code and integrates other instruments, in particular OIR (net neutrality) and ePrivacy (privacy)
- Objective: modernise and harmonise European telecommunications framework
- Shift from Directive to Regulation for uniform application
- General observation: important but not radical changes - it is an **evolution, not a revolution**

How to find what's new for IXPs (and not only to them...)

- You must consider a **combination of rules** about:
 - **Cooperation** between telcos and OTT
 - New (evolved) **interconnection** regime
 - New (evolved) **general authorization** regime
- In addition, some other sets of rules may be notably relevant (*not part of this presentation*):
 - Net neutrality
 - Access and competition rules

DNA: no place for fair share

- Despite speculations by authors, there is **nor explicit "fair share"** payment obligation, **neither imposition of sender-pays principle**

instead

- **Commercial nature** of IP interconnection is confirmed (see *infra*)
- DNA (art. 189 on dispute resolutions) provides that NRAs can intervene, as far as interconnection is concerned, only on «existing obligations» (see *infra*)
- DNA (recital 168) sets a clear **anti-fair share safeguard**: «*Linking access or interconnection terms to a party's own activities or investment, rather than to the service provided, can conflict with competition rules*».
- Instead of fair share: ecosystem cooperation and voluntary conciliation procedure

Ecosystem cooperation and voluntary conciliation procedure

- Both managed by BEREC (this is a safeguard!)
- **Ecosystem cooperation** (art. 191, recital 404 DNA):
 - BEREC's guidelines on the application of industry practices and facilitating cooperation on technical and commercial matters between telcos and OTTs
 - Commercial disputes (aka interconnection prices) or obligations under the DNA (duty to interconnect) are excluded
- **Voluntary conciliation procedure** (art. 192):
 - Litigations about technical and commercial arrangements which are subject to the above guidelines
 - No binding decision by NRA/BEREC, although moral suasion is suggested
- Conclusions:
 - **Purely commercial litigations are excluded from conciliation procedure**, thus conciliation cannot be used to impose fair-share via soft-law

New interconnection regime: between confirmation and evolution

- New interconnection definition (art. 2): **enlargement of the interconnection scope** beyond traditional "public" voice networks and services (thus including IP interconnection)
- But: **default regime** is: **commercial freedom** of interconnection
- Specific regulated regime only for «public networks» namely **networks controlling end-user access**.
- Regulated interconnection regime consisting in duty to accept interconnection, subject to regulator intervention in case of disagreement, but with safeguards (recitals 168 and 404)

New General Authorizations (GA) regime /1

- GA are necessary for undertakings operating networks (both public and private) in Europe
- GA set a number of obligations upon operators, therefore founding **supervision and jurisdiction by telecom regulators**
- DNA (art. 9) extends the scope of GA beyond traditional telecom networks, by including networks used to provide, not only connectivity, but also **content and services available to the public** (IXPs, CDNs, cloud providers....)
- Have you heard of the Italian CDN case? Here we are 😊

New General Authorizations (GA) regime /2

Conclusions on GA:

- The new GA regime **does impose**:
 - supervision (and jurisdiction) by telecom regulators
- GA regime **does not impose**:
 - regulated interconnection (unless you are a public network) or fair share

The new DNA regime: implications for IXPs / 1

- European IXPs traditionally operated at the **edge of regulation**, but the **wind has changed**
- Regulatory intervention already happened with NIS2
- Under the DNA, IXPs continue to operate in a **predominantly commercial context**:
 - Preservation of **commercial nature of interconnection**
 - **No ex ante regulation** of peering prices
 - Regulated prices by dispute **only in limited cases** (public networks) and subject to robust anti-fair share safeguards

However

The new DNA regime: implications for IXPs / 2

..... however

- IXPs and its peers (not only telcos, but also clouds, SDNs ...) may be subject to GA and **extended supervision by national regulators**
- This is in addition to NIS2!

Therefore

- Extended supervision by regulators may **imply intervention for public reasons** about network security and resilience, network architecture, law enforcement.
- This is not about fair share/commercial matters: DNA sets an **enlarged supervision by the State over the Internet ecosystem**
- **This enlarged supervision happens via telecom regulators**

The new DNA regime: implications for IXPs / 3

Consequences of this new enlarged supervision upon current interconnection architectures while evolving:

- IP interconnection is becoming more **selective and hybrid**, combining public peering, private interconnection and transit according to traffic and service needs.
- **Private interconnections, in-network caching and edge architectures** play a growing role in delivering high-volume and low-latency services.
- **Tailored peering and interconnection arrangements** increasingly complement traditional public peering at IXPs.
- These developments lead to more integrated – and in some cases proprietary – **technical and commercial interconnection configurations.**

The above impact not only IXPs, but also other participants of the Internet ecosystem which are not telecom operators (clouds, CDNs)

A final check

- DNA tends to expands telecom regulation beyond traditional telecom operators
- However, IXPs (and other infrastructures/operators) are not automatically included by DNA in the telecom regime
- Qualification depends on:
 - **service/infrastructure nature;**
and
 - **end-user connectivity control**

THANK YOU

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