CISPE comments on the Digital Networks Act

Introduction

CISPE welcomes the opportunity to comment on the European Commission's proposal for a Digital Networks Act. Connectivity is critical to the cloud, therefore CISPE and its members have a vested interest in ensuring that Europe's digital networks are regulated in a way that is conducive to fair competition, innovation and investment.

We would like to congratulate the Commission on the proposal, which represents a significant improvement in comparison with the February 2024 White Paper, including a better understanding of cloud as a business model, cloud infrastructures as well as their interplay with access networks and providers. That being said, we would like to explain some of our remaining concerns we have about the proposal, as well as our suggested solutions

1. Concern over the scope of certain provisions

We remain wary that the scope of certain obligations within the proposal are phrased in such a way that it could be constituted to apply also to cloud providers (no matter their size) and their private backbone networks. The most concerning of these is the general authorisation regime under Article 9(2), whose scope is extended to *'electronic communications networks used, wholly or mainly, for the purpose of providing information society services available to the public'.* In today's world, almost anything can be understood as an 'information society service', making this provision broad enough to pose a risk of being interpreted to also cover the private intra-cloud networks of CISPE members (including even small and micro-entreprises). For an SME, the resulting obligations (such as registering in each EU member state, paying supervisory fees, abiding by data retention rules, etc.) would most likely represent a death sentence.

There is a similar concern regarding the very broad definition of *'electronic communications network'* in Article 2(1) and the absence of a clear definition of what 'public' means. Consequently, regulators may interpret this to encompass also private cloud backbone networks and data centre operators. Therefore, the DNA must make explicit that private networks operated solely to interconnect a provider's own infrastructure fall outside the scope of the general authorisation regime entirely.

Recital (43) contains some reassuring language, but we would be prefer if the exemption would be made more explicit when it comes to cloud providers.

Suggested improvements
Article 9(2)
The general authorisation regime shall apply to providers of public electronic communications services and 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.
Explanation: the concept of 'information society services' is too wide and risks capturing many different businesses unintentionally. The simplest solution is to completely remove this term.
Article 9(3)

The general authorisation regime shall not apply to: (a) number-independent interpersonal communication services; ***(b) private intra-cloud backbone networks and other networks used solely to interconnect digital infrastructure facilities such as data centres.***
<u>Explanation:</u> Using and clarifying the language of Recital (43) within the articles, to achieve a similar result.
Recital (43)
In relation to the providers of electronic communications networks, the general authorisation system should not apply to certain types of networks that do not have the main purpose to support the provision of publicly available electronic communication or digital services. Examples are networks mainly used for private, internal or closed, predetermined user group communications, including networks used only for internal links between communications infrastructure facilities ***such as data centres, as well as any network*** not mainly intended for ***directly supporting*** publicly available digital services.
Recital 6
This Regulation does not cover the content delivered over electronic communications networks using electronic communications services, such as broadcasting content, financial services, and certain information society services ***such as cloud services***, and is without prejudice to measures taken at Union or national level in respect of such services, in accordance with Union law or national law, in order to promote cultural and linguistic diversity and to ensure the defence of media pluralism. (...)
<u>*Explanation*</u>*: The two above recitals help ensure legal clarity regarding the scope of the DNA.*

2. Concerns over the ‘voluntary’ conciliatory mechanism

The DNA contains (Arts. 191-193, Recital (405)) a proposal for a new ‘conciliatory mechanism’ for the purpose of promoting *‘effective cooperation between [telcos] ‘and undertakings [in] related sectors*’. In our view, this proposed mechanism should be deleted, because it lacks any demonstrated justification, but represents many risks.

Large access providers justify their request for a (mandatory) dispute resolution system by stating that this is needed to allow them to achieve stronger negotiating power against large (foreign) content providers. However, this justification is disingenuous and misleading for many reasons:

1. **Creating perverse incentives:** The Commission repeatedly admitted that there are no issues within the IP Interconnection market, but that legislative intervention is only proposed to ‘ensure that conflicts also don’t arise in the future’. However, if we accept that the objective of large telcos is to create a mandatory mechanism (which we must do given that they admit it themselves), it logically follows that the voluntary mechanism risks establishing a grossly perverse incentive. Once adopted, large telcos’ interest would become to create as many bogus or self-created interconnection disputes as possible, so that when the law is reviewed, they can argue that the voluntary mechanism is insufficient/unfit for purpose. Therefore, there is a strong risk that the mechanism will end up creating the very conflicts it claims it tries to help avoid.
2. **Legitimising anti-competitive practices:** Long-standing cases show that vertically integrated incumbent telcos are willing to compromise even their own quality of service,

throwing their customers under the bus, in order to extort excessive payments from content and cloud providers (see Netzbremse complaint and CISPE's supporting note). The 'conciliatory' mechanism risk legitimising such conduct which therefore may spread across Europe, at the expense of SMEs and consumers and jeopardising Europe's digitalisation objectives.

3. **Weakening SMEs' position:** Large telcos argue that they are too small to fairly negotiate with Big Tech regarding interconnection. However, the large majority of their negotiations are not with Big Tech but with SMEs, where it's the telcos themselves that are many times more powerful. Indeed, the Court of Düsseldorf recently ruled that a large incumbent telco such as Deutsche Telekom is a dominant monopoly in almost all cases, except when negotiating with companies the size of Meta (in which case it can be treated as an approximate equal). See quote below:
    a. *'While Deutsche Telekom **did hold a dominant market position with regard to its end users**, [Meta's] countervailing power was such that Deutsche Telekom could not exercise its market power over it.'*[1]
4. **Risk of network fragmentation and of undermining the principle of net neutrality:** The mechanism risks encouraging individual agreements between operators and content providers, thereby making 'adequate' connectivity dependent on paying additional fees. As a result, users would no longer be able to have access the content they prefer on an equal footing. Instead, unhindered access to some content would in fact be tied to agreements between content providers and network access providers, in direct contradiction of the EU's net neutrality principles.

Overall, we understand that the Commission proposed the voluntary mechanism in a bid to find a 'fair compromise' between the telcos' position (mandatory mechanism) and those of all other actors in the ecosystem (no mechanism). However, a compromise between a harmful and a harmless solution is still a semi-harmful one. As such, we would urge the co-legislators to delete this obligation from the proposal and leave the interconnection market – which even the Commission admits is working well – as is.

Suggested improvement
Title IV: Ecosystem cooperation
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About CISPE

CISPE is an association of more than 60 cloud infrastructure service providers, the vast majority of which are European SMEs. Our members deliver essential cloud services across the EU, support millions of users, and invest heavily in European infrastructure. In 2025, CISPE adopted a new governance model that firmly grounds the association in European leadership. Only European entities may now hold board positions and large non-European cloud vendors can only participate as non-voting (adherent) members, without influence over governance decisions. This ensures that CISPE remains the largest, and only fully European-led, independent trade body representing the cloud infrastructure sector.

[1] Our own translation, original German text available here: https://www.olg-duesseldorf.nrw.de/behoerde/presse/Presse_aktuell/20260210_PM_Urteil_VI-6-U-3-24-Kart/index.php