



Thank you to BEREC for the opportunity to comment on the draft report on the IP interconnection ecosystem (the "Draft Report"). We are grateful to BEREC for their thoughtful engagement in this area and for their comprehensive analysis of IP interconnection developments in Europe.

We are committed to helping Europe achieve its connectivity goals and look forward to continuing to collaborate with all stakeholders. In light of this, we would like to provide a few comments and highlight a few aspects of the Draft Report.

We include below an executive summary of our response for your convenience:

- Traffic developments: We agree with BEREC's overall conclusions that the European market for peering and transit is evolving for various reasons and is driven mainly by functioning market dynamics and the cooperative behaviour of market players without regulatory intervention.
- Pricing and costing developments: We agree with BEREC's indications that the growth rate in Europe is not continuing to rise but remains constant. We believe this is, among other things, due to Content Application Providers' (CAPs) investments in complementary infrastructure and innovative partnerships between CAPs and telcos that drive network efficiencies (e.g. on optimisation of video content). We welcome BEREC's finding that transit prices have fallen over longer time horizons, due to competition and technological progress.
- Market developments in IP-IC: We support BEREC's conclusions that CAPs play a crucial role in keeping the IP peering and transit market competitive through their investments in CDNs, subsea cables, and other infrastructure. While we consider such markets to be functioning well, we agree with BEREC's observations that where issues arise, these tend to be as a result of vertically integrated IAS providers exerting their termination monopoly. We support BEREC's finding that the incentives for select vertically integrated IAS providers to limit transit capacity as a mechanism to move CAPs towards (paid) peering should be guarded against.
- Generic structure of IP-IC issues: Meta agrees with BEREC's view that instances of disputes remain rare; and do not mandate nor justify the imposition of mandatory dispute resolution mechanism between ISPs and CAPs. Conversely, imposing mandatory dispute resolution would raise significant net neutrality concerns and undermine the EU's robust open internet framework.
- Bargaining situation (in particular) between CAPs and IAS providers: A recent study found that CAPs such as Meta cannot be presumed as a matter of course to exert bargaining power over IAS providers, simply because of the size and/or popularity of their services. Settlement-free peering is and should continue to be the global norm; direct (settlement free) peering brings economic benefits for both parties. We agree

with BEREC's statements that customers are ultimately the ones who suffer from peering disputes as they cannot use services or access content with the quality they expect.

- **Relationship between IP-IC and OIR:** Meta welcomes BEREC's conclusion that selective routing policies and/or artificially manufactured scarcity in IP-IC connections can degrade the quality of the internet access service experienced by end-users in an application-specific manner that potentially violates net neutrality rules in the OIR. BEREC has clarified that the effectiveness of the Open Internet Guidelines (OIR) necessarily entails a responsibility for IAS providers to abstain from any conduct that has the object and/or the effect of compromising the provision of an open IAS for end-users, including conduct that is technically implemented at the interface between the access network and other connected networks. We respectfully urge BEREC to provide additional guidance on this area, including by way of update to its OIR.
- **Country cases related to IP-IC:** While Meta itself is party to commercial litigation brought by Deutsche Telekom (DT) against Meta's private network (Edge), this is a purely contractual issue. Meta does not agree with the first instance decision of the Cologne Regional Court and has appealed against that decision. Meta is confident the German legal process will recognise this attempted abuse by DT of its market power by artificially constraining the ability to reach German consumers. The DT/Meta case is an anomaly. We maintain positive and collaborative peering relationships with other telecom providers in Germany and around the world.

### **Section 3: Traffic Development**

*This is 'evolution, not revolution': The European market for peering and transit remains competitive.*

We support BEREC's acknowledgment that "the European market for peering and transit is still competitive" (p.13 of the Draft Report).

In 2023 BEREC stated that they are "not aware of structural interconnection problems in relation to growing volumes of traffic" and observed that studies "find generally competitive conditions in the IP-interconnection markets," thus warning that a "careful approach" is needed "when considering whether regulatory intervention is actually warranted."<sup>1</sup> BEREC further observed in 2023 that "the Internet ecosystem has managed to adapt IP-interconnection arrangements to changing conditions, such as the increasing traffic volume."<sup>2</sup>

We are pleased to see that these findings were upheld by BEREC in the recent Draft Report. BEREC not only observes that traffic growth rates remain stable, but also notes that competition and technological progress exert downward pressure on costs and prices for data. We support BEREC's finding that "due to continuous technological developments as well as competitive

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<sup>1</sup> [BEREC response to the European Commission's Exploratory Consultation on the future of the electronic communications sector and its infrastructure](#), (2023) page 5-6

<sup>2</sup> Ibid, page 6

pressure, marginal network costs are observed to have declined to the point that they outweigh any increased costs associated with increased network use” (p.19 of the Draft Report). We agree that the IP-interconnect ecosystem is evolving for various reasons and largely driven by functioning market dynamics and the cooperative behaviour of market players without regulatory intervention.

### *Optimization of video content*

In terms of traffic growth, we agree with BEREC’s indications (based on the referenced study by WIK-Consult) that the growth rate in Europe is not continuing to rise, but rather remains constant (p. 8 of the Draft Report). We also observe some indications that the growth rate may be slowing down. Such as, according to ETNO, “[d]ata traffic growth slowed in 2021 after the disruptions of the pandemic” but may float to “20-25% per year.” But as of 2020 “growth rates of about 30% ha[d] been normal for years.”<sup>3</sup> Analysys Mason finds in 2023: “Whilst demand growth is by nature uncertain, recent growth in concurrent peak demand across mature networks in the last three years has been below 20%.”<sup>4</sup>

BEREC notes that “an increasing consumption of livestreaming content could add to this growth, and could potentially have an impact on peak traffic” (p.12 of the Draft Report). At the same time we would like to note that Over-the-Air (OTA) livestreaming and Internet livestreaming (such as Facebook/Instagram Live) are both examples of livestreaming content. As BEREC investigates future traffic developments, we encourage it to take into account the different contexts for video and the models supported (current and legacy). As OTA livestreaming is not included in peering traffic, we believe that BEREC should differentiate between the two.

BEREC also observes “that the increasing efficiency of video codecs could likely reduce the bandwidth required by UHD video content and, consequently, the relative impact in terms of traffic volumes” (p.12 of the Draft Report).

At the same time, we would like to note that Meta is focused on partnering with telecom operators and others in the industry to drive further network efficiencies. This brings benefits in the delivery of video content, and is also prudent from an energy and sustainability perspective. Meta, for its part, is building on its existing optimisation and efficiency work by continuing to make improvements in video engineering and infrastructure deployment, to enhance both the user experience and the efficiency of video applications. Just recently Telefonica announced its partnership with Meta to work jointly to optimize video traffic delivery on Telefonica’s network and deliver mobile network efficiencies<sup>5</sup>. And Vodafone announced its optimization partnership with Meta to lead to a meaningful reduction in network traffic for Meta applications across

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<sup>3</sup> See ETNO, [State of Digital Communications 2023](#) at 6 (2023)

<sup>4</sup> [Analysys Mason Europe Fibre Report](#) at 23. See also Ericsson, [Ericsson Mobility Report](#) at 23 (2024) “total mobile data traffic is forecast to grow 20–30 percent yearly for the next few years, with growth rate slowing to under 20 percent in the latter forecast years”.

<sup>5</sup> [Telefónica and Meta boost short video experience and network efficiency](#) (2024)

Vodafone's mobile network and at same time allowing users to view more high-quality short videos. This network optimisation has been applied in eleven European markets since the start of June this year<sup>6</sup>.

On the same p.12 of the Draft Report BEREC points out that "virtual world applications, augmented and virtual reality, as well as artificial intelligence content are also expected to be major factors contributing to the growth of data traffic'. We would like to remind here, almost all VR content is currently consumed over fixed networks through Wi-Fi (our own data shows that over three-quarters of Meta's traffic in Europe is delivered through fixed networks). These fixed networks are already established across the majority of Europe, and carry almost 20 times the traffic of mobile networks<sup>7</sup>.

#### **Section 4: Pricing and cost developments**

We welcome BEREC's finding that transit prices have fallen over longer time horizons, due to competition and technological progress; and that overall no evidence has emerged which questions the conclusion from the 2017 IP-IC report that "BEREC considers that the Internet's ecosystem's ability to cope with increasing traffic volumes is still given" (p.14 of the Draft Report).

BEREC rightly identifies at p. 15 of the Draft Report a number of technological developments in internet architectures since the BEREC 2017 IP-IC report (see Chapter 5) and that these changes, which have largely been implemented cooperatively by a variety of market players, have increased the efficiency of networks transmitting data and reduced the distances which it is transmitted, and are a key reason why BEREC continues to observe falling prices and costs. Meta respectfully draws attention again to the significant investment in complementary infrastructure by Meta and other content application providers (CAPs), to bring content closer to EU users (including through increased deployment of CDNs which also exert a downward pressure on prices and costs, as described at p.15 of the Draft Report). These infrastructure investments by Meta and other CAPs have been shown to meaningfully reduce costs for telecoms providers, as described further in the study by Analysys Mason "The Impact of Tech Companies' Network Investment on the Economics of Broadband ISPs (October 2022)"<sup>8</sup>.

BEREC rightly concludes (p.19 of the Draft Report) that while network usage has increased, due to technological developments as well as competitive pressure, marginal network costs are observed to have declined to the point that they outweigh any increased costs associated with network use.

However, as BEREC observes there remain certain competition related issues. As BEREC notes at p.30 of the Draft Report, this is usually because of the incumbent vertically integrated IAS

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<sup>6</sup> [Vodafone and Meta optimise short-form videos to improve network efficiency \(2024\)](#)

<sup>7</sup> Meta, [Network Fee Proposals Are Based on a False Premise \(2023\)](#)

<sup>8</sup> Analysys Mason, [The Impact of Tech Companies' Network Investment on the Economics of Broadband ISPs \(2022\)](#)

provider leveraging its monopoly power: “According to BEREC’s stakeholder workshops, most disputes stem from vertically integrated IAS providers attempting to leverage their termination monopoly into the transit/peering market and to introduce (higher) fees for IP-IC directly from CAPs”.

### ***Section 5: Market developments in IP-IC***

Meta agrees with BEREC’s observations at p.20 (onwards) of the Draft Report as regards the benefits of CAP investment in complementary transport infrastructure for telecom providers and the broader electronic communications ecosystem (e.g., increase in competitive pressure on transit / peering markets, as well as benefits in terms of quality of experience for end-users).

Meta welcomes BEREC’s observations that submarine fibre optic cables play a key role in maintaining a robust and high-capacity global network infrastructure; and the benefits of CAPs’ increased investments in CDN infrastructure in bringing content closer to end-users thereby providing qualitative enhancements for end-users and savings for IAS providers.

Indeed, in Meta’s experience, CAPs play a crucial role in keeping the IP peering and transit market competitive through their investments in CDNs, subsea cables, and other infrastructure. We refer to our previous responses to BEREC’s consultation on its draft report on the entry of large content and application providers into the markets for electronic communications networks and services<sup>9</sup> and consultation on the draft report on the general authorization and related frameworks for international submarine connectivity<sup>10</sup> regarding Meta’s investments in subsea cables.

As we explained in those documents, investment in subsea cables by CAPs increases the global capacity for data transfer, enhancing connectivity between continents and reducing the costs associated with international transit. These investments diversify the routes available for data transfer, reducing the risk of congestion and outages on any single path and improving the overall resilience of the Internet. By building and owning subsea cables, CAPs can reduce their reliance on ISPs for international bandwidth, driving down costs and increasing competition in the market.

We estimate that Meta’s investments, alongside other private investors in submarine cables have led to transatlantic capacity to increase approximately 400% between 2016 and 2023. The cost per bit has plummeted, and we estimate that in May 2023 it was less than 25% of what it was in 2016<sup>11</sup> and we continue to see further decline according to Telegeography data.

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<sup>9</sup> [Public consultation on the draft BEREC Report on the entry of large content and application providers into the markets for electronic communications networks and services](#) (2024)

<sup>10</sup> [Report on the general authorization and related frameworks for international submarine connectivity](#) (2024)

<sup>11</sup> Salvadori/Martin, [Network Fee Proposals Are Based on a False Premise](#) (2023).



By deploying CDNs, CAPs reduce latency and improve end-user experience, while also reducing the load on transit networks. CDNs offload significant amounts of traffic from transit networks, spreading traffic across more direct, efficient routes. This mutually beneficial partnership underscores the importance of collaboration in driving innovation and advancing network resilience.

Meta estimates<sup>12</sup> that its private CDN network results in savings to ISPs of hundreds of millions of euros per annum, based on estimates of what ISPs would need to spend if they had to build and operate their own connections to carry traffic from Meta data centers in the US to their end users in Europe. It also considers alternatives to self-build where ISPs buy international connectivity from Tier 1 transit providers (assuming this capacity is available - in reality, this is very unlikely given current internet architectures).

We would like to recall once again that peering is not a (commercial) service, but instead settlement free peering is a mutually beneficial technical exchange which is the norm and has always been a cornerstone of the growth of the Internet. Direct peering reduces the number of hops data packets need to travel, leading to lower latency. This is particularly beneficial for latency-sensitive applications such as video streaming and real-time communications. Direct peering connections often provide higher bandwidth compared to transit links. This can enhance the overall end-user experience by supporting higher data throughput and reducing congestion during peak times.

As indicated above, CAPs like Meta and others, have made substantial investments in digital infrastructure in order to move content closer to consumers, thereby saving telecom operators billions per year.<sup>13</sup> Paid peering demands on the other hand will undermine and disincentivise continued investment in these networks. As BEREC notes (and as referenced above as regards previous analysis by ACM) cases exist which indicate that certain IAS providers leverage their termination monopoly into the transit/peering market to introduce termination fees for IP-IC vis-a-vis CAPs; and that according to a study by Analysys Mason, there are examples of IAS providers' gaining bargaining power on the transit and peering markets by exploiting their termination monopoly in access networks (p.30 of the Draft Report).

We agree with BEREC that regulators should guard against inappropriate incentives for vertically integrated IAS providers to limit transit capacity as a mechanism to move CAPs towards paid peering on IAS terms.

## **Section 6: Generic structure of IP-IC issues**

### *IP-interconnect disputes*

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<sup>12</sup> Analysys Mason, [The impact of tech companies' network investment on the economics of broadband ISPs](#) (2022)

<sup>13</sup> Abecassis et al, [Analysys Mason - The Impact of Tech Companies' Network Investment on the Economics of Broadband ISPs](#), 4-6 (2022).

We welcome BEREC’s methodical analysis of the very few known IP-Interconnect disputes that have occurred since 2017. According to BEREC’s own expert workshops “most disputes stem from vertically integrated internet access service providers attempting to leverage their termination monopoly into the transit/peering market and to introduce (higher) fees for IP-IC directly from CAPs” (p.30, 38 of the Draft Report).

BEREC references, for example, (p.29 of the Draft Report) previous analysis by the Dutch regulator, ACM, regarding the issue of artificial congestion in a case involving a CDN provider, where ACM concluded that “The capacity of Tier-1 peering interconnections has been (artificially) scarce in order to prevent the use of (partial) transit over these networks from becoming a substitute for direct interconnection with DT [Deutsche Telekom] [sic]. Transit competition was limited in order to impose excessive prices for direct interconnection”; and that this playbook was referred to by various stakeholders.

Meta agrees with BEREC’s view that instances of peering disputes remain rare, and do not mandate or justify the imposition of new regulation of the IP-IC market, much less for introducing mandatory dispute resolution mechanisms between ISPs and CAPs. This is not just our view, as BEREC notes, stakeholders at BEREC’s workshops typically did not call for (general) regulation of IP-IC markets but rather suggested to monitor markets, ensure transparency and - in cases of disputes - to examine the individual case (p. 29 of the Draft Report). Conversely, imposing mandatory dispute resolution would raise significant net neutrality concerns and undermine the EU’s robust open internet framework.

Meta considers the position is well described by Stanford University Professor Barbara van Schewick in her commentary on the EC proposals regarding possible introduction of a mandatory dispute resolution mechanism for commercial disputes between ISPs and CAPs, where she notes that: “In plain language, this proposal requires certain online services to negotiate with ISPs over the size of the fee, not whether there is a fee. And if an online service disagrees with the requested fee or an ISP thinks an online service isn’t offering enough money, some arbitrator will decide how big that fee is”; and “Just like mandated network fees, negotiated network fees would undermine the internet’s economics, violate net neutrality, make online services worse, subsidize ISPs’ own video services at the expense of user choice, and harm smaller competitive ISPs.”<sup>14</sup>.

We believe that a mechanism of mandatory dispute resolution would likely result in dispute creation, rather than dispute resolution. A fee-seeking party will be motivated to raise a point of dispute when claiming fees in a relationship that otherwise worked successfully on a settlement free basis. Mandatory arbitration on fees therefore carries significant risk of becoming de facto paid peering, to “resolve” such a dispute, effectively creating price regulation by third party with

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<sup>14</sup> Barbara van Schewick. [EU telecoms newest proposal to force websites to pay them is just as terrible as their previous one \(2023\)](#)



prices imposed on a non-transparent, ad-hoc basis. Please see our additional comments below, on net neutrality aspects, which we have outlined in our observations to section 8 (Relationship between IP-IC and OIR) of the Draft Report.

The way the open internet functions is through an interconnected and mutually reliant community of network owners – large and small. Each and every one of those networks is reliant on access to each other to ensure that people and businesses can enjoy content, access educational resources and run their companies. The importance of this ability to exchange data led to net neutrality principles being enshrined in the EU and countries all around the world. As a result, the global standard for the interconnection of networks is that they exchange traffic free of charge because this is mutually beneficial. These relationships enable content, apps and digital services to be accessed by customers of telecom providers. At the same time they enable telecom providers to run their business by charging consumers and businesses for internet access.

Hence, Meta and many other online service providers have reciprocal “settlement-free” peering with thousands of telecom providers and other network owners around the world.

### **Section 7: Bargaining situation (in particular) between CAPs and IAS providers**

We welcome BEREC’s discussion at section 7 of the Draft Report as regards the bargaining situation between CAPs and IAS providers.

We believe that intentionally choosing a “bad” transit provider would be an counterintuitive decision, as typically a CAP is seeking connectivity that delivers the right mix of price and quality for their requirement, and intentionally choosing a provider with poor connectivity to the destination IAS providers that are important to the CAP would be inefficient and wasteful. IAS providers with a termination monopoly can levy prices or conditions as they choose, which means that CAPs and backbone providers can be faced with insufficient capacity to end-users of IAS providers, egregious costs or both.

The term CAP covers a variety of business types and sizes, and some of these CAPs might have less interest, capability or access to resources to build their own private or public network that enables peering. CAPs that do not prefer to build their own network or negotiate their own peering may rely on backbone providers to reach end-customers of IAS providers. If as mentioned, some backbone providers find their business is limited by IAS that have a termination monopoly and restrictive peering strategies, this constrains opportunity for both backbone provider and CAP.

We agree with BEREC’s recognition (p.32 of the Draft Report) that bargaining power is relative and may not be permanent, as well as the example cited there that the market environment for ‘Big Tech’ companies has changed a lot in 2022 (rising interest rates, stock prices falling); that there is a mutual interdependence between CAPs and IAS providers, leading to, at first sight, an

overall a balance in the IP-IC bargaining relation between CAPs and IAS providers; and (p.33 of the Draft Report) that “Even the largest CAPs may have no choice but to interconnect with an IAS provider with a significant number of end-users on their network, because CAPs require access to these end-users. This, all other things being equal, increases the likelihood that the CAP finally enters into a paid peering with the IAS providers. At the same time, this means that a “very large” IAS provider has a relative competitive edge [relative] to an IAS provider with a smaller number of end-users.”

In terms of bargaining power, Meta wishes to note that a recent study by Professor Coppik (commissioned by Meta) has also found that CAPs such as Meta cannot be presumed as a matter of course to exert bargaining power over IAS providers, simply because of the size and/or popularity of their services. The study also contains analysis that is informative in the context of the broader network fee debate, by showing that there is no recognisable economic basis for network fees between CAPs and telcos as their business model is characterised by a symbiotic relationship. Both sides benefit considerably from traffic exchange at network level in their respective end customer businesses. Peering is not a transport service provided by the telco, but rather activity in the telco's own interest in providing services to its own customers. Traffic demand is initiated by telco end-customers' requests, not by the interconnection partner, and is also delivered to telco end-customers, for which the customers remunerate the telco as part of their Internet tariffs. The traffic transport is initiated by the telco end customers and covered by their subscription to the telco. Any additional compensation extracted from the interconnection partner would be a double payment for the same service<sup>15</sup>. At the same time studies show that there is substantial demand from the consumer side, expressed by their willingness to pay for connectivity services by telecom operators, enabling them to access content services provided by CAPs.

Equally regulators, governments, trades<sup>16</sup> and academics<sup>17</sup> have voiced reservations about the necessity of mandatory arbitration mechanisms, while raising concerns about the potential harms for the open internet and consumers. We note that BEREC also acknowledges this on the p.29 of the Draft Report by saying that “customers are ultimately the ones who suffer from such disputes as they cannot use services or access content with the quality they expect”.

As a conclusion, settlement-free IP peering should continue to be a standard IP-IC practice because it offers significant benefits such as cost efficiency, improved performance, enhanced reliability, market competitiveness, positive network externalities, and strategic collaborative

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<sup>15</sup> Coppik, [Economic fundamentals of IP interconnection and data traffic between over-the-top providers and traditional telecommunications network operators](#) (Apr. 2024)

<sup>16</sup> DOT Europe, [DOT Europe response to consultation on White Paper “How to master Europe’s digital infrastructure needs?”](#) (2024); Federacja Przedsiębiorców Polskich, [Feedback from: Federacja Przedsiębiorców Polskich](#) (2024); Computer & Communications Industry Association (CCIA), [Joint Statement: Preliminary Concerns Regarding the European Commission’s White Paper on EU Digital Infrastructure Needs](#) (May 2024)

<sup>17</sup> van Schewick, EU Telecom’s Newest Proposal to Force Websites To Pay Them is Just As Terrible As Their Previous One (2023); Konstantinos Komaitis, [Feedback from: Konstantinos Komaitis](#) (2024)

advantages. By maintaining and expanding settlement-free peering arrangements, ISPs can provide better services to their customers, foster a more competitive and innovative market, and contribute to the overall robustness and efficiency of the global internet ecosystem. Settlement-free peering promotes a level playing field, particularly for smaller and regional ISPs who might otherwise struggle to compete with larger providers. This can lead to more diverse and competitive markets.

### **Section 8: Relationship between IP-IC and OIR**

Meta welcomes BEREC's confirmation that the general obligation on IAS providers in Article 3(3) OIR to ensure equal treatment in relation to traffic they manage when providing an IAS, enables NRAs to take into account an IAS provider's interconnection policies so as to ensure that they do not have the effect of limiting the exercise of end-users' rights under Article 3(1) OIR, or otherwise circumvent the clear intentions of the protections under the OIR. As BEREC notes, the underlying objective of ensuring an open internet as well as the overall effectiveness of the OIR would be easily compromised if IP-IC were completely irrelevant (p.35 of the Draft Report).

Meta further welcomes BEREC's indications that selective routing policies and/or artificially manufactured scarcity (e.g. by abstaining from upgrading capacity on congested routes and/or by reducing or limiting the number of interconnections) can degrade the quality of the IAS experienced by end-users in an application-specific manner that potentially results in non-compliance with OIR requirements. (p. 35 of the Draft Report). We agree with BEREC's conclusions in this section that there is an obligation on IAS providers to abstain from conduct that has the object and/or the effect of compromising the provision of an open IAS for end-users, including conduct that is technically implemented at the interface between the access network and other connected networks (i.e. at the peering level). (p.36 of the Draft Report).

In addition to BEREC's confirmations, Meta respectfully urges BEREC to provide additional guidance on this area, including by way of update to its Open Internet Guidelines.

### **Annex I: Country cases related to IP-IC**

#### *B. Germany: Telekom Deutschland vs (Meta)*

We note BEREC refers to the commercial dispute between Deutsche Telekom (DT) and Edge (Meta) in Annex I to the Draft Report (p.41 of the Draft Report). Meta wishes to point out that this is a purely contractual dispute (about whether or not a contract has been agreed to) and it is not a regulatory dispute. While it is true that the first instance Regional Court in Cologne decided in DT's favour that a contract exists, the court did not engage on an analysis of the nature of the relationship (peering or transit), or on the reasonableness of the "price" demanded by DT, or on Meta's antitrust counterclaim.

Meta has appealed the first instance decision, and we trust the German legal process will recognise this attempted abuse of DT's market power by artificially constraining the ability to reach German consumers. Meta does not consider that the existence of this contractual dispute should change BEREC's view that there is no need for regulatory intervention, including introduction of a formal, mandatory dispute resolution process, as potentially envisaged in the the European Commission White Paper "How to master Europe's digital infrastructure needs?". As explained in Meta's response to the EC White Paper<sup>18</sup> Meta cautions against such a process as it would simply serve as a dispute creation mechanism (rather than dispute resolution) and (as noted by a wide range of stakeholders, NGOs, CSOs and commentators) would undermine the EU's robust open internet framework. Here we totally agree with BEREC's finding that "stakeholders typically did not call for regulation but suggested monitoring and a case-by-case assessment" (p.4 of the Draft Report).

DT does not take this view and is putting its subscribers behind a de facto paywall by charging online service providers like Meta for the ability of DT customers to access our apps, potentially restricting its customers' access to online service providers that do not agree with these terms. This dispute is at the core of the current legal proceedings that DT has brought against Meta in Germany.

Meta has done everything in its power to keep its apps available through Deutsche Telekom. The recent first instance decision of the Cologne Regional Court, which we have appealed, has practically left us with only two options: Meta either fully complies with Deutsche Telekom's demands, or disconnects and re-routes its traffic via 3rd party providers instead of exchanging it directly with DT.

Here we totally agree with BEREC finding that "customers are ultimately the ones who suffer from such disputes as they cannot access services or use content with the quality they expect" (p. 29 of the Draft Report).

We believe that the DT/Meta case is an anomaly and hope to reach a collaborative resolution so that DT subscribers can continue to access our apps in the way they rightly expect when they pay DT to connect to the Internet. However, we do not consider that this isolated dispute should alter BEREC's view discussed above that there is no basis for introducing (general) regulation of the IP-IC market, much less for introducing mandatory dispute resolution mechanisms in this area.

We trust that the above comments are of assistance. We would be happy to discuss further with BEREC.

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<sup>18</sup> [Meta's response to the EC White Paper](#) (2024)