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Netflix comments on BEREC's draft Report on the IP interconnection ecosystem

Netflix is one of the world's leading entertainment services, with more than 277 million paid memberships in over 190 countries enjoying TV series, films and games across a wide variety of genres and languages. Members can play, pause and resume watching as much as they want, anytime, anywhere, and can change their plans at any time. We know that our business would not be possible without partnerships with creators or a well-functioning Open Internet. There is a symbiotic relationship between a thriving creative industry and a thriving internet ecosystem. Consumers want great films, TV series and games — and they are willing to pay for high-quality internet to reach the content they love.

We welcome the opportunity to provide our observations and support for BEREC's draft report on the IP interconnection (IP-IC) ecosystem (the "Report"). It accurately and consistently reflects that the IP-IC ecosystem is following an *"evolution rather than a revolution"*, and that it is *"driven by functioning market dynamics and by the cooperative behavior of market players"*.

We comment below on two important conclusions made in the Report:

1. The only persistent exceptions to a well functioning IP-IC ecosystem in Europe are the practices of a few large ISPs that violate Open Internet Rules. They should be dealt with on a case-by-case basis using existing regulations.
2. End users' growing demand for internet content and associated traffic growth is sustainable, and will continue to be sustainable over time. This is thanks to market players' investments and cooperative behavior.

It is essential that these conclusions are fed into the ongoing work on the future of the digital infrastructure being conducted by the European Commission. They reinforce how certain policy measures being considered by the European Commission in its white paper *How to master Europe's digital infrastructure needs?* (the "EC White Paper"), such as 'dispute resolution mechanisms' and 'codec performance labels,' are both unnecessary and potentially harmful.¹ As such, we recommend that these conclusions made by BEREC in the Report be made more prominent and be included in the executive summary.

We look forward to continued cooperation with BEREC to foster a functional Open Internet.

¹ For more information on the potential harms of these proposals, see Netflix' reply: EC White paper 'How to master Europe's digital infrastructure needs?' consultation ([direct pdf](#), [EC filing system](#))

The only persistent exceptions to a well functioning IP-IC ecosystem in Europe are the practices of a few large ISPs that violate Open Internet Rules (OIR). They should be dealt with on a case-by-case basis using existing regulations, and new regulations such as the ‘dispute resolution mechanism’ proposed by the EC White Paper are not needed.

In its section 6, the Report concludes that the IP-IC market functions well. BEREC notes that *“the IP-IC ecosystem is driven by functioning market dynamics and by the cooperative behaviour of market players”*. Netflix agrees and believes that this trend will continue.

The only exception to this trend of a well functioning market noted in the Report is the behavior of large ISPs (*“viewed as persistent exceptions to the rule”*) that *“leverage their termination monopoly into the transit/peering market and introduce termination fees for IP-IC vis à-vis CAPs”*. BEREC further concludes that practices such as *“artificially manufactured scarcity (e.g. by abstaining from upgrading capacity on congested routes and/or by reducing or limiting the number of interconnections)”*, *“can constitute [Open Internet Order] violations”*. Netflix agrees. The IP-IC practices of a few large European ISPs to impose fees under the threat of congestion restricts internet users’ ability to access the internet content of their choice.² There is a very broad consensus against such fees and the damaging effects they would entail.

In section 7, BEREC reports a *“relative bargaining disadvantage for smaller CAPs compared to larger CAPs when trying to peer directly with an IAS provider (of a given size)”*. Similarly, BEREC should explicitly note that large ISPs should have a relative bargaining power advantage relative to smaller ISPs. However, even the largest CAPs advertise open peering policies with no payment required to interconnect. The practices of these CAPs are consistent with the ‘bill & keep’ principle³ and have been recognized by the German monopoly commission as having no harmful effect.⁴ In contrast, BEREC notes the following about large ISPs: *“some IAS providers can charge transit providers significantly higher than market prices”*. In other words, larger CAPs solidify the very cooperative practices that allow the IP-IC market to function well, whereas some large ISPs use their bargaining power to exploit their termination monopoly and extract rents in the form of abnormal IP-IC fees. The Report should explain this distinction explicitly and more clearly. Violations can and should be resolved using existing rules, and don’t require the creation of new rules. Specifically, the EC White Paper’s suggestion to impose a new “dispute resolution mechanism” to settle IP-IC disputes between CAPs and ISPs is not justified by the functioning of the current interconnection market or its foreseeable evolutions.

² See Netflix’ confidential response to BEREC’s ad hoc Questionnaire on practices related to IP interconnection

³ [Google, 2023](#); [Apple, 2023](#); [Meta, 2023](#); [Amazon, 2023](#); [Microsoft, 2023](#)

⁴ [Deutsche Monopolkommission, 2023](#) ; *“it is not apparent that OTT providers are abusing their increased bargaining power in a harmful way”* (translated from German)

End users' growing demand for internet content and associated traffic growth is sustainable, and will continue to be sustainable over time. This is thanks to the market players' investments and cooperative behavior. New burdensome regulations such as the EC White Paper's proposal for 'codec performance labels' are not needed.

Netflix strongly agrees with BEREC's conclusions that *"the internet has, since it was created, managed to cope with traffic growth and more accentuated peak traffic"* and that *"due to competition as well as technological progress, there is currently no indication that this is likely to change in the future."* This is not by chance. Both CAPs and ISPs have a vested interest in providing a great experience for their customers and as a result, both invest in infrastructure and design their interconnections efficiently to achieve that goal. The incentive to provide a great experience for its members is why Netflix has created its own content delivery network, Open Connect⁵, and continues to invest in advanced content delivery and encoding technologies that make delivery more efficient and reliable. The principles of the Open Internet enable competition, which ensures investments in resilient, future-proof network infrastructure.

We would like to note that growing internet traffic also does not result in growing energy consumption resulting in carbon emissions over time. The growing demand for data traffic is actually decoupled from energy consumption. For example, BT Group's energy consumption (~90% from network operations) has reduced on average by 1.5% per year over the past five years, despite increases in data traffic⁶. This fact is further confirmed by large networks like Deutsche Telekom or Telefonica⁷. In France, the French Federation of Telecoms reported a doubling of data traffic between 2015 and 2019 without growth of energy consumption⁸. Conversely, the demand for data traffic is actually a driver for the demand that fuels ISPs' investments in more energy efficient next-generation networks (5G, FTTx) that the European Commission wants to promote. The growth in demand supports investment in energy efficient networks, and does not create meaningful negative environmental externalities.

Netflix agrees that networks will continue to handle traffic growth and we believe that the entertainment of the future will be delivered over the Open Internet. Evidence shows that traffic growth does not create meaningful negative environmental externalities either. The EC White Paper suggests additional measures for increased transparency on the emissions

⁵ https://openconnect.netflix.com/en_gb/

⁶ DIMPACT analysis of the [ESG Addendum](#) to the BT Group plc Manifesto Report 2022

⁷ [Deutsche Telekom, 2023](#): *"In 2024, we will be transmitting twice as much data in Europe as we did in 2020 – but there will be no rise in our power consumption. We can achieve this by using the very latest technologies, updating our networks, and switching off old systems—and we are always on the lookout for innovative ideas"*; [Telefonica, 2022](#): *"Since 2015, we have managed to stabilise energy consumption, reducing it by 2.4% even though the traffic managed by our networks has increased more than 5.1 times"*

⁸ [Etude Economique 2021: Fédération Française des télécoms](#)

related to the usage of e.g. streaming services in order to promote “*a more efficient use of networks*”, for example through codecs’ performance labels. Such an approach is unjustified and unnecessary: all players, including CAPs like Netflix, already contribute to the efficient use of networks, without the need for cumbersome new rules.