JOINT STATEMENT ON THE COMMISSION'S CALL FOR EVIDENCE ON THE DIGITAL NETWORKS ACT – FOCUS ON ACCESS REGULATION

The European Commission's *Call for Evidence* on the proposed **Digital Networks Act (DNA)** includes, among other elements, disruptive proposals concerning access regulation - most notably, the downgrading of the ex-ante **Significant Market Power (SMP)** regulatory regime, a long-standing cornerstone of the EU's pro-competitive telecoms framework.

These policy options rest on **incorrect and problematic premises**, including:

i. selective interpretation of how Europe's digital connectivity is performing, especially regarding full fibre and 5G deployment; and

ii. a **biased interpretation** of the role and purpose of the **Gigabit Infrastructure Act (GIA)** - an instrument intended to facilitate infrastructure deployment, not suitable for replacing access regulation.

The downgrade put forward by the European Commission entails serious risks of dismantling the carefully balanced framework that supports wholesale access, competition, and technological progress - jeopardising the development of next-generation services such as **cloud and edge computing, 6G, and AI** and jeopardising investors' confidence, creating uncertainty and increasing risk.

1. The Reality of Europe's Connectivity

Contrary to the narrative of underperformance propagated by some, the *State of the Digital Decade 2025 Report* demonstrates clear and meaningful progress as of end-2024:

- **Very High Capacity Network (VHCN) coverage**: 82.5% EU average;
- **Full fibre coverage**: 69.2% of buildings (up from 63.9% at end-2023, 56.15% at end-2022, 49.66% at end 2021 and 42.8% at end 2020);
- **Overall 5G coverage**: 94%;
- **5G in the 3.4–3.8 GHz band**: 67.7% (up from 51% at end-2023).

These figures reflect **the positive impact of the current framework which sustained infrastructure deployment. However, the take-up of VHCN, especially of FTTH, is low and is scattered across the EU. The low take-up puts at significant risk the investments made to achieve the Digital Decade targets.**

Importantly, this situation does not constitute a crisis that would justify weakening the SMP-based - regulatory regime. There is no factual evidence suggesting that the

changes proposed by the Commission would produce better outcomes . On the contrary, regulatory stability remains a key enabler for **investor confidence** and is vital for the health of the broader digital ecosystem and for continuing to meet the needs of **consumers, businesses,** and public institutions.

It is worth recalling that in **2013**, the European Commission made similar claims when it proposed the **Telecoms Single Market/Connected Continent package**, which was ultimately **rejected by the co-legislators**. At that time, the sector was also presented as underperforming.

And yet, under the current regulatory framework, the sector has since **successfully deployed two full generations of mobile technology - 4G and 5G - and invested hundreds of billions of euros** in building the very high-capacity networks we have today. The expansion of VHCN and fibre is a direct result of that investment - fostered by a regulatory environment that has been **predictable, proportionate, and rooted in competition law principles**.

2. The Questionable Logic of Prioritising Symmetric Measures

The Commission proposes to relegate SMP-based regulation to a "last resort," applicable only after symmetric measures (the GIA or other forms of already applicable symmetric access) have been applied. This represents a **radical departure** from long-standing regulatory principles - replacing targeted, evidence-based intervention to address proven dominant market positions with a **blanket approach** that would apply to all operators, regardless of their market power.

Moreover, this proposed shift to prioritising symmetric regulation **contradicts the fundamental principles of EU competition law**, which recognise that operators with **Significant Market Power bear a special responsibility** not to distort competition. Abandoning that principle introduces **legal uncertainty**, and risks violating the principles of **proportionality and regulatory certainty** enshrined in EU law.

3. The Inadequacy of the GIA as a Regulatory Substitute

The **Gigabit Infrastructure Act** was designed as a cost-reduction instrument, intended to support network deployment - not as an instrument to resolve structural competition issues. Its limited scope and exemptions risk enabling dominant operators to entrench their market positions, rather than ensuring fair and open access for all.

In contrast, the **European Electronic Communications Code (EECC)** provides a mature, legally sound and **targeted regulatory framework**. It empowers **National Regulatory Authorities (NRAs)** to impose obligations based on rigorous market analysis, specifically where operators have SMP. The EECC focuses on the infrastructure that matters most - such as ducts and poles - controlled primarily by dominant telecom operators.

If these dominant actors are permitted to limit access to ducts and poles and deny fit-for-purpose wholesale passive access, and are free to engage in anti-competitive behaviour discouraging competition or actively damaging the business plans of alternative operators, **competition will suffer immediately and significantly. European**

consumers, businesses and public administrations who benefited from excellent outcomes of the existing framework will be significantly worse off.

4. A Stable, Evidence-Based and Self-Correcting Framework

The **European Electronic Communications Code (EECC)** is not rigid - it is **technology-neutral** and designed to evolve with market conditions. It is also **self-correcting by design**: it mandates regulation **only if justified by a lack of effective competition**. Where competitive conditions improve, regulation is lifted accordingly.

This principle has already led to a **steady decline in the number of regulated markets** - from 18 in 2003 to just **2 in the Commission's 2020 Relevant Markets Recommendation**.

Replacing this effective, market-sensitive regime with an untested system of generalised symmetric rules would seriously undermine the EU's regulatory credibility. Furthermore, it would break a long-standing promise to the investor community - at a time when long-term investment cycles are actively underway - by changing the rules during an investment cycle, undermining legal certainty, and regulatory stability, and the EU's commitment to evidence-based decision-making.

Such an approach would damage the EU's reputation as a destination for long-term infrastructure investment - at a time when such capital is essential not only to meet Europe's digital goals, but also to support the technology investments that underpin the development of next-generation innovations such as cloud and edge computing, 6G, and AI.

Competition is a prerequisite for international competitiveness. Fear of cannibalising legacy business models remains one of the greatest barriers to innovation.

5. Stakeholder Consensus and Democratic Legitimacy

The Commission's proposals come despite extensive public consultations, including:

- The **Exploratory Consultation** (February 2023);
- The **White Paper Consultation** (February 2024);
- Targeted questionnaires conducted in **January and July 2025** as part of three supporting studies.

These consultations generated broad, consistent concerns about the proposed direction on access regulation. expressed by:

- The **Body of European Regulators for Electronic Communications (BEREC);**
- **All 27 EU Member States**, through the **Council Conclusions on the White Paper (December 2024);**
- Numerous stakeholders from civil society, business, and the technical community - including the **undersigned associations.**

These concerns have not been addressed.

6. Our Call to Action

We, the undersigned associations - representing business and technical communities - call on the European Commission to:

- **Abandon its proposed changes** to access regulation under the DNA;
- **Preserve the current ex-ante SMP regulatory framework** under the EECC, without dilution or reinterpretation;
- **Uphold the principles of legal clarity, proportionality, and competition**, which have served Europe and its citizens so well.

We also call on **EU Member States** and **Members of the European Parliament** to ensure that these concerns and suggestions are fully reflected in the upcoming legislative process.

7. Conclusion

EU telecom regulation has, for over three decades, delivered **better outcomes, lower prices and increased quality of networks and services, sustained investment, and continuous innovation. Europe excels with respect to its global peers when it comes to combining the deployment of gigabit networks, their adoption by consumers and professional users, as well as affordability and inclusion for European consumers and businesses**. The EU should now support the take-up of advanced connectivity services to promote private investments and ensure a fair and competitive transition for EU citizens and businesses. Its success stems from a balanced blend of **market forces and proportionate, evidence-based regulation**.

Abandoning this model in favour of vague, untested alternatives would jeopardise Europe's digital ambitions and global competitiveness. The EU must **retain what works and reform only where demonstrably necessary**.

At the heart of this vision is our shared commitment to placing **Europe's global competitiveness at the forefront**. Recognising the vital role played by a **diverse range of market participants**, the undersigned associations advocate for an **inclusive electronic communications sector** - one that fosters innovation, empowers all layers of the European economy, and avoids entrenching market dominance.

In today's dynamic digital landscape, **embracing a wide variety of actors - large and small - is essential**. By nurturing diversity in products, services, and business models, the EU can **unlock its full innovative potential**, ensure **a resilient and competitive market**, and maintain its leadership in the global digital economy.

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List of signatories in alphabetical order

Associazione Italiana Internet Provider
https://www.aiip.it/

Association des Opérateurs Télécoms Alternatifs
https://www.aota.fr/

The Bundesverband Breitbandkommunikation e. V.
https://brekoverband.de/

The european competitive telecommunications association
https://www.ectaportal.com/

Internet Service Providers Austria
https://www.ispa.at/

MVNO Europe
http://mvnoeurope.eu/

Telecommunication Union of Slovak Republic
https://www.tusr.sk/

Verband der Anbieter im Digital- und Telekommunikationsmarkt (VATM) e.V.
www.vatm.de/