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## III. Facts and fiction in the Draghi report

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## ABSTRACT

This article, part of our special On-Topic series on "A New Agenda for Growth: The Draghi Report and Competition Policy," discusses the Draghi report's assessment of European telecom markets, questioning its claims of underperformance and its recommendations for increased consolidation. It argues that easing merger control could harm competition and investment while highlighting positive proposals, such as regulatory harmonization and enhanced competition tools.

*\*The views expressed in this article may not be regarded as stating an official position of the German Monopolies Commission.*

## Table of Contents

- **Introduction** Arianna Andreangeli, Professor of Competition Law, Edinburgh Law School, University of Edinburgh
- **I. Europe's response to a shifting world order and the implications for EU competition policy** Fiona, Carlin, Partner, Baker McKenzie, Brussels
- **II. How the Draghi report may impact EU merger control** Nicholas Levy, Partner, Cleary Gottlieb Steen & Hamilton, Brussels & London, Elena Chutrova, Associate, Cleary Gottlieb Steen & Hamilton, Brussels, Aleksandra Wierzbicka, Associate, Cleary Gottlieb Steen & Hamilton, Brussels
- **III. Competition in telecoms : Facts and fiction in the Draghi report** Tomaso Duso, Head, Firms and Markets Department, German Institute for Economic Research (DIW), Berlin Professor, Technical University (TU), Berlin, Martin Peitz, Professor of Economics, University of Mannheim, Director, Mannheim Centre for Competition and Innovation (MaCCI)
- **IV. New competition tool as a duty to cooperate in regulation** Luc-Marie Augagneur, Partner, Cornet Vincent Ségurel, Lyon, Senior Lecturer Associate, University Jean Moulin Lyon 3
- **V. Competitiveness versus competition? The Draghi report and a new vision for competition policy and innovation in Europe** Arianna Andreangeli, Professor of Competition Law, Edinburgh Law School, University of Edinburgh

## I. Draghi on telecom markets in a nutshell

1. The Draghi report on European competitiveness highlights Europe's sluggish overall economic performance. The report correctly identifies critical sectors and major obstacles to economic growth, such as underinvestment in innovative activities but also in physical infrastructure such as the energy grid or digital infrastructure. It contains radical proposals to reverse Europe's competitive decline compared to China and the USA. In its assessment of the telecom sector, the Draghi report diagnoses a gap between the EU and its global competitors, including the US.

2. As a general principle, the report argues that scale is needed for firms to increase investment and, to increase firm size, recommends relaxing merger control and encouraging consolidation. This is, according to the report, particularly true for the telecommunications sector, where scale is seen as a necessary precondition to expand network infrastructure. One of its more concrete recommendations is to increase the weight of innovation and investment commitments in the EU's rules for clearing mergers. Specifically, remedies should be focused "*on commitments to invest according to detailed time schedules, launch of services or access to data or platforms, rather than partial de-consolidations or the transfer of physical assets.*"<sup>1</sup> To encourage consolidation, the report also recommends that telecom markets be defined at the EU level rather than at the Member State level.

1. M. Draghi, The future of European competitiveness, Part B – In-depth analysis and recommendations, September 2024, at 75.

Finally, the report makes the proposals to reduce the regulatory burden and increase harmonisation across Member States, as well as to introduce rules for sharing the investment costs in telecom infrastructure between network operators and over-the-top (OTT) content providers.

**3.** In this article, we question the assessment of the state of telecom markets in Europe and refute many of the recommendations proposed by Draghi. Even if the EU were lagging behind in telecoms—which it is not—we argue that most of the proposed cures for telecoms would be worse than the disease, as they would likely lead to a further increase in market power and a reduction in the incentives to invest in telecom infrastructure. On a positive note, we also find some of the proposals useful.

## II. Competitiveness and the telecom landscape in Europe

**4.** Telecom services are an important input for many business activities. Hence, the affordability, availability, and quality of telecom services are a key driver of European competitiveness, as has been rightly recognised in the Draghi report. This is also backed up by several empirical economic studies assessing the benefits of high-speed and high-capacity fixed-line and mobile broadband infrastructure on economic performance measures.<sup>2</sup>

**5.** While we acknowledge differences between the EU and the US, overall, the EU is performing better

than the US, in contrast to our reading of the Draghi report. Starting with price levels, as pointed out by Thomas Philippon<sup>3</sup> and more recently by Lear et al.,<sup>4</sup> retail prices paid by consumers in Europe for fixed-line and particularly for mobile telecom services are lower than in other parts of the world and much lower than in the US. Such lower price levels continue to apply until now.

**6.** The Draghi report claims that the availability of telecom services is worse in the EU than in the countries that are their global competitors and, in particular, the US. However, this is not consistent with various data sources. For example, regarding the availability of mobile technology, the Draghi report states that 5G covers only 81% of the EU population, compared to over 95% for the US and China. In contrast, according to numbers reported by the European Commission, 5G coverage in the EU stands at 89% in 2023.<sup>5</sup>

**7.** More importantly, average numbers in the EU mask significant differences between Member States. Looking at fixed-line telecoms, several countries, including the Netherlands, Denmark, Romania, Portugal, and Spain, each had more than 90% coverage of FTTP or DOCSIS 3.1 cable network coverage by mid-2022, while the EU-wide average was just 73.4% (which increased to 78.8% one year later).<sup>6</sup> Other countries are lagging behind. Restricting attention to FTTP, the differences are even more pronounced, with Romania, Spain, Portugal and Latvia topping the list with over 90% coverage, whereas Belgium and Germany are at the bottom of the list with 17.2% and 19.3%, respectively.<sup>7</sup> Given the differences in Member

2. This economic literature goes beyond documenting a positive association of measures for this infrastructure and economic performance measures. It quantifies the positive causal effect of broadband infrastructure on several outcomes, including economic growth (L.-H. Röller and L. Waverman, Telecommunications Infrastructure and Economic Development: A Simultaneous Approach, *American Economic Review*, Vol. 91, Issue 4, 2001, pp. 909–923; N. Czernich, O. Falck, T. Kretschmer and L. Woessmann, Broadband Infrastructure and Economic Growth, *Economic Journal*, Vol. 121, No. 552, 2011, pp. 505–532) as well as productivity and favourable labour market outcomes (A. Akerman, I. Gaarder and M. Mogstad, The Skill Complementarity of Broadband Internet, *Quarterly Journal of Economics*, Vol. 130, Issue 4, 2015, pp. 1781–1824; C. Cambini, E. Grinza and L. Sabatino, Ultra-fast Broadband Access and Productivity: Evidence from Italian Firms, *International Journal of Industrial Organization*, Vol. 86, 2023, 102901; N. Czernich, Does Broadband Internet Reduce the Unemployment Rate? Evidence for Germany, *Information Economics and Policy*, Vol. 29, 2014, pp. 32–45; and T. Duso, M. Nardotto, and A. Schiersch, Broadband and Productivity: Structural Estimates for Germany, *DIW Berlin Discussion Paper* No. 1988, (2022).

3. T. Philippon, *The Great Reversal: How America Gave up on Free Markets*, Harvard University Press, Cambridge, 2019.

4. Eur. Comm., *Exploring Aspects of the State of Competition in the EU – Final Report*, Publications Office of the European Union, Luxembourg, 2024 (“Lear report”), retrieved under <https://tinyurl.com/3j42j9sj> on 12 September 2024.

5. Eur. Comm., *Broadband Coverage in Europe 2023: Mapping progress towards the coverage objectives of the Digital Decade – Final Report*, Publications Office of the European Union, Luxembourg, 2024, at 12, <https://data.europa.eu/doi/10.2759/094495>.

6. FTTP or DOCSIS 3.1 cable networks are considered to be very high-capacity networks. The reported numbers are from mid-2022 in Eur. Comm., *Broadband Coverage in Europe 2022: Mapping progress towards the coverage objectives of the Digital Decade*, Publications Office of the European Union, Luxembourg, 2023, at 34. More recent numbers can be found in Eur. Comm., *supra* note 5, at 35.

7. FTTP numbers for 2022 are taken from Statista at <https://www.statista.com/statistics/1387064/europe-ftp-coverage-by-country/>. Differences in technology lead to remarkable differences in available speeds, in particular

States' recent regulatory policies and subsidies, as well as differences going back to earlier times in the rollout of cable networks, it should come as no surprise that the state of telecom markets varies widely across Member States. Thus, while average comparisons between the US and the EU may make a good headline, they are not particularly meaningful.

### III. Merger policy in the telecom sector

8. According to the mission letter sent by the president of the European Commission, Ursula van der Leyen, the new commissioner responsible for competition has been given the task of reviewing the Horizontal Merger Guidelines: *"This should give adequate weight to the European economy's more acute needs in respect of resilience, efficiency and innovation [and] the time horizons and investment intensity of competition in certain strategic sectors (...)"*<sup>8</sup> The mission letter also explicitly mentions to *"draw on"* the Draghi report, among others.<sup>9</sup> One of the strategic sectors, at least in the Draghi report, is telecoms.

9. Thus, the recommendations of the Draghi report may have a direct bearing on the agenda of the next European Commission. Furthermore, the wording of the mission letter broadly reflects the specific recommendations of the Draghi report. Regarding competition policy, it states: *"In the EU's rules for clearing mergers, increase the weight of innovation and investment commitments, as well as efficiencies in the form of improved quality vis-à-vis price levels through extended assessment timelines (e.g. to five years)"*<sup>10</sup> However, in another part of the report, it is stated that *"an innovation defence cannot be used to justify further concentration by already dominant companies or in cases in which the concentration*

*poses significant risk of entrenching a dominant position, ultimately harming effective competition."*<sup>11</sup> As telecom markets are already highly concentrated, we would conclude that further concentration should not be supported and that the proposal to increase the weight of innovation and investment commitments should have little bearing on this sector.

10. Empirical evidence consistently shows that telecom mergers lead to higher prices and are unlikely to increase investments sufficiently to justify such a merger, if such a boost occurs at all. The recent Lear report for the European Commission contains a review of existing studies and a new empirical analysis based on data from 29 OECD countries in the period from 2009 until 2019.<sup>12</sup> Their results show that one additional mobile network operator (MNO) is associated with a 7% reduction in ARPU (average revenue per user). The relationship is even stronger when focusing on Europe only, where an additional MNO is associated with an average 9% reduction in ARPU.<sup>13</sup> It is noteworthy that mobile virtual network operators (MVNOs) have a limited impact on prices even though they tend to offer lower tariffs. This suggests that competition between network operators (i.e. operators with their own network) is key to driving down prices for consumers.<sup>14</sup>

11. Perhaps even more relevant to this discussion, the report also finds no evidence that higher market concentration leads to higher investment. On the contrary, it suggests that markets with more MNOs tend to see higher overall investment: one additional mobile operator leads to a 9% increase in total investment. MVNOs, which play a minimal role in pricing, appear instead to have a more positive impact on investment, contributing to the broader development of mobile infrastructure.

12. This evidence is not unique. A recent article by Jonathan T. Elliott and co-authors<sup>15</sup> uses a very

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for uploads. For example, in mid-2023, 90.2% of the population in Spain had access to more than 1 Gigabit per second upload and download, while the respective number for Germany is 12.4% (see Eur. Comm., *supra* note 5, at 201 and 117).

8. U. von der Leyen, Mission letter to Teresa Ribera Rodríguez, 17 September 2024, at 6.

9. *Ibid.* at 2.

10. Draghi, *supra* note 1, at 75.

11. *Ibid.* at 299.

12. This analysis builds on and extends the work of C. Genakos, T. Valletti and F. Verboven, Evaluating Market Consolidation in Mobile Communications, *Economic Policy*, Vol. 33, Issue 93, 2018, pp. 45–100.

13. An additional estimation using the Herfindahl-Hirschman Index (HHI) to proxy market structure as the main variable and controlling for its endogeneity shows a positive relationship between market concentration and prices, with a 1,000-point increase in the HHI leading to an 11% increase in ARPU.

14. It also suggests that telecom access regulation for MVNOs may not be very effective, at least from a short-term perspective.

15. J. T. Elliott, G. V. Hounghonon, M. Ivaldi and P. T. Scott, Market Structure,

different empirical approach with much more detailed French data. They employ a structural model of supply and demand that accounts for economies of scale in data transmission. With this approach, they examine the effects of market structure on prices, investment, and welfare, showing that consumer surplus in France would be maximised by having a higher number of MNOs than the existing four.<sup>16</sup> Even though the authors identify a trade-off between low prices and high download speeds through consolidation, simulations of all potential mergers among France's four MNOs consistently show a reduction in consumer welfare. This means that the price effect dominates any potential efficiencies and investment effects.

## IV. Definition of telecom markets

**13.** Notwithstanding this rather compelling evidence of the harmful effects of consolidation in telecom markets, the Draghi report suggests that such consolidation is necessary to support investment. The report pays lip service to concerns that consolidation could harm consumers. One of the most controversial proposals in the report is to “[d]efine telecom markets at the EU level (as opposed to the Member State level), particularly when this facilitates cross[-] border integration and creation of EU-wide players.”<sup>17</sup>

<sup>17</sup> The existence of such a single market is illusory.

**14.** Let us briefly recall the logic of market definition in competition policy. Market definition involves identifying the relevant product and geographic markets where firms effectively compete by assessing the substitutability of products from the perspective of consumers and suppliers, often using criteria like price, product characteristics, and location to understand competitive constraints.<sup>18</sup> Based on such a definition, retail markets in telecoms

remain largely national—and sometimes even regional: consumers cannot freely choose telecom contracts from across the EU but are restricted to offers from their country or location of residence. Thus, from a competition policy perspective, there is not a single European telecom market for fixed-line or mobile telecoms. Instead, antitrust markets must be defined at a national or regional level.

**15.** Certainly, market integration in telecoms would likely lead to attractive service offers becoming more broadly available to some business and private users. Thus, a single EU-wide telecom market is a commendable goal, but the reality on the ground tells us that we are rather at the beginning of the road to a fully integrated European market. While the EU's roaming regulation—despite initially strong opposition from telecom incumbents—has been an important step towards a more integrated market that substantially benefitted European consumers, by its nature it does not allow for true integration.<sup>19</sup> Indeed, it only addresses cross-border usage fees and does not address deeper structural issues such as network infrastructure harmonisation, regulatory fragmentation, or national spectrum allocation, which are essential for seamless integration across Member States.

**16.** Similarly, the implementation of the welcome proposal in the Draghi report to harmonise spectrum auctions across Member States would be a positive step, yet it is unlikely on its own to create a seamless, unified EU-wide mobile telecom market. Therefore, while moves towards a more integrated market and lower barriers to entry are to be strongly encouraged, we do not see a single EU-wide antitrust market for fixed-line and/or broadband telecom services in the foreseeable future. This makes the proposal in the Draghi report to define markets at a broader EU-wide level a fiction. If followed, this proposal is likely to lead to even more concentrated markets in the Member States than what we are currently seeing. This would be to the detriment of users, as they would face higher prices, which would not be compensated by higher quality (if that were to happen at all). The only beneficiaries would be the top management and the shareholders of large telecom companies. Market definition should not

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Investment, and Technical Efficiencies in Mobile Telecommunications, *Journal of Political Economy* (forthcoming).

16. They also find that firms significantly underestimate the social value of spectrum, emphasising the need for robust regulatory oversight in spectrum allocation—this is an issue that we address below.

17. Draghi, *supra* note 1, at 75.

18. See, for example, communication from the Commission, Commission Notice on the definition of the relevant market for the purposes of Union competition law, OJ C, C/2024/1645, 22.2.2024.

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19. See, for instance, G. Canzian, G. Mazarella, L. Ronchail, F. Verboven and S. Verzillo, Evaluating the impact of price caps – Evidence from the European roam-like-at-home regulation, *International Journal of Industrial Organization*, 2024, 103115.

become a political game but should remain grounded in reality.

## V. Remedies in merger control

**17.** While decoupling market definition from reality would pave the way for increasing concentration in national markets, the report also argues for less reliance on structural remedies in merger control. The report correctly foresees that once telecom companies are allowed to merge, they may not invest as much as is socially desirable. Hence, it suggests using remedies in the form of promised investments to clear a merger. Accordingly, antitrust authorities should “[f]ocus remedies on commitments to invest according to detailed time schedules, launch of services or access to data or platforms, rather than partial de-consolidations or the transfer of physical assets.”<sup>20</sup> This calls for a cosy relationship between the state—in this case, the European Commission—and large incumbent firms to agree on an investment plan for the development of telecom infrastructure. It essentially assumes that a wise Commission will have the right foresight to guide the development of telecom infrastructure, anticipating future technological and market changes: a hybrid.

**18.** Such a shift in remedies is prone to failure. In terms of investment, it is, at best, a short- to medium-term solution, as remedies can realistically only cover a few years. In addition, behavioural remedies require constant monitoring by the competition authority—thus effectively giving it sectoral regulation tasks it should not have—and are difficult to enforce.<sup>21</sup> Suppose for the sake of the argument that the merged entity systematically and openly refused to comply with the agreed investment levels. The competition authority could resort to sanctions, but it is unlikely that it could order the unwinding of the merger because of the high economic costs involved. For the same reason, competition authorities do not approve mergers subject to the

promise that the merged entity will not raise prices, because such promises are difficult to enforce. Finally, and perhaps more importantly, investment commitments do not address a diagnosed competition problem and the associated price effects as well as additional quality effects that are not covered by such commitments.

**19.** These are all good reasons why competition authorities should strongly favour structural remedies—such as divestiture of assets—over behavioural ones, which require the merged entity to behave in a certain way, such as committing to certain investments or granting competitors access to proprietary inputs at certain conditions. There is ample evidence to support this contention.

**20.** In the past, the European Commission has approved several mergers in the mobile sector subject to remedies. As it turned out, they have failed to restore competition. A notable example is the 2012 *H3G Austria/Orange* merger in Austria. In this case, the remedy consisted of the commitment by the merged entity to make spectrum available, which would enable a new MNO to enter the market, and to grant wholesale access to part of its network under pay-as-you-go (PAYG) wholesale terms. In the end, no firm bought the spectrum, which was then retained by the merged entity, and the agreed PAYG scheme was arguably too onerous for virtual operators, thereby limiting their interest. The Austrian Federal Competition Authority (BWB) strongly criticised this remedy as ineffective. In an *ex post* evaluation in 2016, it found that the merger had led to significant price increases.<sup>22</sup>

**21.** The problem with remedies is not just a European one. The *T-Mobile/Sprint* merger in the US was approved in 2019 after imposing a divestiture that would reposition satellite-TV provider DISH as Sprint’s replacement. But then T-Mobile reneged on its promises, which led to a shutdown of part of its network. This made it impossible for DISH to offer a service to many customers. As a result, prices allegedly went up and quality down.<sup>23</sup>

20. Draghi, *supra* note 1, at 75.

21. For a discussion on remedies in merger control, see, for instance, T. Duso, K. Gugler and B. B. Yurtoglu, How Effective is European Merger Control?, *European Economic Review*, Vol. 55, Issue 7, 2011, pp. 980–1006 and J. Kwoka, Merger Remedies: An Incentives/Constraints Framework, *Antitrust Bulletin*, Vol. 62, Issue 2, 2017, pp. 367–381.

22. BWB, The Austrian Market for Mobile Telecommunication Services to Private Customers: An Ex-post Evaluation of the Mergers H3G/Orange and TA/Yesss! Sectoral Inquiry BWB/AW-393, Final Report, March 2016.

23. This is the claim by Melody Wang and Fiona Scott Morton, who worked in different capacities for the states in their challenge of the merger, M. Wang and F. S. Morton, The Real Dish on the T-Mobile/Sprint Merger: A Disastrous Deal From the Start, *ProMarket*, 23 April 2021, <https://www.promarket.org/2021/04/23/dish-t-mobile-sprint-merger-disas->

22. To conclude our assessment of the merger control proposals in the Draghi report, both the suggestion to broaden market definition and the shift toward focusing on behavioural remedies seem to imply that competition is not seen as the key driver of innovation and investment. Instead, the emphasis appears to be on consolidation and on replacing structural remedies with behavioural ones, resulting in a stronger regulatory role for the state to manage investment. These two proposals, which effectively ease merger control in the telecom sector and appear to be disconnected from each other (with a broadened market definition, almost no merger can be successfully challenged), may even be strategically linked—if the broader market definition faces opposition, the focus on behavioural remedies could still stand a chance of being implemented. This would be a partial win for the lobbyists of large European telecom firms.

## VI. The allocation of spectrum

23. The Draghi report fails to draw a dividing line between cross-country and within-country effects and, consistent with its stance towards mergers, proposes a change in the auction design that could allow for a single operator to obtain as much spectrum as it wants as long as its retail market share is less than 50%: The Draghi report proposes to “[b]an reservations in spectrum allocation, to create scale benefits for holding larger spectrum bands necessary to improve speed, quality, and ubiquity. Restrict the imposition of caps for spectrum holdings only to cases of dominant position (e.g. more than 50% retail market shares) to preserve competition and choice for citizens and businesses.”<sup>24</sup>

24. This proposal is compatible with the emergence of telecom duopolies, which would imply an even stronger market concentration than what is currently the case. Furthermore, the question arises on which basis relevant market shares in the retail segment

are to be calculated. When the spectrum is newly assigned for new services, one can only resort to past market shares. Then a situation is conceivable in which a firm with an observed market share of less than 50% buys all the spectrum in the auction—this would be permitted under the Draghi proposal.

## VII. *Ex ante* regulation in telecoms

25. The Draghi report proposes to “*reduce country-level ex ante regulation, which disincentivises investments and risk-taking, and favour rather ex post competition enforcement in cases of abuse of dominant position or other anticompetitive conducts.*”<sup>25</sup>

26. While in some countries, such as Germany, specific *ex ante* regulation is still needed—for example in the fixed-line business, until the migration from copper to fibre is well underway—we are sympathetic to this proposal. An important condition, however, is that national competition authorities and the European Commission have appropriate competition tools to detect and remedy not only anticompetitive conduct but also other harmful conduct, as well as structural competition problems that do not require permanent monitoring of remedies. To do so, the European Commission must have the relevant information and the power to effectively intervene *ex post*. To facilitate the former, the Draghi report proposes that “[t]o ease the enforcement of competition policy, it is reasonable to require some parties involved in competition decisions to report metrics that are useful for evaluating the extent of competition *ex post*. Competition authorities may then be allowed to intervene based on concerns arising from these reports.”<sup>26</sup>

27. Regarding the latter, we see the introduction of the new competition tool (NCT) at the European level as a good substitute for *ex ante* regulation in several telecommunications markets. If properly designed, it closes the gap between competition law and legislative measures (including sectoral

trous-deal-lessons/. John Asker and Michael Katz, who both worked for the merging parties, reached a different conclusion in J. Asker and M. L. Katz, Efficiencies, Remedies, and Competition: The *Sprint/T-Mobile* Merger, in *Antitrust Economics at a Time of Upheaval: Recent Competition Policy Cases on Two Continents*, J. E. Kwoka, Jr., T. M. Valletti and L. J. White (eds.), CPI Publishing, Chicago, 2023.

24. Draghi, *supra* note 1, at 75.

25. Ibid.

26. Ibid. at 303.

regulation) and helps to address structural competition problems that cannot be adequately addressed under competition law. We welcome the Draghi report's support for this tool: "*The introduction of an NCT would allow DG COMP to carry out a Market Study to identify the problem and then a Market Investigation to determine the solution together with firms to solve it. The design of this tool must strike a balance between the potential benefits of fixing structural competition problems and the limits of competition enforcement, especially given the limited resources available for the latter.*"

<sup>27</sup> We agree that a more participatory approach involving the affected parties is desirable, but it must be clear that DG COMP must be in the driver's seat.

<sup>28</sup> We note that the limits of enforcement are also determined by the standard of proof.

**28.** However, the proposal in the Draghi report to restrict the NCT to four areas of application would limit its usefulness and reduce the scope for the withdrawal of *ex ante* sector regulation. The report says that "[a] possible approach would involve defining four areas of potential intervention where current competition tools are known to be insufficient. These four areas are: i) tacit collusion; ii) markets where the need for consumer protection is more likely to be needed, for instance due to consumers belonging to sensitive categories or having behavioural biases; iii) markets where economic resilience is weak, one cause of which could be market structure (e.g. reliance on a single source of raw material) leading to frequent shortages or other harmful outcomes; iv) past enforcement actions where the information/data received by the authority indicate that the commitments or remedies adopted are not delivering competition." <sup>29</sup> As an expert study prepared for the European Commission elaborates, there are well-understood reasons for which market power may be entrenched and competition may not work properly that fall outside the four areas. <sup>30</sup> We would find it more useful if,

instead of limiting the area of applications, procedural safeguards were implemented that limit the risk that the instrument is misused (which includes the risk that it is used for political ends). <sup>31</sup>

## VIII. The sharing of telecom infrastructure costs

**29.** One more proposal in the Draghi report aligns with the interests of large telecom companies, suggesting to "[e]ncourage the definition of commercial contractual agreements for terminating data traffic and infrastructure cost-sharing between internet service providers or telecom operators owning the infrastructure and very large online platforms (VLOPs) using it." <sup>32</sup> There are several reasons to be critical of this proposal, often referred to as the "fair share" debate.

**30.** Perhaps the most straightforward criticism of this proposal is that cost-sharing agreements for data traffic termination would undermine the principle of net neutrality. According to this principle, all data packets are treated equally by last-mile network operators, regardless of their source, destination, content or application. This means that internet service providers (ISPs)—often the large incumbent telecom companies—are not allowed to prioritise certain traffic or charge VLOPs for the delivery of data packets to end users. The introduction of individual payment agreements between ISPs and VLOPs would incentivise ISPs to prioritise certain data traffic over others, possibly based on the willingness or ability of VLOPs to pay. Any such prioritisation based on payments would be contrary

27. Ibid.

28. In this respect, the following statement in the report is discomfiting: "*The Commission shall be given the power to design together with firms*" (ibid. at 304). We agree that the Commission should consult the affected firms and be open to suggestions (which should be obvious), but the Commission should have the exclusive decision-making power.

29. Ibid. at 303–304.

30. M. Motta and M. Peitz, Intervention triggers and underlying theories of harm: Expert advice for the impact assessment of a new competition tool – Expert study, Publications Office of the European Union, Luxembourg,

2020, <https://data.europa.eu/doi/10.2763/487824>. A revised version has appeared as: M. Motta and M. Peitz, Intervention Triggers and Underlying Theories of Harm, in *Market Investigations: A New Competition Tool for Europe?*, M. Motta, M. Peitz and H. Schweitzer (eds.), Cambridge University Press, 2022, pp. 16–89.

31. The NCT at the European level can draw inspiration from recent implementations at the Member State level and from the history of market investigations in the UK. Germany has started a new wave of adding such a tool to the existing toolkit. For recent developments in Europe and a critical assessment of the specifics of the German tool, see J.-U. Franck and M. Peitz, Germany's New Competition Tool: Sector Inquiry with Remedies, *Journal of European Competition Law & Practice* (forthcoming), <https://doi.org/10.1093/jeclap/lpae067>.

32. Draghi, *supra* note 1, at 75.

to the non-discrimination rule and the zero-price rule of net neutrality. Therefore, as long as the EU remains committed to net neutrality, such a proposal should be considered untenable, as it directly conflicts with this principle.<sup>33</sup>

**31.** The European Court of Justice has consistently taken a strict interpretation of the Open Internet Access Regulation. Therefore, implementing a “network fee” without a clear legal basis at the EU level could face legal challenges. Furthermore, existing telecommunications and competition laws already provide mechanisms to address potential abuse of market power by VLOPs.<sup>34</sup>

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33. Whether net neutrality itself is worth upholding is a separate, debatable issue. One of the authors has been a long critic of net neutrality. See S. Greenstein, M. Peitz and T. Valletti, Net Neutrality: A Fast Lane to Understanding the Trade-Offs, *Journal of Economic Perspectives*, Vol. 30, No. 2, 2016, pp. 127–149, on pros and cons. For an interdisciplinary overview of the discussion on net neutrality, see also C. Hildebrandt and L. Wiewiorra, The Past, Present, and Future of (Net) Neutrality: A State of Knowledge Review and Research Agenda, *Journal of Information Technology*, Vol. 39, Issue 1, 2024, pp. 167–193, <https://doi.org/10.1177/02683962231170891>.

34. For a discussion, see, for instance, Monopolkommission, A contribution from data traffic-intensive over-the-top (OTT) providers to the costs of telecommunications network expansion should be rejected!, *Policy Brief*, Issue 12, 2023, [https://www.monopolkommission.de/images/Policy\\_Brief/MK\\_Policy\\_Brief\\_12-en.pdf](https://www.monopolkommission.de/images/Policy_Brief/MK_Policy_Brief_12-en.pdf), and B. Jullien and M. Bouvard, Fair Cost Sharing: Big Tech vs Telcos, *TSE Discussion Paper* No. 22-1376, 2022.

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See also:

I. Europe’s response to a shifting world order and the implications for EU competition policy – *February 2025*

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V. Competitiveness versus competition? The Draghi report and a new vision for competition policy and innovation in Europe – *February 2025*

## IX. Conclusions

**32.** In conclusion, Europe is unlikely to become more competitive without sufficient competition in the single market. This is true across the board and particularly so in telecom markets. The specific proposals in the Draghi report on telecoms raise serious competition concerns and are counterproductive for a reform proposal aimed at increasing the EU’s competitiveness. The report’s recommendation to redefine antitrust markets in the telecom sector shows a disregard for general principles of competition law. Similarly, the proposal on remedies in merger control does not adequately address market power concerns. On a more positive note, the intention to create a single European telecom market through harmonisation and the reduction of regulatory barriers is welcome, but there is still a long way to go.

*\*\*This article closely follows and draws on T. Duso, M. Motta, M. Peitz and T. Valletti, Draghi is right on many issues, but he is wrong on telecoms, VoxEU, 17 September 2024, <https://cepr.org/voxeu/columns/draghi-right-many-issues-he-wrong-telecoms>. The authors are grateful to Massimo Motta and Tommaso Valletti for allowing the reuse of some of the material for this article.*

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