# ELFA Response to the Commission Whitepaper "How to master Europe's Digital Infrastructure Needs?"

Brussels, 28 May 2024

**Opening Remarks**

ELFA welcomes the Commission's White Paper "**How to master Europe's Digital Infrastructure Needs?**" as a basis for an open discussion on the scope and content of a potential future Digital Networks Act and more largely on the strategic orientation to take for the digital decade. To this end, the EU Commission presents a variety of topics and scenarios for discussion. This approach is fundamentally to be welcomed.

Fiber optic deployment plays a pivotal role to ensure that ambitious targets towards safe, resilient and efficient digital infrastructures for the future of the EU can be met. Over the past 10-15 years, local and regional fibre operators throughout Europe have made significant investments in deploying all-fibre and future-proof networks (FTTH/B) to citizens and businesses in both urban and rural areas – removing the digital divide once and for all. Today, ELFA's members represent more than 800 operators which provide more than 50% of the FTTH/B availability across Europe. This contribution massively supports the European Union's ambition of providing fibre connectivity to all European citizens and businesses by 2030.

In the White Paper, the Commission assumes that the European Union is not yet able to adequately address the current and future challenges of a data-driven society and economy since digital infrastructures are not yet sufficiently developed.

To successfully tackle these challenges, the Commission wants, besides further enhancing the expansion of local fibre networks, to pursue the approach of facilitating European-wide investments in strategic core networks, with the aim to enable the transition towards future technologies, including edge and cloud computing. ELFA shares the EU Commission's approach to expanding core networks in Europe to best prepare for the future.

However, this should not lead to a further strengthening of the position of the incumbents and thus be to the disadvantage of competitors. It is important to bear in mind in this context that the high number of alternative public and private local fibre operators in the

EU's member states are paramount to enable the switch from copper to fibre and will also continue to do so in the future. Therefore, maintaining a competitive environment that will benefit all fibre operators is crucial and has enabled consumers to benefit from a large variety of products and services at fair and competitive prices

More specifically, ELFA would like to draw the attention of the Commission to the following points:

1. **Switch from ex ante to ex post regulation:**

In the White Paper, the Commission considers weakening the system of ex-ante regulation by applying the instrument of the "relevant market recommendation" to limited geographical areas. The Commission's reasoning is based on a supposed decline in SMPs and the increasing establishment of competing network infrastructures. The Commission recommends that national regulatory authorities keep an eye on the degree of infrastructure competition and possibly identify separate geographical markets to which ex ante regulation could be limited.

ELFA believes that the current market situation in many Member States, which is still dominated by the significant market power of the incumbents, does not yet allow to shift towards ex-post regulation. Without ex-ante regulation, telecommunication markets in the EU would not have been able to reach the current progression as fair competition has proven an essential prerequisite for efficient and large-scale fiber deployment. Therefore, any shifts from ex-ante towards ex-post regulation should be handled with utmost precaution in Member States still dominated by the former state enterprises.

As markets are evolving quickly, any ex-post regulation must generally be able to identify possible distortions quickly and act accordingly.

2. **Towards a successful copper to fibre transition:**

ELFA thrives for a comprehensive fibre roll-out as soon as possible, that takes into consideration different national market dynamics. Against this background, ELFA welcomes a policy goal for the completion of copper switch off since we see it as a decisive lever to achieve comprehensive fibre-connectivity throughout the EU and stimulate take-up of FTTH/B services. We believe that the maintenance of copper networks strongly contributes to delaying the roll-out and weakening the take-up of fibre networks in Europe.

However, it is crucial that European Regulators first set a clear framework which ensures that copper networks are phased out specifically on terms which are fair and reasonable to avoid distortions of competition and do not allow to transmit SMP from copper-based to fibre networks by the former state enterprises. ELFA welcomes the explicit mention by

the Commission in the White Paper of the necessity to ensure a fair transition process that does not penalize the activities and investments of alternative public and private local fibre operators.

3. **Considering a pan-European wholesale access product:**

While we recognize the importance outlined by the Commission White Paper to foster the development of efficient, resilient and safe core networks throughout Europe, ELFA takes a rather critical view on the creation of a wholesale access product on those networks, as well as on all other fixed networks, since a pan-European product would not fit the heterogenous market situations in the different Member States.

Currently, we observe that different wholesale products with different specifications have emerged in the Member States, which have proven to be successful for the respective expansion of those markets, offering favorable conditions and reasonable prices to consumers. However, besides the question of the necessity or benefits of such a product, the disparities between the markets would at this stage neither allow for a pan European wholesale access product to become a profitable investment.

4. **Positioning on the fair-share debate**

By proposing a bilateral dispute resolution mechanism between content application providers (CAPs) and internet service providers (ISPs), the White Paper implies the possibility for CAPs to participate in the network expansion costs of ISPs. The White Paper suggests that in the event of unsuccessful bilateral negotiations between CAPs and ISPs, disputes should be resolved in a dispute resolution procedure before national regulatory authorities or BEREC.

In this context, it should be kept in mind that BEREC has consistently found that the interconnection market is well-functioning and requires no regulatory intervention. Indeed, according to BEREC, there is no causality whereby more traffic translates into higher costs for ISP's. Fixed access networks are largely not traffic-sensitive, as reflected by the widespread practice of offering flat rates. Likewise, BEREC finds that the marginal cost of additional traffic in mobile networks is also quite low. From ELFA's point of view, as network deployment and network operations are in many cases operated by different organizations, contributions of CAPs would likely be collected only by network operators while the cost of infrastructure deployment could remain unconsidered.

Furthermore, as CAP contributions are likely to be determined by the number of customers, those would primarily be collected by big enterprises and incumbents and thus cement their dominant market position.

Should the Commission however consider a dispute resolution mechanism to be necessary, ELFA would like to stress the importance for such a mechanism not to be exclusively reserved to large network operators. Instead, we would favor a solution relying on a redistribution mechanism that is proportionally inclusive to all network operators and would guarantee fair market competition.

### 5. Preparing for next generation gigabit Wi-Fi

Today, most internet traffic generated by Europeans goes through indoor Wi-Fi. The majority of traffic is generated indoors where people tend to spend most of their time; we spend 90 percent of our time indoors, and up to 80 percent of our data is consumed there[1]. It is estimated that 70-80% of the mobile data is offloaded to Wi-Fi networks[2].

Despite these compelling facts, indoor connectivity has been disregarded in the EU and national government's connectivity plans. Failing to address the importance of indoor wireless connectivity as part of infrastructure is a risk to EU's digital targets.

As the EU progresses towards being gigabit (many operators are already offering gigabit fibre connections in most Member States) and the number of connected devices continues to increase, a connectivity bottleneck is emerging inside the home and the office. This is especially important as the EU is already missing out on the next wave of the Wi-Fi revolution powering new applications.

License-exempt spectrum plays an important role in the 5G networks through network offloading. 5G country leaders like the US and South Korea have recognized this fact and confirmed the benefits of the next generation of Wi-Fi technologies to their societies by opening the upper 6 GHz band to license-exempt access. By contrast, the EU is still deciding on the future of this band. The US and South Korea cases illustrates that 5G success and sufficient Wi-Fi spectrum go hand-in-hand. ELFA therefore calls on the EU to ensure that the spectrum strategy for the next decade properly addresses this shortcoming around Wi-Fi.

This would require including indoor wireless connectivity in policy considerations and securing the 6 GHz spectrum band that gigabit Wi-Fi use cases are currently waiting to be unlocked. Firm and swift action in this regard is essential for the EU's digital and global leadership.

[1] Ericsson Report I Mobile-broadband-indoor-deployment
[2] https://accesspartnership.com/wi-fi-is-the-best-way-to-address-capacity-demands/

## 6. Fibre networks as a sustainable investment for the future

Shaping the digital transformation sustainably is of vital importance. The EU has already taken significant steps in addressing corporate sustainability through the Corporate Social Responsibility Directive (CSRD), as well as by working on the identification and analysis of sustainability indicators to prepare the ground for a future EU Code of Conduct for sustainability of electronic communications networks.

ELFA is fully supportive to shape a sustainable digital ecosystem and believes that the migration from copper to fibre optic networks is one of the most important levers to make the telecommunications sector more sustainable.

In this context, we believe that the EU Taxonomy should be adapted to include the deployment of fibre optic networks within the category of sustainable investments. Indeed, the contribution that energy-efficient fiber optic networks can make in terms of energy savings is undisputed.

To conclude, we view the presentation of the White Paper as a basis for further exchanges and are looking forward to further collaboration.

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*The European Local Fibre Alliance (ELFA) is the shared voice from alternative and private and public local and regional fibre operators in the EU. ELFA's members represent more than 800 operators building fibre networks in both urban and rural areas, already reaching more than 50% of all European premises.*