



## Feedback on EC Call for Evidence on the Digital Networks Act

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Administrative official	Patricia Helanow
Approved by	Acting CEO
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# Stokab's feedback on the European Commission's Call for Evidence on the Digital Networks Act

## 1. Introduction

AB Stokab ("Stokab") welcomes the opportunity to provide its feedback to the European Commission's ("Commission") Call for Evidence on the Digital Networks Act ("DNA").

Stokab is a limited liability company wholly owned by the City of Stockholm. It was set up in 1994 to build an open and competition-neutral digital infrastructure capable of meeting future communication needs, for the purpose of spurring economic activity, competition, diversity, innovation and freedom of choice. This was done based on the idea by the City that digital network infrastructure is a vital utility – just like streets. Stokab focuses exclusively on deploying passive infrastructure (dark fibre point-to-point) and operates its business on a wholesale- only basis, leasing out dark fibre to the market (only business to business) on equal terms. Its aim is to provide the essential infrastructure – dark fibre – on which customers can add active equipment and develop services and applications to meet a wide variety of different needs. As a result of the business model and its inherent incentive to lease out as much fibre as possible, Stokab's dark fibre is not only available for operators and service providers, but also for other companies (including SMEs), authorities, and public institutions (e.g. banks, hospitals, retail chains, real estate owners, universities etc.). The latter can then either produce their own services or choose to purchase such services on the market in full competition.

The Call for Evidence describes the problem that the Digital Networks Act aims to tackle and a number of potential policy options for that purpose. Please find below Stokab's feedback on selected parts of the Call for Evidence. The feedback follows the structure of the Call for Evidence.

## 2. Summary

In Stokab's view, it is important to always distinguish between infrastructure and services/content when assessing the telecom sector. Not doing so risks implementing policy measures that are not suited to solve the actual underlying problem. Regarding the problem definition in the Call for Evidence, it should therefore be clarified that the underlying problem for creating a European single telecom market is not related to barriers to deploying pan-European digital infrastructure, but rather barriers to providing cross-border services on top of that infrastructure.

When it comes to the policy options presented for access regulation, generalised symmetric rules should not be prioritised over the well established regulatory framework including a thorough market analysis, a proper economic analysis of competition and the establishment of market power. Such an approach would create regulatory uncertainty and increase the risk of investments and thereby, the cost of capital. This in turn would hamper the investments into advanced digital networks and services that the DNA aims to promote in order to reinforce European competitiveness.

## 3. Political context and problem the initiative aims to tackle – essential to distinguish between infrastructure and services/content when assessing the telecom sector

Stokab shares the Commission's view when it comes to the importance of a cutting-edge digital network infrastructure as well as the availability of high-quality, reliable and secure connectivity for all – consumers, businesses, public institutions. There is no doubt that these are crucial components for Europe's growth and competitiveness.

When it comes to the problem that the DNA aims to tackle, a "*fragmented EU connectivity market*" resulting in that "*end-users and EU operators cannot reap the full potential of the single market*" is described. Although it is acknowledged that the regulatory framework has largely delivered as regards consumer benefits and competition, it is stated, with reference to the Letta and Draghi reports, that "*the electronic communication sector in the EU lacks innovation and investments*". Barriers to operate cross-border and scale up are highlighted as holding back the deployment of very high-capacity networks and the technological transformation towards cloud-based networks and services.

The political context as well as the problem definition are however based on the misconception of defining digital networks as including both infrastructure and services. Although this is in line with how the regulatory framework historically has regarded telecom networks (as there was no separation of the infrastructure from the services when the telecom market was liberalised, e.g. as in the railway market, the framework aimed at dealing with traditional vertically integrated operators), the markets are rapidly changing. The markets today look very different from when the regulatory framework was introduced. This change is also acknowledged in the political context. For example, the European telecom markets have been naturally developing towards delayering at both a retail and wholesale level, rather than further vertically integrating. Stokab is convinced that that development should be promoted, rather than promoting vertical integration.

Against the background above, when assessing the telecom sector it is important to recognise the different market logics between infrastructure/networks on the one hand, and services (and content) on the other, instead of treating them as one cohesive “connectivity infrastructure”.

Infrastructure and networks (such as fibre networks) are local in their character in the same way as other ground-based infrastructures such as water pipes and roads. This applies both from a deployment perspective (putting ducts and fibre cables in the ground) and from an operational perspective (remedying cable breaches, conducting maintenance work etc.). There are in essence no scale benefits associated with deploying and providing such infrastructure and networks nationwide or multi-nationally – the main costs (excavation works) will be the same.

When it comes to the provision of services, Stokab has no experience itself in that area, but can establish that providing services is not a local business in the same way as infrastructure and networks, but today rather national with clear potential to be multi-national. Stokab finds it reasonable to assume that there are indeed significant economies of scale to be achieved in providing services cross-border. Stokab can also see that there is a lack of harmonisation within the EU when it comes to the rules for providing telecom services in different Member States, resulting in telecom services being delivered in one Member State facing different rules than in another Member State.

Against the background above, it is not barriers to operate cross-border or scale up that holds back the *deployment* of very high capacity networks. Significant investments in deploying fibre infrastructure have also taken place over the last couple of years. This is true in particular after the adoption of the European Electronic Communications Code (“**EECC**”), including its provisions on wholesale-only operators which prescribe a lighter regulatory burden for such models, thereby providing investors investing on the basis of such business models with a clear framework for investment. Barriers to operate cross-border and scale up may however hold back *cross-border service provision* and thereby the creation of a European single market for digital services and content. Consequently, policy options aimed at tackling such problems, *e.g.* a common set of rules and regulations for services, and enable operators and service providers to provide their services in any scale they want across Europe and thereby to contribute to a single European market in services, would be beneficial.

In summary – it is important to always distinguish between infrastructure and services/content when assessing the telecom sector. Not doing so risks implementing policy measures that are not suited to solve the actual underlying problem. Regarding the problem definition in the Call for Evidence, it should therefore be clarified that the underlying problem for creating a European single telecom market is not related to barriers to deploying pan-european digital infrastructure, but rather barriers to providing cross-border services on top of that infrastructure.

## 4. Objectives and policy options – regulatory stability is key for investments

Stokab shares the Commission’s objective that the DNA should aim “*to incentivise all market players to innovate and invest in advanced connectivity and promote an ecosystem of connectivity and computing infrastructures enabling the AI continent*”. Well built-out digital infrastructure networks in the EU are indeed a pre-requisite to achieve this aim. However, in addition and most importantly, the market must also have the possibility and freedom to innovate by having the flexibility to explore and implement solutions that best meet the diverse and dynamic market demands, create new business models, services, etc. From Stokab’s perspective, this requires future proof infrastructures (dark fibre point-to-point, allowing for passive unbundling of fibres) which enables innovation in communications technologies, the development of new digital services and applications as well as fostering competition, all of which is beneficial to end users (consumers as well as companies and public institutions).<sup>1</sup>

Against the background above, Stokab has the following feedback when it comes to the policy options presented in the Call for Evidence regarding access regulation.

The Commission proposes a significant shift in access regulation, whereby symmetric regulation (Gigabit Infrastructure Act (“**GIA**”) or other forms of already applicable symmetric access) would be the prioritised regulatory measure, while the currently established ex-ante regulation based on Significant Market Power (“**SMP**”) would only be applicable as “*a safeguard*” after assessment of the application of the symmetric measures. This would replace a long-standing regulatory approach based on thorough market analysis, the identification of competition issues and the establishment of market power with a new, untested, approach that would apply to all operators, regardless of their market power.

Stokab does not consider such an overhaul of the current regulatory framework to be suitable or appropriate. More importantly however, Stokab does not believe that such a measure will contribute to achieving the Commission’s aim with the DNA described above. On the contrary, it would instead risk hampering investments by creating regulatory uncertainty. The reasons for this are briefly described below.

The existing framework is well established and predictable as it includes a thorough market analysis and importantly the requirement to establish competition problems in order for regulation to be justified. It is well balanced when it comes to the circumstances under which the regulatory obligations can be imposed. From Stokab’s perspective, it is important to highlight that this applies in particular for wholesale-only operators since Article 80 of the EECC came about and provided well-needed regulatory predictability for operators with such business models. In addition, as also acknowledged in the Call for Evidence, the current framework has delivered well in terms of competition and has supported the growth of a dynamic and competitive sector. The fact that the number of recommended markets

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<sup>1</sup> For examples of how such developments in digital technologies and digital services for the future, *e.g.* 5G and quantum communication, have been supported by a neutral dark fibre network, please see Godlovitch et al., 2023, *Neutral fibre as a platform for innovation*, WIK Study for Stokab; [https://stokab.se/download/18.4e63bdf518e5799b1da147/1712591992160/Stokab\\_Neutral%20fibre%20as%20platform%20for%20innovation.pdf](https://stokab.se/download/18.4e63bdf518e5799b1da147/1712591992160/Stokab_Neutral%20fibre%20as%20platform%20for%20innovation.pdf).

susceptible to ex-ante regulation has significantly decreased over the last years is proof thereof.

Symmetric regulation in GIA, on the other hand, was introduced as a tool to facilitate cost-efficient infrastructure deployment and is not a suitable instrument for replacing access regulation. While the EECC mandates regulation only if justified by a lack of effective competition, GIA does not currently include any material threshold for the type of symmetric regulation that it sets out (other than that a request for access has to be reasonable). Stokab is of the opinion that there always has to be an underlying assessment of whether there is effective competition or not, prior to imposing any regulation. A “default” imposition of regulation on all operators of fixed networks would be detrimental to investments in deploying such networks. This is particularly true, since it would result in endless regulation and thereby go against the longstanding aim to deregulate once a market develops towards effective competition.

Regulatory stability remains a key enabler for investor confidence. Stokab therefore believes that the legislative priority must be for a stable and predictable regulatory regime that underpins long term capital investments. The favourable treatment of wholesale-only operators in the EECC has had a positive impact on investment and on market development. This treatment of wholesale-only operators remains wholly appropriate given the absence of incentives to discriminate or to seek to impose excessive prices. A sudden shift in the regulatory approach that changes the terms on which the large scale investments that took place the last ten years were made, would be very destructive to the investments which need to occur over the next ten years.

In summary, generalised symmetric rules should not be prioritised over the well established regulatory framework including a thorough market analysis, a proper economic analysis of competition and the establishment of market power. Such an approach would create regulatory uncertainty and increase the risk of investments and thereby, the cost of capital. This in turn would hamper the investments into advanced digital networks and services that the DNA aims to promote in order to reinforce European competitiveness.

As a final note when it comes to access regulation, Stokab wants to emphasize the need for any regulation to allow NRAs the flexibility to base their assessment on the specific market conditions in a relevant Member State. It is a fact that the markets look very different across the EU and a standardised type of regulation, such as symmetric regulation under GIA, will not be suitable everywhere – quite the contrary. This flexibility is particularly important where well-functioning models are already in place. For example, in Sweden, where access to dark fibre is readily available, *inter alia* from a number of municipal networks operating wholesale-only business models, but also from the incumbent, there is no demand for access to physical infrastructure under the GIA, this is not a regulatory failure but a feature of a successful competitive model.