

ISOC EUROPEAN REGIONAL BUREAU - EU issues overview

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EU general

EU competition authorities raid ISPs for suspected anti-competitive behaviour in Internet connectivity services

- The European Commission and national competition authorities carried out a series of **unannounced inspections of ISPs** on 9 July in connection with concerns about possible abuse of a dominant position. These raids start a formal Commission competition investigation.
- **Deutsche Telekom, Orange SA and Telefonica** have all confirmed that they were targeted in the raids. Deutsche Telekom has said in its [statement](#) that it is 'surprised by the initiation of further investigations by the Commission into the global market for Internet traffic, since previous allegations have all turned out to be unfounded'. It underlined that it faces 'fierce competition' in a global market dominated by American ISPs.

Net neutrality

Commission's legislative plans on net neutrality unclear

- A [leaked version](#) of the Commission's forthcoming proposed **Regulation laying down measures to complete the European single market for electronic communications** does not directly mention net neutrality.
- However, **Article 20 (2)** says that within contractual limits, '**providers of electronic communications to the public shall not restrict the foregoing freedoms by employing traffic management practices solely or primarily to block, slow down or otherwise degrade specific services or applications**'. Certain exceptions are provided, e.g. to implement a court order.
- NGO **EDRi** has [claimed](#) that the draft proposal represents 'not neutrality' based on its interpretation of **Article 20 (1)** of the draft on quality of service, which only states that service providers shall be 'free to agree with each other on the treatment of the related data volumes or on the transmission of traffic with a defined quality of service'. However, EDRi does not mention Article 20 (2).
- The Commission is due to publish its proposal in early September.

Commissioner Kroes disapproval of Deutsche Telekom's data charging plans

- **Digital Agenda Commissioner Neelie Kroes** has given her [answer](#) to a [written question](#) from German MEP Josef Weidenholzer (S&D) on **Deutsche Telekom's** selective increase of Internet tariffs, as from 2016, based on data caps which will not apply to its own services.
- Kroes says that the Commission is aware of Deutsche Telekom's plans, and that when ISPs provide services to end users '**differentiation based on content, particularly where ISPs discriminate in favour of their own services or those of partners against those of competing third parties, clearly raises serious problems**'.
- According to Kroes, in preparing its forthcoming proposals on net neutrality, the Commission 'is examining the possibility for the measures to ensure, amongst other things, the **responsible use of traffic management tools**. No discriminatory blocking and throttling would be allowed.'
- Kroes reiterated her stance on net neutrality in a [speech](#) in the European Parliament on 9 July: "Blocking or throttling services isn't just unfair and annoying for users – it's a death sentence for innovators too. **So I will guarantee net neutrality.**"

France: Court backs regulator's right to gather data on net neutrality

- France's highest administrative court, the **Conseil d'Etat**, has [dismissed](#) an appeal against the right of telecoms regulator **Arcep** to gather data from telecoms companies to determine, inter alia, whether they are compliant with net neutrality principles.
- In March 2012, Arcep adopted a [decision](#) by which it gave itself the right to gather information on technical and pricing conditions on interconnection and data routing from **ISPs**, providers of public online communication services and technical intermediaries. This would relate to companies active on the French market, regardless of where they were based. Arcep hoped that such data would enable it to settle disputes between ISPs and others.
- **Verizon** and **AT&T** challenged the Arcep decision in a court case on the grounds of it exceeding its powers, but the Conseil d'Etat has ruled against the two companies and said that such information gathering by Arcep is 'necessary and proportionate' to fulfil its responsibilities, particularly considering EU net neutrality obligations.

Copyright infringement

France: Hadopi law revoked

- As hinted by Digital Agenda Minister Fleur Pellerin at the end of May, the French government has [revoked](#) the controversial '**Hadopi law**', named after the agency whose job was to penalise persistent breaches of copyright online.
- The law was introduced by President Sarkozy in 2009 and charged the agency with conducting a graduated response, starting with fines and leading to cutting off Internet access at the third offence.
- The law [did not work as intended](#): during its existence, Hadopi sent out two million first warnings, 186,000 second warnings and started 663 third stage proceedings. However, **there was only one court order applied**, to cut off access for one individual for a period of 15 days.
- **Aur lie Filippetti**, Minister of Culture and Communication, has commented that cutting off access was a disproportionate sanction.

Commission reluctant to address copyright infringement in upcoming law

- The Commission's [forthcoming proposed Regulation on electronic communications](#) steers clear of the issue of appropriate sanctions for copyright infringement. It does mention, however, in Article 20 (2) that **implementing a court order** would be a valid reason for ISPs to block services.
- Also, Article 21(6) states that ISPs shall 'distribute public interest information free of charge to end-users', provided by public authorities and may include awareness-raising about use of electronic communications services for copyright infringements.

Data protection

Top EU court hears arguments on data retention

- On 9 July, the **Court of Justice of the EU (CJEU)** heard two joined cases referred by courts in [Austria](#) and [Ireland](#) on the compatibility of the EU's [Data Retention Directive](#) with the EU Charter of Fundamental Rights. Both cases originated with complaints about national laws implementing the Directive and the data on citizens held by telecoms companies.
- The Irish case was originally brought by NGO Digital Rights Ireland. A lawyer for that group argued in the hearing that the Directive places a "wholly disproportionate" burden on civil society compared with the benefits.

- Much of the discussion in the hearing centred on the fact that it is left to Member States to define who has access to the data. The judge questioned whether it was feasible to have 28 different national regimes all comply with the Charter.
- The CJEU Advocate-General will issue an opinion on the case on 7 November: CJEU rulings are nearly always in line with such opinions.

Cybersecurity

UK: Parliament report highlights cybersecurity threat

- The **UK Parliament's Intelligence and Security Committee** has assessed the state of the country's cybersecurity in its [annual report](#).
- Relying on information given by the UK security services, the report concludes that **foreign states** are the principal threat, particularly China and Russia, but also that they increasingly use **private organisations** for state-sponsored attacks.