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ARCEP'S response to the consultation for the global symposium for regulators 2020 (GSR-20) best practice guidelines on "the gold standard for digital regulation"

1   Drawing inspiration from telecommunication regulation for an ex-ante regulation of the digital sector focused on major players

ARCEP recognizes the pressing need to establish a new form of regulation for "structuring digital platforms".

For ARCEP, **the operators of "structuring digital platforms" are online platform operators or operating system providers which**, owing in particular to their intermediary role in the provision of access to Internet content and services and their importance , **are in a position to significantly restrict the ability of users to perform an economic activity or communicate online**.

By virtue of their economic profiles[1], these platforms have become key players in our society and hold a position that is difficult to challenge. This places partner companies and consumers in a position of increased dependence and calls into question the principle of an open the Internet.

In this regard, ARCEP had identified as early as 2018 in its report on terminals the **need for greater openness in the software ecosystem for terminals**, which do not fall under the principle of an open Internet, even though they are an essential entry point to it. Consumers' freedom of choice in the access to and production of digital services and content is a fundamental value and must be protected. The same logic should be extended to other **structuring digital platforms which undermine access to an open Internet**.

Lastly, the COVID-19 health crisis has only served to further illustrate the essential role and influence of the digital economy's major players in the implementation of States' sovereign policies, territories' economic activities, network infrastructure and in the entrepreneurial fabric of many sectors. It is, therefore, all the more pressing to institute a form of regulation that helps to prevent economic risks associated with post-crisis effects, such as the reinforcement of their market power, the elimination of potential sources of innovation or the restriction of consumers' freedom of choice.

An ex-ante regulation that eschews a traditional dominance analysis and relies on **supervision and rapid preventive intervention** when necessary, before damage manifests itself, would have significant advantages. Such regulation should be based on a graduated approach that would propose types of remedies appropriate to the effects identified: **monitoring of structuring platforms; data-driven regulation; definition of targeted and proportional remedies such as access by partners/competitors to non-personal data held by the platforms; transparency of certain essential algorithms used by these platforms; portability of essential data of structuring platforms (in order to limit transfer costs); interoperability and maintenance of application**

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[1] These players have characteristics in common: controlled access to users ("bottleneck"); ultimate control over access to services, information and content ("gatekeeper" role); existence of strong network effects; integration of services within closed ecosystems; or financial power.

programming interfaces (APIs); and competitor access to functionalities controlled by the platform, etc. This would avoid the regulation of the whole Internet as the remedies would be applied only to players identified as "structuring" and would help to "re-decentralize" the Internet by returning power to the many.

Furthermore, the competent regulator could be given a dispute resolution mandate to allow certain conflict situations involving a structuring platform to be settled quickly.

2   Consideration of the environmental impact of technologies

The environmental impact of ICTs has become a focus of increasing attention. According to sources[2], ICTs currently account for 3-4 per cent of global greenhouse gas emissions and 2 per cent of national emissions[3]. While this share remains relatively modest compared with other sectors, annual growth in the consumption of ICTs (volume of data, terminals, etc.) **should be a matter of interest for the sector regulator**. The environmental issue should constitute a new avenue of regulation and prompt **a long-term goal in line with the efforts of public authorities and in partnership with competent civil society and environmental stakeholders**.

Following the publication of initial work on the subject by a scientific committee[4] and in collaboration with other French sector regulators[5], **ARCEP decided to make the environmental issue a major focus of its regulation**.

To this end, on 11 June 2020, **ARCEP launched a working platform dedicated to ensuring the sustainability of ICTs**. It brings together associations, institutions, operators, ICT enterprises and interested prominent people in a series of thematic workshops that will provide food for collective thought.

An initial report, co-written with the above players, has been announced for the end of the year. Intended to enlighten the public authorities, it will cover **contributions from participants** and **a diagnostic assessment by ARCEP** and include a first version of a green barometer[6] and initial avenues to explore further in addressing the environmental issues.

To deliver on this approach, **ARCEP proposes relying in particular on data-driven regulation**, which would aim to promote awareness by providing end users with pertinent information on the

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[2]   The Shift Project, Lean ICT: Towards digital sobriety (in English); Green IT, Environmental impact of the global digital economy, September 2019 (in French).

[3]   French Senate, Information report — Fact-finding mission on the environmental impact of ICTs, June 2020 (in French)

[4]   For further information, see: "The carbon footprint of ICTs", ARCEP, 21 October 2019, available here (in French): https://www.arcep.fr/uploads/tx_gspublication/reseaux-du-futurempreinte-carbone-numerique-juillet2019.pdf

[5]   For further information, see: "Paris Agreement and climate emergency: regulatory issues", Competition Authority, AMF, ARCEP, ART, CNIL, CRE, CSA, HADOPI, May 2020, available here (in French): https://www.arcep.fr/fileadmin/user_upload/publications/cooperation-AAI/publication_AAI-API_Accord_de_Paris_052020.pdf

[6]   The aim is to be able to provide the public with the most relevant data on the environmental impact of networks, terminals and uses, but also an initial inventory of the best practices of players' in the face of this issue.

energy impact associated with the use of ICTs. For this purpose, ARCEP has gathered initial information on the environmental impact of telecommunications (networks, terminals) from operators. The data collected provide insight into the carbon footprint of the major telecommunication players and the power consumption of audiovisual decoders and boxes used by their clients.

In addition, at the European level, **ARCEP is co-chairing a new expert group on sustainability within the Body of European Regulators for Electronic Communications (BEREC)**, which will be charged in particular with studying the environmental impact of telecommunication networks more broadly and considering best practices to ensure alignment with environmental issues.

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