

To:

**European Commission
Directorate-General for Communication Networks, Content and Technology,
Directorate B: Electronic Communications Networks and Services
Unit B2: Electronic Communications Policy
Brussels
1049
Belgium**

September 18th, 2018

Dear Sir,

We refer to your letter of August 31st in which you respond to our concerns raised in our letter of August 18th. Our letter aimed at preventing a potentially unbalanced study conducted by Bird & Bird and Ecorys to feed into the Commission's forthcoming report on the implementation of the net neutrality provisions of the TSM Regulation. We would like to thank you for your extensive answer and very much appreciate all the measures that have been put in place to ensure the impartiality of the contractors. We still would like to address two particular issues.

First of all, we recommend to require from applicants that they not be actively involved in or commence any litigation activity (either as a litigant or as legal representative) concerning a legal issue that is a key subject of the study to be conducted. We consider this would not substantially limit the number of potential applicants and or prevent applicants with relevant practical experience from participating. On the contrary, this can ensure that applicants put in place measures to prevent conflicts of interest before applying. There are numerous experts in Europe that would be qualified to apply to Commission's tenders. If this issue is addressed, EU institutions can benefit from greater credibility and impartiality.

Second of all, we recommend that the European Commission request that the contractors conducting the study not work in the same office as the lawyers that are representing a stakeholder in a case in the area of the study. We have noticed that several of the lawyers involved in this particular study are based in Bird & Bird's office in The Hague. This is the same office of the lawyer representing T-Mobile in Bits of Freedom's court case on zero rating. This court case revolves around the practice of zero-rating and the interpretation of the net neutrality rules that are also the subject of the study.

Presenting these two issues is not to discredit the report of the contractors before it is published. Instead, these should be considered as suggestions for improvements of the practice when awarding similar contracts. We believe a solid practice is vitally important, as any doubts regarding the impartiality of

contractors will create space for questions about the validity of the presented results. This is damaging to the credibility of and confidence in European legislation, which, in turn, reduces the value for money of the outputs of the research.

Having said that, we are looking forward to the publication of the report that is now being prepared by the consortium. Needless to say, we will remain vigilant and we will not hesitate to voice any concerns if we feel the report is unbalanced.

Thank you very much for your time and consideration.

Kind regards,

Access Now, Brussels
Bits of Freedom, Netherlands
Digitalcourage, Germany
EDRi, Brussels¹
epicenter.works, Austria
Frënn vun der Ënn, Luxembourg
Hermes Center, Italy
IT-Pol, Denmark
Vrijschrift, Netherlands
Wikimedia DE, Germany

¹ Representing 39 digital civil rights organisations in Europe. See <https://edri.org/members>