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THE FAIR SHARE PROPOSAL: A SOLUTION IN SEARCH OF A PROBLEM?

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Summary

1. Looking for a market failure
2. The Net Neutrality problem
3. The EU industrial policy approach to digital transformation: a «blaming and taxing Big Techs» approach?

Justifying the fair share proposal

- Market failure as the economic justification of any regulatory intervention
- The Commission's questionnaire is not asking whether the OTTs' levy is needed, but is merely addressing the question of how it should be structured
- Evidence of a market failure to address? (see, e.g., BEREC and Government of the Netherlands and Germany's joint declaration)

The Net Neutrality paradox

- Net Neutrality as a primary driver of the fair share debate: if telcos are facing an uneven regulatory playing field is exactly because of net neutrality, which limits private negotiations preventing telcos from monetizing their networks discriminating among content and applications
- The proposal is at odds with the economic rationale and the legal obligation of equal treatment that ensues from the Net Neutrality Regulation
- How justifying such intervention without repealing Net Neutrality?

The EU industrial policy approach to digital transformation

- The “blaming and taxing Big Techs” approach: the success of a few large online platforms is considered the reason of purported market failures, hence it is deemed fair to tax their success imposing over them to share their profits
- Digital transformation v. protection of homegrown legacy players: the previous cases of the Audiovisual Media Services Directive and the Directive on copyright in the Digital Single Market
- Promoting innovation through regulation?