GSMA’s Views

On the European Commission’s Public Consultation on measures to further improve the effectiveness of the fight against illegal content online

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The GSMA represents the interests of mobile operators worldwide, uniting nearly 800 operators with more than 300 companies in the broader mobile ecosystem, including handset and device makers, software companies, equipment providers and internet companies, as well as organisations in adjacent industry sectors. The GSMA also produces industry-leading events such as Mobile World Congress, Mobile World Congress Shanghai, Mobile World Congress Americas and the Mobile 360 Series conferences.

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GSMA’s views on the European Commission’s Public Consultation on measures to further improve the effectiveness of the fight against illegal content online

This document outlines GSMA members’ comments on the European Commission’s (the Commission) public consultation on measures to further improve the effectiveness of the fight against illegal content online. The public consultation follows the Commission’s Inception Impact Assessment and a number of other initiatives that the Commission has recently undertaken in relation to tackling illegal content online; namely, the Commission’s Communication on Tackling Illegal Content Online from September 2017, and its Recommendation on Measures to effectively tackle illegal content online from March 1, 2018.

The GSMA commends the Commission for seeking input from a wide variety of stakeholders who all have a vested interest in tackling illegal content online. However, the GSMA is concerned about the process, as it appears to disregard the recent communication and the recommendation with guidelines for online platforms to step up the fight against illegal content online. We believe that industry should have been allowed time to deliver against those guidelines and recommendations before initiating another consultation.

Legislation regarding illegal content already exists in the eCommerce Directive, the Directive on Combatting Terrorism, the Directive against Child Sexual Abuse, the Directive on the Enforcement of Intellectual Property Rights, as well as the Audio-Visual Media Services Directive (AVMSD), and the Directive on Copyright, the latter two currently undergoing important legislative revisions. This demonstrates that each type of illegal content requires different approaches in terms of notice-and-action, including counter-notices, detection, removing and prevention mechanisms as well as reporting to national authorities and/or trusted entities.

Some types of illegal online content, such as terrorist and child sexual abuse content, are widely recognised as infringing public safety and order, but other types require contextualisation and must be weighed against the European citizens’ fundamental right to freedom of expression and information.

Already today, in the context of child sexual abuse content, many GSMA members have implemented voluntary measures to prevent the misuse of mobile networks and services for hosting, accessing, or profiting from child sexual abuse content. This is done in collaboration between industry, law enforcement and hotline organisations, enabling effective and
coordinated action to be taken. This approach, which prioritises the rights of abused children, is very specific to this form of harmful content, and is, in our view, an appropriate way of addressing a crime, that is recognised as illegal around the world.

However, for other forms of illegal content, it is key that any proactive measures do not interfere unduly with the freedom of communication and information. When contextualisation is required, the GSMA strongly believes that the exchange of arguments on the legality of the contested content should take place before the competent authority. It should not be based on a judgement by an online intermediary or a private trusted flagger or through automated tools, the latter contradicting Article 15.1 of the eCommerce Directive, which prohibits Member States from imposing general monitoring by service providers.

GSMA members believe that the current eCommerce Directive still proves its validity in relation to the obligations and liability of intermediary service providers including online platforms. The liability regime contains appropriate safeguards to ensure that intermediaries do not violate freedom of expression and information while at the same time allowing Member States to empower competent authorities to impose obligations on intermediaries where illegal activities deem to have occurred. Moreover, a number of CJEU judgements (SABAM vs. Netlog (2012) and the L’Orèal vs eBay international (2011)) still remain valid and provide sound guidance.

In terms of any policy proposal, which might follow this consultation, GSMA members recommend that the European Commission focus on tackling illegal online content, which is widely considered infringing public safety and order, such as terrorist content. The European Commission’s Recommendation, issued prior to the consultation, provides a number of expected actions and reporting from online platforms and its effectiveness should be assessed before any other measures are considered.