

Global Civil Society: Statement on Network Fees

The undersigned entities and individuals would like to express their grave concern about a global policy trend to introduce a mechanism of direct payments (“network contribution”, “network fee”, “fair share”) from content and application providers (CAPS) to telecommunication operators from around the world.

In Europe, where such discussions have advanced over the past year, a swath of stakeholders, representing diverse sectors and interests, have rejected this policy idea over fears about competition¹, media plurality, consumer protection², innovation and quality of service³; further concerns have been expressed about the way the proposal violates network neutrality⁴ and its detrimental effect on the open and global Internet.⁵

In fact, a mechanism of direct or indirect monetary compensation to telecommunication providers based on interconnection traffic flows would have an immediate and wide ranging effect on users and digital markets.⁶ Such intervention would negatively impact consumer choice and prices for online services.⁷ According to an independent assessment⁸, such an intervention would create an unpredictable and inconsistent legal environment, and create a significant administrative burden, hostile to the open Internet, investment and innovation.

To this end, we jointly call on governments around the world to refrain from introducing such a counterproductive and dangerous measure.

Currently, there is no evidence, anywhere in the world, of a failure in the interconnection market. Over the past decade but, also more recently, several regulators have investigated the interconnection markets and have found no evidence of a market failure that would justify regulatory

¹ German Monopoly Commission issued a stark warning about the policy idea:

https://www.monopolkommission.de/images/Policy_Brief/MK_Policy_Brief_12.pdf

²https://www.beuc.eu/sites/default/files/2022-09/BEUC-X-2022-096_Connectivity_Infrastructure-and-the_open_internet.pdf

³ 29 Internet experts and academics send a letter to the Commission urging to abandon the “Sending Party Network Pays” proposal,

<https://www.komaitis.org/personal-blog/29-internet-experts-and-academics-send-a-letter-to-the-commission-urging-to-abandon-the-sending-party-network-pays-proposal>

⁴ When it comes to fair share, network neutrality should be on the table.

<https://www.komaitis.org/personal-blog/when-it-comes-to-fair-share-network-neutrality-should-be-on-the-table>

⁵<https://www.internetsociety.org/resources/doc/2023/submission-to-ec-future-of-the-electronic-communications-sector-and-its-infrastructure/>

⁶ EU Telecoms’ Newest Proposal to force websites to pay them is just as terrible as the previous one,

<https://cyberlaw.stanford.edu/blog/2023/07/eu-telecoms-newest-proposal-force-websites-pay-them-just-terrible-their-previous-one>

⁷ See position of BEUC, the umbrella of all EU consumer protection organisations:

https://www.beuc.eu/sites/default/files/2022-09/BEUC-X-2022-096_Connectivity_Infrastructure-and-the_open_internet.pdf

⁸ Oxera study commissioned by Dutch Ministry of Economics warns significant setup and administration costs:

<https://open.overheid.nl/documenten/ronl-8a56ac18a98a337315377fe38ac0041eb0dbe906/pdf>. Moreover, the BEREC preliminary assessment (BoR (22) 137) expects any such interventions to cause subsequent problems which will demand further intervention: https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf

intervention.⁹ As BEREC, the Body of European Electronic Communications Regulators, has stated: “[...] the internet has proven its ability to cope with increasing traffic volumes, changes in demand patterns, technology, business models, as well as in the (relative) market power between market players. These developments are reflected in the IP interconnection mechanisms governing the internet which evolved without a need for regulatory intervention”. At the same time, a diverse set of actors¹⁰, including CAPs¹¹, are investing heavily in broadband networks, indicating that the financing of network infrastructure is a complex enterprise.

Moreover, according to the OECD, “since the Internet was commercialised in the early 1990s, it has developed an efficient market for connectivity based on voluntary contractual arrangements. Operating in a highly competitive environment, largely without regulation or central organisation, the Internet model of traffic exchange has produced low prices, promoted efficiency and innovation, and attracted the investment necessary to keep pace with demand”.¹²

There is no question that a network fees scheme will ultimately hurt consumers, their rights, their ability to connect to the Internet and their choice of what content to consume. In South Korea, for example, the only legal framework to have implemented such a scheme, the result has been high prices, a failing interconnection market and an adverse effect on investment.¹³ Additionally, in Europe, many other stakeholder groups have voiced their opposition, including the biggest EU associations representing all private¹⁴ and public¹⁵ broadcasters who are concerned about media plurality; these include stakeholders like the Sports Rights Owner Coalition, the Motion Picture Association and Wikimedia Europe.¹⁶

⁹ BoR (12) 130

<https://www.berec.europa.eu/en/document-categories/berec/reports/an-assessment-of-ip-interconnection-in-the-context-of-net-neutrality>; BoR (12) 120 rev1

<https://www.berec.europa.eu/en/document-categories/berec/others/berecs-comments-on-the-etno-proposal-for-ituwcit-or-similar-initiatives-along-these-lines>; BoR (17) 184

<https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-ip-interconnection-practices-in-the-context-of-net-neutrality#:~:text=In%202012%20BEREC%20published%20the,patterns%20and%20in%20business%20models>; BoR (22) 137

https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf; BoR (23) 131d

<https://www.berec.europa.eu/en/document-categories/berec/others/berec-input-to-the-ecs-exploratory-consultation-on-the-future-of-the-electronics-communications-sector-and-its-infrastructure>;

¹⁰<https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/long-term-demand-for-communication-tools-pulls-pe-capital-into-sector-62785434>

¹¹<https://www.wsj.com/articles/google-amazon-meta-and-microsoft-weave-a-fiber-optic-web-of-power-11642222824>

¹² Weller, D. and B. Woodcock (2013-01-29), “Internet Traffic Exchange: Market Developments and Policy Challenges”, *OECD Digital Economy Papers*, No. 207, OECD Publishing, Paris. <http://dx.doi.org/10.1787/5k918gpt130q-en>

¹³ Kyung Sin “KS” Park and Michael R. Nelson, “Afterword: Korea’s Challenge to the Standard Internet Interconnection Model,” in *The Korean Way With Data: How the World’s Most Wired Country Is Forging a Third Way*, edited by Evan A. Feigenbaum and Michael R. Nelson (Washington DC: Carnegie Endowment for International Peace, 2021), 73–75, <https://carnegieendowment.org/2021/08/17/afterword-korea-s-challenge-to-standard-internet-interconnection-model-pub-85166>.

¹⁴ TV and VoD statement on network fees, <https://www.acte.be/publication/tv-vod-statement-on-network-fees/>

¹⁵ EBU’S reply to the consultation on the future of the electronic communications sector and its infrastructure https://www.ebu.ch/files/live/sites/ebu/files/News/Position_Papers/open/2023/EBU_position_future_of_electronic_communications_ECConsultation-FINAL.pdf

¹⁶ 50+ ISPs, NGOs and broadcaster groups hit out at “Big Telco bias” driving anti-competitive EU network fee proposal <https://techcrunch.com/2023/05/03/coalition-says-no-eu-network-fee-please/>

We also like to point how such policy schemes will exacerbate the global internet access concerns¹⁷, which continue to persist despite the recent COVID-19 pandemic driving people online and demonstrating the internet's role in today's societies.

Given the existing evidence and the overwhelming negative reaction of this policy idea in Europe, we are extremely alarmed by the tsunami of policies that have been emerging throughout the world due to the European Commission's uninformed and dangerous idea on network fees.

According to reports,¹⁸ India's telecommunication companies are pointing to the European Union's "fair share" initiative as a reason for the government to unnecessarily intervene in the market. The same thing is happening in Brazil.¹⁹ To be clear, the majority of EU governments opposes these plans²⁰ and key countries called on the European Commission to adhere to its own due diligence standards²¹ like publishing an impact assessment or taking stakeholder opinions into account, before any new bill is proposed. While former France Telecom CEO and current EU Commissioner for Europe's Internal Market, Thierry Breton²² has given the impression the EU will establish network fees, other world leaders should be cautious to follow his example.

In the end, the "fair share" debate is not about big tech and it is not about investment in infrastructure. It is about repositioning telecommunication operators as gatekeepers, allowing them to demand payment from anyone who wants to reach their customers. No matter how hard telecommunication operators try to spin it²³, this issue is about network neutrality²⁴ and, effectively, the rights of users. In the end, this business model of the telephony era would be a radical shift in the functioning of the global internet and could splinter it.

In light of all this, we ask policy makers and governments from around the world to stand against the imposition of direct or indirect payment obligations to the benefit of only a handful of telecommunication operators. The current system works, has proven its resilience and its ability to evolve alongside the Internet.

¹⁷ More than a third of world's population have never used the internet, says UN
<https://www.theguardian.com/technology/2021/nov/30/more-than-a-third-of-worlds-population-has-never-used-the-internet-says-un>

¹⁸ https://www.trai.gov.in/sites/default/files/PR_No.73of2023.pdf; see also, How TRAI consultation may make online streaming slower for Indians, <https://indianexpress.com/article/opinion/columns/internet-must-be-free-open-8860126/>
¹⁹ https://sei.anatel.gov.br/sei/modulos/pesquisa/md_pesq_documento_consulta_externa.php?8-74Kn1tDR89f1Q7RjX8EYU46IzCFD26Q9Xx5QNDbqYiJNH7rwkhXeXo3WfvrhUb0PHMGw8p5aR24P00IwCDUyM1xwmW482e3ugs0--XOxyvVYs1nVv14z49I3MOGWZm

²⁰ Majority of EU countries against network fee levy, sources say,
<https://www.reuters.com/business/media-telecom/majority-eu-countries-against-network-fee-levy-big-tech-sources-say-2023-06-02/>

²¹ <https://www.permanentrepresentations.nl/documents/publications/2022/07/19/call-for-a-careful-process-in-light-of-the-current-debate-on-otts>

²² https://en.wikipedia.org/wiki/Thierry_Breton

²³ Yes, Telefonica, Forcing Apps to Pay ISPs Violates Net Neutrality,
<https://cyberlaw.stanford.edu/blog/2023/07/yes-telefonica-forcing-apps-pay-isps-violates-net-neutrality>

²⁴ *Id.*

SIGNATORIES

Civil Society Organizations

Internet Freedom Foundation, India
ISOC Brazil, the Brazilian Chapter of the Internet Society
Homo Digitalis, Greece
Electronic Frontier Foundation (EFF), United States
Epicenter.works, Austria
Instituto Nupef, Brazil
IPANDETEC, Panama
Digital Medusa, United States
The Internet Society, Global
ABRINT - Associação Brasileira de Provedores de Internet e Telecomunicações, Brazil
OpenNet, S. Korea
CDT, United States
Politiscope, Croatia
Open Rights Group, United Kingdom
European Digital Rights (EDRi), Belgium
SUPERRR Lab, Germany
IT-Pol, Denmark
The Lisbon Council, Belgium
Wikimedia Deutschland, Germany
Hermes Center, Italy
Centre for Internet and Society, India
Derechos Digitales, Latin America
Internet Governance Project, Georgia Institute of Technology, Atlanta, USA
Center for Technology and Society at FGV, Brazil

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Annex I

Relevant civil society positions on network fees

BEUC:

https://www.beuc.eu/sites/default/files/publications/BEUC-X-2023-060_Fair_for_Consumers_the_future_of_Connectivity_and_the_Open_Internet.pdf

EPICENTER.WORKS

https://en.epicenter.works/sites/default/files/verbose_eusurvey_response.pdf

Internet Society

<https://www.internetsociety.org/resources/doc/2023/submission-to-ec-future-of-the-electronic-communications-sector-and-its-infrastructure/>

Article 19

<https://www.article19.org/resources/eu-telecom-interests-must-not-trump-human-rights/>

CDT

<https://cdt.org/wp-content/uploads/2023/05/2023-05-19-CDT-Letter-SenderPays.pdf>

European Foundation, Creative Commons and IFLA

<https://pro.europeana.eu/post/europeana-foundation-creative-commons-and-ifla-join-forces-to-defend-net-neutrality-in-the-eu>

EDRI

<https://edri.org/our-work/commission-launches-internet-fee-consultation-full-of-biased-questions/>

